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A Study of the Assignment of Judges to Criminal Cases in Allegheny County—The Poor Fare Worse

*R. Stanton Wettick, Jr.**

It is frequently claimed that the private attorney "who knows his way around criminal court" will have his cases heard by the less severe judges. Many attorneys justify their unwillingness to represent defendants in criminal proceedings in the Common Pleas Court of Allegheny County, Pennsylvania on the basis of their inability or unwillingness to arrange for their cases to be heard by particular judges. Also, frequently persons in attendance at community meetings in the poverty neighborhoods have complained to attorneys with Neighborhood Legal Services Association¹ about a sentence which was imposed against a particular defendant, stating that this had occurred only because the defendant could not afford a "good" lawyer who would have had the case heard by a "better" judge.²

If certain attorneys are able to have most of their cases heard by the less severe judges, this probably operates to the detriment of the indigent defendant. As a general practice, public defenders in Allegheny County make no effort to influence the assignment process—they go to the judge to whom a case is assigned as a matter of course.³ Consequently, if the more affluent defendants who can afford the services of certain private attorneys appear disproportionately before the less severe judges, the least affluent defendants, who are represented by public defenders, are more likely to appear disproportionately before the more severe judges.

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1. Neighborhood Legal Services Association is the Office of Economic Opportunity funded legal services program serving Allegheny County, Pennsylvania which includes the City of Pittsburgh.

2. Many poverty residents believe that the defendant who can afford the "good" criminal attorney will seldom receive a jail sentence. They believe that the "good" criminal attorney can make deals throughout the system—the "good" criminal attorney is frequently described as a fixer. Legal Services attorneys and public defenders are frequently criticized by their clientele for their inability or unwillingness to operate in this fashion.

3. This information was received in conversations with several attorneys who are or were staff attorneys with the Allegheny County Public Defender's Office.

I. DESCRIPTION OF THE STUDY

This article describes a study which examines the assignment of judges to cases in criminal proceedings before the Criminal Division of the Allegheny County Common Pleas Court to determine if certain private attorneys are able to appear disproportionately before less severe judges. The data used for the study was obtained from court records of such criminal proceedings. These records were examined for a large number of defendants to obtain the name of the trial judge, the name of the defense counsel, the charges against the defendant and the outcome of the case. Data on the outcome of the case will be used to identify the more and less severe judges. Data on the judge and defense counsel will be used to learn the frequency with which various private counsel and public defenders appeared before various judges. This will enable us to determine: (a) whether defendants represented by certain private attorneys appear more frequently before the less severe judges; (b) whether defendants represented by these attorneys appear more frequently before the less severe judges than do defendants represented by a public defender; and (c) whether defendants represented by a public defender appear more frequently before the more severe judges than do defendants represented by these private attorneys. A complete description of the data and findings is set forth in the next section of this article.

Also the procedures for assigning cases to judges were discussed in interviews with twelve criminal attorneys who frequently represent defendants in criminal proceedings before the Court of Common Pleas of Allegheny County. The third section of this article summarizes these interviews.

The findings in the next section of this article will show that the defendant who can afford private counsel is much more likely to appear before one of the less severe judges than is the indigent represented by a public defender. A summary of the interviews as set forth in the third section of this article will indicate that this occurs as a result of the use of flexible and informal procedures to assign cases.

The purpose of this article is to show the need for altering the procedures used in assigning criminal cases. The article is not intended to criticize any of the judges or court personnel who operate within the present system. It has been the author's experience that such persons are very concerned with improving the quality of justice. There

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is absolutely no evidence of any deliberate or conscious efforts on the part of such persons to favor the defendant who can afford a private attorney over the defendant represented by a public defender. Rather, this has occurred through the very nature of the system for assigning judges—a system that has generally operated on its own and has never been subject to any critical evaluation to the best of the author's knowledge.

