National Institute of Law Enforcement and Criminal Justice
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The New Justice: Alternatives to Conventional Criminal Adjudication

THE NEW JUSTICE: ALTERNATIVES TO CONVENTIONAL CRIMINAL ADJUDICATION

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ABSTRACT

The primary objectives of this study were to identify and examine the current range of alternatives to conventional adjudication; to determine the impact of these alternatives on the activities of criminal justice agencies; and to present an overview of organizational, legal and evaluative issues and concerns relative to the adoption and implementation of an alternative.

The researchers collected and analyzed a large amount of written documentation and evaluative reports on alternative projects throughout the country and in addition, visited over twenty cities to examine their alternative procedures. The results of this research effort are contained in two documents, *The New Justice* and *Alternatives to Conventional Adjudication—A Guidebook for Planners and Practitioners.*

The New Justice represents a summary of the actual analysis and comparison of more than seventy models of alternatives examined. In this report the researchers have concluded that most alternatives deal with one or all of three basic sources of dysfunction in the traditional system: 1) improper subject matter jurisdiction; 2) ineffective disposition of defendants, and 3) disparity in treatment of defendants. This summary report provides a valuable discourse on a topic of growing national interest and concern.

PREFACE

The New Justice

An ancient Egyptian philosopher, nearly ten centuries before the birth of Christ, already voiced his misgivings and disdain of courts and the adjudicatory process. "Go not in and out in the courts of justice," admonished his he readers, "so that thy name may not stink." [1] In the American republic, perhaps more than elsewhere, the judiciary is held in such esteem that even conflicts between different branches of the government are entrusted to judicial rather than political resolution.[2] But the American judiciary has lately fallen into disrepute for its less than efficacious processing of criminal cases.

Courts, it is said, are undermanned and inefficient. The wheels of justice creak with deliberation, and the process has become slow and cumbersome. The size of the judiciary is not adequate to modern needs. Procedure has become so complex that it ceases to be meaningful. Counsel have been tempted by the adversary process to the point of litigiousness, gamesmanship and other tricks which bring justice into contempt. The delay in the courts, moreover, imposes undue hardships upon the complainant and his witnesses. Not only does the delay continue the accused in a state of jeopardy, but it also makes it more difficult for the prosecution to hold its case together. Perhaps the most serious consequence is that the more the offender becomes enmeshed in the criminal process and the criminal label, the more difficult it is for him to be later retrieved for a life of lawfulness. It is better, therefore, so the argument concludes, to sacrifice formality and dispose of offenders expeditiously and at the earliest stage possible. More speedy, less burdensome and less expensive procedures—so as to reduce trauma and permanent labeling—must be developed and utilized in the effort to accord offenders their due deserts.

Alternatives to the conventional adjudication process have been advanced, accordingly, with the promise that they answer several if not all the existing inadequacies. The search for "alternatives" is by no means new in the American criminal justice reform movement. Beginning with the President's Commission on Law Enforcement and the Administration of Justice in 1967, reformers have repeatedly stressed the need to find alternatives for the overburdened and allegedly unrehabilitating correctional institutions. Incarceration was depicted as wasteful and brutalizing. Adjusting the offender to institutional standards was rightly viewed as useless and irrevelant to the proper objective of equipping him with the skills and attitudes required for a return to the community. Increased attention, therefore, was urged for non-confining practices—probation, fines, restitution, and victim compensation, as well as supervised correctional measures with closer ties to the community, such as halfway houses and similar innovations.

[1] The Wisdom of Anii, in Adolf Erman, *The Literature of the Ancient Egyptians* (trans. 1927 by A. M. Blackman).

[2] Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York, Alfred A. Knopf, 1941), p. 312.

These "penal" or "correctional" alternatives must be distinguished from alternatives to conventional criminal adjudication. The former are concerned with how offenders are dealt with after adjudication. Criminal corrections, and its alternatives, are concerned with the *substance* of the criminal sanction, with issues of retribution, incapacitation, rehabilitation and deterrence. Adjudicatory alternatives have a totally different thrust, seeking more efficient and just ways or procedures for processing those charged with crime. Although alternatives are related to the striving for more humanitarian or individualistic disposition of offenders, adjudicatory alternatives, conceivably, could serve those seeking merely a more efficient and speedy determination of guilt or innocence.

Adjudication is the making of judgment: it is the Anglo-American formula par excellence for conflict resolution, and the criminal trial is a major demonstration of that process. At adjudication the judge—an impartial, solemn umpire representing the sovereign authority—is vested with the power to decide the matter in dispute. The decision-making process for reaching the judgment is adversary in character, permitting each party to put forth its best factual and conceptual-legal positions. Adjudication, thus viewed, is both a product and beneficiary of a conflict between parties—much as capitalism is expected to benefit from free economic competition. Modern adjudication is the child of the Age of Reason: the conflict is resolved by intellectual debate and persuasion, unlike earlier resort to trial and judgment by witchcraft, magic, fire, or ordeal.

The goal of the adjudicatory process is to convince the umpire, by rational means, of one's factual superiority and that a given disposition of the case is more in conformity with public policy, as embodied in law, than the disposition urged by the opposing party. The hallmarks of adjudication in Anglo-American law are reliance upon intellectual persuasion; the regulated conflict of parties; a highly visible, duly constituted procedure; and the independence of the umpire, modified by the popular input of the jury. Conventionally, without this process, justice cannot be attained. And we are reminded by a German philosopher that "the capacity of man for justice, is what makes democracy possible." [3]

Alternatives to conventional adjudication can assume a variety of forms. Several major classes of alternatives are readily apparent. Although the study which follows presents a broad spectrum of options, three illustrations will suffice here. The first seeks to "popularize" or simplify adjudication by modifying the character and qualifications of the judge. The second seeks to eliminate the criminal label from adjudication by replacing the judge with an administrative adjudicator. The third seeks to change the nature of the adversary procedure itself to an inquisitorial-negotiated process of justice.

The least drastic of the above reforms is one in which the basis elements of the process remain essentially unchanged; only the umpire's qualifications are modified. Thus, the judicial functions might be transferred to a non-professional judge (justices of the peace in the United States and lay magistrates and assessors in Europe), resulting in greater popular input and possibly in less complex and less adversary procedures. (One could simplify procedures, however, without seeking to directly affect the judicial office.) On the other hand, it is arguable that more professionalization of the judicial role resulting in reduced functions for juries and lay magistrates might lead to increased judicial efficiency.

The second class of alternatives is designed to change criminal offenses into administrative violations, particularly in such areas as traffic, housing, or other

[3] Reinhold Niebuhr, *The Children of Light and the Children of Darkness* (1944).

regulatory infractions, thereby permitting administrative dispositions in lieu of the conventional criminal process. Turning a criminal offense into an administrative violation permits a change in both the symbolism and rituals of adjudication. Procedure is likely to be less formal; adversary intensity is reduced; the stigmatization of the offender is avoided. The adjudicatory alternative thus directly interacts with the movement for correctional alternatives.

The third class of alternatives to adjudication would not affect the legal classification of criminal offenses, nor would it modify the mainstream of conventional adjudication. Instead, it leaves traditional forms of adjudication as an avenue of last resort while seeking to "divert" selected and "deserving" classes of offenders from it. The "diversion" class of alternatives, in effect, transfers the traditional focus of judgmental responsibility. It becomes a matter of discretion for the police, the prosecutor or even the judiciary to identify groups or individual offenders for differential dispositions prior to a formal adjudication. Since this differential handling is discretionary, adversary confrontation between prosecution and defense is diminished. It is supposed to be time-saving, procedurally, and more likely to assure the offender of a better individualized correctional disposition. Moreover, if the diversion fails in these respects, a return to the conventional adjudication is usually still possible.

What is conventional adjudication and what is an alternative depends upon a given society and a given time. During the greater part of American history, the adjudication of the majority of criminal cases was assigned to non-professional judges, the justices of the peace. To this day, English criminal process relies heavily upon magistrates who are not legally trained. Trial by non-professional judges has, therefore, long been the conventional form of adjudication in the Anglo-American system of justice. Only in the third quarter of this century had this form of adjudication come under so much criticism and undergone so much change that new reference is now made to "people's" and "neighborhood" courts as alternatives to the growing delay in the more formal courts.

Even the current clamor for administrative justice is scarcely new. From the middle of the last century, the criminal process gradually relinquished control over large numbers of offenses and offenders viewed either mentally or chronologically immature. The therapeutic or civil handling of the mentally ill is but one example. Instead of being charged criminally for disturbing the peace, mental patients began to be committed administratively to special institutions without the benefit of a judicial hearing. In a related development, the creation of the juvenile court at the end of the nineteenth century attenuated the adversary climate for juvenile offenders, no longer to be found "guilty" but only "involved." Similar non-criminal adjudications were later introduced for the disposition of alcoholics, drug addicts, and psychopaths. In all these instances, an alternative was designed ostensibly to accelerate the process, to reduce the heavy reliance upon adversary procedures, to avoid stigmatization, or to afford offenders individualized treatment.

Even within the remaining traditional criminal process, departures from the conventional norms were noteworthy. The discretion of the police and the prosecution have always been with us. While the criminal system of Continental Europe has traditionally claimed to adhere to the "legality principle," which requires the adjudication of all proper complaints and insists upon a final disposition by a judicial officer, this has not been the American way. On the contrary, American criminal justice is based upon the "opportunity principle," which holds that a violation or complaint ought to be prosecuted with only in opportune cases and circumstances. It is the discretion of the police or prosecutor which determines

what cases and what circumstances are opportune. It is not surprising, therefore, that many informal diversions from the criminal process, accompanied by warnings or mild supervisory measures, were used in this country long before the attention presently paid to the search for alternatives. Perhaps the most powerful manifestation of the discretionary power of the agents of criminal justice is to be seen in the practice of plea bargaining. Plea bargaining depends essentially on the wide discretionary authority of the prosecutor to compromise the complaint in the assumed interest of society. The result is a product of negotiation rather than adversary adjudication. Strict adherence to objective truth might be incidental; a man who in fact committed a robbery or attempted murder could well be found guilty only of assault. Plea bargaining has, therefore, been a unique American form of alternative. While it usually requires a conventional judicial disposition at the conclusion of the negotiations, the prior process itself is not traditionally adjudicative.

If principal classes of alternatives to conventional criminal adjudication are both so time-honored and widely known, what is new in this arena? Why has this monograph been written? The answer to both questions lies in the birth of a new generation of alternatives and the search for a more scientific assessment of both the attainments and the inadequacies of a strategy seeking greater utilization of alternatives. In the past decade there has been enthusiastic support for both correctional alternatives and alternatives to adjudication. Unlike earlier periods, this support was backed by extensive financial funding, mostly by LEAA, HEW, and the Labor Department, designed to test specified alternative models. These models varied from the very small to the very large and complex. Established in metropolitan centers and in suburban areas, they mostly reported success though at times they admitted to failure. The majority of projects were designed to test innovative approaches to correctional and adjudicatory missions.

In the past most reform movements in American criminal justice have been the result of preconceived ideological notions and commitments rather than scientific findings. The arrival and maturation of LEAA, and the growing sophistication of other grantors, require reformers and innovators to measure their accomplishments against their original hypotheses or promises. The recent movement for alternatives to conventional adjudication has been equally and increasingly exposed to the same demands.

Key questions to be answered by this research were as follows:

1) What have been the major claims supporting the introduction of alternatives to conventional adjudications?

2) What major classes or types of alternatives have been advocated and introduced in recent years?

3) Have these programs been measured for cost-effectiveness or by other criteria?

4) How can these programs be measured more usefully?

5) What limitations are imposed upon the potential of these programs by Constitutional, legal, and administrative requirements?

6) What is the impact of these programs upon the business of the court and upon court delay?

7) What is the impact of these programs upon crime control?

8) What is the impact of these programs upon the quality of justice?

9) What should be the future public policy with regard to alternatives to conventional criminal adjudications?

The chapters that follow do not purport to answer all the above questions fully. They claim, in fairness, to represent the best that can be done, given the limitations in the evaluative efforts by the alternative projects themselves, and given the restraints imposed upon field assessments by lack of time and inadequate records.

This report makes a significant contribution to the understanding and classification of adjudicatory alternatives. The comprehensive Adjudicatory Alternatives Matrix produced by this study is a totally new contribution. It should serve as a useful tool for the better planning, utilization, and evaluation of new alternatives. The Matrix is referred to throughout the report, and two explanatory appendices are presented to aid in its use. Appendix B provides a detailed discussion of the construction and limitations of the Matrix and concise definitions of each of the Matrix items; Appendix C presents more than 130 illustrations of alternatives keyed to the classifications in the Matrix. The recommendations contained throughout this monograph should be carefully considered by practitioners, planners, scholars, and funding organizations.

The foregoing is written with the distinct advantage of having read the 1,900 pages of the full report, presented by those who worked so diligently on this difficult project. It is offered as an encouragement to others to read the complete study, as well as the summary report contained in this monograph.

What the principal investigators—David E. Aaronson, Nicholas N. Kittrie and David Saari—find outstanding and amply illustrated by this study can be summarized in a few pages:

1) Recently instituted alternatives to conventional adjudication (with the exception of a few programs such as those decriminalizing public intoxication) affect only a small portion of all cases which require disposition, while the conventional system of justice continues to be little affected.

2) The primary impact of alternatives is upon lower criminal or misdemeanor courts. The alternatives movement has provided a long overdue infusion of new programs, procedures, and personnel into these courts. In many jurisdictions, the climate of justice in the lower courts has been improved.

