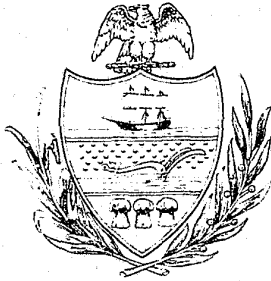


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IN  
THE  
COURT  
OF COMMON  
PLEAS OF ALLEGHENY  
COUNTY, PENNSYLVANIA

**CRIMINAL DIVISION**

**1987 ANNUAL  
REPORT**

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**ROBERT E. DAUER  
ADMINISTRATIVE JUDGE  
CRIMINAL DIVISION**

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JUDGE'S CHAMBERS  
COURT OF COMMON PLEAS  
PITTSBURGH, PA. 15219

February 10, 1988

ROBERT E. DAUER  
ADMINISTRATIVE JUDGE  
CRIMINAL DIVISION

NCJRS

MAY 10 1988

ACQUISITIONS

Honorable Michael J. O'Malley  
President Judge  
618 City-County Bldg.  
Pittsburgh, PA. 15219

RE: ANNUAL REPORT FOR 1987

Dear Judge O'Malley:

With a few swift strokes of his mighty pen, the Chief Justice of Pennsylvania obliterated the "backlog" of cases in the Criminal Division.

The theoretical "backlog" has always been computed by ascertaining the number of cases in the system awaiting trial that could not be disposed of by our assigned number of judges within 165 days. Using this formula, our "backlog" on December 30, 1987 was 3239. On December 31, 1987 the Supreme Court revised Rule 1100 of the Pennsylvania Rules of Criminal Procedure extending the speedy trial limitation from 180 to 365 days and our "backlog" of cases was, figuratively speaking, totally erased.

Unfortunately, Chief Justice Nix's pen is not a magic wand and all of these cases did not disappear. We had more undisposed cases in the system at the end of last year than any time in the history of this court. That number grew from 6,039 on December 31, 1986 to 7,111 on December 31, 1987.

This was partially due to an increase in the number of incoming cases. In 1987 the number of cases held for court by the District Justices and City Magistrates totaled 14,049, as compared with 13,339 cases in 1986, an increase of 710 cases. The number of cases filed in the past four years has remained fairly constant. The following table shows the number of incoming cases for the last ten years.

1978	7,412
1979	7,609
1980	8,933
1981	8,984
1982	10,491
1983	12,373
1984	13,473
1985	13,516
1986	13,393
1987	14,049

During last year, the judges of the Criminal Division were able to dispose of a total of 12,940 cases as compared to 13,293 cases in 1986. This decline is completely attributable to a decline in judicial help.

Not all of the 7,111 cases were awaiting trial. Many of these defendants in the system were scheduled for ARD hearings or had already been tried and were awaiting post-trial arguments and/or sentencing. These categories are not included in computing our "backlog"

In every year of the last decade, with the exception of 1986, the number of incoming cases has exceeded the number that could be tried by the judges assigned to the Criminal Division within the 180 days permitted by the Pennsylvania Rules of Criminal Procedure. Extensive statistical studies of judicial records through the past ten years has demonstrated that the average disposition rate of cases per assigned judge has remained remarkably constant at between thirty-five and forty cases a month. The percentage of incoming cases admitted to the Accelerated Rehabilitative Disposition Program, nolle processed or dismissed also remains fairly constant so that the most variable factor is the number of judges trying cases in Criminal Court during any particular time period.

Obviously, some judges are more expeditious than others in disposing of cases and abnormal circumstances such as complex cases or loss of judicial time through illness will result in some temporary impact. However, because of the consistency in the average disposition rate, the escalation or diminishing of the number of cases in the system is quite predictable.

Based on the number of cases currently coming into the system, as I have reported before, the number of fulltime judges necessary to maintain the status quo is eighteen. Additional judges will decrease the number of untried cases proportionately. Less than eighteen fulltime assigned judges will result in a constant increase in the number of untried cases. I will continue to consider these cases a "backlog" since the present status of Rule 1100 makes it impossible to determine whether a case must be tried within 180 days or 365 days until the date of trial.

Our "backlog" first appeared in 1982 when the number of cases held for court by the District Justices and Pittsburgh City Magistrates first exceeded the number of cases disposed of by the criminal courts in the time permitted by the Pennsylvania Rules of Criminal Procedure. We have been struggling to keep this "backlog" within bounds ever since. The following table shows the yearly fluctuation in our "backlog" as of December 31 of each year of the last six years.

1982	1577
1983	2697
1984	2427
1985	2496
1986	2132
1987	3239

As I stated to you in my last several reports, the number of judges needed to keep current with the number of incoming cases was eighteen. Since the number of incoming cases has leveled off at between 13,500 and 14,000 that number remains eighteen.