II. FINDINGS BASED ON DATA FROM COURT RECORDS

Records of 738 criminal cases⁴ heard by the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania over a three-month period were examined to obtain the name of the trial judge, the name of the defendant's counsel, the charges against the defendant and the outcome of the case. These 738 cases constituted all criminal cases heard by the Court over the three-month period, excluding motor vehicle⁵ and homicide cases,⁶ jury trials⁷ and cases for which the records were incomplete.⁸

A. *Ranking the judges in terms of leniency*

During the three-month period six judges⁹ heard more than thirty cases.¹⁰ Table 1 lists the number of cases heard, the number and

4. All proceedings against each individual defendant constitute a separate case. Thus where a defendant is tried on the same occasion on more than one charge, the proceedings constitute only one case. If the proceedings involved co-defendants, however, the proceedings against each co-defendant constitute separate cases.

5. Motor vehicle cases constituted about one third of all cases handled by the Court during the three-month period. These cases were excluded from the study because they don't appear to be treated as criminal cases by most judges. Consequently the inclusion of such cases might distort the findings.

6. Homicide cases constituted about 1% of the proceedings heard by the Court during the three-month period. These are excluded from the study because it seems likely that there would be little difference among the judges in their handling of such cases in terms of verdict and imposition of some jail sentence. Consequently the inclusion of such cases might distort the findings by exaggerating the severity of the three judges who heard all homicide cases.

7. Jury trials constituted less than 2% of the cases heard during the three-month period.

8. These constituted less than 5% of the cases heard by the Court during the three-month period.

9. These six judges heard 74% of the cases examined by this study.

10. These 738 criminal cases were heard by twenty-six different judges. Fourteen of the twenty-six judges were "visiting" judges (judges of other Common Pleas Courts within Pennsylvania). These visiting judges, however, heard about one third of these cases and two of these fourteen judges heard more than one half of all cases heard by visiting judges.

percentage of not guilty verdicts rendered,¹¹ and the number and percentage of jail sentences imposed¹² by each of these six judges.¹³

TABLE 1
CASE DISPOSITIONS—ALL CASES

Judge	Number of Cases Tried	Not Guilty Verdicts		Jail Sentences Imposed	
		Number	Percentage	Number	Percentage
A	66	41	(62%)	6	(9%)
B	174	82	(47%)	31	(18%)
C	161	54	(34%)	30	(19%)
D	46	19	(41%)	13	(28%)
E	33	9	(27%)	13	(39%)
F	69	17	(24%)	29	(42%)

Because the differences among the six judges in the percentage of guilty verdicts rendered and jail sentences imposed could be accounted for by differences in the types of cases heard,¹⁴ Table 2 lists the same information as presented in Table 1 for only the less serious crimes—cases previously heard by the court of quarter sessions of the peace (hereinafter referred to as "quarter sessions cases").¹⁵ In both Tables 1 and 2 the judges are ranked in almost identical order in terms of their severity as measured by the percentage of guilty verdicts rendered and the percentage of defendants receiving jail sentences,¹⁶ so differ-

11. When a defendant is charged with more than one offense during the same proceeding, a judge is credited with rendering a not guilty verdict only if the defendant is found not guilty on all charges. Included as not guilty verdicts are demurrers sustained and cases dismissed as well as not guilty verdicts.

12. Where a defendant is charged with more than one offense during the same proceeding, a judge is credited with imposing a jail sentence if a jail sentence is imposed for any of the charges.

13. The remaining cases in which neither a not guilty verdict was rendered nor a jail sentence imposed were disposed of by suspended sentences, probation or fine following a guilty plea or guilty verdict.

14. It is recognized that the comparison between the judges does not take into account factors which vary from case to case such as the number of charges, the circumstances surrounding the crime, the defendant's past criminal record and the skill of particular defense counsel. These factors, however, should generally balance out over the number of cases examined.