3) Alternatives to conventional adjudication are usually designed to deal with minor and non-violent crime and cannot be expected to have a noticeable direct impact upon major street crime.

4) Alternatives to conventional adjudication are designed to encourage more effective and individualized handling of offenders; accordingly they forego the formality and visibility of dispositions designed to serve the major purpose of general deterrence.

5) While alternatives to adjudication encroach upon the traditional concept of the offender's "day in court," they equally deprive society of the symbolic value of an official finding of offender accountability. The loss of both symbols in serious criminal cases can critically affect the functioning of criminal justice.

6) A substantial number of alternatives exhibit the disturbing tendency (characteristic of earlier therapeutic programs) of expanding control over the lives of individuals out of humanitarian and rehabilitative motives, without proper attention to substantive and procedural due process. Due process standards and rules must be imposed upon the practitioner of alternatives to minimize these excesses.

7) Alternatives rely heavily upon unregulated discretionary exercise of power by police, prosecutors, and others, and are subject to legal criticism for denial of the values underlying constitutional equal protection and due process.

8) The central importance of the discretionary power of police and prosecutors in the operation of many alternatives has tended to further encroach upon the tra-

ditional role of the trial judge. Judicial participation in many alternative programs and procedures is feasible and desirable, both as a check upon discretion and as an appropriate symbol of the state authority.

9) Many alternatives, especially pretrial diversion programs, have tended to become substitutes for decriminalization; they have thus exerted a conservative influence upon criminal justice by reducing pressure for legislative decriminalization.

10) Advocates of alternatives sought to substitute for conventional adjudication by developing new dispositional tracks, but the institution of such alternatives should not replace efforts to make the traditional system of adjudication more speedy and effective.

11) There has been a decline in popular participation in the adjudicatory process, due to the reduced role of the grand and petit jury as well as a diminishing use of lay justices of the peace. This trend should be reversed and new forms of popular participation should be encouraged.

12) The pragmatic and symbolic values of conventional adjudications have been constantly eroded by procedural complexity and delay, excessive plea bargaining, and the small sample of all serious criminal offenders standing full trial. The community's "sense of justice" requires greater reliance upon traditional adjudication for serious offenses.

13) Informal and inexpensive alternatives to adjudication have their place and require encouragement in intrafamily, school, work, and neighborhood disputes, where mediation and other possibilities of popular conflict resolution are likely.

14) Lesser infractions of the law—in the areas of vehicular, housing, and other regulatory requirements—should be increasingly handled through administrative adjudications.

15) Minor infractions of law, especially in the areas of private morals and so called victimless or complaintless offenses, can be handled more appropriately and inexpensively through legislative decriminalization than through referral to more costly adjudicatory alternatives.

16) An issue critical to the future of alternatives is their relationship with the conventional system of adjudication. Some specialists believe there is a need to incorporate many of the practices developed by alternatives within an overall adjudicatory system, rather than to permit the development of permanently separate and competing tracks. Others believe that alternatives programs are adversely affected when incorporated in the dominant criminal justice system. Careful and early review of this question is needed.

17) The funding of new alternative projects should concentrate on three major needs: (1) the continuing effort to decriminalize minor infractions; (2) the substitution of administrative for conventional adjudication in the case of lesser infractions of law; (3) the streamlining of procedures, the reduction of delay, and the greater utilization of conventional adjudication for the trial of major offenses.

18) No funding of new alternative projects should be undertaken without the strictest attention to the requirement of evaluation and assessment of their attainments vis-a-vis the stated goals.

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CHAPTER I. ALTERNATIVES AND ADJUDICATION

The last decade has been a period of foment and change in America's criminal adjudication system. It has been a decade of experimentation in procedures and programs. A growing concern over dysfunctions in our criminal courts has given rise to a variety of innovative measures: some directed to fact-finding procedures; some to the sentencing phase of the adjudicatory process; and some seeking to modify both simultaneously; others have combined a reform of adjudication and corrections. A few examples of the range of innovations spawned during this period:

- In New York City, few minor motor vehicle infractions remain on the criminal court dockets. Instead, ticketed motorists have an opportunity to explain their cases or make their defenses informally in the offices of a "hearing officer" employed by the Bureau of Motor Vehicles, who has the power to impose fines and to initiate license suspension or revocation.
- In Boston, police officers and civilian "rescue teams" cooperate in locating and taking custody of persons drunk in public. Depending on which agency actually "picks up" such individuals, he or she will be taken to either a police station house or to a medical detoxification center. Even in the event of an initial police pick-up, the civilian team, once notified, takes over soon afterwards.
- In Washington, D.C., recently arrested petty offenders may go to court as observers rather than as participants. Young people charged with shoplifting or marijuana possession can "earn" a dismissal by attending court sessions, touring the Federal Bureau of Investigation, and, in most cases, writing essays which are "graded" by prosecuting attorneys.
- In Philadelphia, Rochester, Columbus, East Palo Alto, the Bronx, the District of Columbia, and a number of other cities, criminal complaints by one neighbor against another never reach court. Instead they are made the subject of "mediation" or "arbitration" procedures—which can result in duties being imposed upon the complainant, as well as the person complained of.
- In Dayton, the police department has adopted a set of internal rules which describe when and how juvenile curfew laws will be enforced. The rules were devised by the department's legal staff, but only after informal consultation with representatives of schools, parents, and community organizations.
- In Wichita Falls, Texas, some accused persons whose cases are brought before the grand jury —on charges as serious as armed robbery— are immediately "diverted" to the supervision of a local probation officer. If, in the months and years after this "diversion," they meet the standards set for them, their cases will never come up for disposition in court.
- In Oregon, Ohio, and California, by statute, and in Alaska by judicial decision, possession of marijuana in quantities of less than an ounce has been decriminalized. In the first three states, possessors are subject instead to a civil penalty not to exceed $100.

What do these efforts to change our conventional system of criminal justice have in common? How are alternatives to adjudication different from or related to correctional alternatives? What are the past record and future promise of alternatives to adjudication?

Studying innovations in the criminal adjudication system has been the focus of an 18-month research project, the "Alternatives Study," conducted by the Institute for Advanced Studies in Justice of The American University, under a grant from the National Institute for Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration.* This monograph contains a summary of the study, its findings, and its recommendations.

* The results of that effort are contained in a three-volume, 1,900-page report, *Alternatives to Conventional Adjudication*. This report, on file with LEAA, is now available in mimeograph form.

A. Objectives of the Alternatives Study

The study focused on the courts and innovations which relate directly to their work. It was not the aim of the research to deal with correctional values, institutions, and policies. The study's objectives were fourfold: 1) to identify, classify, and describe essential features or characteristics of a host of apparently unrelated alternatives to adjudication; 2) to explore issues and interrelationships among the diversity of alternatives, especially in the evaluative, legal, and organizational areas; 3) to consider the role and policy implications of these alternatives for the criminal adjudication and the criminal justice systems; and 4) to make the resulting analysis and conclusions the tools for a more systematic and comprehensive planning of alternatives. It was not within the purview of this study to document the extent of dysfunctions in our criminal courts, such as court delay, jury and witness complaints, and other procedural or administrative inadequacies. The study did not address directly the question of whether the full range of alternatives, on the whole, represents a better response to the criminal adjudication system's problems than increased funding and increased commitment to our conventional adjudication system. The study did attempt, however, to delineate the circumstances under which particular alternatives may be more appropriate than conventional adjudication.

One of the major findings was that most of the strategies for change examined *were* inter-related and part of a change "movement." While these diverse and sometimes conflicting measures appear to arise in response to local and specific symptoms of malaise in the criminal courts, they all attack problems which are fundamental to our criminal adjudication system generally. The variety of alternatives reveals diverse strategies for change:

- Some alternatives attempt to modify the way in which an offender passes through our present criminal adjudication system.
- Others seek a different method for processing cases currently handled by our criminal courts.
- Still others seek to remove certain categories of offenses or offenders from our sanctioning process altogether, without providing an alternative forum or means of resolution.

A central thesis of the alternatives movement is that our criminal courts, patterned on an adversary model for the resolution of social conflicts, are imperfect—and often inappropriate—societal response to the processing of alleged offenders, especially those involved in minor criminal offenses or offenses involving no substantial factual dispute. In many lesser criminal cases conventional adjudication may be too time-consuming, expensive, and irrelevant to, or even inconsistent with, achieving effective dispositions.

The manifested claims for alternatives are that they serve to improve the quality of justice within our criminal adjudication system, to provide the most appropriate resolution of criminal disputes, to enhance the effectiveness of the criminal adjudication system as a deterrent and as an instrument for the rehabilitation of offenders, to improve the efficiency with which our criminal adjudication system functions, and to make the criminal adjudication system more responsive to the needs of our society.

B. Purpose of this Monograph

This monograph presents a summary and the major findings of the Alternatives Study; explains the development of an *Adjudication Alternatives Matrix* as an analytical tool, used to classify and explore the interrelationships among the diversity of alternatives examined; points to the potential uses of the matrix by criminal justice planners and practitioners; and considers some of the implications of these alternatives for the future of the criminal adjudication and justice systems.

The study and this report are addressed to legislators, government officials, criminal justice planners, scholars, and citizens who wish to view the reform of the criminal adjudication system in the broader perspective of all societal efforts to control criminal behavior, in a manner consonant with our society's values of justice, humanitarianism, and individual self-worth. While this monograph discusses issues of concern to program directors and funding agency personnel charged with responsibility for implementing or overseeing one or more individual projects, it is not intended to be a guidebook for the implementation of alternatives.

The goal is to encourage the reader to consider a broader and more diverse range of strategies for attacking the problems of backlog, inefficiency, absence of individualized justice, and disparity of treatment in our criminal courts—and to weigh the implications of each strategy considered. The study's contribution, we hope, will be in aiding the reader

to determine which alternatives offer the most practical, efficient, satisfactory, and feasible solutions to the particular dilemmas facing their courts and their criminal justice system. The contribution expected from the reader is to think broadly in considering the possible solutions available, and to think specifically and concretely about *all* the effects and side-effects of those alternatives which show the most promise.

Before we explore in greater detail the terms "alternatives," "conventional adjudication," and "criminal adjudication system," and before we describe the scope and approach of the Alternatives Study, we will provide some essential perspectives on conventional criminal adjudication and describe the problems which, from these perspectives, appear to have given rise to what may be characterized as an inevitable "movement" towards alternatives.

C. Alternatives and the Role of Conventional Adjudication

Our courts are creations of Constitutional and legislative mandate, with exclusive power to judge and to impose sanctions, in the name of the state, against criminal offenders. Legislative definitions of crime and jurisdiction establish definite limits on the types of criminal matters a court can entertain, but they may also be viewed as a legislative grant of a charter for a monopoly in the use of state sanction against an offender. Other substantive and procedural rules exist for the purpose of insuring that the court domain in criminal adjudication is exclusive. This exclusivity was originally designed to substitute state action for private vengeance. Prosecution of people who undertake vengeance or other "self-help" remedies in response to criminal acts (when they exceed the narrowly defined rights of citizens' arrest and self-defense) serves to reinforce the exclusive position of the criminal adjudication system. Indeed, so dominant has become the state interest in the maintenance of "public order" that in most jurisdictions an unwilling complainant is not free to withdraw criminal charges without the consent of the court or prosecution.

1. *Conventional adjudication: myth vs. reality.* The public's image of criminal adjudication, encouraged by accounts of actual and fictional trials in the media, involves a judge in a black robe, presiding over a trial of the accused. Any disposition short of this is considered by many as less than full justice, for it deprives accused persons of their day in court while also denying the public the full and open spectacle of the meting out of justice. This plea for the traditional image of adjudication is supported by the National Advisory Commission on Criminal Justice Standards and Goals, which mandates abolition of plea bargaining by 1978.[1]

But what, in fact, occurs in our courtrooms? Insight is provided by Edward L. Barrett, Jr.:

> If one enters the courthouse in any sizeable city and walks from courtroom to courtroom, what does he see? One judge in a single morning is accepting pleas of guilty from and sentencing a hundred or more persons charged with drunkenness. Another judge is adjudicating traffic cases with an average time of no more than a minute per case. A third is disposing of a hundred or more other misdemeanor offenses in the morning, by granting delays, accepting pleas of guilty and imposing sentences.[2]

The National Advisory Commission reports that, of those arrested for crimes serious enough to be considered FBI Index Crimes (murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny over $50, and auto theft), only 8 percent were processed fully through the formal steps of criminal prosecution.[3] While no precise figures are available on what happens to the remainder of the cases, it is safe to say that the vast majority are released earlier by police or prosecution for lack of sufficient evidence, are referred to diversion programs (possibly following negotiations with defense counsel or a concerned agency), or are disposed of by judicial ratification of a negotiated guilty plea.

