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RELEASE ON BOND AND LEGAL REPRESENTATIVES OF CRIMINAL DEFENDANTS ARRESTED IN EVANSTON, ILLINOIS DURING 1970

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INTRODUCTION

The death of John Cox, an Evanston resident who died while in custody awaiting trial for involuntary manslaughter, was the subject of an investigation by a committee of the Evanston City Council headed by Alderman Shel Newberger. This committee reported that numerous problems had aggravated the case of John Cox, among them the lack of defense counsel to act on behalf of Cox, and the fact that he was held in pre-trial custody rather than release on bond.[1]

Alderman Newberger's committee recommended that Mayor Vanneman appoint a citizens' committee to determine the nature and the availability of criminal legal services in Evanston.

To aid it in its work, the Citizens' Committee obtained the services of the Law Enforcement Study Group of Northwestern University's Center for Urban Affairs. Together, the Committee, two law students and the Study Group surveyed 1970 criminal cases arising in Evanston to determine the number of persons accused of crime in Evanston, the types of crimes of which they are accused, and the dispositions of their cases. Particular attention was given to the prevalence and effect of pre-trial release on bond and representation by attorneys.

This paper presents the analysis of the processing of persons arrested and tried in Evanston during 1970. It traces their careers

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1 Report on John Edward Cox by the Evanston City Council Special Committee, Shel Newberger, Chairman

through the judicial portion of the criminal justice system in the Second Municipal District of the Cook County Circuit Court from pretrial custody or release on bond to bind-over, discharge or sentencing. The analysis is of the records of the Office of the Clerk of the Circuit Court in District Two. An explanation of the method which we used to collect and tabulate the date may be found in Appendix A.

Information on several of the demographic characteristics which would guide our interpretation of the data (i.e. race, residence, age and income of the accused) was unavailable. Within these constraints, however, patterns emerge which clearly indicate the nature of the criminal legal system in Evanston.

We have divided this report into four main parts:

1. An outline of the role of the branch court in Evanston and the procedure by which a criminal defendant is discharged or acquitted,

2. A description of the results obtained from the survey of criminal defendants through the court,

3. A section on two specific problem areas, pretrial release on bond and availability of defense counsel, and

4. A concluding section dealing with recommendations that flow out of the data collected.

I. JURISDICTION AND PROCEDURE IN EVANSTON BRANCH COURT

The Court Structure and Rules

The court in Evanston is a branch of the Municipal Department of the Circuit Court of Cook County. Like most other suburban courts, it was incorporated into the Circuit Court after the 1963 judicial articles to the Illinois Constitution came into effect on January 1, 1964.

The Circuit Court of Cook County has two main parts, the County Department and the Municipal Department. The County Department has seven divisions which specialize in different types of cases: law, chancery, divorce, probate, county, criminal and juvenile. The Municipal Department, of which the Evanston Branch Court is a part, is divided into six geographic districts: the first encompasses Chicago and the remaining five encompass suburban Cook County. Evanston is in the Second Municipal District.[1] (See diagram, next page).

The jurisdiction of the various parts of the Circuit Court of Cook County is set out in a general order of the Circuit Court of Cook County.[2] Trial jurisdiction of the branches of the

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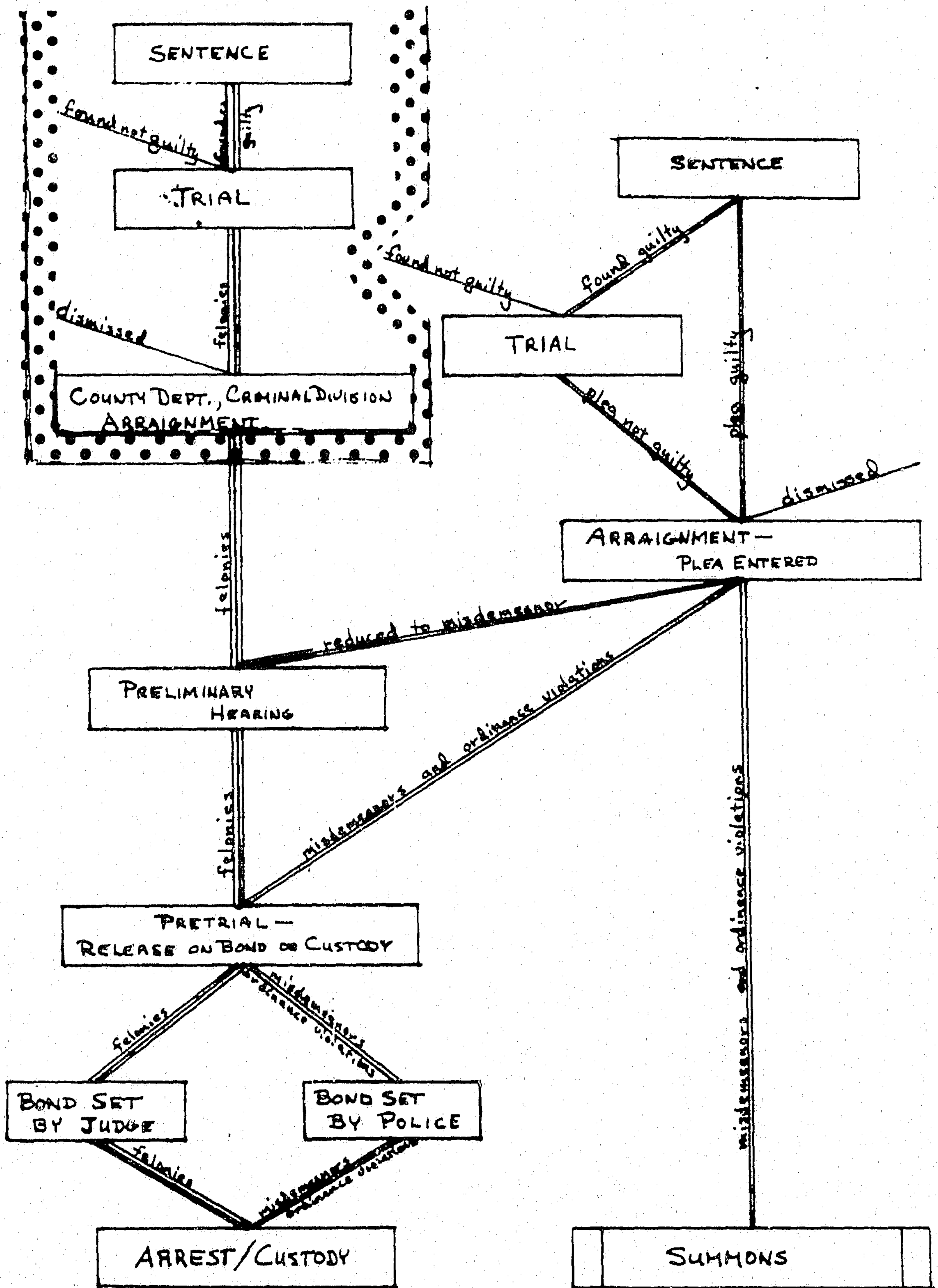
1 General Order No. 1 dated March 1, 1966, Sullivan's Law Directory for the State of Illinois, 1970-71, p. 316b.

2 The townships of Evanston, Niles, excluding that part lying within the territorial limits of the Village of Niles, New Trier, Northfield, Wheeling, and that part of the township of Palatine lying within the territorial limits of Palatine and the Village of Rolling Meadows.



THE EVANSTON BRANCH COURT

felony defendants

misdemeanor & ordinance violations defendants

county department jurisdiction

Municipal Department, including the Evanston Branch Court, is limited to "criminal and quasi-criminal actions and prosecutions commenced by complaint or information," principally misdemeanors and ordinance violations. The branch courts may also hold preliminary hearings in felony cases to determine whether there is probable cause to hold persons accused of felonies. If the branch court determines that there is probable cause, the person is "bound over" for indictment by a grand jury. The indictment is returned to the County Department, Criminal Division, of the Circuit Court which has exclusive jurisdiction over "criminal actions and prosecutions commenced by indictment."

Thus, the Evanston Branch Court has two main functions as a part of the Circuit Court:

1) to try misdemeanor and ordinance violation cases, and

2) to hold preliminary hearings in felony cases.

It has divided its criminal docket into two parts which correspond to these two functions. On Mondays the Court holds preliminary hearings for felonies,[3] and on Fridays it tries misdemeanors and ordinance violations.[4] Tuesdays through Thursdays the Court

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3 These include felony arrests made in the rest of the Second Municipal District except for Arlington Heights, Buffalo Grove and three other western suburbs.

4 These are only misdemeanors alleged to have been committed in Evanston.

handles traffic cases. These divisions are not mandatory. The Court sets bond in criminal cases Monday through Friday and often handles misdemeanor or ordinance violation cases on Mondays when the defendant has been in custody over the weekend.

The Officers of the Court

The judges who preside over the Evanston Branch Court are Cook County Circuit Court judges or magistrates who are assigned to sit in Evanston for a month at a time. The offices of the Cook County State's Attorney and Public Defender also assign two Assistant State's Attorneys and two Assistant Public Defenders to serve in Evanston. The Assistant State's Attorneys are assigned to Evanston for both the Monday and Friday calls. However, the Assistant Public Defenders are assigned to Evanston on Mondays (for the felony call) and to Arlington Heights on Thursdays.[5] No public defender is present in the Evanston Branch Court on Fridays.

The Defendant and Illinois Court Procedure

The first contact with the criminal justice system will usually be a summons to appear in court or more frequently an arrest with

5 One of the two Assistant Public Defenders takes primary responsibility for Evanston cases and the other takes primary responsibility for Arlington Heights cases.

or without a warrant. If the person is arrested rather than summoned he is taken into custody by the Evanston City Police Department and taken to the police station to be booked. At the station he will be allowed to make a reasonable number of phone calls to contact a friend or relative and an attorney.

If he has been charged with a misdemeanor or an ordinance violation, bail may be set from a schedule by the desk sergeant at the police station. Bail set according to this schedule ranges from $250.00 to $1,000.00. If the person arrested can post 10% of the bail in cash, he may be released pending trial.[6] If the person is charged with a felony or a misdemeanor which is not listed on the schedule, bail must be set by a judge. This can be done fairly simply during working hours on week days, but on weekends or after regular court hours, the "duty" judge must be phoned by the police. If bail is set by a judge, persons accused of felonies and misdemeanors not on the bail schedule may also be released if they deposit 10% of the bail in cash. Persons for whom bond has not been set remain in the Evanston police lock-up until they can be brought before a judge. Those persons who cannot make bond are transferred to Cook County jail until their trial or until they can make bond.