15. Prior to January 1, 1969, courts of oyer and terminer and general jail delivery had exclusive jurisdiction over the more serious crimes including homicide, manslaughter, sodomy, rape, robbery, arson, mayhem, kidnapping and burglary; and courts of quarter sessions of the peace had jurisdiction over all crimes for which exclusive jurisdiction had not been given to the courts of oyer and terminer and general jail delivery. Act of March 31, 1860, P.L. 427, § 31, 17 P.S. 391; Act of March 31, 1860, P.L. 427, § 32, 17 P.S. 361. As of January 1, 1969, these courts were abolished as constitutional courts and jurisdiction over such crimes now rests in the common pleas courts. See Pa. Constitution Act 5, § 1, § 5; Sched. Article V, § 4.

16. Judges are ranked in this study according to their severity (A being the least severe—F being the most severe) in terms of the percentage of not guilty verdicts rendered and the percentage of jail sentences imposed as set forth in Table 1. On the basis of the percentages set forth in Table 2, the rankings would be identical except that Judges E and F would reverse positions.

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ences among the judges would not appear to be accounted for by differences in the types of cases heard.¹⁷

TABLE 2
CASE DISPOSITIONS—QUARTER SESSIONS

Judge	Number of Cases Tried	Not Guilty Number	Verdicts Percentage	Jail Sentences Imposed	
				Number	Percentage
A	56	35	(63%)	4	(7%)
B	106	56	(53%)	15	(14%)
C	119	45	(38%)	12	(10%)
D	36	16	(44%)	8	(22%)
E	33	9	(27%)	13	(39%)
F	42	13	(31%)	12	(29%)

Tables 1 and 2 show that there are substantial variations among the judges in their treatment of defendants.¹⁸ The extremes are Judges A and F: for both quarter sessions cases and all types of cases, the defendant appearing before Judge F was twice as likely to be found guilty and four times as likely to receive a jail sentence as the defendant appearing before Judge A. In addition, there were considerable differences among other judges: for example, for both quarter sessions cases and all types of cases defendants appearing before Judges E and F were more than twice as likely to receive jail sentences as were defendants appearing before Judges A, B and C. Consequently, the judge before whom a defendant appears is an important factor in determining the outcome of a case both in terms of verdict and sentence.¹⁹

17. To be sure that the more severe judges did not hear a disproportionate number of the more serious quarter sessions cases, the percentage of each judge's quarter sessions cases which constituted more serious quarter sessions cases (aggravated assault and battery; assault and battery on a police officer; assault with intent to kill; narcotics violations; and receiving stolen goods) was calculated: Judge A—26/56 (47%); Judge B—56/106 (52%); Judge C—36/119 (30%); Judge D—17/36 (47%); Judge E—12/33 (36%); and Judge F—20/42 (48%). These figures show that while there is some variation in the frequency with which these judges heard these more serious quarter sessions cases, there is no correlation between the severity of the judges and the frequency with which he heard these more serious cases.

18. Because sentencing is individualized to base punishment on the defendant's personality and the circumstances of the crime, as well as the gravity of the crime, variations among judges in their sentencing of defendants normally exist because of the lack of guidelines and criteria and the differing psychological traits and social, economic, ethical and legal views of each judge. See Rubin, *Disparity and Equality of Sentences—A Constitutional Challenge*, 40 FRD 55 (1966).

19. At the author's request, Judge B reviewed this article prior to its submission to the Duquesne Law Review. Judge B observed that the concern of certain of the "less severe" judges with reducing the Criminal Court's backlog accounts for some of the differences among the judges in the percentages of not guilty verdicts rendered and jail sentences imposed. Lengthy delays between the date of the crime and the trial date operate to the defendant's advantage because evidence is no longer fresh, witnesses cannot be located, etc., and to society's disadvantage by permitting the "bailed" defendant to remain on the street almost indefinitely. Consequently Judge B believes that the public interest is best promoted through his making strenuous efforts to reduce the backlog by streamlining trial proceedings. This requires the use of various procedures and in-

B. *Comparison of appearances of certain private attorneys and public defenders before various judges*

Having determined which were the more and less severe judges sitting during this three-month period, we will next examine the number of cases of various private attorneys before each of the six judges listed in Tables 1 and 2 to see whether these attorneys appeared disproportionately before the judges who are less severe according to Tables 1 and 2. In addition, we will compare the number of cases heard by each of these six judges in which the defendant was represented by one of these private attorneys with the number in which the defendant was represented by a public defender to see if the defendant represented by the private counsel was more likely to be tried by a less severe judge.