During the past several years the combination of the Individual Calendar System and a "Daily Trial List" primarily composed of cases expected to be pleas or short jury trials, to fill in judicial "down time" has proven to be very successful. However, to provide some time for opinion writing, P.C.H.A.'s, legal research, etc., the majority of our assigned judges desire to experiment with a pure individual calendar. We, therefore, temporarily eliminated the "Daily Trial List" beginning in December, 1986. We will carefully monitor the case statistics for the next several months to ascertain the effect of this change. During 1987 we disposed of 2,329 cases by the use of the "Daily Trial List".

The percentage of jury trials has decreased to 4.5 percent in 1987. Since the institution of our Individual Calendar System this percentage has remained fairly constant. The following chart shows the relative number of jury trials, non-jury trials and pleas. It also shows the percentage of the total of each category during the past five years.

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Pleas	4668(68%)	5912(68%)	6374(71%)	6895(75%)	6895(76.5%)
Non-Jury	1723(25%)	2387(27%)	1945(22%)	1806(20%)	1709(19%)
Jury	<u>465(7%)</u>	<u>455(5%)</u>	<u>637(7%)</u>	<u>470(5%)</u>	<u>409(4.5%)</u>
	6856	8754	8956	9171	9013

The number of actual jury trials again this year is much lower than in 1981, prior to the institution of our Individual Calendar System. This is directly attributable to the pre-trial conferences which are an integral part of that system.

The average time between arrest and trial during 1987 was lengthened to 134 days. The following table shows the annual increase in this figure during the last five years.

1983	122 days
1984	124 days
1985	128 days
1986	133 days
1987	134 days

These figures included all cases in which the defendant, for whatever reason, waived his constitutional rights to a speedy trial as defined under Rule 1100 of the Pennsylvania Rules of Criminal Procedure but do not include cases where the defendant is a fugitive from justice or has been committed to a state mental hospital. It is interesting to note that the time between arrest and trial back in 1979, when I first started to compute these figures, was only 104 days. At that time it was our intention and hope that we could reduce this to under 100 days, a dream that never materialized.

For your information, the following is a brief review of some of the various supplemental activities and supporting agencies of the Criminal Division during the past year.

### ACCELERATED REHABILITATIVE DISPOSITION

The Accelerated Rehabilitative Disposition Probation Program remains one of the most useful and successful of our disposition procedures. Last year we were able to place 3004 criminal defendants on ARD Probation, reducing court trials by that number and also avoiding giving these defendants a criminal record. It should be noted, however, that there is an exception to the general rule. Under the "Drunken Driving" statute, acceptance of ARD by the defendant is considered a first conviction for the succeeding seven years for the purpose of determining mandatory sentences for recidivists.

It should also be noted that by accepting the ARD program, the defendant is implicitly admitting that he has committed the offenses with which he has been charged. Apparently during the past year there were some attorneys and defendants who did not understand this, although it should have been obvious that you cannot be placed on probation if you have not done anything illegal.

The remarkably low rate of recidivism for persons placed on ARD attest to the rehabilitative and deterrent benefits of this program. Much of this success is due to the screening, interrogation and investigation by the competent staff of the ARD Section in the District Attorney's office and I believe this successful program could be extended to some more serious non-violent crimes. This would also help to alleviate the problem of over-crowded jails and correctional institutions. However, this would require a change in the Rules of Criminal Procedure which now limits ARD probation to two years. As I have advocated in previous reports since ARD is granted currently in some felony cases, particularly welfare fraud, and could be expanded to include others, the Supreme Court should be urged to extend the probation limitation to at least five years or even the statutory limitation for the particular crime. Even under the existing rule, it should be obvious that a person who has obtained substantial payments of money from the Department of Public Welfare by misrepresentation or false statements cannot pay back the thousands of dollars involved in a two-year period. Many of these people are still on welfare and, of

course, the Department of Public Welfare can only deduct a minimum amount from their payments. The statutory limitation would be much more realistic. Probation can always be terminated by the court in the unlikely event of earlier complete restitution.

We were most fortunate again, at least during the earlier months of last year, to have the services of Senior Judge William S. Rahauer handling ARD cases and thereby freeing one of our regularly assigned judges to hear cases on the trial list. However, Judge Rahauer retired as of August 1, 1987 and these cases are again being handled by the Administrative Judge. During the first seven months of 1987, Judge Rahauer disposed of 1774 ARD cases.

Because of the large number of defendants and attorneys participating in each scheduled ARD hearing session, we have obtained the permission of the County Commissioners to use the Gold Room if it has not been pre-empted for some county meeting. This room, of course, can accommodate many more persons than any of our courtrooms and its use has proven to be very satisfactory as now everyone can at least sit down during these lengthy hearings.