Especially in urban courts facing severe backlogs, decisions on cases are often made in haste. For example, the decision whether the defendant will be jailed or released into the community pending trial may be made in one or two minutes.[4] This despite the fact that defendants who are detained pending trial are more likely to be convicted, are more likely to be sentenced to prison rather than be given some form of conditional release, and are more likely to be sentenced to longer prison terms than their counterparts accused of the same crime but freed pending trial.[5] The discretionary decisions which are made may also reflect *ad hoc* decisions rather than written—or even formally articulated—policy.[6]

The low percentage of trials in our criminal adjudication system has led both the President's Crime Commission[7] and the National Advisory Commission on Criminal Justice Standards and Goals to conclude that much of the criminal process is administrative rather than judicial. Both commissions recognized the administrative nature of criminal case processing as desirable as well as essential. Kenneth C. Davis explains how many of the important decisions in the criminal adjudication system are reached:

> Not many questions for discretionary justice ever reach adjudication, whether formal or informal. Discretionary justice includes initiating, investigating, prosecuting, negotiating, settling, contracting, dealing, advising, threatening, publicizing, concealing, planning, recommending, supervising. Often the most important discretionary decisions are the negative ones, such as not to initiate, not to investigate, not to prosecute, not to deal, and the negative decision usually means a final disposition without ever reaching the stage of either formal or informal adjudication.[8]

James Q. Wilson elaborates on the consequences of the fact that conventional adjudication has become in large part an administrative process. He posits that the role of the courts today is *not* to determine guilt or innocence, but "to decide what to do with persons whose guilt or innocence is not at issue. Our judiciary is organized around the assumption that its theoretical function is its actual one. . . . But most of the time, for most of the cases in our busier courts, the important decision concerns the sentence, not the conviction or the acquittal." [9]

Clearly, conventional adjudication in America today bears little resemblance to the idealized historical model present in the public's eye. By and large, the adjudication process remains a model rather than a reality. Although courts continue formally to maintain their claim for monopoly over criminal trials and adjudications, the greatest number of dispositions result from discretionary decisions by the police, prosecutors, and court personnel, including judges themselves. Nevertheless, a consistent though relatively small portion of criminal violations does finally end up on a full-dress adjudicatory process—which remains a supremely effective method for resolving conflicts of fact, and which continues to supply the system of justice with its symbolic ritual.

But the myth of conventional adjudication persists, and as Harvey Friedman has observed: "the inaccurate perception of the mechanics by which the criminal justice system operates impedes an effort toward reform." [10]

2. *Other models of conflict resolution.* The historical antecedents of our criminal adjudication system suggest that its main purpose is to preserve peace and public order by substituting state sanction for private vengeance. Criminologists suggest that the goals of the criminal sanction are societal retribution, general deterrence of potential offenders, and special deterrence of the particular offenders, through intimidation, incapacitation, or rehabilitation.[11] But these purposes simply indicate the use to which state sanction is to be put. The underlying question is why should there be any state sanction. The accepted answer is that in the absence of state criminal sanctions, people would redress criminal wrongs through private action or "self-help" groups and the state would lose one of the major claims for its existence—the guaranteeing of the peace. Indeed, such atavistic developments can be seen in many jurisdictions in this country where the criminal justice system is seen by the community as ineffective in keeping the peace. In the Bronx, juvenile gangs, seeing the lives of other youths ruined by drugs pushed by dealers selling with impunity, spread the word that pushers would be shot. Following an increase in street crime in the Hassidic Jewish community in New York, a self-help group, the Macabees, was formed to patrol the streets with large sticks. Similarly, sentences have been known to be imposed and executed, without the benefit of formal courts, in areas and by groups who consider the judiciary unresponsive.

Over the years, the Anglo-American common law system has developed an elaborate adversary process for determining the facts, using stringent rules of evidence and procedure, and for adjudicating a defendant guilty or innocent. But historical and anthropological studies affirm that this is not the only method a society has at its disposition for resolving conflicts between victims and criminal offenders.

While our elaborate common law criminal process is seen as a major form of dispute settlement, in which the power of the state is brought to bear in order to prevent private retribution in serious criminal cases, other models for responding to disputes have existed in this and in other cultures.†

† Appendix A discusses conflict resolution procedures of other countries.

Two of the most noted are *mediation*, a process less formal than adjudication, and *dispute avoidance*, in which a society recognizes that not all conflicts of social values and mores need be resolved through use of the criminal sanction.

Llewellyn and Hoebel, in *The Cheyenne Way*, provide insight into the American Indian criminal justice mediation system of the late nineteenth century.[12] An offender is brought before a tribal council, or the fraternity of warriors to which he may belong, to be held accountable for his actions. After each side to the dispute presents his or her proofs and arguments, the body seeks accommodation between the parties, exacts restitution, imposes punishment in the few cases where this is appropriate, and strives to reintegrate the penitent offender back into the community. The goals and procedures both bear startling resemblance to modern arbitration and mediation practices.

Similar procedures for resolution of criminal matters occur in the "moot" of the Kpelle tribe in Liberia,[13] in the enforcement of the "Oral Codes" in black Africa,[14] and in parallel institutions in other countries.[15]

The mediation process is especially suitable for allowing popular or community input into the process for the resolution of disputes. In mediation the state remains at arm's length. It is one's immediate kin, community, or specially selected mediators who gather the facts and resolve the issues. Legal anthropologists have drawn a distinction between "tyrannical" law, imposed from outside in disregard for the attitudes of the people governed, and "organic" law, arising as a natural outgrowth of the attitudes, values, customs, and institutions of the people. The process in Llewellyn's *The Cheyenne Way* falls into the "organic" category. Similarly, Maitland quotes the commitment of William the Conquerer to preserve the local courts and other forms of local government after the Norman Conquest:

> The free-men, or the free land-owners, of the hundred are in duty bound to frequent the "moot" court of the hundred, to declare the law and make the dooms [judgments]. The presiding ealdorman or sheriff turns to them when a statement of the law is wanted. As yet there is no class of professional lawyers, but the work of attending the court is discharged chiefly by men of substance, men of the only rank; the small folk are glad to stay home.[16]

Only later and very slowly were these institutions converted into instruments of royal power in the course of the development of a powerful, centralized state.

The popular concept behind the "moot" remain remarkably viable after one thousand years—"community moots," based on the model of the court of the hundred, have been urged for America today.[17] Other current manifestations are the Peoples' Courts of the U.S.S.R. and Eastern Europe, the Popular Tribunals of Cuba, and the reconciliation forums in other countries. The English lay magistrate tradition—an extremely viable system which disposes of some 97 percent of the criminal cases in that country—shares many of the advantages and the problems of the pre-1066 "moot." The lay magistrates will be discussed in greater detail in a later section.

Another frequently used, but seldom recognized form of dispute processing is "avoidance"—people forego the opportunity to file a complaint, avoid contact with their adversary in a dispute, move, change jobs, or take some other similar action. While dispute avoidance, in its simplest form, describes a victim's foregoing his lawful claim, the concept has broader implications. It is especially relevant in the area of decriminalization, for it casts in a new light the state's effort to retrench from overinvolvement in victimless or complainant-less cases. What distinguishes the area of victimless crime is the usual absence of a private complaining victim; instead, it is the state's peace and morals which are allegedly protected in these instances. Decriminalization in this public morals area therefore consists of dispute avoidance not by individual victims but by the state.

The degree of a system's reliance upon adjudication, mediation, or dispute avoidance varies from culture to culture and is closely related to social developments. Interesting insights to cultural preferences are provided by William Felstiner, Richard Danzig, and Michael Lowy in a dialogue staged in *Law and Society Review*.[18] Felstiner [19] suggests that in "technologically simple poor societies," in which face-to-face contact is common, the costs of dispute avoidance will tend to be too high and the practice, therefore, will be avoided in favor of mediation. Allowing for the same rationale in a mass and mobile society, dispute avoidance through decriminalization is a natural and expected development. Yet as society grows to the point that face-to-face contact is less and less frequent, mediation becomes less common and more reliance is placed on adjudication. Adjudication accordingly, is used more fre-

quently in "technologically complex rich societies." In such societies mediation is hard to institutionalize —because outside of tightly knit ethnic communities, mediators do not share a commonality of experience and background with the disputants.

While dispute avoidance and adjudication appear to be the earmark of technological societies, the lasting merits of mediation should not be overlooked. Danzig and Lowy point out that while dispute avoidance is easier in America than in a small, tightly knit society, it is not without financial and psychological costs, especially in interfamily and neighborhood disputes not amenable to adjudication. They observe that community forums or mediation are most necessary and most frequently proposed for those pockets of ethnic isolation where dispute avoidance is difficult. Other areas appropriate for community forums are work disputes, consumer disputes, and citizen disputes—because neither elaborate fact finding nor judicial neutrality and detachment are usually required.

Use of paralegals for resolution of neighborhood disputes, bad check cases, and consumer complaints, through informal hearings in prosecutors' offices, is a recent application of the mediation model.[20] Labor union internal hearing forums have also been advanced as a model for "community courts." [21] Another notable example of the use of mediation forums for resolution of disputes against government is found in inmate grievance proceedings.[22]

Given the particular features and benefits of dispute avoidance and mediation, what are the special values of adjudication? Lon Fuller defines adjudication as "a social process of decision which assures the affected party a particular form of participation, that of presenting proofs and arguments for a decision in his favor." [23] Ideal conventional adjudication reflects the values of:

- Authority legitimation
- Legal predictability
- Neutrality
- Impartiality
- Objective search for truthfulness
- Finality
- Reviewability

Fuller also outlines the types of disputes most amenable to adjudication. The primary utility of conventional adjudication is accurate fact finding in cases in which the issues are narrowly drawn so as to be answerable in a "yes-no" form (e.g. "guilty" or "not guilty") or in a "more or less" form along a clearly defined continuum (e.g. how much damages to be paid, how much time to be served). Adjudication is less useful for resolution of "polycentric" problems which consist of a complex web of interactions without a clearly defined central issue, such as long-standing family or neighborhood disputes. Not by coincidence, family and neighborhood disputes have been the focus of many efforts to provide alternative means of dispute settlement, ranging from police family crisis intervention units,[24] to informal police sergeants' hearings,[25] to the arbitration-mediation projects listed in the discussion of "community courts" in Chapter IV.[26]

The characteristics, advantages, and limitations of conventional adjudication, mediation, and dispute avoidance should be borne in mind as we proceed to explore more fully the record of the recent alternatives movement.

3. *What have alternatives offered?* There have been many calls for reform of our criminal courts, from within and without. Our courts have gone through a period of introspection and change, most dramatically illustrated by U.S. Supreme Court decisions to increase the measure of justice meted out in our trial courts by protection of defendants' rights. These decisions of the 1960s have been labeled a "criminal law revolution," one which has added a whole litany of terms, such as "Miranda warnings," to the lawyers' language.[27] But these decisions have raised defendants' expectations about due process and a higher quality of justice as rapidly, or more rapidly, than they have improved the quality of justice—leaving open the possibility of a "revolt of rising expectations." There has also been a national movement towards criminal code reform; comprehensive revisions have been enacted in 17 states in the last decade and await enactment in 18 others.[28] Statutes and constitutional amendments to reorganize the judiciary have been enacted or are under consideration in a number of states.[29]

In a dramatic gesture to illustrate the problems of our courts, the American Bar Association, at its Annual Meeting, placed the criminal justice system on trial. According to the report in an ABA newsletter, one of the charges was that "critical parts of the criminal justice system are inefficient and self-serving fiefdoms." [30] The American Bar Association has also shown its concern, over a 10-year period, by issuing 18 volumes of *Standards Relating to the Administration of Criminal Justice* and, more recently, the first of a planned series of volumes on court administration.[31] These efforts have been in

conjunction with such concerned organizations as the National Center for State Courts, the Institute for Court Management at the University of Denver, the American Judicature Society, and the Federal Judicial Center. Much of the focus of these standards is in removing inefficiencies from the court process and making the courts more responsive to the communities they serve. A number of Federal studies, from the 1968 President's Crime Commission to the current efforts of the National Advisory Commission on Criminal Justice Standards and Goals, echo a similar theme.[32] The American Assembly, which publishes authoritative reports on significant social issues, has also called for re-examination and improvement of the criminal adjudication system.[33]

Dissatisfaction with our present criminal adjudication system has given rise to several Federal studies and action programs for improvement, as well as calls for reform. The President's Crime Commission report, for example, led to the Omnibus Crime Control and Safe Streets Act of 1968, creating the Law Enforcement Assistance Administration.[34] The Center for Studies of Crime and Delinquency of the National Institute of Mental Health, in its series of monographs, addressed such court-related issues as decriminalization, pretrial intervention, and commitment of the mentally ill.[35] The Department of Labor's Manpower Administration has funded action programs and research on pretrial intervention.[36] The Drug Enforcement Administration and predecessor agencies have put substantial efforts into modification of processes for adjudication of drug offenders. The Department of Transportation's National Highway and Traffic Safety Administration has been promoting administrative hearings as an alternative to criminal adjudication of traffic offenders.[37]

On the state and local level, these national efforts have been but small solace to those planners, judges, lawyers, defendants, victims, witnesses, jurors, law enforcement officers, government officials, and concerned citizens who must cope daily with problems of delay and assembly-line justice facing their courts. Locally, a variety of innovative strategies have been designed for removing classes of cases or offenders from the courts and for improving the manner in which defendants pass through the criminal adjudication system.

Earlier, we stressed that what alternatives have in common is that they all arose in response to the perceived dysfunctions of the courts—either to modify the overall criminal adjudication system or to offer alternatives to criminal adjudication for specified classes of cases or offenders. Another commonality among the alternatives examined is that while each may have contributed to easing the problems facing our courts, none is, or even claims to be, an adequate response to their major problems. One need stress, again, that improvements in adjudication system efficiency are only one of the many goals advanced for alternatives. A prosecutor, for example, may initiate a screening of diversion progress because of a belief that rehabilitation and avoidance of a criminal record are more appropriate alternatives than conviction. Or the prosecutor may feel that the case is too minor to warrant criminal sanction. Or the prosecutor may look at the backlog of cases and feel that there is little choice. Given the diversity of alternatives examined and the inadequacy or absence of evaluation for most, it would be impossible to draw any sweeping conclusions about whether additional funding should be put into alternatives in lieu of increased funding for our courts.