During the three-month period for which the records were examined, eight private attorneys handled more than ten cases. Table 3 identifies these attorneys and the judges before whom they appeared.²⁰ Table 4 shows the number of cases heard by each of the six judges listed in Tables 1 and 2 in which the defendants were represented by one of these eight attorneys and by a public defender and the percentage of each judge's caseload which these cases constituted.

The data contained in Tables 3 and 4 show that these eight private attorneys had a disproportionate number of their cases tried by the less severe judges. If cases were assigned randomly, defendants represented by the eight private attorneys would constitute approximately the same percentage of cases heard by each judge. This however did

centives because unless defense counsel believes that his client will be tried fairly, he can drag out his cases through postponements, being unavailable, requesting jury trials, pleading not guilty in all cases, demanding proof of matters not actually in dispute, etc. Thus so long as the judges are faced with a tremendous backlog, many judges believe it to be necessary to conduct proceedings in a manner which encourages the cooperation of defense counsel to streamline the trial process, particularly in cases which do not involve crimes of violence.

Judge B also indicated that certain "less severe" judges are reluctant to impose jail sentences in most cases because of the inability of the prison system to rehabilitate its prisoners. Many judges believe that the jail sentence reduces, rather than increases, the likelihood of rehabilitation.

Judge B also said that the findings set forth in section II of this article are in accord with his observations as a Criminal Court judge. Judge B, however, believes that the deficiencies in the procedures for assigning judges to criminal cases is only one manifestation of a more basic problem; a grossly insufficient number of judges, court personnel, court facilities, and detention and rehabilitation facilities to properly handle the criminal caseload of Allegheny County.

20. These eight private attorneys handled 216 of the 738 cases examined by this study—this constitutes 29% of the total cases and 40% of the cases in which the defendant was represented by a private attorney. The public defender, on the other hand, handled 189 of the 738 cases (26%).

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TABLE 3
NUMBER OF CASES OF EIGHT PRIVATE ATTORNEYS BEFORE VARIOUS JUDGES

Attorneys	Judge A	Judge B	Judge C	Judge D	Judge E	Judge F	Other Judges	Total
A1	6	14	20	5	3	1	14	63
A2	3	9	13	1	2	2	6	36
A3	7	6	10	1	0	0	4	28
A4	2	14	1	1	0	0	4	22
A5	1	15	4	0	0	0	1	21
A6	0	1	10	3	1	0	2	17
A7	4	5	5	0	0	0	2	16
A8	1	2	5	3	0	1	1	13
Total	24	66	68	14	6	4	34	

TABLE 4
PERCENTAGE OF CASES OF VARIOUS JUDGES WHERE DEFENDANT WAS REPRESENTED BY EIGHT ATTORNEYS OR PUBLIC DEFENDER

Judge	Quarter Sessions Cases				Total Cases			
	Eight		Public Defender		Eight		Public Defender	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
A	23	(41%)	13	(23%)	24	(36%)	17	(26%)
B	47	(44%)	18	(17%)	66	(38%)	34	(20%)
C	57	(48%)	21	(18%)	68	(42%)	39	(24%)
D	12	(33%)	8	(22%)	14	(30%)	9	(20%)
E	6	(18%)	13	(40%)	6	(18%)	13	(40%)
F	3	(7%)	14	(33%)	4	(6%)	30	(44%)

not occur. Clients of the eight attorneys constituted only 6% and 18% of the cases heard by two of the judges as compared to 42% and 38% of the cases heard by two other judges.²¹

Moreover, the percentage of each judge's caseload made up of the eight attorneys' cases correlated closely with the percentage of not guilty verdicts and sentences which did not include a jail term rendered by the judges. Defendants represented by these private attorneys constituted 36%, 38% and 42% of the cases heard by the three least

21. If each judge had heard the same percentage of cases in which the defendant was represented by one of the eight private attorneys, each judge would have heard the following number of such cases: Judge A-22; Judge B-58; Judge C-53; Judge D-15; Judge E-11; and Judge F-23. And if each judge had heard the same percentage of cases in which the defendant was represented by a public defender, each judge would have heard the following number of such cases: Judge A-17; Judge B-45; Judge C-42; Judge D-12; Judge E-9; and Judge F-18.