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6 Illinois Supreme Court Rule

If the charge against the defendant is a felony, the next step for both those in custody and those released on bond is the preliminary hearing.[7] At the preliminary hearing the judge is supposed to determine whether the state has "probable cause" to hold the defendant for the grand jury. Probable cause in this context generally refers to a combination of:

1) probable cause to believe that a crime has been committed, and
2) probable cause to believe that the defendant committed that crime.

If "probable cause" is found, the branch court's jurisdiction ends and the defendant is "bound over" to be indicted by the county grand jury. After indictment he will be tried in the criminal division of the County Department of the Circuit Court. If no probable cause is found, the charges against the defendant are dismissed.

If the charge is a misdemeanor or an ordinance violation, the defendant is arraigned -- told the charges against him and asked to enter a plea. Under Illinois law, every person has a right to counsel before pleading to the charge.[8] If he pleads

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7 Ill. Rev. Stat. Ch. 38 § 109-3

8 Ill. Rev. Stat. Ch.38 §113 - 3

not guilty, bond is set if it has not been set previously, and pre-trial motions may be made. The case is then tried. In most misdemeanor cases, a jury trial is waived, and the judge hears the case alone. The state must prove beyond reasonable doubt that the defendant committed the crime of which he is accused.

If the defendant is found not guilty, he is discharged. If the defendant is found guilty, he is sentenced by the judge. The sentence for a misdemeanor can be no more than one year in jail and a $1,000 fine.

All of these steps, from arrest or summons to preliminary hearing or arraignment to discharge, bind over or sentencing may take minutes or several appearances. Over one thousand persons arrested in Evanston went through part or all of this procedure during 1970.

II. RESULTS OF THE SURVEY

During 1970, 1,115 persons were arrested or summoned in Evanston and brought before the Evanston branch court on charges of violating either Illinois law or Evanston city ordinances. The graphs on the next two pages summarize the flow of the defendants through the Evanston courts.

The crimes which these people were accused of committing varied widely. There were 275 persons accused[9] of felonies, 639 persons accused of misdemeanors and 201 persons accused of ordinance violations. Approximately 30% of these persons were eventually found guilty and sentenced. Since the seriousness of these offenses varies greatly, and since the court has different powers with regard to each type of offense, the charts in this chapter summarize the results of the survey separately for each class of crimes.

Felony Defendants

As we noted above, the Evanston branch court is one of limited jurisdiction -- while it may try and sentence people accused of misdemeanors and ordinance violations, it may only set bond and hold probably cause hearings on felonies.

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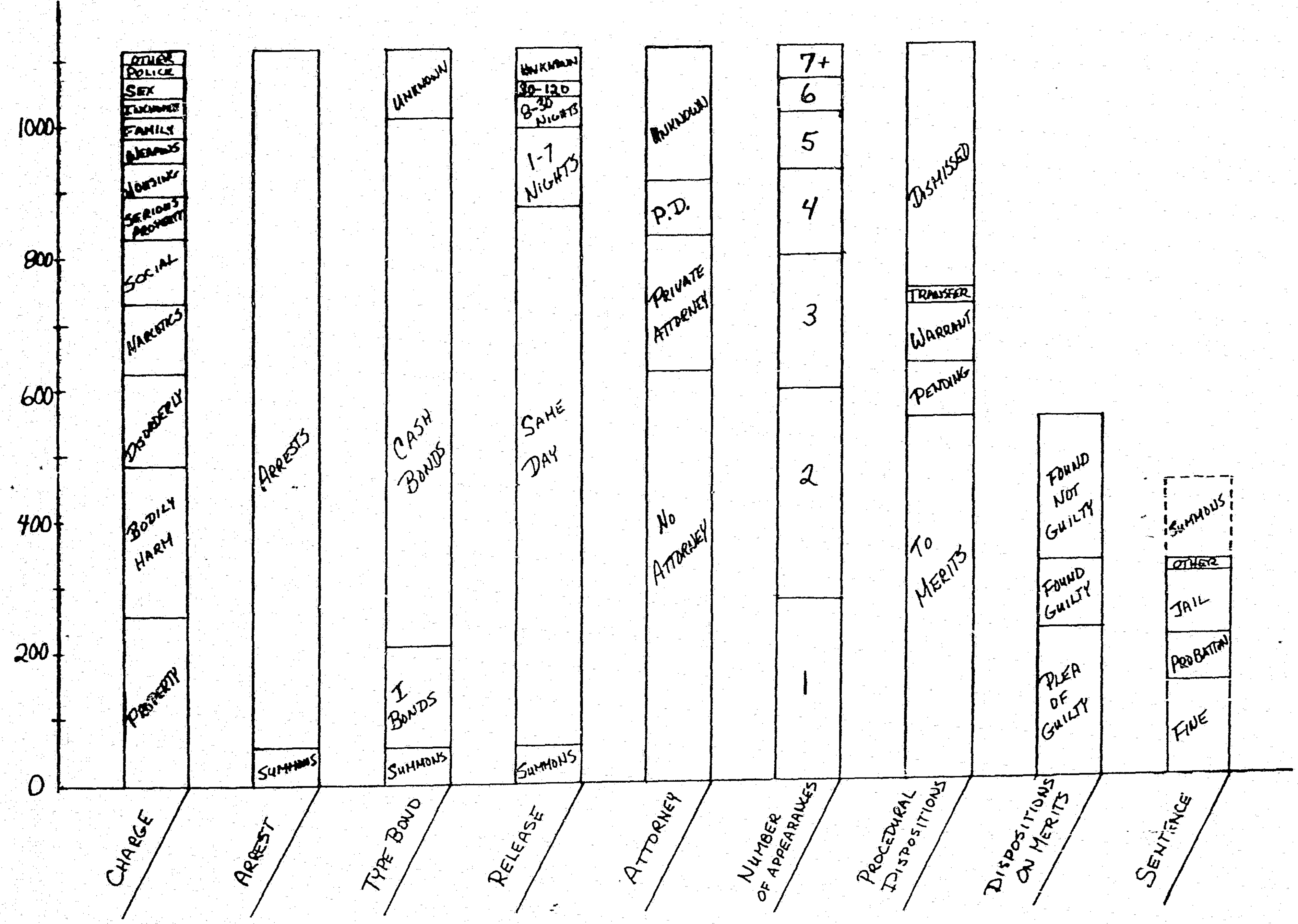
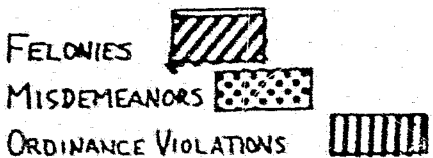
9. Unless otherwise stated, we refer to the principal charge against each person, see note 33, Appendix A.

FLOW OF CRIMINAL DEFENDANTS THROUGH THE EVANSTON COURT




TYPES OF OFFENSES
(for breakdown of each type, see Appendix B)
FELONIES
MISDEMEANORS
ORDINANCE VIOLATIONS
TOTAL PERSONS
250
200
150
100
50
INCHOATE
HOMICIDE
BODILY HARM
SERIOUS PROPERTY
PROPERTY
NARCOTICS
SEX (NOT RAPE)
GOVERNMENT
POLICE
WEAPONS
SOCIAL
DISORDERLY
FAMILY
HOUSING

All 275 persons accused of felonies were arrested and taken into custody by the police. These persons were accused of five main types of offenses:

Type of Felony	% of all felony defendants	Most common offense
Property offenses	30%	Theft
Serious property offenses	24%	Burglary
Bodily harm offenses	20%	Agg. Battery
Narcotics offenses	11%	
Inchoate offenses	8%	Attempted felonies
Other	7%	

Bond must be set by a judge for persons accused of felonies, and the general range for bonds on felonies in Evanston was between $1,000 and $5,000 ($100 to $500 cash). Slightly over half of the felony defendants were able to post bond the same day. The remainder spent at least one night in jail prior to making bond or the disposition of the case:

Nights in jail Pre-trial	Persons	% of felony defendants
1- 7	48	18%
8- 30	25	9%
30-120	19	7%
Unknown[10]	19	7%

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10. The date of arrest not clear from the docket sheets for these defendants. All spent some time in jail pre-trial.

Although the principal role of the Evanston Branch Court in felony cases is to hold probable cause hearings, few of the felony cases were actually disposed of in this manner. Only 16 of the 275 persons accused of felonies (5.8% total felony accused) had dispositions which were clearly the result of probable cause hearings. Eight of these people were bound over for grand jury indictments; eight were dismissed for lack of probable cause. The remaining dispositions show that actual practice in felony cases does not follow the theory outlined in the statutes and court rules. These dispositions were as follows:

Disposition	Persons	% total felony Defendants
Superceded by direct indictment	12	4%
Superceded by information	4	2%
Dismissed	61	22%
Reduced to misdemeanors	128	47%
Warrant outstanding (jumped bond)	23	9%
Warrant outstanding (no arrest ever made)	12	4%
Pending, unknown	19	7%

Nearly half of the persons accused of felonies (129 of 275 persons) had the charges against them reduced to misdemeanors, a procedure which enabled the branch court to try the case. These

persons were consequently arraigned and tried on the misdemeanor charges in the Evanston branch court. The final dispositions of these 128 cases were:

	Persons	Percent of Those tried
Plea of guilty, found guilty	75	59%
Plea not guilty, found guilty	22	17%
Plea not guilty, found not guilty	31	24%

Those persons found guilty on the reduced charges were usually sentenced to terms in jail (42% of those sentenced[11]) or placed on probation (44% of those sentenced[12]).