What makes a cost-effectiveness assessment of alternatives impossible is the fact that there has never been an adequate evaluation of the impact of specific alternatives. But of those which have been subjected to close scrutiny, many have fallen short of their original objectives, and some have given rise to unanticipated, adverse consequences.

To pick but one example of a highly touted reform movement about which misgivings have arisen of late, one need only look at diversion or pretrial intervention programs. One of the early warnings given, that pretrial intervention may be no panacea, was presented by the Vorenbergs of Harvard.[38] More recently, LEAA-sponsored publications have echoed these misgivings.[39] It it clear that, in many jurisdictions, they have not led to the hoped-for reduction in court backlogs. One of the earliest and best-known of these projects is the Manhattan Court Employment Project. But the National Advisory Commission on Criminal Jusice Standards and Goals reports that only 20 of the thousand cases coming into court daily in Manhattan are selected for the program.[40] Part of the explanation is noted in a recent law review article:

> Existing eligibility criteria normally state only the upper limit . . . (of case seriousness); the lower limit is left undefined. Consequently, there is the risk that those who should be screened-out are funneled into pretrial diversion.[41]

Additionally, it is observed that most pretrial diversion cases, given the non-serious nature of the charges, would have been disposed of by negotiation and plea rather than trial on the merits.

Other authors have also expressed misgivings. Donald J. Newman points out: "Diversion tends to diffuse control and accountability. Individuals 'disappear' from the criminal process so that there is no easy way to keep track of them, to monitor their treatment, or to assess the effectiveness of diversionary alternatives." [42] The consequence, he states, is that from "this perspective, the diffusion of diversionary programs is likely to result in more arbitrary and capricious decision making, without controls, than is possible in formal procession." [43] Norval Morris cites George Orwell's *1984* in order to describe pretrial intervention as a form of social control.[44] Studies on involuntary labeling and commitment of "social deviants" as "mentally ill" provide some support for this concern.[45]

Yet alternatives must spring up as long as resistance continues toward application of innovations and modern management concepts and technology in our courts. As the author of *Managing the Courts* explains: "A tendency to defensiveness and a reluctance to innovate has inhibited improving the management process of the courts. A climate of inertia has been nurtured by concerns for the bar's financial stake in the status quo." [46] After an extensive study, Lewis Katz concluded that delay in the criminal courts "can be accounted for by the persons most directly involved in the management and operation of the criminal courts. Apparently speedy justice is primarily in the interest of the community, and the community is simply not adequately represented in the courts. Between defendants and lawyers—and it must be kept in mind that judges and prosecutors are lawyers too—the procedures are being neatly emasculated to ensure that only their respective interests are protected." [47]

Laura Nader, professor of anthropology at Berkeley, and Linda R. Singer, a Washington attorney and executive director of the Center for Correctional Justice, reached a similar conclusion in a study recently completed for the California State Bar Association. Much of the violence, bitterness, and dissatisfaction in American life, they assert, is due to the failure of the legal profession to provide the kind of substantive relief for routine grievances that other societies supply as a matter of course. "Why is it," they ask, "that the richest counry in the world does not have a pattern of adequate access to legal remedies that are available in lesser-developed parts of the world?" [48]

Only very recently have courts begun substantial efforts to inform and involve citizens in any way more meaningful than jury service "at the pleasure of the courts." We will later elaborate on the need for more effort on behalf of victims, witnesses, and jurors. As yet there has been no significant effort to involve the public in promulgation of rules by which police and prosecutorial discretion is exercised in criminal justice, despite the large role discretion plays in both our conventional and alternatives systems.

In reviewing the emergence of the alternatives movement during the last decade one is drawn to the conclusion that by and large these innovations were not designed or intended to reform the adjudication process as such. Alternatives were often advocated and introduced by social workers, labor experts, mental health practitioners, and others who sought to breach the stifling monopoly of the formal adjudicatory process.

Whether the development of alternatives to conventional adjudication will occur within our present court system or become completely divorced from the courts is very much an open question. Conventional adjudication will remain the sole province of our courts, and a few seriously contend that it is the most appropriate means of resolution of serious or minor cases in which factual disputes arise. But this does not mean that courts cannot adopt alternative means of resolution of criminal disputes that do not involve adjudication. Courts, for example, sponsor pretrial intervention programs. The Philadelphia 4-A project for arbitration and mediation of citizen complaints is now an arm of the city's municipal court.[49]

More often than not, the new alternatives have been more concerned with the delivery of less stringent and community-oriented correctional strategies than with a lasting impact upon and reform of the adjudicatory process. Many of the alternatives studied combine a reform of adjudication and corrections. Given the long-existing reliance upon discretion and traditional alternatives in our criminal justice system, which has turned "full dress" conventional adjudication into a symbolic practice, the new alternatives could offer little impact upon the system generally. One major accomplishment has been the fact that the new alternatives, funded specifically for this purpose, were trying for the first

time to offer relevant correctional or rehabilitative programs for some of the great mass of offenders who have been traditionally on the borderline of the conventional adjudication process.

Our evidence suggests that the appropriate question for criminal justice planners and practitioners is what the respective roles of conventional adjudication and alternatives should be, not whether conventional adjudication should be supplanted. In considering the societal values of adjudication, it is observed that the goals underlying ideal conventional adjudication differ from the goals underlying many of the alternatives reviewed by this study. The approach that is most meaningful is to attempt to delineate the circumstances under which particular alternatives may be more appropriate than conventional adjudication.

D. Terms and Definitions

Early in the course of the Alternatives Study it became clear that the term "Alternatives to Conventional Adjudication" provided an inadequate and imprecise definition for the scope of our efforts. The term "adjudication," standing alone, provided an insufficient basis for analyzing whether the particular alternatives we explored would enhance or thwart goals of the institutions they seek to modify or replace. Nor could any consensus be obtained as to what process or procedures were "conventional." What is conventional in one jurisdiction may well be considered an innovative change in another. Police diversion of alcoholics and pretrial intervention programs, to name but two alternatives, are mirrored by such long-standing customs in some smaller communities as taking drunks home and placing first offenders on informal "desk drawer diversion." Finally, the single term "alternatives" encompasses a number of varied approaches to change. Some alternatives discussed in this study expedite or rationalize what continues to be viewed as "traditional" process (e.g. plea bargaining rules and omnibus hearing procedures). Others do not change the nature of the proceedings but alter the status of defendants, at least temporarily (for example, by releasing them from jail or providing them with social, educational or vocational services pending trial). Still others supplant the traditional adversary process with arbitration or informal mediation procedures, or remove the defendant from the criminal justice system entirely.

We defined "conventional adjudication," for the purposes of this study, as that mode of official response to disapproved behavior which has roots in the common law historical-ideological model of criminal case processing. This model is typified by an adversary proceeding at which the accuser and the accused each have the opportunity to present proofs and arguments in the presence of an officer with judicial authority, who disposes of the matter and terminates the involvement of the offender in the proceeding.

Further understanding of the meaning of adjudication is provided by William Felstiner in *Law and Society Review*. Felstiner distinguishes "adjudication" and "mediation" from self-help, negotiation and other forms of dispute processing [50] by the necessary presence of an impartial third party in the former, and further defines "adjudication" as "that process in which the third party is acknowledged to have the power to stipulate an outcome of the dispute, compliance with which is obtained by use of coercive power."

As seen earlier, values of authority legitimation, predictability, neutrality, impartiality, objective search for truthfulness, finality, and reviewability are implicit in the adjudication model, and serve to elaborate its definition. On the other hand, arbitration, mediation, conciliation, negotiation, and investigatory dispositions are viewed as other forms of conflict resolution which reflect different values, but which may be uniquely advantageous for the resolution of at least some matters now before our criminal courts. For example, in Chapter IV we contrast the eight values implicit in conventional adjudication, listed above, with the values which would be promoted through adoption of "community courts."

We describe "adjudication" as a *process*. To avoid a narrow and mechanistic study of the courtroom process only, we have encompassed in "adjudication" not only what goes on in the courtroom, but the preliminary activities which feed and lead to courtroom disposition as well. The alternatives studied included therefore all innovations affecting the "criminal adjudication system," thus encompassing those activities by legislators, police, correctional officials, court administrators, and the like which *directly* (rather than indirectly) affect whether a matter will enter the court system as a criminal case, and how the case will be resolved once it enters. In this context, alternatives are not limited to court reform measures, but include a diverse range of

changes which directly affect the business of the criminal courts.

It has been pointed out earlier that the historical-ideolcgical model of adversary adjudication is not a realistic portrayal of our current criminal court system. Accordingly, we have embraced in the term "conventional adjudication" most of the traditional and well-established deviations from the adversary ideal, such as plea bargaining or civil commitment procedures for the mentally or psychiatrically affected. It was felt unnecessary to include those long-standing modifications of the adjudicatory process in our study of new alternatives, because many of these practices had become so widespread and generally accepted to be considered conventional. Moreover, much critical attention has been previously directed towards both plea bargaining and the "therapeutic state." [n1]

The alternatives examined in this study reflect unconventional and recent innovations. They represent reforms instituted in order to correct perceived dysfunctions in the present-day adjudicatory system. The alternatives under review seek to accomplish these goals through the formation or modification of policies, programs, processes, or institutions. Within the confines of this definition of "alternatives," we sought to explore any of these new approaches which appeared to directly affect the manner in which courts handle the cases of those accused of crime. The range of alternatives considered is reflected in the Matrix described in Chapter II and further explained and illustrated in Appendices B and C.

E. Our Approach to the Study of Alternatives

Some comments on the scope of the Alternatives Study, and of this monograph, are in order. Our intent was to maintain an emphasis upon adjudication, as distinguished from law enforcement and corrections. By design, we excluded innovations in police crime-control practices, except insofar as these practices work to redefine the classes of offenders who enter our courts as defendants. At the other end of the criminal justice spectrum, because of their remoteness from adjudication, we excluded correctional programs. But we included such correctional programs as pretrial intervention programs or unique forms of sentences, since these give a judge wider latitude in the adjudication and selection of appropriate dispositions in a defendant's case. In addition, we attempted to maintain a focus on new ways of viewing the main business of the criminal courts, which is the disposition of accusations involving adult defendants. Thus, such historical developments as the invention of "civil commitment" for the mentally ill, or the rise of juvenile courts, were not systematically surveyed as alternatives. Although their effects on the nature of criminal court business has been great, the impact has already been felt and assessed. Only where such historical developments were practically intertwined with a new alternative—as "civil commitment" is with certain forms of "decriminalization"—or offered as a model of reform potentially applicable to adult criminal cases—as do juvenile "intake" and "adjustment" procedures—were they treated in detail in the study's overview of approaches to the reform of the criminal adjudication system.

The alternatives included in the matrix (our classification system for criminal adjudication system innovation, presented in Chapter II) provide planners and policymakers with a wide variety of potential legislative, administrative, and judicial innovations, which can significantly affect the adversary process of criminal adjudication and alter the role of the court in the disposition of criminal cases. As the matrix demonstrates, the focus of our study was decidedly broader than that of pretrial intervention or diversion studies. Our attention, by design, went beyond the developments encompassed in the American Bar Foundation study, by Raymond T. Nimmer, of *Diversion, The Search for Alternative Forms of Prosecution* (1974). For the purposes of our study, alternatives to *prosecution* were only one portion of the alternatives movement, and diversion was only one prong in the reform of adjudication.

This study was also broader than the usual court management studies, because it considered innovative practices affecting adjudication which occur outside the court structure. But the Alternatives Study has by no means been a full-scale inquiry into comprehensive anti-crime planning. Its purposes were to present in one place the full spectrum of policies, procedures, and programs which have been instituted to reform or replace conventional adjudication of various classes of offenses or offenders, and to analyze the significant legal and policy issues which have arisen from these measures. Thus the Alternatives Study could serve as a bridge between fragmentary reform of court procedures and the institution of integrated and comprehensive criminal justice plans and processes.

A word should also be added about the distinc-

tion between "programmatic" and "non-programmatic" alternatives. Programmatic alternatives are marked by special funding, creation of a new agency, additions to staff, extensive documentation and record-keeping, and the like. Many "programmatic" alternatives were examined because they were highly visible to the affected jurisdictions, as well as to the Alternatives Study staff. But one of the early findings of this study was that the dichotomy between "programmatic" and "non-programmatic" alternatives reflects more on the *strategies* for change than on the significance of the change. For example, while pretrial intervention programs involved pilot funding, new staff, and high visibility in some jurisdictions, in others similar changes were accomplished through internal modification of an agency's procedures, redefinition of the duties of that agency's staff, informal arrangements with other agencies, and preservation of a low profile. Perhaps the most dramatic illustration of this is in Pennsylvania, where an Accelerated Rehabilitative Disposition (pretrial intervention) program was launched by court rule. In 1974, 17,974 criminal cases were disposed of under this ARD program. Of course, many (some 11,418 in Philadelphia Municipal Court alone) were disposed of under a formal "program." But while not every county has a formal ARD program, each did report ARD dispositions.[52]

It also became clear during the course of this study that, as strategies for change, legislation, internal rules changes, and similar "non-programmatic" alternatives frequently have had a more significant effect on a criminal justice system, at a much lower expenditure of taxpayers' funds, than specially-funded programs. This point is later discussed in greater detail.