The vast differences between the expected number of cases heard and the actual number heard by each of the judges strongly indicates that the cases were not randomly assigned. Assuming random assignment, the probability of more extreme differences in the assignment patterns between the expected and actual number of cases heard for cases of the private attorneys and cases of the public defenders is .0004 and .01, respectively. Moreover, the probability is overstated because "extreme results" in the other direction are used. These probabilities are obtained from a Chi-squared distribution with fine degrees of freedom.

The author is indebted to Martin Geisel, Assistant Professor of Economics, Carnegie-Mellon University, for the above probability analysis.

severe judges in contrast to 6%, 18% and 30% of the cases heard by the three most severe judges.²² Although the two most severe judges heard approximately 15% of the cases tried during this three-month period, less than 5% of the eight private attorneys' cases were before these two judges; and while the three least severe judges heard only about half of the cases tried during this period, these eight attorneys had over 70% of their cases tried by these judges.

The comparison between judicial assignments of defendants represented by the eight private attorneys with defendants represented by a public defender shows that cases of these eight attorneys constituted a significantly higher percentage of the caseload of the four less severe judges than did the public defenders' cases—Judge A—36% to 26%; Judge B—38% to 20%; Judge C—42% to 24%; and Judge D—30% to 20%—while the public defenders' clients constituted a much greater percentage of cases before the two most severe judges—Judge E—40% to 18%; and Judge F—44% to 6%.

Also looking only at public defenders' cases, Table 4 shows that the public defenders' clients constituted from 20% to 26% of a caseload of the four least severe judges in comparison to 44% and 40% of the caseload of the two most severe judges.²³

22. Several criminal attorneys whom we interviewed were asked to rank the six judges in terms of their severity. Each of these attorneys described Judges A, B and C as moderate and Judges E and F as severe. Since their descriptions of these judges correspond to this study's rankings derived from an examination of verdicts rendered and sentences imposed, defense counsel appears to prefer the judges ranked less severe by this study.

23. Substantial differences among the six judges in the percentage of not guilty verdicts rendered and jail sentences imposed are not explained by the frequency with which defendants represented by a public defender appeared before these judges. The following table shows that when defendants represented by a public defender are excluded from the cases heard by the six judges during the three-month period, these six judges rank in the same order as when all cases are considered.

	% of N.G. Verdicts	% of Jail Sentences
Judge A	71%	20%
Judge B	52%	12%
Judge C	40%	10%
Judge D	38%	29%
Judge E	33%	29%
Judge F	35%	32%

(This table also shows that each judge's percentage of not guilty verdicts increases and each judge's percentage of jail sentences imposed decreases when only cases handled by private counsel are considered. This means that the public defender's clients are less likely to be acquitted and more likely to receive jail sentences when appearing before any of these judges.)

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C. Comparison of appearances before other judges

Judges who had heard less than thirty quarter sessions cases during this three-month period were divided into two categories: (1) those who rendered *not guilty* verdicts in at least 50% of the cases which they heard; and (2) those who rendered *guilty* verdicts in at least 50% of the cases which they heard.²⁴ Table 5 compares the number of cases heard by the judges in these two categories in which the defendants were represented by a public defender with the number in which the defendants were represented by one of the eight private attorneys.