It took an average of 3.8 appearances for the branch court to dispose of a felony case. Over one-third of the defendants were not represented by counsel. In all, 35.0% of those defendants whose principal charge was a felony were found guilty on the reduced charge. Another 8.7% were transferred to be tried on felony charges by the criminal division. The proportion of defendants convicted was highest for serious property offenses (46.2% of those charged)

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11. Any sentences with a jail component, e.g., jail plus probation

12. Any sentence with a probation component except jail plus probation, e.g., probation plus fine.

and lowest for inchoate crimes (17.4% of those charged).[13]

Persons Accused of Misdemeanors

Over half of the persons charged with crimes in Evanston were charged with misdemeanors. These misdemeanors were of six main types:

Type of Misdemeanor	% Misdemeanor Defendants	Most Common Offense
Bodily Harm Offenses	27%	Battery
Property Offenses	26%	Theft
Disorderly Conduct	12%	Disorderly Conduct
Narcotics Offenses	11%	Possession
Weapons Offenses	5%	Unlawful use of weapon
Family Offenses	5%	Non-support
Other, (All less than 30%)	14%	

Most of those accused of family offenses (paternity and non-support) were summoned to appear before the court. The remaining individuals were arrested and taken into custody.

Bail for most of these misdemeanors could usually be set according to the schedule at the police station. Most of the cash bonds set for misdemeanors fell between $250 and $1,000 ($25 to $100 cash). Nearly 90% of all the persons accused of misdemeanors

13. Another 30.4% of the defendants accused of inchoate crimes were placed under court "supervision" although officially found not guilty.

were able to post bond the same day or were summoned. Those who were not able to post bond the same day were held until they could post bond or their case was disposed of:

Nights in jail pre-trial	Persons	Percent Misdemeanor Defendants
1- 7	37	6%
8- 30	15	2%
30-120	3	5%
Unknown	22	3%

The average misdemeanor case was disposed of after 2.6 court appearances. Nearly 315 of the misdemeanor defendants (58.7%) did not have lawyers. The Evanston branch court has complete jurisdiction to try misdemeanors. The dispositions in misdemeanor cases broke down as follows:

Disposition	Persons	% Misdemeanor Defendants Accused
Dismissal	241	38%
Plea not guilty, found not guilty	149	23%
Plea guilty, found guilty	96	15%
Plea not guilty, found guilty	59	9%
Warrant outstanding (jumped bond)	24	4%

Warrant outstanding (no arrest ever made)	29	5%
Pending	41	6%

The high number of dismissals of misdemeanors is largely the result of the reluctance of citizens to prosecute complaints. Over half of the misdemeanors charges which were dismissed were "dismissed for want of prosecution." For misdemeanors involving bodily harm the rate was even higher. 86.5% of the dismissals in bodily harm cases dismissed were dismissed for want of prosecution. Narcotics offenses were the only category of misdemeanors in which nearly all the dismissals were the result of the state's attorney's recommendation or the decision of the judge.

Approximately one fourth of all misdemeanor defendants were found guilty, but, as was the case with the felonies, the conviction rates for individual types of mi emeanors varied widely. While only 12% of those accused of narcotics offenses and 11% of those accused of weapons offenses were found guilty, 2% of those accused of property offenses and 30% of those accused of disorderly conduct were found guilty.[14]

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14 As with felonies, the types of offenses with low conviction rates had a large proportion of persons who were found not guilty but placed under the court's supervision (16% for narcotics offenses, 25% for weapons offenses).

Over half of the 155 persons convicted of misdemeanors (56%) were sentenc d to pay fines. Another 17% were sentenced to terms in jail and 16% were placed on probation.[15]

Persons Accused of Ordinance Violations

201 persons were accused of committing ordinance violations in Evanston. Nearly all of these violations fell into three categories:

	Percent	Most common Offense
Social offenses	42%	Public Intoxication
Disorderly Conduct	30%	Loitering
Housing & zoning violations	24%	Housing & zoning
Other	4%	

Hearly all of the persons accused of housing and zoning offenses were summoned rather than arrested. Persons accused of other ordinance violations were taken into custody. Bond for ordinance violations was generally set at the police station at $250, or $25 cash. Of those persons accused of ordinance violations for whom amount of bond was known and who were not summoned, 71% has bond set at $25 cash. 11% were released on their own recognizance, and 14% were given $100 cash bonds. Despite the proedominantly low

15 Sentence type refers to the most serious component of the sentence.

bonds, only three-fourths of the persons taken into custody for ordinance violations were released on the same day as their arrest. Approximately two-thirds of those unable to make bond were accused of social offenses, usually public intoxi ation; and the other third was accused of disorderly conduct. These persons were held in custody until they were able to make bond or were tried.

Nights in jail Pre-trial	Persons	% Ordinance Violation Defendants
1- 7	34	17%
8-30	5	2%
Unknown	13	6%

It took the Evanston Branch Court an average of 2.2 appearances to dispose of each ordinance violation. Most of those accused of ordinance violations, 73%, appeared before the court with no attorney.

The dispositions in ordinance violation cases broke down as follows:

Disposition	Persons	% Ordinance Violation Defendants
Dismissals	60	30%
Found not guilty	42	21%
Plea guilty	57	28%
Found guilty	19	10%
Warrant	2	1%
Pending	21	10%

The conviction rate for all ordinance violations was 38% of those accused. This did not vary widely for the individual offenses as did the rates for felonies and misdemeanors. The high was for social offenses at 44% of those accused, and the low was for disorderly conduct at 31%.[16]

The sentences for ordinance violations were usually fines of $20 or $25. However, about a third of those sentences on ordinance violations were sentenced to jail, or to jail in addition to being fined. Most of these persons had been convicted of public intoxication. In these cases the sentence was often for the "time served" while the person had been in custody prior to trial.

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16 Again, the offense with the lowest conviction rate had the most people placed under court supervision but found not guil[illegible]

III. PROBLEM AREAS

Pre-Trial Release On Bond

The first problem which the investigation by the Evanston City Council found to have aggravated the case of John Cox was his inability to post bond in order to be released from custody pending trial.

Release on bond is a constitutional right in the United States. The Eighth Amendment to the Constitution states:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Bond is also a right under Illinois law. The Illinois Criminal Code states that all offenses except capital offenses are bailable:

> "Ch. 38 § 110-4(a) All persons shall be bailable before conviction, except when death is a possible punishment for the offenses charged and the proof is evident or the presumption great that the person is guilty of the offenses."

The policy behind allowing bail is part of the presumption of innocence. A person should not be punished until the state has proved that he is guilty of a crime. Accordingly, he should not be jailed before he has been tried and convicted.

The theory behind bond itself is that by depositing an amount of cash as security, a defendant can guarantee his appearance for trial. If he appears, his bond is refunded; if he fails

to appear, the bind is forfeited to the state, and he may be arrested again. Bond is not supposed to keep a defendant accused of a serious offense in jail until he is tried; on the contrary, bond is only supposed to assure the defendant's appearance at trial.

Everyone arrested in Evanston except those persons accused of housing or zoning violations, paternity or non-support was arrested and taken into custody for some period of time by the police. Only five of the 1059 persons so arrested were accused of capital crimes, that is, were not presumed bailable under Illinois law. Most of these persons were able to post bond the same day that they were arrested. However, 240 persons, about one-fifth of the persons arrested and brought to trial in Evanston, were forced to spend some time in jail prior to being tried. This is two and one-half times as many persons as were ultimately sentenced to terms in jail after being tried.

	Persons	% Total
Jail pre-trial	230	22%
Sentenced to jail	91	8%

Although the problem of inability to post bond was greatest for felonies (where the bonds were the highest), a substantial number of persons accused of misdemeanors and ordinance violations

were also held in custody for some time prior to making bond or the disposition of their case.

	Persons	% Total Class
Felony defendants held pre-trial	111	40%
Misdemeanor defendants held pre-trial	77	12%
Ordinance Violation defendants held pre-trial	52	20%

The majority of those held in custody pre-trial for ordinance violations were persons arrested for public intoxication. Since these persons present a somewhat different problem from the ordinary defendant who cannot post bond for financial reasons, we shall only consider the misdemeanor and felony defendants who could not make bond in this section.

Defendants Who Could Not Post Bond

We cannot precisely identify the types of persons who could not make bond. We can assume that they all had in common the inability to raise the required amount of cash the same day as their arrest. However, the defendants held in custody pre-trial were not simply those defendants with high bonds or those defendants accused of serious crimes. Most defendants in Evanston could make bond even if it was high and even if the charges against

them were serious. There was, however, a minority who could not post even low bonds, and the number of persons in this minority increased as the amount of the bond increased.

In felony cases where most of the bonds were set at $100.00 cash or higher, nearly one defendant in four could not post bond within 3 days.[17] In misdemeanor cases, however, where the majority of the bonds were $100.00 cash or less, only one defendant in twenty could not post bond within 3 days. Persons accused of property offenses (both serious and simple property offenses) were even less likely to be able to post the amount of their bonds than those accused of other offenses.

The Effect of Pre-Trial Custody

The person who was held in custody prior to trial was not only indirectly punished before being tried, he was also more likely to plead guilty or to be found guilty by the judge and more likely to be given a jail sentence[18] than the person who was released pre-trial. (See table, next page). Our data do not indicate whether these defendants would have fared differently had they been able to post bond.

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17 3 days was chosen in order to eliminate those people held over a weekend (Friday night to Monday morning) who might not have been able to post bond because it was not set.

18 A defendant is credited under Illinois law with the time he has served pre-trial if he is convicted.

RELATIONSHIP BETWEEN PRETRIAL CUSTODY AND CASE DISPOSITION

Felony

Total number of persons who spent no nights in jail 164

Disposition	Persons	% Defendants Released Pre-trial
Number pleading guilty	32	20%
Number pleading not guilty/ found guilty	9	6%
Number sentenced to jail	6	4%

Total number of persons jailed for some time pre-trial 562

Disposition	Persons	% Defendants Held Pre-trial
Number pleading guilty	37	51%
Number pleading not guilty/ found guilty	10	14%
Number sentenced to jail	30	42%

Misdemeanor

Total number of persons who spent no nights in jail 562

Disposition	Persons	% Defendants Released Pre-trial
Number pleading guilty	74	13%
Number pleading not guilty/ found guilty	48	9%
Number sentenced to jail	8	1%

Total number of persons spending time in jail 55

Disposition	Persons	% Defendants Held Pre-trial
Number pleading guilty	17	31%
Number pleading not guilty/ found guilty	8	15%
Number sentenced to jail	18	33%

Requiring cash as security for a defendant's appearance for trial after pretrial release obviously discriminates against defendants who are poor. It is not necessarily those most culpable, or those accused of the most serious crimes or those most likely to flee who are in custody prior to being tried, but simply those with the least ready cash. And yet, people jailed pretrial are more likely to plead guilty or be found guilty and jailed.