#### COURT APPOINTED COUNSEL

The judges of this division have been monitoring very closely the use of court appointed counsel. Attorneys for indigent defendants are appointed by the judges of the Criminal Division for two separate reasons, either the public defender has a conflict of interest or there is no public defender available.

The first situation results from decisions of the Superior Court that where there are multiple defendants, the public defender would normally have a conflict of interest, as would any attorney or law firm, in representing more than one. The second situation results from a lack of a necessary number of public defenders available to represent all eligible defendants.

Where counsel must be appointed prior to assignment of cases under the Individual Calendar System, the appointment is made by the Administrative Judge from a list of volunteers. These volunteers are obtained through periodical advertisements in the Pittsburgh Legal Journal. After the case has been assigned, necessary appointments are made by the trial judge.

The expense of this program which must be appropriated yearly in the court budget has been astronomical. This cost

was reduced in 1987 by 42% from that of 1986 because many of the vacancies, although regrettably not all, in the Public Defender's Office were filled. The total cost of court appointed counsel in 1987 was \$551,814.00.

ADULT PROBATION DEPARTMENT

The workload of the Adult Probation Department again increased in 1987 reflecting, among other factors, the additional number of incoming cases and an effort on the part of our judges to put non-violent convicted defendants on probation rather than give them light sentences in the overcrowded Allegheny County Jails. A large proportion of these defendants are convicted "Drunken Drivers" but the crimes of probationers include the whole spectrum of offenses from Harassment to Homicide.

The total number of cases on probation or parole under the supervision of the Allegheny County Probation Office at the end of last year was 14,184. This number has increased every year since I have been keeping records as Administrative Judge with no new positions for probation officers being budgeted by the County Administration. The following list illustrates the annual growth in the number of probation and parole cases for the past five years.

1983	8,596
1984	10,151
1985	11,899
1986	12,822
1987	14,184

The following table shows the tremendous workload of the Allegheny County Adult Probation Division.

	<u>PROBATION</u>	<u>PAROLE</u>	<u>1987</u> <u>TOTALS</u>	<u>1986</u> <u>TOTALS</u>
Total Cases January 1, 1987	10,147	2,675	12,822	11,899
Received from Court in 1987	5,895	1,563	7,458	8,937
Discharged During 1987	4,822	1,274	6,096	8,014
Total Cases December 31, 1987	11,220	2,964	14,184	12,822
ARD Total Cases Jan. 1, 1987	8,907		8,907	8,518
ARD Received from Court in 1987	3,222		3,222	5,300
ARD Discharged During 1987	6,309		6,309	4,911
ARD Total Cases December 31, 1987	5,820		5,820	8,907



In Allegheny County the rehabilitation of these 14,184 convicted criminals is left to the supervision and guidance of thirty-eight probation officers. This means that each probation officer is responsible for 374 probationers and/or parolees, obviously a ludicrous caseload. The tragic absurdity of this situation is more apparent when this caseload is compared to the standard recommended by the American Correctional Association which is no more than fifty probationers under the supervision of each probation officer.

As a comparison to the workload of the Adult Probation Office, the following table shows the number of cases from Allegheny County supervised by the State Probation Office.

Total Cases Jan. 1, 1987	2,371	404	2,775	2,226
Received from Court in 1987	914	168	1,082	1,669
Discharged During 1987	665	122	787	1,160
Total Cases December 31, 1987	2,623	447	3,070	2,775

One of the principal duties of the Adult Probation Office in addition to the supervision of probationers and parolees, and its most beneficial duty to the disposition of cases, is to furnish the court with pre-sentence reports. In 1987 the Adult Probation Office conducted investigations and completed pre-sentence reports in 4,121 cases. The earlier that these reports are furnished to the judge, the more expeditiously the court is able to dispose of cases and, parenthetically, reduce the population of our overcrowded jails.

The Adult Probation Office also was responsible for the completion of 2,763 probation violation reports which were sent to the court. These reports resulted in 1,656 probation violation hearings at which probation officers must appear as witnesses.

Despite the ever increasing workload, the Allegheny County Probation Office has continued to meet the requests of the court to furnish pre-sentence reports within five weeks after conviction for jail inmates and eight weeks after conviction for bailees. Director John Kolesar and his over-burdened staff remain underpaid and the Adult Probation Office is dangerously undermanned. If we are ever going to properly supervise our parolees and probationers and thereby reduce recidivism, the number of these officers must be significantly increased.

Director Kolesar and his deputies should be paid commensurate with the salaries of the Directors and Officers of the other departments of Allegheny County.

#### BAIL AGENCY

During 1987 representatives of the Allegheny County Bail Agency attended more than 19,000 preliminary arraignments and bail hearings at which the amount and type of bail to be demanded was determined by District Justices, Pittsburgh's City Magistrates and Judges of the Criminal Division. For the past eighteen years, the judges of the Criminal Division have continued to hold hearings each day on applications for bail modifications presented by private defense attorneys, public defenders, prisoners and/or their families, the District Attorney's office and any other interested party.