TABLE 5
CASES OF PUBLIC DEFENDERS AND EIGHT PRIVATE ATTORNEYS
BEFORE OTHER JUDGES

	Total Cases	Public Defender	Eight Private Attorneys
Judges rendering <i>not guilty</i> verdicts 50% or more	84	19 (23%)	25 (30%)
Judges rendering <i>guilty</i> verdicts 50% or more	87	28 (32%)	9 (10%)

These judges who heard less than thirty quarter sessions cases during this three-month period were also divided into two other categories: (1) those who imposed jail sentences in any quarter sessions case which they heard; and (2) those who did not impose a jail sentence in any quarter sessions case which they heard.²⁵ Table 6 compares the number of cases heard by judges in these two categories in which defendants were represented by a public defender with the number in which defendants were represented by one of the eight private attorneys.

TABLE 6
CASES OF PUBLIC DEFENDERS AND EIGHT PRIVATE ATTORNEYS
BEFORE OTHER JUDGES

	Total Cases	Public Defender	Eight Private Attorneys
Judges imposing no jail sentences	74	18 (24%)	17 (23%)
Judges imposing jail sentences	97	29 (30%)	17 (18%)

Tables 5 and 6 reflect the same assignment patterns. Defendants represented by the eight private attorneys appeared more frequently before the less severe judges (30% to 10% for not guilty/guilty com-

24. Eight of these judges imposed not guilty verdicts in at least 50% of their cases and twelve of these judges imposed guilty verdicts in at least 50% of their cases. Seventeen of these twenty judges heard only quarter sessions cases.

25. Twelve of these judges imposed no jail sentences and eight of these judges imposed jail sentences in at least one case which they heard.

parison; 23% to 18% for no jail sentence/jail sentence comparison), while defendants represented by a public defender appeared more frequently before the more severe judges (32% to 23% for not guilty/guilty comparison; 30% to 24% for no jail sentence/jail sentence comparison). The eight private attorneys had 74% of their cases heard by these judges before judges who rendered not guilty verdicts in at least 50% of their cases as compared to 40% for the public defender and 50% of their cases before judges who imposed no jail sentence as compared to 38% for the public defender.

D. Comparison of appearances over a twelve-month period

Records of quarter sessions cases heard by the Court of Common Pleas of Allegheny County, Pennsylvania—Criminal Division—for an entire year were also examined and for every fifth case the name of the trial judge and whether the defendant was represented by a public defender was noted.²⁶ Table 7 lists the number of these cases before each of the six judges listed in Tables 1 and 2 in which the defendant was represented by a public defender and the percentage of each judge's caseload which these cases constituted.

TABLE 7
PERCENTAGE OF CASES OF VARIOUS JUDGES WHERE DEFENDANT
WAS REPRESENTED BY PUBLIC DEFENDER

Judges	Total Cases	Cases of Public Defender	
		Number	Percent
A	83	16	(19%)
B	201	36	(18%)
C	112	28	(25%)
D	33	11	(33%)
E	96	30	(31%)
F	93	33	(36%)

The same situation is again present. Defendants represented by a public defender constituted 33% (74/222) of the cases heard by the three most severe judges and only 20% (80/396) of the cases heard by the three least severe judges. In 48% of their cases, public defenders appeared before one of the three most severe judges while private attorneys appeared before these judges in only 32% of their cases.

For these cases we also compared the number of clients represented by a public defender before judges falling within the categories listed

26. These cases involve all types of quarter sessions charges including motor vehicle violations.

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in Tables 5 and 6: defendants represented by a public defender appeared in 29% of the cases (40/137) heard by judges who had imposed sentences and in only 16% of the cases (29/124) heard by judges who had imposed no sentences; and defendants represented by a public defender appeared in 27% of the cases (46/171) heard by judges who had rendered guilty verdicts at least 50% of the time and in only 15% of the cases (23/150) heard by judges who had rendered not guilty verdicts at least 50% of the time.

E. *Summary of Findings*

There were substantial variations among the judges in their treatment of defendants. For example, 51% of the defendants appearing before the two least severe judges were acquitted and only 15% of these defendants received jail sentences, while only 25% of the defendants appearing before the two most severe judges were acquitted and 41% of these defendants received jail sentences.