When one compares the persons accused of felonies and misdemeanors who were released on various amounts of bond and then jumped bond,[19] it appeared that the amount of money at stake had little to do with appearing for trial:

Amount Bond	% Felony defendants with each type bond with warrant dispositions[20]
Indiv. Bond	12%
$25 - $50	8%
$100	12%
$150 - $5000	9%

19 These are persons whose final disposition was the issuance of a warrant for not appearing or an <u>ex parte</u> judgment on the bond with no attempt to vacate. Thus, the people who missed court appearance but returned are left out.

20 The base for these percentages was 213 felonies and 547 misdemeanors. The difference between these numbers and the total number of felonies and misdemeanors is due to 1) persons summoned, 2) persons for whom warrants were issued, but who were never arrested at all, and 3) persons for whom no bond was ever set and recorded.

Amount of Bond	% Misdemeanor defendants with each type of bond with warrant dispositions[21]
Indiv. Bonds	3%
$25 - $50	14%
$100	3%
$150 - $500	6%

Overall, some 3.8% of the persons accused of misdemeanors warrant dispositions while 8.7% of the persons accused of felonies jumped bond even though the average felony bond was for a larger amount.

The results of the use of a cash bond system in Evanston seem to support what has been said numerous times before: that other criteria besides wealth should be considered when making the decision to release a person pre-trial.[22]

Availability of Defense Counsel

The second major problem which the investigation by the Evanston City Council of John Cox's death pointed out was that Cox and his family were never represented by a lawyer. The committee of the City Council stated that a defense lawyer could have lessened the problems of communication which arose as well as asserted Cox's rights.

Since many of the case files are being held in other offices for processing, we were able to examine the files for 82% of the individuals accused of crimes in Evanston in order to determine whether the accused had the assistance of counsel. The results of

21 See note 20 above

22 See note 31, in Part IV

this survey showed that more than half of the persons arrested and tried in Evanston did not have attorneys:

	Persons	% of Sample
Private attorneys	207	23.0%
Public Defender	78	8.5%
Appointed private attorney	5	.5%
No attorney	623	68.0%
Total examined . .	913	

The absence of counsel was not simply a problem in "petty" crimes but in all three classes of crimes:

	Private Attorney	Public Defender	Appointed Counsel	No Attorney
Felonies	61	56	1	102
Misdemeanors	123	20	3	375
Ordinance Violations	23	2	1	146

Thus, of the 913 persons whose files were examined, 623 or 68% had no attorneys. Even if we were to assume that all the persons whose files were unavailable had private attorneys,[23] over half of the persons arrested and tried in Evanston would have appeared before court without the benefit of counsel. (See graph, next page).

23 Since we had a complete list of the cases handled by the public defender, we know that these persons were not represented by that office.

The Sixth Amendment to the Constitution of the United States states that:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense." (emphasis added)

The Supreme Court, in the case of Gideon v. Wainwright,[24] said that counsel must be appointed for those who cannot afford to hire private counsel:

> "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

The Gideon case involved a person who was tried and convicted of a felony, the Supreme Court presently has a case before it on the issue whether this rule extends to those accused of misdemeanors. In Illinois, however, the rule is clear. Section 113-3 of Chapter 38 states:

> "(b) In all cases, except where the penalty is a fine only, if the court determines that the defendant is indigent

24 372 U.S. 335 (1963)

and desires counsel, the Public Defender shall be appointed as counsel. If there is no Public Defender in the county or if the defendant requests counsel other than the Public Defender, the court may appoint as counsel a licensed attorney at law of this State, except that in a county having a population of 1,000,000 or more the Public Defender shall be appointed as counsel in all misdemeanor cases where the defendant is indigent and desires counsel unless the case involves multiple defendants, in which case the court may appoint counsel other than the Public Defender for the additional defendants. The court shall require an affidavit signed by any defendant who requests court-appointed counsel. Such affidavit shall be in the form established by the Administrative Office of Illinois Courts containing sufficient information to ascertain the assets and liabilities of that defendant. The Court may direct the Clerk of the Circuit Court to assist the defendant in the completion of the affidavit."

The Court does not secure information regarding the race and income of defendants. Whether they were wealthy, middle class or poor, whether they belonged to a minority race or not, is a matter of speculation. We can, however, identify the principal types of crimes for which persons did not have counsel:

Type of Offense	Persons	% Defendants accused of each offense with no attorney
Bodily Harm	145	63%
Property Offenses	127	50%
Disorderly conduct	96	69%
Misdemeanor	57	72%
Ordinance violation	39	64%
Social offenses	90	89%

Perhaps those people accused of ordinance violations felt that no attorney was necessary. This would explain the lack of counsel for part of the disorderly conduct cases and most of the social offenses. Those people accused of misdemeanors and felonies however, ran the risk of imprisonment and one might guess that they would have hired attorneys if they had been able to afford it,[25] or would have requested appointed counsel if they had known of their rights.

In order to determine how much of a difference representation by an attorney made, we looked at felony and misdemeanor cases separately. The felony cases not only involved more serious offenses but they were also a majority of the cases in which the Evanston branch court appoints counsel for indigents. The misdemeanor cases on the other hand were generally handled by private attorneys or no attorney at all.[26]

The Effectiveness of Counsel in Felony Cases

For each type of representation, the breakdown of dispositions in felony cases was as follows:

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25 The Illinois Bar Association recommends minimum fee $2,000 paid in advance for representation on a felony charge and for representation on a misdemeanor.

26 The 3% of the misdemeanors which the public defender represented probably had multiple offenses which included a felony.

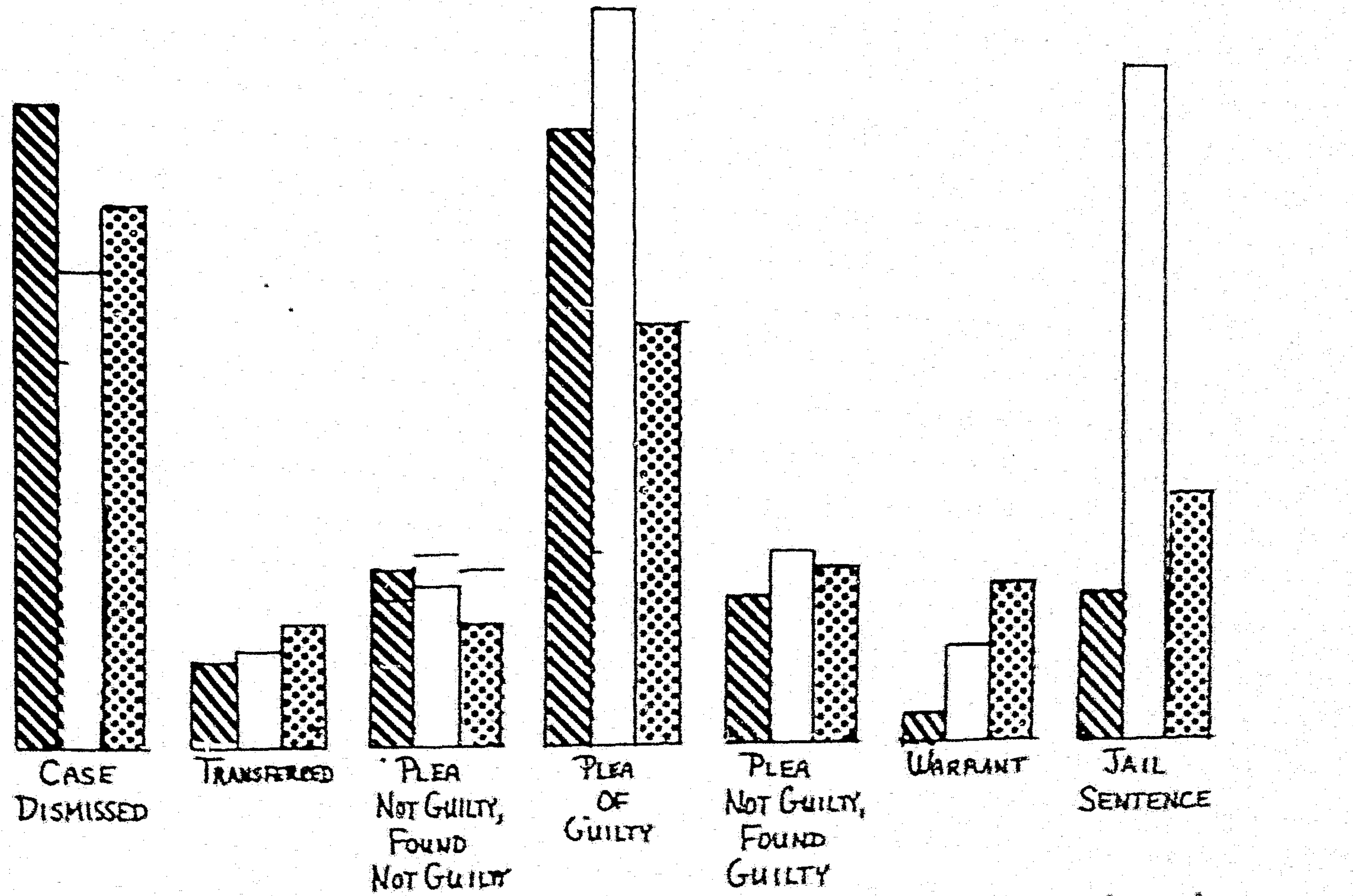
Disposition	Private Attorney[27]	P.D.	No Attorney
Dismissed	36%	27%	30%
Found not guilty	10%	9%	7%
Plea of guilty	34%	41%	24%
Plea not guilty/found guilty	8%	11%	10%
Transferred	5%	5%	7%
Jail sentence	8%	38%	14%
Warrant outstanding (jumped bond)	2%	5%	9%

On the whole, felony defendants with private attorneys fared better in the Evanston Branch Court than those without attorneys. (See graphs, next two pages) Although more persons represented by private attorneys pled guilty, fewer received jail sentences upon being found guilty. The wide difference in the proportions of pleas of guilty may have been caused in part by the high number of unrepresented persons who apparently jumped bond.