In our continuing effort to reduce jail population, the Bail Agency has been directed to constantly monitor the bail status of all persons imprisoned in the county jails and apply to the Administrative Judge for a change in amount or conditions whenever it is deemed necessary or proper.

Because of the orders of the United States District Court as to jail population it is probable that release of prisoners who have not made bail is again imminent. Since the jail must release the prisoners with the lowest bail it is critical that no violent criminal be placed on the streets. This court has ordered Warden Kozakiewicz to refrain from releasing any person accused of any violent crime or with a record of prior bail jumping. If any of these dangerous inmates with low bail become eligible for freedom from incarceration under Judge Cohill's mandate, this court must be notified. We then raise the bail of that inmate or lower that of another who presents no physical danger to the public. This, of course, is a deplorable situation, but is the only alternative remaining to this court because of the impasse between the County Administration and the Federal Court.

The following table shows the number of bail modification hearings in each of the last five years.

1983	1875
1984	2143
1985	2853
1986	2702
1987	2606

The slight reduction in the number of hearings during 1987 is partially attributable to the necessary cancellation of bail hearings on every other Monday since August 1, 1987. These dates are scheduled for pre-trial conferences and ARD's and the combination of these results in no judge being available for bail hearings. When we enjoyed the services of Senior Judge William S. Rahauer this was not a problem as he handled all of the ARD cases on these dates leaving the Administrative Judge free to hear bail cases.

Aside from this, the number of necessary investigations that have to be conducted by the very competent staff of the Bail Agency has, for the past several years, exceeded their capability. The Bail Agency remains critically understaffed and there is just not enough time for the present employees to increase the number of investigations and presentations. A few additional jobs in the budget of the Bail Agency would be an additional method of helping to relieve the problems of overcrowding in the county jails. When there is a thorough investigation, the court can frequently reduce bail allowing the prisoner to be released. To emphasize this point, it should be noted that of the 2606 bail appeals to the judges of this division, 36% resulted in the granting of nominal bail. In many other cases, we were able to lower bail sufficiently so that it became affordable by the inmate or his family and thereby provided additional space in the jail.

The Common Pleas Court of Allegheny County has one of the best records of any metropolitan court in the United States for adherence not only to the letter but to the purpose of the Eighth Amendment in making certain that the lowest bail consistent with the probability of appearance is granted to each defendant. Seventy percent of all defendants are released on nominal bail. Of the remainder two-thirds are released on court/percentage bail and only four and one-half percent are required to post surety bonds.

Our established system of communication between the Bail Agency, the Calendar Control Office, Pittsburgh's City Court and the staffs of the various Criminal Court Judges permits information exchange which enables investigators to contact defendants, their attorneys, their families and prison authorities to arrange for bail appeals and check on mistaken failures to appear, avoiding costly bail forfeitures and additional criminal charges.

This system and the diligence, prudence and expertise of Director David W. Brandon and his staff has resulted in an overall bail forfeiture rate of only three-fourths of one percent. The number of trial forfeitures was 331, down eight percent from the previous year. However, it is reasonable to expect that this

figure will significantly go up during 1988 because of the current jail situation which necessitates our release of prisoners who are poor risks.

BEHAVIOR CLINIC

In 1987 the Behavior Clinic conducted 2151 psychiatric and psychological examinations of suspected mentally ill Allegheny County jail prisoners. This court is provided by the Behavior Clinic with pre-trial reports as to the defendant's capability to stand trial. We are also furnished, at the time of sentencing, with diagnostic reports and treatment recommendations.

Last year there were sixty-six convicted persons remanded by the trial judges to the Behavior Clinic for psychiatric examinations prior to sentencing. The other examinations were ordered by District Justices, City Magistrates, the Administrative Judge of the Criminal Division or they were performed pursuant to Rule 300.29 of the Criminal Division where the defendant is accused of Kidnapping, Sex Crimes, Arson or other offenses indicating mental aberrations. The following table indicates the reasons for psychiatric examinations performed during 1987.

Remands from sentencing judges*	66
Murder	107
Robbery	67
Arson	105
Aggravated Assault	154
Minor Assault	97
Burglary, Breaking/Entering	65
Auto Theft	1
Stolen Property	64
Forgery/Counterfeit	7
Rape	200
Other Sex Offenses	320
Narcotics/Drug Laws	33
Deadly Weapons	27
Driving Intoxicated	15
Other Vehicle Laws	3
Disorderly Conduct/Vagrancy	43
All Other Offenses	469
Commitments to Mental Hospitals	143
Court Orders for Discharge of Mental Prisoners	120
Violation of Parole/Probation	45
	<u>2151</u>

\*NOTE: Convicted persons are remanded by the trial judge to the Behavior Clinic for psychiatric examination prior to sentence whenever it is deemed appropriate.