The eight private attorneys with the largest caseload were much more likely to have their cases heard by the less severe judges. Defendants whom they represented constituted 38% of the total cases heard by the two least severe judges and only 10% of the total cases heard by the two most severe judges.

Defendants represented by a public defender, on the other hand, constituted a higher percentage of the cases heard by the two most severe judges. Defendants represented by a public defender constituted 43% of the cases heard by the two most severe judges and only 21% of the total cases heard by the two least severe judges.

The same patterns existed in the assignment of cases to judges hearing less than 30 cases during the three-month period serving as the basis of the study and in the assignment of cases to judges over a twelve-month period.

III. SUMMARY OF INTERVIEWS WITH CRIMINAL ATTORNEYS

The assignment of judges in criminal proceedings before the Common Pleas Court was discussed in interviews with twelve criminal attorneys who frequently represent defendants in such proceedings.²⁷

27. These interviews were conducted during the summer of 1970.

These attorneys interviewed included an attorney who had handled more than twenty-five cases during the three-month period examined, present and former staff attorneys with the Office of the Public Defender of Allegheny County, and former Allegheny County Assistant District Attorneys.

While the various attorneys' descriptions of the process by which judges are assigned differed to some extent, the following over-all picture was presented:

In actual practice no definite, consistent system is used in assigning criminal cases to various judges. Theoretically, there is a system—the District Attorney's Office lists most minor cases for Courtrooms 3 and 5, to be heard by a judge assigned to that courtroom; all jury trials are sent to Courtroom 1; and the remainder of the cases are assigned to the Witness Room with the next case on the list being sent to the next judge who becomes available. Assignments, however, are not made in this manner in many instances. Whenever a case is important to the District Attorney, he will have the case scheduled before the judge of his choice. And in those cases in which the District Attorney's Office is not seeking a particular judge, a private attorney is frequently successful in securing the judge of his choice, or at least in avoiding certain judges. In many instances this involves no more than the attorney's requesting a clerk to assign his case to a particular judge.

Since uniform answers were not received to most of the questions presented to these attorneys, the remainder of this section will review their answers to the questions presented.

- Question 1. In assigning criminal cases to various judges is a definite, consistent system used?
Nine attorneys—No
Three attorneys—To some extent
- Question 2. Is it a general practice for private attorneys to maneuver for a particular judge?
Eleven attorneys—Yes
One attorney—Only for minor cases
- Question 3. How do private attorneys maneuver for particular judges?

Many of the answers stressed the lack of supervision and the informality in listing cases. The answers indicated that many court personnel are able to exercise some control over the assignment process.

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Frequently an attorney can get before the judge of his choice by merely asking that the case be assigned to that judge—since the process is flexible, many court personnel are willing to grant such requests merely as a favor to the attorney. Also some of the answers alleged that attorneys will pay to have a case assigned to a particular judge—attorneys making these allegations stressed that such payments are never made to judges or the more important court personnel.

- Question 4. How would you like to see the system changed?
Seven attorneys—Change it to a random system
Five attorneys—Favor the system as it is

The answers included:

“I favor the system as it is, it gives me a chance sometimes to get before a decent judge rather than having to take pot luck;”

“I favor a completely random system;”

“A published and official method of assignment;”

“I don’t want a random system; then I’m at the mercy of the system and have no chance for a decent judge if the numbers go against me;”

“I like the present system; it is obviously not equal justice but at least it gives my client a chance;”

“A completely random system that also prevents the District Attorney from influencing the assignment of judges;”

“The assignment of cases should be made in advance as soon as a true bill is returned; the case should be assigned to a permanent judge who will hear all phases of the case and the assignment should be made through a lottery system.”