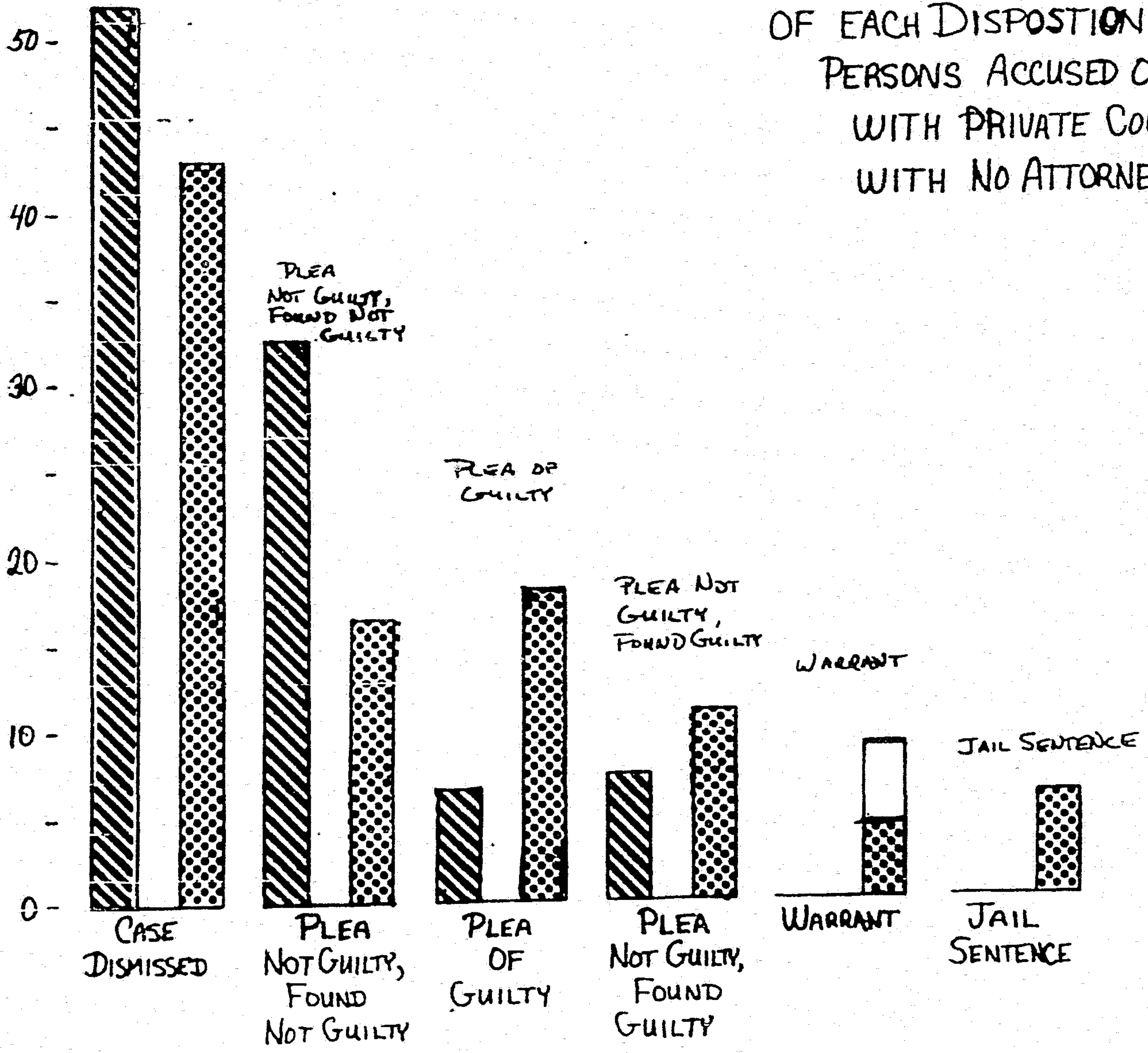
Persons represented by the Public Defender's office fared worse than those in the other two groups.[28] There are two possible explanations for this phenomenon - either the quality of the legal services available through the public defender's office in Evanston needs to be improved, or else, the public defender is generally assigned to losing cases. The latter may

27 The percentages do not sum to 100 since some categories overlap, and others (pending, etc.) are not included.

28 Compare Lawyers' Committee findings for Boston where the same was true.



COMPARISON OF THE PROPORTIONS
OF EACH DISPOSITION—
PERSONS ACCUSED OF FELONIES
WITH PRIVATE ATTORNEY
WITH PUBLIC DEFENDER
WITH NO ATTORNEY
PERCENT
50
40
30
20
10
0
CASE DISMISSED
TRANSFERRED
PLEA NOT GUILTY, FOUND NOT GUILTY
PLEA OF GUILTY
PLEA NOT GUILTY, FOUND GUILTY
WARRANT
JAIL SENTENCE


COMPARISON OF THE PROPORTION
OF EACH DISPOSTION —
PERSONS ACCUSED OF MISDEMEANORS
WITH PRIVATE COUNSEL
WITH NO ATTORNEY
PERCENT
50
40
30
20
10
0
CASE DISMISSED
PLEA NOT GUILTY, FOUND NOT GUILTY
PLEA OF GUILTY
PLEA NOT GUILTY, FOUND GUILTY
WARRANT
JAIL SENTENCE

be true if the judges sitting in Evanston believe that since there is only one public defender, she should be appointed only in serious cases -- in other words, if the judges appoint the public defender on the basis of their impression of the merits of the case rather than on the basis of the indigency of the defendant. This theory still does not explain why there should be such a substantial difference between the disposition of cases where the defendant had private counsel and those where the defendant was assigned the public defender.

Effectiveness of Counsel in Misdemeanor Cases

The presence of an attorney had an even more clear cut effect in the cases of persons accused of misdemeanors. Comparison of the ispositions of cases of people with private attorneys to those without attorneys shows that those who could afford private counsel came out ahead:

	%* of persons represented by	
	Private attorney	No attorney
Dismissals	52%	43%
Found not guilty	33%	16%
Pled guilty	7%	18%
Plea not guilty/found guilty	7%	11%
Jail sentence	0%	6%
Warrant outstanding (jumped bond)	0%	4%

* See note 27.

These figures indicate that what the Supreme Court stated in Gideon is true: "lawyers in criminal courts are necessities, not luxuries." The person accused of a misdemeanor who could not hire an attorney was far more likely to be found guilty and to be sentenced to jail, than the person with no attorney at all. These results provide support for Justice Sutherland's statement in Powell v. Alabama[27] on the need for a lawyer in criminal cases:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." 287 U.S. at 68, 69.[29]

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29 Quoted in Gideon at 372 U.S. 344, 345.

IV. PROGRAMS TO ALLEVIATE THE INADEQUACY OF THE PRESENT BOND AND APPOINTED COUNSEL SYSTEMS

Pretrial Release

The simplest solution to the economic discrimination of requiring money bond is to arrest fewer people, that is, to take fewer people into custody prior to trial. Under Illinois law, it is possible to summon rather than arrest minor offenders. In Evanston, a summons or notice to appear is presently used for housing and zoning violations and most paternity and non-support cases. The Evanston Police Department has proposed extending this policy to all ordinance violations and many misdemeanors.[30] Under this plan the police would have discretion to issue a summons instead of make an arrest in cases which made up over one-third of the 1970 Evanston cases.

A summons is similar to a traffic ticket. In minor cases where the person charged has identification and is from the community, an officer may issue a summons on the scene for some offenses or, where the nature of the offense is more serious, he may take the person charged to the police station for processing. In either case, when the summons and processing are complete, the

30 See Appendix C

person is released pending trial. No bond is posted, but the person summoned is warned that he is subject to arrest if he fails to appear and that failure to appear is an additional offense.

Cities which have used summons programs have not only found that the rate of non-appearance was very low [31] but also that the number of police man hours spend on each arrest was greatly diminished. [32]

While a summons system would help de-emphasize economic criteria for pretrial release in many misdemeanors, persons would still be taken into custody prior to trial if they were charged with certain misdemeanors or felonies. The way to reduce economic discrimination of cash bond for these charges is to expand the use of recognizance or "I" bonds. Although some defendants are presently released on their own recognizance, the number could probably be expanded if the judges were able to collect and verify information on more defendants.

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31 In San Francisco, it was found that only 4.5% of those cited failed to make the first court appearance. (Letter from San Francisco Police Department, L-1670, dated 3/18/71) The Manhattan summons project in New York City, the non-appearance rate was 5.3%. (Criminal Justice Coordinating Council of New York City and Vera Institute of Justice, The Manhattan Summons Project, New York, 1969)

32 In New York City it was estimated that by the use of about 37,000 summons over a two-year period, the city saved over 46,000 eight-hour police days valued at more than $2.5 million.

In programs in New York City, Washington, D.C. San Francisco, Connecticut and most recently in Cook County holiday court, use of recognizance bonds has been expanded by using interviewers to determine the defendant's ties to the community (such as employment and family). If the prisoner appears to be a good risk, a recommendation for release on recognizance is sent to the court. These communities found that they were able to expand the use of recognizance bonds considerably, that the rates of non-appearance was quite low, and that jail costs were cut.[33]

Access to Legal Counsel

From the information which we were able to gather on lawyers in Evanston criminal cases, it is obvious that many persons go without legal counsel. Counsel could be made available to more persons if the Cook County Public Defender would assign additional assistant public defenders to the Evanston Branch Court. This would assure the presence of an assistant public defender for the Friday misdemeanor call, to lower the felony case load of the present assistant public defender and to allow counsel to be appointed

33 Foote, Caleb, ed. Studies on Bail. Philadelphia, University of Pennsylvania Law School, 1966. 288 p.; Sturz, Herbert. "The Manhattan Bail project and its aftermath." American Journal of Correction (St. Paul, Minn.), 27(6):14-17, 1965; Georgetown University. Law Center. "Bail reform in the nation's capital," by Richard R. Molleur. Final report of the D.C. Bail Project. Washington D.C., 1966, 99 p.; and, O'Rourke, Thomas P.; Carter, Robert F. "The Connecticut Bail Commission," Yale Law Journal (New Haven), 79:513-530, 1970.

in felony cases of indigent persons who presently go without sounsel because the judges seem to "save" public defender services for more serious cases.