During last year, as noted in the above table, the judges of the Criminal Division held hearings on 143 commitment petitions for mentally ill persons confined in the Allegheny County jails. In addition to these mental commitment hearings initiated by the Behavior Clinic, the court held 55 mental commitment hearings for the State Correctional Institution at Pittsburgh. Although these hearings are conducted by our court because of the proximity of Western Penitentiary, the costs of hospitalization are charged to the sentencing county.

During 1987 many of these latter hearings were held by this court within the penitentiary in a courtroom provided by Superintendent George Petsock with the approval of the Pennsylvania Department of Corrections. This procedure proved to be very satisfactory and, in my opinion, all of these hearings should be conducted in the penitentiary unless the inmate's family is involved. It is certainly more reasonable, safer and easier for everybody concerned if the judge, his minute clerk, a court reporter and the attorneys take a half-hour to go to Western Penitentiary rather than to have these mentally ill persons brought in shackles to the courthouse.

#### COMMENTS AND CONCLUSION

The year 1987 was not a kind one to the Criminal Division. We began the year with the loss of the Honorable Samuel Strauss who retired. Judge Strauss was a prodigious worker and disposed of thousands of cases during his assignment as a Senior Judge in this division. His advice has been, and will continue to be, greatly missed by the judges and the staff of our division. On May 11, 1987 two of our most able judges, the Honorable Robert P. Horgos and the Honorable John L. Musmanno, were transferred to the Civil Division and, although we received two very fine replacements, the Honorable Joseph M. James and the Honorable Lee J. Mazur, it always takes a few months for a new judge to become acclimated to our procedures. Even though Judge James and Judge Mazur, having both previously been Magistrates, were experienced enough to assume the already scheduled cases of their predecessors, transfer of judges always results in a significant, if only temporary, decline in case disposition.

On February 6, 1987, the Honorable Henry R. Smith, Jr. reached mandatory retirement age but fortunately Judge Smith was appointed as a Senior Judge and is still assigned to the Criminal Division.

As you know, the Honorable James R. McGregor has been awaiting appointment to the United States District Court so it has been very difficult to assign him cases in the usual manner.

However, during this period, Judge McGregor was of great assistance to us in trying several lengthy complex cases. Because of the procrastination of the President in making this appointment and failure of the Governor to reappoint Judge Mazur prior to the expiration of his original appointment, I assigned all the cases that were previously assigned to Judge Mazur to Judge McGregor and started to give him a full assignment load. I have no idea what I will do with these cases when he becomes a Federal Judge.

During the early months of 1987 one of our judges had to undergo surgery and could not be assigned cases for several months. This, of course, as do all judicial illnesses, caused a decline in case dispositions. Fortunately, we have a pretty healthy bunch of jurists in the Criminal Division.

At the end of 1987 because of the critical situation in the Civil Division, Judge Alan S. Penkower was transferred. However, we will not lose his services until he has completed all of the cases that had been already assigned to him. Hopefully, by that time we will have some replacement for our judicial vacancies.

As I mentioned before, Senior Judge William S. Rahauser retired last Summer, and for the past six years Judge Rahauser has been an invaluable asset to the Criminal Division in presiding in Accelerated Rehabilitative Dispositions (ARD's) thereby allowing our regularly assigned judges more time for trials and other duties. Judge Rahauser's many years as a State Legislator, District Attorney of Allegheny County and Judge of the Orphans' Court and the Court of Common Pleas made him singularly suited for this important and time-consuming function. He spent hours reviewing each of the cases prior to the hearing dates and disposed of all the many cases on ARD day with judicial decorum and efficiency. We will miss the dignity, temperment and common sense that this great jurist gave to the Criminal Division and to the entire Court of Common Pleas.

During 1987 we continued to have logistical problems in courtroom assignments or the lack of them. Although I realize it is presently impossible, we must continue to strive to acquire more courtroom space in the courthouse for the Criminal Division. Holding criminal trials in the City-County Building is dangerous and impractical. The lack of courtroom space during 1987 made it difficult most of the time and impossible some of the time to use our assigned Senior Judges to their maximum potential. Obviously, a judge cannot try a case without a courtroom. Often I had no vacant courtrooms and could not borrow them from the Civil Division to accommodate trials assigned to Judge Lewis and Judge Smith. Frequently, the only recourse was to use these judges for pleas and non-jury trials in the small hearing room behind my courtroom (formerly the Nurse's Office).

In addition to this debacle we lost the use of Judge Ross's courtroom (No. 3) for four months while it was being restored to its original grandeur in recognition of the court's Bicentennial. During this period, Judge Ross also frequently was relegated to the use of the old Nurse's Office.