- Question 5. Is the District Attorney able to have cases heard by the judge of his choice?
All attorneys—Yes

The answers included:

“The District Attorney has tremendous power—if he feels the case is important enough, he can have it assigned to the judge he wants;”

“The District Attorney has enormous power in the assignment of cases, whenever he cares to exercise it—too many judges think they are part of the District Attorney’s Office—the District Attorney actually goes to certain judges and asks them to take particular cases and the judges comply;”

“The District Attorney runs the show—many judges in Criminal

Court consider themselves, at least subconsciously, a part of the prosecution's side;"

"The District Attorney has extraordinary influence over all the minor officials who are involved in the assignment process;"

"Absolutely—he can do a great deal by just telling a clerk of his wishes;"

"The District Attorney can steer any case to any judge at any time."²⁸

CONCLUSION

Criminal Court cases appear to be assigned through informal and flexible procedures over which many persons can exercise some control. From the defendants' point of view the informality and flexibility may offer several benefits: it may result in the more lenient judges hearing a greater percentage of the cases; it may result in a greater percentage of cases with extenuating circumstances being heard by judges who will give some consideration to these circumstances; it may result in the assignment of a greater percentage of cases involving a particular crime to a judge who treats offenders of that particular crime leniently; it permits cases in which defense counsel and the prosecutor or police officers agree to a given outcome to be heard by a judge that will go along with the agreement; and it permits law enforcement officers, court personnel, etc. to affect the assignment and outcome of a case which in their opinion presents extenuating circumstances.

Nevertheless, the use of such informal and flexible procedures should be discontinued. Under such procedures justice is not dispensed in an even-handed, impersonal and impartial manner. Consequently the use of such procedures may undermine the integrity of the judicial process. An adverse outcome becomes less acceptable to the defendant, his family and acquaintances because they credit the adverse outcome to their lack of influence—they believe that the penalty was imposed only because the defendant couldn't afford the right attorney and didn't know the right people.

Moreover, there may be some basis for their beliefs. The informal and flexible procedures by which criminal cases are assigned to the

28. If the District Attorney is able to have cases which interest his office assigned to the judge of his choice, this might account for some of the private attorneys' appearances before the more severe judges. Consequently, in those cases in which the District Attorney does not seek a particular case, the private attorneys may have even more ability to avoid the more severe judges than is indicated by this study's findings.

Criminal Cases in Allegheny County

various judges favor the more affluent defendants. Our findings show that defendants who can afford particular private attorneys are more likely to appear before a less severe judge (and consequently much less likely to be convicted or to receive a jail sentence) than are defendants who cannot afford a private attorney and are therefore represented by a public defender; and that defendants represented by a public defender are much more likely to be tried by a more severe judge (and consequently much more likely to be convicted and to receive a jail sentence) than are defendants represented by particular private attorneys. Consequently, the defendant's wealth, a supposedly irrelevant factor, is emphasized by the informal and flexible assignment procedures presently used.

To minimize the importance of the defendant's wealth and more importantly, to preserve the integrity of the judicial process, the procedures by which criminal cases are assigned must be altered.²⁹ A procedure should be adopted that will give all defendants an equal opportunity to appear before the less severe judges; that will be specific, visible, and carefully supervised; and that will apply to the District Attorney as well as defense counsel.

29. Also the assignment procedures may violate certain constitutional provisions. Counsel for a defendant petitioning to have his conviction set aside on the basis of the assignment procedures should explore the following constitutional arguments: (1) the assignment procedures deprived the defendant of his equal protection rights in that he did not have the same chance to appear before the less severe judges as was available to defendants who could afford private counsel—consequently, solely by reason of his poverty the defendant was more likely to be convicted and sentenced to jail; (2) the assignment procedures deprived the defendant of his constitutional rights to a trial which complied with due process standards in that these rights preclude the state's use of procedures for selecting judges that discriminate against certain defendants; and (3) the defendant represented by a public defender was deprived of his constitutional right to competent counsel by reason of the public defenders' unwillingness or inability to utilize procedures to enable their cases to be heard by the less severe judges with the same frequency as private counsel while making no efforts to alter assignment procedures that operated to their clients' disadvantage.

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