If the Public Defender's Office will not or cannot assign more assistant public defenders to the Evanston Branch Court,[34] the City of Evanston can make legal services available through establishing its own criminal legal aid office. In addition, a list of private attorneys willing to be available as counsel for indigent defendants can be established.

Relieving Court Congestion

The problems which the Evanston Court Survey pointed out in the heavy reliance on cash bonds and the absence of legal counsel are a part of an even more basic problem - the congestion of the Evanston Court. If the court handled fewer cases, the judges and other officers of the court might have time to make a thorough factual inquiry into each defendant's ability to post bond and to hire an attorney. But as it is, the Evanston Branch Court handled the cases of about 1, 100 persons arrested in Evanston plus an unknown number of felony defendants from the communities in the Second Municipal District during 1970. The average defendant appeared before the court three times before his case was disposed of;

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34 The Public Defender's Office in Cook County employs only 78 assistants compared to over 350 in Los Angeles County.

thus, on Evanston cases alone the court held some 3,300 hearings. When one considers that the court is only in session for criminal cases on Monday and Friday each week, it is no surprise that there is little time devoted to each defendant's trial, let alone to an indigency hearing for release on bond or court appointed counsel.

One way in which problems in the Evanston Branch Court might be alleviated is by trying to lower the work load of the court. One of the ways that it has been proposed that court congestion can be reduced is to reconsider whether law enforcement resources should be spent on "victimless crimes" (as opposed to crimes such as battery or theft where someone besides the defendant is involved).

Evanston should examine its city ordinances (many of which were drafted nearly fifty years ago) and reconsider whether the conduct prohibited by those ordinances is really conduct which concerns a criminal court.

Over one-third of the arrests on ordinance violations in Evanston were for public intoxication. Many of these spent time in jail. For most of them, the criminal justice system could do no more than make them wait in jail until the next court date and then sentence them to pay a fine or to "time served."

Many communities have begun to view alcoholism as a medical rather than a criminal problem and have set up defoxification centers at a local hospitals with voluntary rehabilitation programs for the

chronic alcoholic. This approach was recommended by the 1969 Report of the Council on Evaluation and Diagnosis of Criminal Defendants authorized by the Illinois General Assembly. Although public intoxication is a significant part of the Evanston Branch Court's caseload (69 of the 1,100 persons arrested), the problem is not of such magnitude in Evanston that admission to a hospital where medical treatment is available would be particularly burdensome for the city.

Two other city ordinances which might be re-examined accounted for another 34 Evanston arrests during 1970. These ordinances prohibit "lounging" and "congregating on a sidewalk." Although Evanston has a relatively recent disorderly conduct ordinance, over one-half of the ordinance arrests that we have classified as "disorderly conduct" were made under these two ordinances. Arrest and prosecution for conduct short of that described in the actual disorderly conduct ordinance (or the State misdemeanor, disorderly conduct) is probably unconstitutional. Yet court resources were spent deciding these cases.

APPENDIX A

METHOD

We have surveyed all of the cases which were processed in Evanston in 1970. The following information was recorded on the bound docket sheets for each case:

1) docket number
2) sex of the accused
3) specific violation
4) amount of bond
5) number of days in jail before bond was posted or case disposed of
6) the complainant (police or civilian)
7) number of appearances in court prior to the disposition of the case
8) case disposition
9) type of sentence
10) length of jail sentence or probation
11) amount of fine
12) type of attorney

All these data except for 12) were available on the case docket sheets. The last, essential to our analysis, appears in no central location. In accordance with Illinois law, attorneys must file an appearance and affidavit for each case they handle; the court

files for Evanston cases therefore provided us with information concerning representation by private counsel. In addition, the assistant public defender assigned to Evanston provided us with a list of those cases in which she had been appointed. In approximately one-fifth of the cases we were unable to determine whether the defendant had been represented.

Because of our particular concern with the availability of counsel, number of appearances and release on bond, our unit of analysis was the individual defendant rather than the individual case. In those instances where individuals were charged with more than one offense, they were categorized with regard to their primary offense,[33] and secondary offenses were analyzed separately. The pattern of results is not substantially affected by the inclusion of these secondary offenses.

The data were computer processed and cross tabulated with a particular emphasis on the effect of private or court-appointed representation, and the effect of bond, on the legal history of

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35 Offenses against the same individual were ranked by:

1. Conviction if conviction was on only one offense.
2. Felony
3. Misdemeanor
4. Ordinance violation
5. If all were with one class (e.g. all misdemeanors) most serious (by possible penalty)
6. If all were of equal seriousness, then the first offense docketed

defendants in Evanston. The data are striking, but cautions must be noted with regard to interpretation. These cautions are mentioned where appropriate.

APPENDIX B

PRINCIPAL CHARGES AGAINST PERSONS ARRESTED DURING 1970

23.0% **PROPERTY OFFENSES**

Theft (59.4%)
Deceptive practices (16.0%)
Criminal damage to property (10.9%)
Criminal trespass to land (5.5%)
Theft of labor or services (2.7%)
Other (5.6%)

20.6% **BODILY HARM OFFENSES**

Battery (51.7%)
Aggrevated battery (21.3%)
Assault (12.2%)
Aggravated Assault (10.0%)
Rape (2.6%)
Other (2.1%)

12.6% **DISORDERLY CONDUCT**

Disorderly conduct (56.4%)
Loitering* (20.7%)
Disorderly conduct* (19.3%)
Congregating on a sidewalk* (3.6%)

9.2% **NARCOTICS OFFENSES**

Possession narcotics (58.3%)
Possession narcotics (22.3%)
Possession dangerous drugs (12.6%)
Acquisition of drugs by fraud (3.9%)
Possession of hypodermic needle & syringe (2.9%)

9.1% SOCIAL OFFENSES

Public intoxication* (66.3%)
Possession of alcohol* (9.9%)
Curfew (6.9%)
Truancy (5.0%)
Gambling (4.0%)
Other (7.9%)

5.8% SERIOUS PROPERTY OFFENSES

Burglary (56.9%)
Armed robbery (26.2%)
Robbery (9.2%)
Possession of burglary tools (4.6%)
Arson (3.1%)

4.4% HOUSING AND ZONING OFFENSES

Housing and zoning offenses* (100%)

3.4% WEAPONS OFFENSES

Unlawful use of weapons (55.3%)
Unregistered weapon (21.1%)
Misuse of firearm (18.4%)
Unlawful sale (2.6%)
Unlawful firing* (2.6%)

3.0% FAMILY OFFENSES

Non-support (51.5%)
Paternity (48.5%)

2.8% INCHOATE OFFENSES

Attempt (71.0%)
Conspiracy (29.0%)

2.7% **SEX OFFENSES (NOT RAPE)**

Contributing to the delinquency of a child (50.0%)
Public indecency (26.7%)
Indecent liberties with a child (10.0%)
Prostitution (3.3%)
Other (10.0%)

1.8% **POLICE OFFENSES**

Resisting arrest (80.0%)
Escape (20.0%)

1.0% **GOVERNMENT OFFENSES**

Bribery (63.6%)
Impersonation of a police officer (27.3%)
Impersonation of a government official (9.1%)

.7% **HOMICIDE**

Murder (75.0%)
Involuntary manslaughter (25.0%)

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* Ordinance violation

DEPARTMENTAL GENERAL ORDER 70 -
EVANSTON POLICE DEPARTMENT

Index as:

Citation Violations
Violation Procedures
Violation Citation Program

DRAFT 10/20/70

SUBJECT: Violation Citation Program

Purpose: To establish procedures for the use of the Violations Citation form to enforce certain categories of City ordinances and State statutes.

I. MEMBER'S PROCEDURES

A. All field personnel whose activities normally include the duty of arrest will be issued a book of Violation Citation forms.

B. The Violation Citation may be issued to any male person 17 years of age or older and to any female 18 years of age or older.

C. The Violation Citation may be issued for the following violations:

1. State misdemeanors:

a. Chapter 38, Section 12-1 Assault (simple)

b. Chapter 38, Section 12-1 Battery (simple)

c. Chapter 38, Section 12-5 Reckless Conduct

d. Chapter 38, Section 26-1a Disorderly Conduct

2. City Code Violations:

a. All city code violations may be cited except in cases where the violation involves:

(1) firearms or other deadly weapons,

(2) juveniles and/or minors,

(3) prostitution or lewdness,

(4) sex offenses,

(5) gambling, or

(6) houses of ill-fame.

D. The Violation Citation form may be used in situations where:

1. the citing officer is the complainant,

2. a private person is the complainant against another person, or

3. two or more persons are complainants against each other (cross-complaint cases).

E. In deciding whether to issue a citation to a violator or effect a physical arrest, the officer will take into account the following information:

1. The likelihood that the violator will appear in court and answer to the charges.

a. A field interview of the violator will be conducted to establish and verify the identification of the violator. Documents and identification cards in the possession of the violator should also be checked.

b. If additional checking of the violator's name, outstanding warrants, vehicle, etc., is deemed necessary, it will normally be made through the radio dispatcher to avoid the need of transporting the violator to the police station.

(1) If the check indicates that there are not any outstanding warrants on the individual and there is not any valid reason for further detaining the violator, the officer will issue him a citation for the violations.

(2) If the check indicates an outstanding warrant(s) or need for further investigation of the violator, the officer will begin the normal arrest procedures.

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EVANSTON POLICE DEPARTMENT

SUBJECT: Violation Citation Program

2. The Violation Citation form will not be used when an arrest is required for the safety of the violator or the safety of others.

3. The Violation Citation form will not be used if it appears that any type of violence will resume when officers depart from the scene.

4. When the investigating officer is in doubt about the status of any case, he will contact his immediate supervisor for a decision on whether to issue a Violation Citation form or make a formal arrest.

F. The Violation Citation form is a four-part form, with the copies as follows:

1. Complaint - Court Copy (white). This copy will serve as the court complaint. The complaint number in the upper right-hand corner will be the court docket number of the case.

2. Records Section Copy (green). This copy will be used by the Records Section and will be attached to the offense report.