Again, last year the perennial and every-increasing problem of space in both the Allegheny County jails and the State Correctional Institutions continued to hamper the administration of justice in this County and in the Commonwealth. The limitation placed on jail population by the United States District Court and the intransigence of the Pennsylvania Department of Corrections in refusing to admit state prisoners to the State Regional Correctional Facility at Mercer has resulted in a horrendous predicament for the judges of this court.

According to the latest statistics issued by the United States Department of Justice, the population of state prisons has grown by fifty percent in this decade. This over-crowding of state prison systems proportionately increases pressures on local jails. Transfer of state prisoners from local jails has become delayed and even halted entirely. In Pennsylvania, and particularly in Allegheny County, this problem has reached the critical stage. Because some of the mandatory sentences enacted by the state legislature are relatively short and because of short sentences recommended in the Sentencing Guidelines, some judges feel constrained to sentence convicted defendants in these cases to either the County Jail or Mercer. The Pennsylvania Department of Corrections is constantly closing Mercer to new admissions so that many of the defendants sentenced to that institution serve their time in the Allegheny County Jail. Also, if a defendant is gainfully employed, often in an effort to preserve that employment and keep the defendant's family off the welfare rolls, some judges sentence persons to the county jail for the sole purpose of granting work release.

These are the primary reasons that the jail population is escalating and will continue to do so until new alternatives to incarceration are permitted by the State Legislature, the Pennsylvania Department of Corrections changes its policies and/or the County Administration provides a zero minimum security facility for non-violent offenders.

The legislature must deal with these problems for which they are, at least in part, responsible. They must amend the sentencing laws and give to the court the discretion to impose alternative punishment rather than incarceration such as community service and house arrest. They must allow for creative and innovative sentences formulated by the trial judge to fit the crime which will emphasize to the defendant the damage he has done, the psychological harm he has inflicted and the pain and suffering that has resulted from his particular type of criminal activity.

The Pennsylvania Department of Corrections must build or purchase facilities that can be used as minimum or zero security prisons for non-violent criminals such as drunken drivers, retail thieves, prostitutes and other convicted defendants who pose no danger of violence and whose temptation for escape would be minimal. The closer such facilities are to metropolitan centers, the more useful they would be for such required sentencing considerations as rehabilitation, family visitations and work release.

There is no question that everyone wants the dangerous criminal off our streets but we have run out of places to put them. The legislature undoubtedly will continue to enact mandatory sentences but has provided no funds with which to build prisons where these sentences can be served. The cost of jail construction and maintenance is a horrendous one and is not a popular item in either state or county budgets. The Board of Commissioners of Allegheny County has done its best to cope with this problem even to the extent of constructing a new jail but it is unlikely that Governor Casey will bite the bullet any more than did Governor Thornburgh.

The most logical solution is to find the least expensive method of incarceration which will allow compliance with the laws. Minimum or zero security facilities would supply the necessary space and leave the maximum security institutions for the murderers, rapists and robbers.

There have been many available facilities that could have been, and some still could be, converted to zero or minimum security prisons. I have previously suggested Saint Fidelis College, old Dixmont Hospital or Kane Hospital as such a zero or minimum security facility. I just learned of another that could be used for this purpose, the former Toner Institute in Brookline, which I understand is presently up for sale by the Catholic Diocese of Pittsburgh. I also reiterate my recommendation of ten years ago to the Prison Board that an interim solution for the county would be the use of barracks at either of the county airports.

This scarcity of jail space and protracted inaction by the governor and legislature in filling judicial vacancies are not the only foreseeable impediments to the proficiency and smooth operation of the criminal justice system of Allegheny County in 1988. In addition to these built-in handicaps, we face the disconcerting and, as yet, unknown problems that will undoubtedly arise with the Supreme Court's recent revision of Rule 1100.



On December 31, 1988, the Supreme Court of Pennsylvania rewrote Rule 1100 of the Pennsylvania Rules of Criminal Procedure requiring that criminal defendants who are awaiting trial in jail to be tried before those who have been released on pretrial bail. The Justices further directed that all defendants awaiting trial in jail must be tried within 180 days of the date the criminal complaint was filed and that those out on bail must be tried within 365 days of that date. Petitions for extension filed by the Commonwealth and now routinely granted for a myriad of reasons under decisions of both the Supreme Court and the Superior Court will no longer be permitted.

This revised Rule conjures up many scenarios which are bound to arise and result in hearings and appeals. For example, what is the final trial date for a defendant who has been out on bail for more than 180 days and where he is then incarcerated for a violation of his bail conditions?