F. Methodology

The building of our Adjudication Alternatives Matrix, a comprehensive analytical classification system for alternatives, was one of the major goals of the study. The approach taken by the study to this assignment was one of "posit, explore, re-posit." That is to say, the staff drew on its own experience and knowledge and a preliminary survey of the literature in order to conceptualize a preliminary version of the matrix. Then the team searched for examples for each alternative included in this matrix. At that point, modifications were in order. In some instances, where no examples of an alternative were found, it became clear that the alternative had been erroneously included in the preliminary drafts of the matrix. In other cases, programs and strategies for reform were discovered which fit the study's definition of an "alternative" but which had not been included in the preliminary matrix. These alternatives were included in the final version of the matrix.

The survey portion of the study—which proceeded simultaneously with the matrix building—was designed to unearth all well-known as well as unknown types of alternatives in operation. It began with a search for legislation, court rules and procedures, and particular programs which fit our preliminary conception of "alternatives." The literature was searched, the Law Enforcement Assistance Administration and various LEAA-funded state and local criminal justice planning agencies were polled, and the study team also drew from its own experience.

The search process was selective and was designed to yield good examples of various alternatives included in the matrix, rather than to identify all the instances in which each had been reduced to practice. For some widely used alternatives, such as pretrial intervention projects and bail reform efforts, it was decided to include the better known of the "established" programs along with programs which represented unique variations on the common theme. For most other types of alternatives only a few examples of each were identified for inclusion. This effort eventually yielded some 300 examples of alternatives.

Some 150 of these programs were contacted by telephone or letter to obtain further information, and for verification of the information contained in written materials. Further elimination of duplicative programs followed, but the objective of illustrating by example the full range of alternatives was maintained. Criteria for inclusion in this selective category were:

- Diversity of implementation, where a particular alternative strategy (such as rulemaking, case screening, or pretrial intervention) has been implemented differently or by different bodies and agencies in different jurisdictions.
- "Typicality," when a particular strategy (such as pretrial intervention, bail reform legislation, or statutory decriminalization of alcohol-related offenses) has become an archetype in the alternatives movement.
- Program quality, as assessed from literature

and study team judgments, when many examples of that type of alternative were available.

- Uniqueness of implementation problems encountered by a program, when these problems could be easily identified. Thus some programs known to have problems in transition from specially funded pilot status to "institutionalized" components of the criminal justice system, or in building and maintaining staff morale, were examined in order to gain better insight into the practical aspects of the policy issues raised in the second half of our study.

In each contact, we also asked for ideas and suggestions about other projects or non-programmatic alternatives. Thus, our study included a "grapevine survey" of practitioners' insights about other unique and successful alternatives not reported in the literature.

Site visits were made to 20 locales, to explore some identified examples of alternatives in further depth.[53] Site selection involved further staff judgments, made according to the criteria previously discussed, with the added practical criterion that each selected site should offer examples of several distinct "programmatic" alternatives and, whenever possible, of "non-programmatic" alternatives as well. Other criteria considered at this point were:

- Geographic distribution.
- Community size.
- Cooperativeness of program staffs.

Our site visits involved between 50 and 60 programs, with the exact total depending upon how a "program" is to be defined.

G. The Organization of this Report

The remainder of this monograph is divided into three chapters. Chapter II presents a typology of alternatives. It begins with a discussion of myths and realities about the criminal adjudication system. It then presents and explains the Adjudication Alternatives Matrix, a classification scheme by which all the various efforts to change the criminal adjudication system can be organized and put into perspective. It concludes with an explanation of how the matrix can be used as a planning tool in devising alternative solutions to problems in the criminal adjudication system.

Chapter III discusses issues and presents recommendations on the design and implementation of alternatives. In different sections we discuss evaluation issues, legal issues, organizational and policy implications issues, and problems in implementing alternatives.

Chapter IV seeks to assess the place of alternatives in the future criminal adjudication system. The first part discusses the need to reorder our priorities in the use of alternatives. It presents the thesis that too much emphasis has been placed on pretrial intervention projects as "the only" or major answer, and not enough attention has been given to decriminalization, community courts, rule-making by criminal adjudication system agencies, reform of criminal court procedures and operations, and programs serving victims. The next two sections discuss alternatives in relation to the central questions of crime control and the quality of justice. The concluding section seeks to place the movement toward more extended use of alternatives in the broader perspective of America's future criminal justice.

CHAPTER II. A TYPOLOGY OF ALTERNATIVES

The first half of the Alternatives Report is devoted to a discussion of a broad range of programs and procedures developed in response to the practical problems facing our criminal courts today. It urges that efforts at change be preceded by an analysis of problems rather than symptoms, and offers a framework (the matrix presented in Figure 1 and in Appendix B) within which one can consider the advantages and limitations of each of a broad range of options for addressing these problems.

A. Alternatives: A Response to Problems of Our Criminal Courts

Alternatives to conventional adjudication appear to have emerged in response to a wide range of problems relating to perceived dysfunctions of the criminal adjudication system. In addition to backlog and delay, and in part accounting for them, three broad problem areas especially merit discussion: 1) the inappropriate subject matter jurisdiction of criminal courts; 2) the ineffectiveness of disposition derived through the conventional adjudication process; 3) and the disparity of treatment meted out to defendants and victims alike in the criminal justice process. In discussing these problems we mention as well the solution suggested by our study. Thus we anticipate our discussion of the Alternatives Matrix by stating preliminary conclusions as to which alternatives are especially responsive to these problems.

1. *Inappropriate subject matter jurisdiction of criminal courts.* Ironically, at a time when our courts are complaining that case backlogs are mounting and that they lack the resources to deal adequately with the serious criminal offender, their dockets are jammed with public drunkenness and traffic cases, intrafamily and neighborhood squabbles resulting in threats, harassment, and minor assault, and other marginally significant criminal matters. In Connecticut, a recent court study concluded that 11.3 percent of the court docket was comprised of traffic cases without criminal overtones (as would be present in cases involving drunk or reckless driving and leaving the scene) and that more than 33 percent consists of such petty "Class C Misdemeanors" as "allowing dog to roam," "violation of town ordinance," "breach of peace," "harrassment," and "disorderly conduct."[1]

It is clear that some of these cases would be more appropriate candidates for statutory or *de facto* decriminalization, while others may be better disposed of by administrative tribunals, arbitration panels, or other forums, than they would be by our overcrowded criminal courts. The Connecticut study just cited found that removing traffic cases, public drunkenness cases, and the Class C petty misdemeanors enumerated above would reduce the average daily caseload facing each judge from 26.6 to 12.0 cases.[2]

Moreover, many of the other alternatives that are classified in the matrix also respond to the problem of inappropriate subject matter jurisdiction. In particular, those alternatives which result in decisions not to focus attention on a suspect or the decisions not to arrest for specified offenses are promising. In functional terms, the three types of decriminalization options available to the legislature ("pure" decriminalization, reclassification of offenses to levels bearing lesser penalties, and substitution of a non-criminal response) are also available, with some modification, to criminal justice agencies in making discretionary decisions on case processing. Uniform policies on non-arrest or non-prosecution of certain classes of offenses are the analog to pure statutory decriminalization. Policies relating to screening and specification of grade of charges for particular offenses, as well as plea bargaining policies, may have much the same impact as reclassification.

Finally, pretrial intervention programs, providing services such as counseling, vocational training, and drug rehabilitation, may achieve results similar to the legislative substitution of a non-criminal response for criminal sanctions.

There is no more urgent problem for the criminal courts than the problem of inappropriate subject

matter jurisdiction. There is increasing realization that our society has limited resources for successful maintenance of domestic tranquility, and that these resources must be wisely husbanded. Moreover, citizen respect for law, and public cooperation with criminal justice agencies, cannot be fostered by a criminal adjudication system which cannot, or will not, set priorities. If clear priorities cannot be set, significant reductions in serious criminal offenses probably cannot be achieved by law enforcement efforts.

2. *Ineffectiveness of dispositions derived from conventional adjudication.* Conventional criminal adjudication too often fails to achieve its own dispositional goals, whether these are stated in terms of rehabilitation, deterrence, or even retribution. High recidivism rates were observed to be a typical result of conventional adjudication in many of the jurisdictions visited by the project staff. Victim dissatisfaction with the dispositions given offenders who have been found guilty of crimes against them runs high.

It is reasonable to view the ineffectiveness of dispositions as a problem related to other ills of American "mass justice." The conventional prosecutorial practices of plea bargaining, informal screening out of cases, and judicial resort to sentences of fines and unsupervised probation, on the one hand, and incarceration, on the other hand, are mechanisms which have been widely used to respond to the press of business in the metropolitan courts. Neither the victim nor the defendant is well-served when cases are heard in assembly-line fashion, when less attention is paid to individual details of each case in the disposition phase than in the guilt-determination phase.

As mentioned in Chapter I, in order to put the problem of ineffective dispositions in perspective, the Alternatives Study attempted to compare the values and assumptions underlying conventional criminal adjudication with the values underlying alternative methods of dispute settlement, such as mediation.[3] One conclusion of the Alternatives Report was that arbitration and mediation forums have much greater flexibility in fact-finding and dispute resolution, and much more latitude in the dispositional phase, than do our courts. The arbitration or mediation process gives greater service to values of flexibility, informality, humaneness, speed, and economy. It is an approach which emphasizes solution of the underlying problems. Another conclusion of the study was that in many minor criminal cases, especially those in which there is little factual dispute, the values of conventional adjudication may be irrelevant to—or even inconsistent with—achieving effective dispositions. This conclusion has provided much of the stimulus for our discussion of the potentially valuable role of "community courts," presented in Chapter IV of this monograph.

The study considered a variety of alternatives that respond to the problem of ineffective criminal court dispositions by providing for new dispositional forums. These include arbitration programs, administrative tribunals, courts of special jurisdictions, and "community courts." Other alternatives are considered which affect the disposition process *within* the framework of the conventional system. One of those, pretrial intervention, is discussed in Chapter IV of this monograph. Another alternative discussed in Chapter IV, "rule-making to regulate discretionary decision making," also addresses the problem of ineffectiveness of criminal dispositions.

Finally, the Alternatives Study included innovations in sentencing in order to consider a special group of alternatives to improve the effectiveness of dispositions within the conventional criminal adjudication system. Some of these alternatives, such as restitution, victim compensation, and mixed restitution-victim compensation programs, seek to ease the plight of victims of crimes. Two novel alternatives are recommended for consideration because they give sentencing judges wider latitude to design dispositions better tailored to the individual circumstances of each defendant.

The first is the "day-fine," a correctional alternative widely used in Scandinavian countries. Following disposition, a jury specifies that a defendant be fined for a specified number of days—ranging, say, from one to six months—depending on the gravity of the offense. The judge then conducts a fact finding hearing to determine how much the defendant, with great parsimony, would be able to spare from his net income each day, multiplies this daily rate by the number of days specified by the jury, and levies a fine in an equivalent amount. This alternative would seem to meet the requirements of *Tate v. Short*,[4] which places due process restrictions on the fining of indigents, and would permit a judge to impose fines, as an alternative to prison or probation, in more cases. (In Chapter IV we advocate a further extension of this concept—that is, using proceeds from these fines for victim compensation.)

The second alternative (combining adjudicatory and correctional innovation) is "contract sentencing," which involves the active participation of the defendant in the sentencing process as the terms of the actual disposition are worked out. The contract signed at sentencing specifies the obligation of the state to provide services, as well as the defendant's obligations. The approach parallels the Mutual Agreement Programming programs developed under joint American Correctional Association—Department of Labor auspices, now in use in several states as part of the parole release decision-making process.[5]

3. *Disparity of treatment of persons served by the criminal justice process.* One chronic problem of the criminal courts is the disparity of treatment between rich and poor defendants. To begin with, members of minority groups may face a rougher road in the criminal justice system than their white, English-speaking counterparts. These problems are compounded when a defendant is poor. Allegations of sentencing disparities along lines of race or wealth, and of the under-representation of minority group members on the bench, reinforce the suspicion and hostility felt not only by defendants, but by victims and witnesses from minority groups. Not all disparities of treatment, however, are chargeable to discrimination. Caprice and accident, as well, can have invidious effects on the courts' handling of criminal cases.

Some alternatives to conventional adjudication have emerged, in part, as a response to the problem of unjustified disparity of treatment. The demonstrated inability of the poor defendant to compete with the more wealthy defendant in obtaining pretrial freedom, for example, has been a principal impetus to bail reform alternatives. Concern for the plight of the "near-poor" is the basis for our advocacy of "day-fining."

Other alternatives to conventional adjudication discussed in this report are especially responsive to problems of actual or apparent disparities in the treatment of criminal defendants. Statutory decriminalization, uniform police department policies of non-arrest, and uniform prosecution office policies on non-prosecution are potential options to get at the caseload problems frequently giving rise to disparities in disposition. Citizen complaint evaluation centers respond to disparities in treatment of victims, as well as defendants. Police department rule-making aimed at avoiding over-charging, and prosecutorial screening policies and pretrial intervention programs, similarly respond to the sources of dispositional inequalities. Most of the alternatives which are intended to rationalize the sentencing process also work to reduce unjustified disparities.

B. The Alternatives Matrix: A System of . . Classification . .

A major effort of the Alternatives Study was to develop a matrix which could incorporate and classify in one place such diverse reform strategies as police-citizen advisory boards, victim restitution procedures, and test-case challenges to the Constitutionality of specific criminal law. The matrix is presented in Figure 1 and explained and illustrated in more detail in Appendices B and C.