3. Notice to Appear - Defendant's Copy (yellow). This copy will be given to the defendant and will serve as his written notice to appear in court on the date and time cited.

4. Officer's Copy (pink). This copy will serve as the citing officer's copy of the citation.

G. Court Appearance Information form (#)

In situations where a private person is the complainant, the issuing officer will complete a Court Appearance Information form and give it to the complainant for his information and later reference.

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EVANSTON POLICE DEPARTMENT

SUBJECT: Violation Citation Program

H. Cancelled Citations

1. No erasures or cross-outs will be made on the Violation Citation form.

2. If an error is made on the form or the form is misprinted, the officer will void and cancel it by printing the word "VOID" in large letters across the front of all four copies of the form.

3. A notation will be made on the voided copies of the corrective action taken either by:

   a. entering the number of the new citation that was issued, or

   b. entering the report number if a physical arrest was made.

4. The officer will turn in the white, green, and yellow copies of the cancelled form to the desk personnel. The pink copy will remain in the Officer's citation book.

I. Before the end of his tour of duty, the citing officer will turn in to the desk personnel the completed Court and Record Section copies of any citations issued by him during his tour of duty.

J. The desk personnel will, upon receiving the completed copies, check them for completeness and accuracy.

1. If the citation is incomplete or inaccurate, he will return the citation to the issuing officer for necessary corrections.

2. If the citation is correct and accurate, he will complete the appropriate boxes of the Violation Citation form located in the lower left-hand portion by entering:

   a. the current date,

   b. his signature as a deputy clerk of the circuit court, and

   c. the name of the clerk of the circuit court.

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DEPARTMENTAL GENERAL ORDER 70 -
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SUBJECT: Violation Citation Program

3. He will then forward the copies to their appropriate destinations.

II. DISTRIBUTION AND RECORDING PROCEDURES

A. Responsibility for Distribution

1. The Records and Communication Section will be responsible for issuing, processing, controlling and storing of Violation Citation books.

2. The Records and Communications Section will maintain a record for all Violation Citation books issued.

B. Receipt and Storage of Books

1. The Records and Communication Section will be responsible for the requisition of an adequate number of Violation Citation books, and will arrange for their proper storage.

2. An adequate supply of books will be kept at the desk area, preferably in a locked file or storage cabinet inaccessible to personnel other than the issuing member.

3. The remaining supply of books will be maintained in a locked storage area.

C. Issuance of Violation Citation Books

1. Books will be issued in ascending numerical order. A book will not normally be issued out of sequence.

2. Upon receipt of a Violation Citation book each officer will determine if all the citations are in the book and in satisfactory condition.

3. Books found to be satisfactory will be accepted by receiving . . . er.

4. Books found to be unsatisfactory will be returned.

D. Citation Control Sheet

1. A Citation Control Sheet (#   ) will be assigned to each book in a box at the time the box is opened. The only information required on the sheet at this time will be the number of the first citation in the book.

2. The sheets will be arranged numerically and stored with the immediate supply of books (opened box).

3. After all the books in a box have been issued, a check will be made by the distributing member to determine if there are any unassigned sheets (missing books) for that box. If there are books missing, the citation numbers for the unassigned books will be listed immediately on a memo to the Commander of the Records and Communications Section.

4. The requesting and issuing member will complete the Citation Control Sheet corresponding with the book being issued at the time the book is issued. Both members will place their signature on the sheet.

5. The complete Citation Control Sheet will then be inserted in numerical order in an active citation binder.

6. As copies of citations which have been written are received, entries will be made on the corresponding Citation Control Sheet indicating the date the citation was written, the date of the transfer listing covering the citation, and the initial of the person making such entries.

7. If a citation from any book is not received in numerical order, the individual preparing the Citation Control Sheet will notify the Shift Commander who will immediately initiate an investigation

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SUBJECT: Violation Citation Program

to locate the missing citation. In all cases, any missing citation will be fully accounted for. While an investigation is being conducted, all subsequent citations will be processed without delay.

8. When a book of citations is completed and all citations are received and accounted for, the Citation Control Sheet for that book will be removed from the active citation binder and placed in numerical order in the inactive citation binder.

E. Detailed, Transferred and Separated Members

1. Police officers detailed to other units will retain all citation books for which they have signed receipts.

2. Police officers transferred to Records and Communication Section or Inspections and Planning Division will retain all citation books for which they have signed receipts. At the completion of the last tour of duty before the transfer is effective, the officer will submit all unused citations to the desk personnel. These unused citations will then be reassigned to another officer with the appropriate recordings on the Citation Control Sheets.

3. When an officer is separated or retires from the Department, he will return all unused citation violations. These unused citations will be reissued to another officer after appropriate notations on the Citation Control Sheet.

F. See our procedure as compared to Chicago

APPENDIX D

Index of Materials Related to Recommendations of the Study

I. Documents from the Law Enforcement Study Group report

A. Background documents on the Evanston criminal justice situation

1. Letter from Mayor Vanneman charging committee to study criminal justice system in Evanston

2. Report on John Edward Cox by the Evanston City Council Special Committee

3. Evanston Police Department, Annual Report 1970

B. Study materials used during the LESG final report

1. Interview Sheets

2. Computer coding

3. Felony Docket numbers

4. Miscellaneous notes

II. Information on the summons system

A. San Francisco:

1. Letter from San Francisco Police Chief Neldler on "Notice to Appear" forms

2. San Francisco Police Department General Order No. 102, Notice to Appear Forms

B. Oregon: The League of Oregon Cities, "Misdemeanant Citations: A Discussion of Oregon Laws and Suggested Citation Forms and Procedures", October, 1969

C. Washington, D.C.: Report from the Washington Metropolitan Police Department on their summons system

D. Chicago: Various newspaper articles on the announcement of Chicago's summons system

E. New York City: Rand Corporation, The Flow of Defendants Through the New York City Criminal Courts, 1967-1969

F. Model Summons System: American Law Institute, Model Code of Pre-Arraignment Procedure, 1966

III. Information on detoxification programs

A. Articles

1. Peter Barton Hutt, "Modern Trends in Handling the Chronic Court Offender: The Challenge of the Courts", 19 South Carolina Law Review 305, 1967

2. Jack H. Watson Jr., "Chronic Alcoholic Court Offenders: An Alternative to the Drunk Tank", 3 Georgia Law Review, 54, 1968

3. Earl Rubington, "Alcoholic Control on Skid Row: Preliminary Draft of a Research and Demonstration Proposal"

B. Reports

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RECOMMENDATIONS OF THE AD HOC CITIZENS COMMITTEE ON THE DEFENSE OF THE POOR IN THE CRIMINAL COURTS OF EVANSTON

Mayme F. Spencer
Cordell J. Overgaard
Richard A. Beyer, Chairman

I. PROMPT ACTION SHOULD BE TAKEN TO PROVIDE MORE EXTENSIVE AND EFFECTIVE LEGAL REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS IN EVANSTON.

1.1 THERE IS AN IMMEDIATE AND URGENT NEED FOR ONE OR MORE ADDITIONAL ASSISTANT PUBLIC DEFENDERS TO BE ASSIGNED TO THE ELMWOOD STREET BRANCH COURT.

1.2 UNLESS AND UNTIL THE SCOPE OF REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS BY THE PUBLIC DEFENDER'S OFFICE IS EXPANDED TO INCLUDE NON-FELONY CASES AND AN ADEQUATE NUMBER OF ASSISTANT PUBLIC DEFENDERS ARE ASSIGNED TO THE ELMWOOD STREET BRANCH COURT, THE CITY OF EVANSTON SHOULD PROVIDE ADDITIONAL LEGAL ASSISTANCE TO INDIGENT CRIMINAL DEFENDANTS WHO ARE RESIDENTS OF EVANSTON BY MAINTAINING A MUNICIPAL PUBLIC DEFENDER'S OFFICE STAFFED BY A FULL-TIME ATTORNEY, A FULL-TIME PARALEGAL ASSISTANT, A FULL-TIME INVESTIGATOR AND SUPPORTING CLERICAL ASSISTANTS.

1.3 CONSIDERATION SHOULD BE GIVEN TO SUPPLEMENTING THE NEW MUNICIPAL PUBLIC DEFENDER'S OFFICE BY THE CREATION OF A NEW CRIMINAL LEGAL ASSISTANCE ORGANIZATION COMPOSED OF VOLUNTEER LAWYERS AND LAW STUDENTS.

1.4 PROCEDURES SHOULD BE ADOPTED TO PROVIDE LEGAL ASSISTANCE TO CRIMINAL DEFENDANTS AT AN EARLIER STAGE IN THE LEGAL PROCESS.

II. THE PRESENT BOND SYSTEM SHOULD BE RESTRUCTURED BY THE ADOPTION OF A CITATION PROCEDURE FOR ORDINANCE VIOLATIONS AND SOME MISDEMEANORS AND BY GREATER UTILIZATION OF RECOGNIZANCE BONDS.

III. CONSIDERATION SHOULD BE GIVEN TO REDUCING THE CASE LOAD IN THE JUDICIAL SYSTEM BY REMOVING THE CRIMINAL SANCTION FROM SOME TYPES OF ORDINANCE VIOLATIONS AND BY REPEALING OBSOLETE, UNCONSTITUTIONAL OR UNWORKABLE CRIMINAL ORDINANCES.

IV. SOME CHANGES SHOULD BE MADE IN THE PROCEDURES OF THE ELMWOOD STREET BRANCH COURT.

V. A NEW STANDING COMMITTEE SHOULD BE CREATED BY THE CITY COUNCIL TO SUPERVISE THE NEW MUNICIPAL PUBLIC DEFENDER'S OFFICE AND THE NEW LEGAL ASSISTANCE ORGANIZATION AND TO UNDERTAKE A CONTINUOUS REVIEW OF THE ADEQUACY OF POLICE, JUDICIAL AND LEGAL PROCEDURES APPLICABLE TO INDIGENT CRIMINAL DEFENDANTS.

Discussion

I. PROMPT ACTION SHOULD BE TAKEN TO PROVIDE MORE EXTENSIVE AND EFFECTIVE LEGAL REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS IN EVANSTON.