These new regulations have the potential of wrecking havoc on our Individual Calendar System since the judges schedule cases months in advance. We will, when it is possible, attempt to clarify each of these cases as jail or bail cases, prior to assignment, so that individual judges may fit them into their own schedules accordingly. However, if the Supreme Court continues to prohibit extensions and does not clarify the effect of this Rule where the classification of the defendant changes, we may face the problem of having to dismiss cases without trial. There is even the regrettable possibility that we might be forced to abandon our very successful Individual Calendar System and return to using a Master Trial List exclusively. This could mean that misdemeanor cases, including Driving Under the Influence cases, may never be reached.

Parenthetically, this may also have an undesirable, if not unconstitutional, effect on our bail procedures. It is doubtful that Magistrates, District Justices or Judges will be anxious to grant affordable bail in felony and other serious cases to those otherwise eligible when they know that because these defendants are out of jail, their case will likely be dismissed under Rule 1100. This, of course, will exacerbate the jail population problem.

In any event all of these questions which arise from the newly written Rule will result in multitudinous hearings for our reduced number of trial judges. These hearings will further delay trials which also will mean longer stays in the jail for persons awaiting trial, the exact opposite effect that the Supreme Court intended to achieve. This Rule obviously was revised in an attempt to resolve the disaster in the Philadelphia Courts. It is lamentable that it may undermine the expediency and accomplishments of the Allegheny County Courts. I can

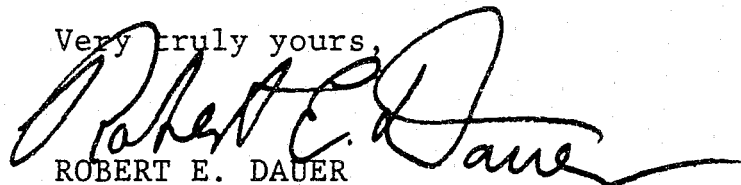
assure you, however, that as they have done in the past, the judges, support staffs and employees of the Criminal Division will exert Promethean efforts to resolve and contain this Pandora's Box of troubles.

Our past achievements and our continuing pursuit of excellence have been made possible by the devotion, diligence and expertise of our Criminal Court employees and our personal staffs. A judge in many ways is only as good as his staff and those who work in his courtroom. We are equally dependent upon, and grateful for the untiring efforts of the many agencies which aid the court and carry out its orders. The courtesy and guidance given to us by the Members of the Bar is invaluable to our decision process and administrative duties. Without this collaboration the wheels of justice which grind slowly, at best, would come to a screeching halt.

I would like to extend my thanks to each of the judges who were assigned to the Criminal Division in 1987 for their cooperation and support and to both the Court Administrator, Charles H. Starrett, Jr., and the Deputy Court Administrator, Robert V. McCarthy, for their assistance in obtaining for us our basic necessities.

Finally, I am most pleased that you have been able to attend the monthly meetings of the Criminal Court Judges to personally observe and hear our perplexities and imbroglios. I am also personally grateful to you for your advice and counsel in my moments of desperation and frustration.

Very truly yours,



ROBERT E. DAUER  
Administrative Judge  
Criminal Division

RED:dlp

Honorable Robert N.C. Nix, Jr., Chief Justice of Pennsylvania  
Honorable Rolf Larsen, Justice, Supreme Court of Pennsylvania  
Honorable John P. Flaherty, Justice, Supreme Court of Pennsylvania  
Honorable Thomas T. McDermott, Justice, Supreme Court of Pennsylvania  
Honorable Nicholas P. Papadacos, Justice, Supreme Court of Pennsylvania  
Honorable Stephen A. Zappala, Justice, Supreme Court of Pennsylvania  
Nancy M. Sobolevitch, Administrator of Pennsylvania Courts  
All Judges of the Court of Common Pleas of Allegheny County, Pennsylvania  
Honorable Thomas J. Foerster, Chairman, Board of County Commissioners  
Honorable Barbara Hafer, County Commissioner  
Honorable Peter F. Flaherty, County Commissioner  
Honorable William S. Rahausser  
Honorable Samuel Strauss  
Honorable Lee J. Mazur  
Honorable John L. Musmanno  
Honorable Robert P. Horgos  
Honorable Robert E. Colville, District Attorney  
Honorable Eugene L. Coon, Sheriff  
Honorable John C. Kyle, Clerk of Courts  
Charles H. Starrett, Jr., Court Administrator  
Robert V. McCarthy, Deputy Court Administrator  
Charles J. Kozakiewicz, Warden  
Lester J. Nauhaus, Public Defender  
David W. Brandon, Director, Bail Agency  
Gary Zimmerman, Esq., Chairman, Association of Trial Lawyers in  
Criminal Court in Allegheny County  
Thomas Coyne, Director of Administration, Behavior Clinic  
Dr. Christine Martone, Director of Forensic Psychiatry, Behavior Clinic  
James J. Dodaro, Esq., County Solicitor  
Ms. Cynthia McCormick, Jail Population Control Manager  
Steven Bowytz, Director, Calendar Control  
John Kolesar, Director, Adult Probation Office  
Robert Reabe, Jury Coordinator  
Ruth Gaffney, Chief Minute Clerk  
Brian O'Connor, Assistant Chief Minute Clerk  
Cynthia Adams, Supervisor, ARD