A matrix—like a computer simulation model, a flow chart, or an organizational chart—is a theoretical model, formulated in order to simplify, clarify, and make more easily understandable complex "real-world" phenomena. Models may be considered as falling into three different categories.[6] The least complex is the *didactic* model, which presents a classification scheme and method of organizing data. The now well-known flow chart of the criminal justice system first presented in the President's Crime Commission Report [7] is such a model.

A more powerful model is the *heuristic* one, which not only describes known relationships between the components of the model but also reveals previously-unsuspected relationships. An heuristic model suggests hypotheses which can be operationally defined and tested. If the hypotheses are repeatedly rejected, the model should be modified or discarded. A model demonstrating how a pretrial intervention program should lead to a reduction in recidivism and decreased costs to the criminal justice system is heuristic. Sheldon has employed this type of a stimulus-organism-response (S-O-R) model to examine judicial decision-making.[8]

The most powerful model is the *predictive* one. Computer simulations of court operations, application of game-theory, and predictive scales developed by probation and parole agencies are examples.

The matrix presented here is largely didactic, or descriptive. It permits the criminal justice planner to consider a wide variety of policy options. In addition, it demonstrates the interrelationships between the various alternatives considered. The ma-

trix may serve a heuristic purpose as well. We contend that there is an interrelationship between all alternatives which appear in the same column or the same row of the matrix. Some of these relationships are obvious, while other interrelationships suggested by our classification scheme may appear less obvious or even inappropriate. It may be a fruitful line of inquiry, however, to explore further whether the interrelationships suggested among alternatives in the same row or columns do, in fact, exist in the real world.

The organizational principle behind the matrix is that each alternative affects the way in which critical decisions relating to the criminal adjudication system are made. The matrix is intended as a simplified map of the important choices which can be influenced by the introduction of alternatives. As highlighted in Figure 1,* column headings indicate the decisions to be made; for example, the decision to define specified conduct as a crime, or the decision to arrest or charge a suspect. There are eight such decisions. They are arranged from left to right to approximate the sequence in which these decisions occur in our criminal adjudication system. The row headings indicate who makes these decisions. These nine categories include legislatures, police, prosecutors, trial courts, defense lawyers, public and private agencies, citizens, probation departments, and appellate courts. Each classification category is explained in more detail in Appendix B; numerous illustrations appear in Appendix C.

Some alternatives substitute for the conventional decision-making process. Others alter the way in which decisions are made within the confines of the conventional process. But every alternative can be "located" by reference to the decision on which the alternative's effects will be felt most strongly. Thus the grid of the matrix represents, in a sense, the conventional adjudication system. The entries in each cell of the grid represent the alternatives.

There are several limitations inherent in our classification scheme. The matrix reflects self-imposed limitations, discussed earlier, on the scope of our study. There is no theoretical reason why it could not be extended to embrace decisions which precede legislative decisions defining crime, in a chronology of social action, including decisions concerning the education of the young or law enforcement efforts to prevent crime. Even more obviously, the matrix could—and perhaps should—be expanded to include decisions which are made after sentencing.

The most serious limitation of the matrix reflects a problem common to all theoretical models. While they simplify analysis of problems in many important respects, models necessarily structure thinking so as to deemphasize other important relationships. For example:

- The matrix does not purport to provide goal orientation. While it informs the reader of what can be done, and suggests who can—or should—do it, it does not indicate which alternatives promote given social goals. It is silent, for example, on the subject of which alternatives support a crime-control model of criminal justice and which support a due process model.
- It provides no information regarding the efficacy or efficiency of reform strategies. From the matrix alone, one cannot tell which alternatives are costly or which will have the greatest impact.
- It does not highlight problem areas in the implementation of alternatives. No legal or policy issues are identified in the matrix itself.
- Its classification of each alternative, by reference to the decision and decision-maker which would be *most significantly* affected by it, fails to signal the practical significance of interagency relationships to program success.
- It does not describe individual programs. Rather, it lists "models" of alternative reform strategies. In practice, following those strategies will mean different steps in different jurisdictions. Thus, establishing a pretrial intervention project may—or may not—include legislation, rulemaking by one or more agencies, judicial review or program decisions, and community involvement.

Some of the above issues and others which the matrix, standing alone, was not intended to address, are discussed in detail in the Alternatives Study report.

C. Using the Matrix as a Planning Tool

The limitations of the matrix are, in turn, one of its major strengths. The matrix by itself provides no handy list of solutions to such particular problems as

* The figures in this chapter are presented only to illustrate the organization and use of the matrix. A larger, more readable version of the matrix appears elsewhere in the monograph.

court calendar congestion or overcrowded jails. It is a planning tool, not merely a problem-solving tool. Use of the matrix by practitioners encourages one to consider a more comprehensive range of strategies to solve any adjudication-related problem, and to examine more fully the broader policy implications of any contemplated change in criminal adjudication system operations.

Readers who are developing or reviewing individual programs or projects, for example, may find the matrix helpful in re-thinking a project's objectives and strategies. The first step in this process is to locate the contemplated program on the matrix. A quick perusal will disclose other alternatives available to other agencies and organizations at this point in criminal justice processing. This suggests actions which other agencies and organizations could undertake to strengthen the project. A review of all alternatives in the same row suggests different actions a project's sponsoring agency can take, at early or later stages of the criminal justice process, to enhance project efforts. Figure 2 illustrates this approach. Suppose a court official is considering a pretrial intervention program. The glossary in Appendix B indicates this program is located at the junction of Row D ("Trial Courts") and Column IV ("Decision to Charge"). This cell is starred in Figure 2. The matrix indicates that pretrial intervention programs, listed as "Court case review intervention," offer four options, depending on whether or not the program offers services to the defendants. Other programs with similar goals are found in the same cell. A court, then, could achieve substantially the same objectives by review of prosecutorial discretion, by supervision of plea bargaining, or by referral of cases to arbitration. Other entries in Row D suggest steps a court could take earlier or later in the process. Thus a court might take a more active role in reviewing police discretion, instituting pretrial release reforms (including supervised pretrial release contingent on participation in a rehabilitation program), experimenting with omnibus pretrial hearings, seeking to establish more informal courts of special jurisdiction similar to civil Small Claims Courts, or altering its sentencing practice.

A review of Column IV suggests steps which other agencies could take at this stage of the proceedings which would accomplish many of the same ends sought through court pretrial intervention. The most obvious alternatives are pretrial intervention by a police department, a prosecutor, or an independent agency—or referral of cases by the prosecutor to arbitration or mediation. Elimination of the Grand Jury by the legislature would encourage prosecutors to screen their cases more carefully—possibly screening out many of the clients who would be considered for the pretrial intervention program. Police department efforts to formalize or centralize the charging process may lead to the same result. Court review of a prosecutor's discretion in charging defendants with particular offenses should be placed in the same category.

A more comprehensive approach is to examine the entire matrix and construct "clusters" of alternatives directed at the same goals. For example, a jurisdiction considering reduction of court caseload by the device of reducing the number of different offenses for which arrests are made and prosecutions brought may examine the alternatives marked on Figure 3. Similarly, alternatives responsive to the failure of the adjudication system to "screen out" insignificant or inappropriate cases might include those shown in Figure 3 *plus* those shown in Figure 4.

D. Targeting Alternatives on Offenses and Offenders

Among the questions most frequently asked by planners, field workers in alternatives, and researchers is whether this study can help reduce dysfunctions of a system by providing guidance for the selection of the alternatives most appropriate to assume responsibility for handling particular classes of offenses. The answer is a qualified "yes." The qualification is three-fold and important. First, although the study examined much descriptive information on what planners and managers of alternatives have done to include particular offenders and offenses in their program or project designs (or exclude them from those designs), the study design did not embrace any independent evaluation of the "success" of individual alternatives programs. Where the claim as to the promise of various alternative modes of case processing is based on "hard" information, that information consists of existing rather than our own evaluation. But existing evaluations leave much to be desired.

Second, many alternatives have not been tested in practice to determine the limits of their usefulness in dealing with certain offender groups and offense types. We have little or no information from the field, for example, on the appropriateness of pretrial intervention as an alternative for dealing with recidi-

vists or accused serious felons. The issue, however, is not simply the unavailability of programs dealing with serious offenses or dangerous offenders. Alternatives may have deliberately or unwittingly excluded potential categories of offenders or offenses because available services are considered inappropriate. For example, an arbitration program may limit services to cases where the parties to an incident are acquainted—overlooking the possibility that stranger-to-stranger confrontations may be amenable to resolution through arbitration. Thus we have inadequate information on whether arbitration, potentially beneficial in many types of cases, can in fact be used in all of them. Nevertheless, because we believe that the growth of the alternatives movement depends on more—and bolder—experimentation in years to come, we have reached our own tentative conclusions on the appropriate offenses and offenders to be included in various forms of alternatives.

Third, we have not attempted an ultimate and comprehensive effort to assess the potential coverage of alternatives. Because most interest in this topic appears to arise from practical concern for improved handling of particular offenses and offenders, rather than a theoretical concern with the "reach" of alternatives, we have organized sample "matches" by offense and offender group types. Given our approach to such matchings, which is essentially judgmental rather than rigorously scientific, we have tried to provide examples where we believe the evidence for a "match"—whether from field experience or the logic of design—was most telling.

1. *Generally applicable alternatives.* Before presenting the "matches" themselves, we believe it is important to note that some alternatives are virtually unlimited in their potential reach—that is, they are appropriate for the processing of significant numbers of selected accused persons, drawn from almost every offense and offender category. Prime examples of such alternatives are those of a "non-diversionary" nature—the "bail reform" items appearing in Column V of the Matrix, and the "sentencing reform" items in Column VIII.

Equally important in its potential for including a broad range of offenses and offenders alike is the "cluster" of alternatives shown in Figure 5. These include supervised pretrial release with services, defender sentence planning using voluntary service rehabilitation programs, and special probation sentencing. This "cluster," which amounts to a series of related reforms designed to enrich and thus alter traditional case processing, rather than to substitute for it, is most promising for "hard cases" where public policy dictates that no "diversion" should occur. But it is equally attractive whenever there are other reasons why "diversion," although not contraindicated by offenses or offender characteristics, may be found financially or programmatically undesirable.

Note that the clusters in Figures 3, 4, and 5, when combined, provide a comprehensive list of alternatives to diversion. Our stress on the existence of generally available, "non-diversionary" alternatives and their potential for general coverage is not, of course, intended to imply that they can, when used to the exclusion of "diversionary" modes, fulfill all the purposes of the alternatives movement. It is, however, intended to emphasize the conclusion that approaches to alternatives planning should not over-emphasize specific "targeting" of alternatives on narrowly defined offense or offender groups.

2. *Specially "targeted" alternatives: offense categories.* High on any list of criminal matters which might be best handled outside conventional criminal courts are petty, *malum prohibitum*, regulatory offenses—a category including much of conventional traffic court jurisdiction (but excluding "serious" traffic cases involving allegations of malice or gross irresponsibility), housing or other licensing violations, and the growing number of "crimes against consumers." For all these classes of cases, "administrative" handling through such institutions as traffic violations bureaus,[9] staffed by lay specialists and observing fewer technical formalities than misdemeanor or general jurisdiction courts, is believed particularly appropriate.[10]

The conventional criminal law court is at best a cumbersome instrument for economic and minor social regulation. The courts' attempts to deal with this work of regulation tend to detract from their other, more central adjudicative functions, and even threaten to erode public confidence in the courts themselves. Thus the substitution of alternative adjudicative modes deserves attention.

So-called "status" offenses—illegal activities without identifiable individual "victims"—are a second category of matters appropriate for some form of alternative handling. The choice of an alternative should depend, for each such offense or offense group, on two considerations. First, do the "status" offenders in question have clear social service needs? If the answer is in the negative, the second consideration is whether the community will tolerate can-

did, official "dispute avoidance." If so, the most appropriate alternatives will be either legislative "pure decriminalization" (I.A.1.a.),† a selection of items from the agency rule-making cluster (I.B.1.a. & b. and II.B.1.a. & b.), or both. If not, "status" crimes can be dealt with by promoting the alternatives in the "cluster" representing intensified police and prosecutor "screening" efforts,[11] or even through "contract without service" pretrial intervention. If a group of "status" offenders under consideration for alternative handling does have identifiable service needs, other alternatives will be most appropriate: legislative decriminalization with "substitution of non-criminal response" for example, in jurisdictions where public support exists for policy change; and "pre-arrest case-finding," police "referrals to social services," and "pretrial intervention" of the "service" sub-types (see, e.g., C.4 a. & c.), in jurisdictions where such support is absent.

The burdens which the enforcement of "status" offense laws impose on the courts and ancillary law enforcement agencies is probably often overstated, at least if intoxication statutes are left out of the reckoning. But the stress that such enforcement creates on public confidence in adjudicative institutions—although essentially non-quantifiable—would appear to be disproportionately great in comparison with any drain on real resources. A major cause for seeking alternative modes for dealing with "status" offenses is the desire to reestablish public respect for the institutions of the criminal law; and the greatest possible public candor in the selection and implementation of such alternatives is thus generally desirable.