1.1 THERE IS AN IMMEDIATE AND URGENT NEED FOR ONE OR MORE ADDITIONAL ASSISTANT PUBLIC DEFENDERS TO BE ASSIGNED TO THE ELMWOOD STREET BRANCH COURT.

As appears to be the case in Cook County generally, the Assistant Public Defender assigned to the Elmwood Street Branch Court has a case load which is so substantial that it is virtually impossible for the Assistant Public Defender to prepare a thorough, imaginative defense for each criminal defendant. It appears to be the rule rather than the exception that the Public Defender first meets with and prepares defense witnesses on the date of trial. The substantial case load of the Assistant Public Defender undoubtedly is one of the factors responsible for the prevalence of "plea-bargaining" in Evanston as well as elsewhere. Further, the Committee cannot help but feel that the heavy burden placed upon the Assistant Public Defender is at least partly responsible for the alarming fact that more than half of the criminal defendants in Evanston in 1970 were not represented by any counsel at all.

The Committee understands that both the Public Defender's Office and the Chief Judge of the Circuit Court of Cook County have recommended that an additional Public Defender be assigned to the Elmwood Street Branch Court but that no such assignment has been made because of the lack of funds available to the Cook County Public Defender's Office to increase its staff. The Committee strongly recommends that the Evanston City Council use every means at its disposal to encourage the assignment of additional public defenders to the Elmwood Street Court. In the Committee's view one additional Assistant Public Defender would in and of itself be inadequate, particularly if the scope of the Public Defender's representation of criminal defendants is increased to cover non-felony cases.

Finally, the Committee is mindful of indications that the Cook County Public Defender's Office may be constrained in its selection of lawyers to serve as Assistant Public Defenders by political considerations. Without purporting to go beyond the Committee's area of assigned responsibility by attempting to review in depth the workings of the Cook County Public Defender's Office, the Committee wishes it to be noted that it subscribes to that portion of Section 3.1 of the Standards Relating to Providing Defense Services approved by the House of Delegates of the American Bar Association in February, 1968 (cited as "Approved Draft, 1968") which states:

> "Selection of the chief defender and staff should be made on the basis of merit and should be free from political, racial, religious, ethnic and other considerations extraneous to professional competence."

1.2 UNLESS AND UNTIL THE SCOPE OF REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS BY THE PUBLIC DEFENDER'S OFFICE IS EXPANDED TO INCLUDE NON-FELONY CASES AND AN ADEQUATE NUMBER OF ASSISTANT PUBLIC DEFENDERS ARE ASSIGNED TO THE ELMWOOD STREET BRANCH COURT, THE CITY OF EVANSTON SHOULD PROVIDE ADDITIONAL LEGAL ASSISTANCE TO INDIGENT CRIMINAL DEFENDANTS WHO ARE RESIDENTS OF EVANSTON BY MAINTAINING A MUNICIPAL PUBLIC DEFENDER'S OFFICE STAFFED BY A FULL-TIME ATTORNEY, A FULL-TIME PARALEGAL ASSISTANT, A FULL-TIME INVESTIGATOR AND SUPPORTING CLERICAL ASSISTANTS.

In spite of the fact that the Illinois Revised Statutes (ch. 38, § 113-3) require the appointment of the Public Defender as counsel for indigent defendants "in all cases, except where the penalty is a fine only," the practice in the Elmwood Street Branch Court as well as in Cook County generally appears to be that an Assistant Public Defender is appointed only in felony cases. As a matter of fact, an Assistant Public Defender is not present in the Elmwood Street Branch Court on Friday when the court tries misdemeanors and ordinance violations can result in incarceration both before trial, in the case of failure to post bond, and after conviction, the Committee believes that it is imperative that indigent persons accused of misdemeanors and ordinance violations involving the possibility of incarceration be afforded the opportunity for public legal representation. In this respect the Committee subscribes to Standard 4.1 of the Approved Draft, 1968 to the following effect:

> "Counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such punishment is not likely to be imposed, regardless of their denomination as felonies, misdemeanors or otherwise."

In view of the fact that non-felony cases account for by far the largest volume of criminal cases in Evanston, a very substantial and deplorable void presently exists with respect to adequate representation of indigent criminal defendants. The Committee believes that this void should properly be filled by the Cook County Public Defender's Office. However, it does not believe that the City of Evanston can sit idly by until the desired strengthening of the Public Defender's Office has been accomplished. Accordingly, the Committee recommends that the City of Evanston create a new Municipal Public Defender's Office to be staffed by a full-time attorney, a full-time paralegal assistant, and a full-time investigator. The function of the Municipal Public Defender's Office in the first instance would be to provide representation to indigent criminal defendants charged with misdemeanor and ordinance violations which have a significant possibility of a loss of liberty. The Municipal Public Defender's Office would also be available to assist, but not replace, the Cook County Public Defender's Office in the representation of criminal defendants charged with felonies. Further, the Municipal Public Defender

Office, which would maintain facilities open to the public during normal business hours on weekdays, would perform a much-needed and useful function of serving as a source of information to persons lacking in basic information with respect to the workings of the criminal legal processes.

The Committee is mindful that its recommendation would require the expenditure of significant funds for the salaries of the three full-time personnel as well as supporting clerical assistants and for office facilities. However, the Committee has concluded that the substantial void which presently exists in providing adequate representation to indigent criminal defendants cannot realistically be filled with anything other than full-time, salaried personnel. In this connection, the Committee has considered the possibility of utilizing an all-volunteer system of legal representation but has concluded that such a system would not be feasible - it is unlikely that sufficient volunteer legal assistants could be obtained and, in any event, a volunteer system presents substantial problems with respect to maintaining uniform standards of excellence and adequate accountability. In short, the present system of legal representation of indigent criminal defendants is most inadequate and cannot be remedied without a substantial expenditure of funds. The Committee understands that the program which it is recommending may be eligible for substantial financial assistance from the Illinois Law Enforcement Commission.

Finally, the Committee wishes to make to clear that it does not in any way intend by its recommendations to denigrate the roll of the private attorney in the criminal process. The Committee is quite convinced that private attorneys perform well in the criminal courts. This conclusion is supported by the attached report's statistics with respect to 19 0 Evanston criminal cases.

1.3 CONSIDERATION SHOULD BE GIVEN TO SUPPLEMENTING THE NEW MUNICIPAL PUBLIC DEFENDER'S OFFICE BY THE CREATION OF A NEW CRIMINAL LEGAL ASSISTANCE ORGANIZATION COMPOSED OF VOLUNTEER LAWYERS AND LAW STUDENTS.

Although the Committee believes that an all-volunteer system of representation of indigent criminal defendants cannot be completely successful, volunteers can be useful as a supplement to the public defender system. Thus, even with the creation of a new Municipal Public Defender's Office, the case load of an Assistant Cook County Public Defender and the Municipal Public Defender would

be substantial and it would be helpful to have available to both Public Defenders the volunteer assistance of present and future members of the Bar who could do legal research and from time to time assist in the courtroom. The Committee is mindful that in recent years there has been increasing interest on the part of younger members of the Bar in pro bono publico activities and a new volunteer association could well provide a useful outlet for this interest.

1.4 PROCEDURES SHOULD BE ADOPTED TO PROVIDE LEGAL ASSISTANCE TO CRIMINAL DEFENDANTS AT AN EARLIER STAGE IN THE LEGAL PROCESS.

At the present time the Evanston Police Department gives to each person charged with a criminal offense a Miranda-type warning to the effect that the person is entitled to be represented by a lawyer. However, the Police Department scrupulously avoids recommending specific counsel to persons charged with a criminal violation for fear that it would be subject to charges of favoritism. This policy is understandable but yet unfortunate. The Committee believes that careful consideration should be given to the establishment of procedures whereby persons charged with a criminal offense can be provided access to an attorney shortly following their arrest without the selection of counsel being influenced by the Police Department. This could be accomplished if a simple method of preliminarily determining indigency could be adopted and, following a determination of the economic status of the defendant, non-indigents without their own counsel were referred to a lawyers reference service and indigents were referred to the Municipal Public Defender's Office.

II. THE PRESENT BOND SYSTEM SHOULD BE RESTRUCTURED BY THE ADOPTION OF A CITATION PROCEDURE FOR ORDINANCE VIOLATIONS AND SOME MISDEMEANORS AND BY GREATER UTILIZATION OF RECOGNIZANCE BONDS.

The Committee finds disturbing the statistics with respect to the number of persons who are incarcerated because of failure to post bond. As indicated by the enclosed report, many of such persons are eventually found innocent of the charges against them or the charges are dismissed. The Committee believes that a substantial improvement could be made in the present bonding system in the adoption of a citation procedure with respect to ordinance violations and many misdemeanors. Such a procedure would

permit police officers to issue citations for such offenses in much the same manner as traffic tickets are used for violations of motor vehicle laws. The Committee understands that the Evanston Police Department presently has under consideration a citation procedure and recommends its adoption. The Committee has contacted the Police Department of the City and County of San Francisco, which initiated a citation procedure on November 7, 1969, and has been advised that the system "is quite satisfactory and, overall, the program has been successful." The San Francisco Police Department noted that one of the primary advantages of the citation procedure is that it avoids congestion of departmental facilities and permits members of the Department to spend less time on custodial work and moretime on vital police functions such as investigating and preventing crime.

The Committee also believes that greater utilization could be used of recognizance bonds - the so-called "I bond." It recommends that procedures be established to determine residence, employment and other information with respect to persons charged with criminal offenses and that where such information indicates that a defendant has an attachment to the area such as to make it unlikely that he will attempt to flee the court's jurisdiction, he be released on his own recognizance if he is without sufficient funds to post bond and if the offense is one which does not involve substantial physical harm to other individuals.

III. THE ELMWOOD STREET BRANCH COURT SHOULD COLLECT SYSTEMATIC DATA ON THE AGE, RACE, SEX AND INCOME OF ALL DEFENDANTS APPEARING BEFORE THE COURT.

The Committee was unable to report on the representation or bonding of low income and minority group people because the court does not systematically secure this information from defendants. We recommend that the court, with the assistance of Northwestern University's Center for Urban Affairs, establish a procedure for collecting this information. The Center should then be requested to undertake a continuing study regarding the effect of bonding practices and legal representatives upon poor and minority group people arrested in Evanston.

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