## APPENDIX

Attached is the statistical review of case disposition by judges for 1987. It must be emphasized that bare statistics as to the number of cases disposed of by each judge may be very misleading. Bare statistics do not necessarily reflect the actual amount of work produced by nor the contribution made by a particular judge. The recognized success of the Criminal Division of this court depends not only upon the individual effort of each judge, but also upon the accepted concept that all of the judges are participants in a unified effort to dispense justice as quickly as possible under all of the circumstances.

In order that these statistics be more fully understood, it must be noted that all of the duties required to be fulfilled by each judge are not reflected in these statistics. For example, the review does not include the judicial time and effort expended for the following matters:

1. Disposition of pretrial motions, i.e., Motions for Habeas Corpus; Motions to Quash; Motions for Discovery; Suppression Motions.
2. Sentencing hearings;
3. Disposition of Petitions for Post-Conviction Relief filed pursuant to the Post-Conviction Hearing Act; (Generally speaking, the greater the number of cases heard over an entire judicial career, the greater the number of P.C.H.A. petitions a judge will receive annually.);
4. Research and writing of legal opinions and memoranda;
5. Probation Violation Hearings.

In considering these statistics, it should be understood that there is no way to determine with complete accuracy the judicial time required to dispose of a trial or hearing. Some cases, depending on the number of witnesses and the complexity of the evidence may require much more time to complete. Even some pleas, if there are many charges, can take several hours because of the length of the colloquy required. A non-jury trial can be lengthy, whereas conversely a jury trial, particularly in Driving Under the Influence cases can frequently be completed in several hours. Experience demonstrates, however, that jury trials generally are the greatest burden on a judge's time since not only is the actual trial usually lengthier but the post-verdict motions and appeals, that are almost always filed, require much more transcript study, legal research and opinion writing than other proceedings.

1987

CRIMINAL DIVISION - DISPOSITIONS BY JUDGE

<u>JUDGES</u>	<u>PLEAS</u> <sup>1.</sup>	<u>NON-JURY</u> <sup>2.</sup>	<u>JURY</u>	<u>A.R.D.</u>	<u>NOLLE PROSSE</u>	<u>TOTAL</u>	<u>MISTRIALS</u>	<u>MENTAL COMMITMENT</u>	<u>BAIL-APP. HEARING</u>
BIGLEY	515	127	10	2	1	655	1	1	44
CERCONE	345	99	29		11	484		8	131
CLARKE	224	55	46		2	327	8		18
DAUER	827	331	44	1,218	637	3,057		100	1,728
FRIEDMAN	188	64	17			269		1	8
HORGOS	379	40	4	1		424			22
JAMES	182	72	11			265			30
KELLY*	139	60	15	2	1	217	2	1	12
LITTLE	614	187	34	2	18	855	1	17	200
MAZUR	238	105	9	1	12	365		11	190
MCDANIEL	556	122	43	1	18	740	1	3	125
MCFALLS	302	95	12			409		1	21
MCGREGOR	332	72	5	1		410		25	274
MUSMANNO	115	78	7		6	206		5	79
NOVAK	398	73	28		1	500		1	15
OBRIEN	324	119	36			479		3	21
PENKOWER	305	137	21		1	464	1		24
RIDGE	300	128	17			445	1	1	7
ROSS	502	93	3			598			8
SMITH**	124	73		2	2	201			7
LEWIS**	217	84	18		1	320		18	87
OTHER	1			1,774		1,775			
<b>TOTAL</b>	<b>7,127</b>	<b>2,214</b>	<b>409</b>	<b>3,004</b>	<b>711</b>	<b>13,465</b>	<b>15</b>	<b>196</b>	<b>3,051</b>

1. Includes Probation without Verdict and disposition in lieu of trial.

2. Includes Dismissals, Demurrers, Information Quashed, and Nolle Prosse in which information was filed.

3. Judge William S. Rahauser sits periodically in the Criminal Division only for A.R.D. cases.

\*Judge Robert A. Kelly is assigned half-time to the Criminal Division and the remaining time to the Family Division.

\*\*Judge Henry Smith and Judge Loran Lewis are Senior Judges in the Criminal Division.

Note: On May 11, 1987 Judge Joseph James and Judge Lee Mazur were sworn in as Court of Common Pleas Judges and are serving in the Criminal Division. Judge Robert Horgos and Judge John Musmanno are now serving in the Civil Division.