A third category of offenses appropriate for offense-group/alternative "match" includes intrafamily and intraneighborhood offenses—perhaps including offenses involving unarmed violence, but excluding offenses in which the use of firearms is involved. Prime alternative possibilities are police "crisis intervention" (III. B. 3.), "referral to social services" (III. B. 4.) and "referral to arbitration" (III. 5.), "citizen complaint evaluation centers" (II. C. 3.), prosecutor "referral to arbitration" (IV. C. 5.), or—where collective social action expressing disapproval is deemed important—"community courts" (VII. G. 1.). The pool of intrafamily and intraneighborhood offenses—unlike those of regulatory or status offenses—will always include some cases, such as instances of repeated child abuse, for which conventional prosecution and penalization will be the law's most appropriate response. Consequently, any attempt to introduce alternative modes for handling all or some of those offenses will necessarily also involve "secondary" resort to alternatives from the "rulemaking cluster," to assure that discretionary decisions will be efficiently, cautiously, and even-handedly made.

As suggested in our discussion on the limits of conventional adjudication in Chapter I, petty offense cases arising out of close, continuing interpersonal relationships, may represent a category of "criminal matters" with which the criminal courts are exceptionally ill-equipped to deal. Although the use of alternatives to dispose of these matters will never—nor should they—reach every case in the category, a wealth of alternatives ranging from the relatively well-tested to the almost wholly untested does exist.

A final example of a class of offenses containing numerous cases ripe for alternative handling is the category of petty misdemeanor crimes, usually punishable by a fine and/or a relatively short term (i.e. less than one year of imprisonment), and including such conduct as simple assault, unarmed battery, theft of small amounts of money or goods, and minor vandalism. Increased use of alternatives in the "screening cluster" (see Figure 4) may prevent some of the less serious of these cases from reaching or penetrating the justice system. Others—particularly those involving "first offenders"—may be most appropriately handled by one of the various forms of "pretrial intervention." [12] Many individual offenses in this category, however, are of sufficient gravity to merit public exposure and censure, at the least, and in many instances the imposition of penal sanctions as well. This offense category differs from the intrafamily and intraneighborhood offenses in that the perpetrator and the victim are usually clearly identifiable—and usually not previously acquainted. The two categories, however, have one important common characteristic: the violation and the reason for concern over the offending conduct are often not so much connected with general social norms, as with the particular standards of some more narrowly defined community or communities. If alternatives for processing misdemeanor cases out-

† References are to matrix cells, indicated by the roman numeral (column) capital letter (row); arabic number and small letter indicate a specific alternative when more than one appears in a cell. A definition of each alternative will be found in Appendix B. Where the reference is introduced by the citation "See," the textual term for the alternative or cluster differs from the term to be found on the matrix.

side the conventional system in significant numbers are sought—and whether they should be remains an open policy question—the "community court" (VII. G. 1.) would again appear to be one of the most appropriate choices.

In Chapter IV of this report, the point is made that the "community court" as an alternative has a greater academic constituency than a following in the field. Potent political and policy reasons may dictate this state of affairs. Yet community courts and mediation/arbitration forums are well-suited to take on a significant portion of the criminal courts' present burden of petty offenses.

3. *Specially "targeted" alternatives: offender groups.* Concentrating attention on the personal characteristics of alleged offenders rather than on the circumstances of their alleged crimes is another route to the identification of alternatives with special applications. Often, of course, this approach leads to identical conclusions. Obviously, the same alternatives appear as most appropriate whether one is considering new mechanisms or policies to deal with the "status" *offenses* of public intoxication or marijuana possession or searching out alternatives for processing the "status" *offenders* who commit them. Just as often, however, an inquiry into available alternatives which begins with a focus on offender groups rather than offenses will yield new results.

So-called "petty first offenders"—persons without prior records of conviction currently charged with non-violent misdemeanors, violent misdemeanors not involving firearms, and non-violent felonies without serious property loss or damage—form an offender category to whom special attention should be paid in the selection of alternatives. Many persons charged with "regulatory offenses," "status offenses," "intrafamily or intraneighborhood offenses," and "petty misdemeanors" will be "petty first offenders," and some of the alternatives previously identified as most appropriate for these offense categories will remain suitable for them. There are, however, two considerations which dictate special attention to the needs of this offender group. First, the range of offenses in which "petty first offenders" may be involved is wider than any category of offenses which can be generally identified as ripe for alternative handling. Second, not all of the alternatives previously identified as suitable for handling specified offense categories will be suitable for "petty first offenders." In particular, any method of case processing, conventional or alternative, which leaves a "petty first offender" with a permanent, public record of conviction would appear less appropriate than methods which avoid the creation of such records or allow for their subsequent expungement, destruction, or modification.

To deal appropriately with "petty first offenders," then, an alternative must be flexible in specifying which offenses qualify or disqualify a defendant for participation. Further, it must accomplish either an early "one-way diversion" out of the justice system, for example, by way of police "referral to social services" (III. B. 4.), or, a later-stage "diversion" which includes an opportunity to avoid the objective and subjective stigma of conviction, i.e., by way of "pretrial intervention"[13] or equivalent deferred or suspended prosecution techniques. Indeed, it is principally because of the existence of the "petty first offender," with his or her peculiar needs, that the option of "pretrial intervention," despite all its shortcomings as an alternative, remains an essential part of comprehensive planning for alternatives.

A more problematic offender group, at least from the standpoint of alternatives planning, is that made up of "petty offense recidivists"—persons previously convicted and now charged again with the sorts of offenses described above in defining the "petty first offender" group. For this group as a whole, few statements can be made about optimum choices of alternatives. A consideration of each of the group's two sub-groups, the naive and the experienced, does, however, yield some answers.

A prior conviction record is no guarantee of an alleged offender's having experienced the full force—whether uplifting or demoralizing—of being processed through the system. Many "petty recidivists" are, in most essential respects, more like "first offenders" than they are like "career" criminals. Nor is it clear that the benefit of avoiding a record of an additional conviction is non-existent—or even insignificant—for persons whose prior records do not reflect serious crime or set patterns of criminality. Thus the "pretrial intervention" alternatives may be the alternatives of choice for "naive petty offense recidivists." Or, where intervention is unavailable as an option, the alternatives "cluster" of supervised pretrial release with services, defense preparation for sentence, and special probationary sentencing (discussed above at p. 49) may serve many of the same purposes for this offender group.

Use of the "cluster" just described is also one appropriate means of employing alternatives to deal with the problem of the "experienced petty offense

recidivist," whose record of conviction is clear evidence of the past ineffectiveness of conventional processing. "Diversion" from the criminal justice system is generally inappropriate for such offenders, but by the same token the exploration of new "tracks" within the system might be worth exploring. The consideration of post-conviction "correctional alternatives," not dealt with in the present study, is important in planning for the disposition of "experienced petty offense recidivists." In addition to the "cluster" of practices leading to special probation sentencing, there are several untested judicial dispositional alternatives which may prove appropriate for these experienced recidivist. Of these, perhaps the most promising are "contract sentencing" (VIII. D. 2.), which would involve both new forms of "individualization" of sentence and new modes of post-sentence supervision; and "day-fining" (discussed in more detail in Chapter I), which might influence "experienced petty offense recidivists" by significantly changing the real cost to them of continuing criminality.

The most serious and interesting question presented by attempts to match alternatives with offender groups is whether there exist "offender-centered-alternatives" appropriate for persons (first offenders and recidivists) accused of serious felony offenses—whether violent or non-violent. Clearly, some "victim-centered alternatives," including "restitution" sentencing (VIII. A. 2. and VIII. D. 1. a.), "victim compensation" (VIII. A. 3.), and "mixed restitution-victim compensation" plans (VIII. A. 4.), have application to instances of serious crime. Almost as clearly, "diversionary" alternatives generally do not. The open question, then, is whether "non-diversionary" alternatives—those which trace new "tracks" within the justice system or employ judicial sentencing powers in new ways—have any promise for serious offenders. This is a question which only experimentation will answer.

In conclusion, we must reiterate our earlier point that while the matrix reflects our judgment as to the broadest possible range of policy actions offering alternatives to conventional adjudication, it does not provide the reader guidance as to the alternatives most appropriate for specific jurisdictions. There are many legal and policy issues involved with each alternative, discussed later in Chapter III, which each planner must consider before narrowing down his choice of policy options and selecting those alternatives worthy of more extensive and intensive investigation and possible implementation.

E. Recommendations on Alternatives Planning

What does our typology of alternatives mean? Is the study's presentation of "models" and strategies for change simply another collection of criminal justice reforms? Or are there unifying themes and directions for the future in these experiences? Discussion of the policy ramifications of these alternatives will be deferred to the next two chapters. But it is appropriate to discuss one major observation, with an accompanying recommendation, before moving on.

It quickly became apparent that planning efforts behind most of the alternatives reviewed were less than optimal. In part this reflected a failure to clearly articulate the goals of the reform effort, and in part a failure to develop in sufficient detail other viable strategies for accomplishing these goals. It also reflected the fact that planning is too frequently undertaken from a narrow perspective—actions to solve one particular problem or to be taken by one agency —with no consideration given to other strategies which may accomplish most of the same goals.

A further difficulty is that the review of goal statements in planning past funding applications or project proposals may be an inadequate guide upon which to base planning decisions in targeting alternatives to respond to particular dysfunctions. A functional analysis of what each alternative is doing may well disclose a major impact of an unanticipated kind. Lack of information on the actual impact of particular alternatives is therefore a major impediment to optimal planning and targeting in the future.

The Matrix presented in this chapter should not necessarily be taken as "the optimal"—or the only—tool for the development of alternative strategies. But clearly some tool is needed. Consequently, the following recommendation is presented:

> *Recommendation No. 1.* Reform strategies should not be adopted merely because the impact of the proposed change on the courts is "a good change." An alternative should not be adopted unless rationales are advanced for considering and rejecting other *alternative* strate-

gies, which might achieve substantially the same goals. The range explored should include:

- Other possible actions that the agency implementing the change *could* have taken
- Actions by *other* agencies, bodies, organizations, groups or individuals
- Intervention at a *different point* of the criminal justice process from the point finally selected.

Comprehensive alternatives planning should be integrated into regular planning processes.*

* See other related recommendations (notably Recommendations No. 4 and No. 13 discussed in Chapter III).

CHAPTER III. DESIGNING AND IMPLEMENTING ALTERNATIVES: ISSUES AND RECOMMENDATIONS

The purpose of this chapter is to discuss some of the broader issues raised by alternatives. The discussion focuses first on evaluation issues; second, on legal implications raised by alternatives. Third, the chapter treats organizational and policy issues, and it concludes with a discussion of implementation issues. These topics are singled out for treatment because they represent the most central and pressing issues in the alternatives movement. Given the duration of many alternative programs, it is our opinion that thoughtful and critical consideration of these issues is long overdue.

A. Evaluation Issues and Recommendations

The Alternatives Study's conclusions—regarding the past record of evaluations for new alternatives—raise issues of concern to all who puzzle over the question of whether the time, money, and effort invested in development and implementation of alternatives is having any impact. A review of evaluations of alternative programs and strategies concludes that these evaluations are frequently underfunded, of questionable accuracy, irrelevant to policymaker concerns, and deficient in articulating and relating the significance of their findings to policymakers' goals and objectives.

One common flaw in most evaluations, which is not already reflected in current literature, is that they fail to take into account the varying needs of their intended audience. Four groups of evaluation consumers have differing and increasingly detailed and technical information needs:

- Potential participants in alternatives programs, referral organizations, and service organizations. (Information about programs and their accomplishments is vital to an intelligent, informed consent to program participation, yet clients are a seldom-considered audience for evaluation information.)
- Program directors and staff.
- Researchers and replicators.
- Policymakers, funders, and sponsors.

The typical evaluation report containing information for the middle two groups is too detailed and technical to be useful to the other two.

Much of the study's effort on evaluation was devoted to a detailed examination of cost-benefit analysis—deemed appropriate because of burgeoning interest in this evaluative tool. Techniques of economic evaluation such as cost-benefit analysis are relatively new and incompletely understood tools in the arsenal of criminal justice evaluators. Perhaps too much is expected of this one tool. To date, cost-benefit analyses in evaluations of alternatives have generally been marked by failure to include important potential benefits and costs, and by insufficient attention to the quality and accuracy of the data used. The Alternatives Report contains a presentation of the theoretical framework of cost-benefit methodology, illustrated with an example of its application to a pretrial intervention project. It continues with a discussion of the very real problems in applying cost-benefit analysis to criminal justice projects. An outline of the assumptions required in identifying and measuring relevant benefits and costs demonstrates many of the practical difficulties inherent in attempts to assign dollar values to such costs and benefits.

The point is made, however, that projects yielding quantifiable results, such as reduction in recidivism, are amenable to techniques of economic analysis—whether or not we are willing or able to assign dollar values to the outcome.

There remains a more fundamental problem with cost-benefit analysis: cost-benefit analysis compares "input" to "output." It was originally developed to analyze the comparative efficiency of factory production lines, where production techniques ("process") are undersood. Its use in criminal justice is

speculative because our understanding of how projects "work," and how they "work best," is inadequate. In an assembly line, uniform manufacturing processes will yield uniform products. In a criminal justice program, the same services provided to two different defendants may affect each differently. Thus, while cost-benefit analysis can be useful in comparing projects to other projects and to other possible expenditures of public funds, it should be used only *after* an adequate evaluation of the project, treating both "process" and "impact," has been performed. This contention is the heart of our second recommendation:

> *Recommendation No. 2.* Cost-benefit analysis should never be used as the *sole,* or even the *main,* criterion for evaluation of alternatives. It should only be used as an adjunct to evaluation plans which also employ a "case-history" approach and appropriate methodologies of both "process analysis" and "impact analysis."

Another major problem preventing effective evaluation of alternatives is that evaluators of individual projects need more staff and technical assistance. Our awareness of the need for a cogent strategy for providing this assistance resulted in five recommendations, beginning with an agenda of action which should be taken to assist evaluators of individual alternatives to conventional adjudication. It is recognized that the tasks enumerated in the agenda are difficult and taxing ones, but if we are to be able to draw meaningful conclusions in the future about the utility of alternatives, these tasks must be undertaken. Accordingly, we recommend:

> *Recommendation No. 3.* Efforts should be undertaken, as soon as possible, toward achievement of the following goals in evaluation:
>
> - Developing a standard list of criteria for measuring the effect of each alternative.
> - Developing, for each alternative, a list of its possible effects on the criminal justice system. Such a list would encourage evaluators to explore more fully the broader ramifications of the project or policy decision being examined.
> - Identifying and collecting important criminal justice system baseline data.
> - Identifying techniques for measuring goal-conformity.
> - Developing techniques for providing brief, cogent summaries of evaluation results to potential program participants.
> - Developing a guide or handbook for evaluators, discussing application of evaluation techniques to document the impact of various alternatives. Its focus should be broader than present manuals on evaluating corrections and pretrial intervention programs.
> - Developing a guide for project administrators and planners, discussing selection of appropriate evaluation techniques and evaluators.

Recommendation No. 4. Some appropriate funding agency or organization should sponsor a comprehensive analysis of evaluation efforts in the realm of alternatives to conventional adjudication, similar to LEAA's National Evaluation Plan, Phase I, and to the National Science Foundation's 37 projects assessing policy-related research in areas of public policy.

Recommendation No. 5. LEAA's recently announced evaluation clearinghouse should:

- Develop a system for classifying and indexing evaluation efforts by subject area and by methodology.
- Make the information and reports in its library freely available to evaluators as well as to Federal and State planning agency officials.

Recommendation No. 6. State and regional planning bodies (including budget offices and regional crime-planning agencies) should be encouraged to create advisory panels of experts, to provide both general direction to the planning agencies' evaluation efforts and guidance on individual evaluations.

Recommendation No. 7. LEAA should provide technical assistance in evaluation, along the patterns of existing efforts to provide technical assistance to courts, police, and corrections. Technical assistance in evaluation, provided by this mechanism, should not be restricted to LEAA-funded projects.

B. Legal Issues and Recommendations

We believe there is a host of legal issues exemplified in three categories of alternatives: bail reform

and supervised pretrial release programs, pretrial intervention projects, and agency rule-making. For each category, these issues arise—for the most part—when the essential fairness of alternatives programming is assessed with a view to Constitutional concepts familiar from the contexts of conventional criminal and civil adjudication. Even a preliminary assessment reveals a number of respects in which alternatives programming is—or may be—deficient. And as the alternatives movement develops, planners, program officials, and interested members of the community must continue to test particular programs against basic legal and constitutional standards.

1. *Issues in pretrial releases and pretrial intervention programs.* Pretrial release and intervention programs—despite conceptual and practical differences—share many common operational features, and the legal issues raised by these two categories of alternatives will be discussed together here.

Because pretrial release and intervention programs are perceived as experimental efforts to serve defendants accused of less serious crimes and to offer them helping services, no substantial legal challenges have been mounted in the past. But the history of juvenile courts and commitment procedures for the mentally ill, and recent court decisions mandating formal safeguards to protect the rights of juveniles and the mentally ill being served by these courts, amply demonstrate that informal, benevolent alternatives to conventional adjudication are subject to abuse. The tenor of our remarks is cautionary, warning that for the myriad of recently-begun and heretofore "experimental" supervised pretrial release and pretrial intervention programs the honeymoon will be of limited duration.

One purpose of the Study's research into legal issues was to alert persons who plan or operate pretrial release and intervention alternatives, respectively, to urgent legal and constitutional issues on which litigation can be expected, and to suggest ways of avoiding disruption by anticipating and resolving those legal issues before they are raised in court. A secondary—but nevertheless important—purpose was to examine the degree to which the vulnerability of some alternatives and their procedures to legal challenge reflect inadequate initial consideration of important public values.

For policy-makers, the most important legal problems in alternatives are those which will call into serious question features of alternative programming which are common rather than extraordinary. Several legal issues in pretrial release and intervention can be identified as particularly "important" in this sense:

> Procedures which may result in impermissible coercion to induce individual participation in alternatives of the supervised pretrial release and pretrial intervention varieties are far too common. In pretrial release programs, such procedures may lead to the infringement of a fundamental constitutional right; in all programs the use of excessive coercion casts doubt on the legitimacy of their overall operations. This common legal infirmity detracts from the legitimacy of the alternatives. Significantly, the coerced intake of "clients" or "participants" may also tend to defeat the purposes of service delivery.

The problem of impermissible coercion is most real not because the dangers of non-participation are incorrectly stressed to potential participants, but because potential benefits from participation are often overstated, and risks associated with participation understated. In particular, programs often neglect to inform potential participants adequately of the restrictions on personal freedom and privacy which any participation may entail, or of the disadvantages at trial or sentencing which may accrue to the unsuccessful participant who is returned to the conventional criminal adjudication system. True "voluntariness" is an elusive quality in criminal justice generally, and the pendency of criminal charges makes it particularly difficult to achieve when the defendant's decision to participate in alternatives programming is at issue. But the recognition of the fact that inherent, systematic pressures toward participation do exist should only enhance the determination of program planners and officials to develop procedures which maximize the individual's capacity to decide for or against participation on the basis of informed self-interest.

Another, related problem of potentially impermissible coercion arises when participation in a pretrial release or pretrial intervention alternative is conditioned on the waiver of rights or privileges otherwise available to defendants. Some such waivers—including limited surrenders of rights of confidentiality and of the right of speedy trial—are clearly acceptable

where the receipt of program benefits would be inconsistent with the full exercise of the rights involved. But compliance with constitutional principles dictates that no more be exacted from program participants by way of waiver than is necessary to make participation legally and practically possible. One of the most difficult legal issues in pretrial intervention programming—the permissibility of a required "conditional guilty plea" from program participants—is a special version of the general waiver problem; the Alernatives Study concludes that the case for the programmatic necessity—and hence the permissibility—of the compound waiver represented by a plea has not been made.

The eligibility criteria for intake into alternatives, and particularly into alternatives of the pretrial intervention type, are too often set and administered without due regard for the principles of equality of access and distributional fairness expressed in the Fourteenth Amendment's guarantee of "equal protection" of the laws. Although a large measure of reasoned discrimination among potential participants in intervention is permissible, the intake practices of alternatives tend to encourage irrational or insufficiently justified discriminations.

The problem of potentially impermissible discrimination at intake must be considered whenever the availability of a program is limited—to "first offenders," for example, or to "drug-dependent" defendants. Because the guarantee of "equal protection" protects only against unnecessary or irrational discrimination, few intake criteria—except hypothetical ones based, for example, on race or sex—can be said flatly to be violations of this constitutional principle of fairness, in the absence of a detailed inquiry into the programmatic purposes they serve. Moreover, the courts will defer making the most rigorous applications of "equal protection" tests to new, small-scale programs, on the grounds that their provisional nature requires that administrators exercise a relatively great degree of latitude in screening participants as they experiment with program formats and procedures.

But even where constitutional concepts of "equal protection" do not bar the placing of particular limitations on program access, other legal considerations may. Eligibility criteria must always be measured against any authorizing legislation or court rules, to determine whether those criteria reinforce or detract from the express objectives of the particular intervention program in question.

Nevertheless, a day of reckoning on the issue of distributional fairness will come for every pretrial alternatives program which survives the experimental phase to become an institution of the criminal adjudication system. Every program should therefore be prepared to justify the necessity of the intake criteria it employs. The Alternatives Study identifies certain criteria as particularly vulnerable to Constitutional challenge; they include criteria based on defendants' prior criminal records and present charges, as well as criteria involving essentially subjective measures, such as "suitability for participation."

- In pretrial intervention programming, both intake and termination procedures tend to slight the Constitutionally grounded concept of "procedural due process." Unless more procedural safeguards are built into designs for alternatives, real risks of error, inefficiency, or unfairness in decision-making are posed.

The dilemma posed by this finding of the Alternatives Study is obvious. If greater measures of "due process" are afforded to participants and potential participants, arguments for the desirability of pretrial release and intervention alternatives based on their informality or low cost will lose some force. Nevertheless, it is a conclusion of the study that some increase in the degree to which essential elements of procedural "due process" are regularly and systematically provided is essential. These elements amount, in effect, to a meaningful opportunity for individual defendants to inform and persuade the decision-makers in alternatives programs before critical decisions affecting those defendants are made. And of those decisions, the two most critical are intake selection, on the one hand, and termination, on the other. The study concludes that the provision of formal procedures by which defendants can advocate their own inclusion in an alternatives program is—at the least—highly desirable, while the provision of procedures

which permit program participants to argue against their deletion from program rolls is a Constitutional necessity.

At the same time, however, the study does not conclude that additional procedural "due process" must necessarily take the form most familiar from the conventional criminal adjudication system—that of the judicial hearing. A range of mechanisms, varying in formality and complexity, are available to planners who desire to upgrade the procedural fairness of pretrial release and intervention programs. Experimentation with systems including judicial hearings, administrative hearings, non-hearing procedures (such as administrative consideration of applications), and even "peer review" mechanisms, should be encouraged—especially in connection with improving the fairness of intake.

In addition to its conclusions as to where the principal legal problem areas in pretrial release and pretrial intervention alternatives lie, the Alternatives Study arrived at a number of recommendations and suggestions regarding their solution. Many of these are relatively particular and will be of interest chiefly to those readers who see tht legal problems of their own alternatives mirrored in the discussion. From its investigation of pretrial release and intervention alternatives, however, the study has extracted certain critical and generally applicable recommendations:

Recommendation No. 8. Every pretrial intervention and pretrial release program should subject its policies and procedures to independent legal review, to insure their fairness and to guarantee that they provide adequate protection for participants' rights. Funding agencies should insist—barring exceptional circumstances—on the availability of such analyses as conditions of financial support. Independent reviews of program designs should include consideration of:

- The program's eligibility criteria and intake decision-making procedures: the special undertakings, waivers, acts of restitution, pleas, or admissions required as conditions of admission into the program.
- The provisions for maintaining confidentiality as to participants' program records.
- The procedural safeguards for participants' rights.

When procedural safeguards in pretrial intervention programs are considered, two particular recommendations of general application have been deemed to deserve special stress:

Recommendation No. 9. Every pretrial intervention program should assure participants and potential participants access to meaningful legal advice at every stage of the intervention process—from discussions preceding intake to termination of program participation. Indigent defendants should be provided this advice at government expense. This assistance must begin before a defendant decides whether or not to enter the program. While the use of licensed attorneys may not be required in every instance in which a participant or potential participant requires assistance, law students or legal paraprofessionals employed to assist defendants should work under close professional supervision.

Recommendation No. 10. Every pretrial intervention program should institute a hearing procedure to be employed in all decisions to extend program participation or to "terminate unfavorably"—i.e., return to the conventional criminal process—program participants. The opportunities for innovation in designing such hearing procedures are considerable, but any design must include:

- Specific written notice to the participant of the alleged grounds for termination.
- Opportunity to prepare and present arguments refuting or mitigating the alleged grounds for extension or termination, including such outside assistance in preparing those arguments as a participant may require.
- A neutral hearing officer or board to hear arguments and render a decision.
- A clear and detailed written notice of the nature and basis of any unfavorable termination reached by the hearing officer and board.

2. *Legal issues in rulemaking.* Many alternatives to conventional adjudication involve the exercise of considerable discretion by non-judicial personnel, including police and prosecutors. Some alternatives add to the scope of the discretion of criminal adjudication system officials, while others merely legitimize and make more apparent the discretionary powers which those officials already possess and exercise.

Discretion, however, is subject to abuse, and alternatives founded on administrative discretion are particularly vulnerable to challenge on the grounds of inequitable operation. One approach to the problem of discretion is agency rulemaking. Some forms of rulemaking, such as the self-regulation of police arrest discretion, are complete alternatives in themselves. Other forms, such as the particularization of intake criteria in pretrial diversion, are actual or potential concomitants of non-rulemaking alternatives. Because legal issues common to all criminal adjudication system rulemaking were believed especially important, the Alternatives Study concentrated its legal analysis on how agencies may make rules, and what the consequences of rulemaking will be for agencies which undertake it.

The study also examined legal issues raised by proposals and efforts at rulemaking in various law enforcement agencies to regularize the exercise of discretion. In general, it can be said that such rulemaking helps insure that the policy being enforced is agency policy rather than individual proclivities. It also enhances the reality and the appearance of fairness and even-handedness to the administration of the policies. Rules leave the agency more vulnerable to well-constructed legal challenges, in the sense that proof of agency policy is simplified; but, they may well make it more difficult for a challenger to establish that a policy is Constitutionally improper or insufficiently supported by proper rationales. Indeed, the existence of sound rules may make it easier for an agency to refute claims that a particular decision in a case is an arbitrary abuse of discretion.

Several important questions remain open. One such issue is whether the members of law enforcement agencies which make rules governing discretion are legally bound to follow those rules in all instances. As it emerges, the answer to that question will determine how detailed and realistic agency rules can be expected to be. In favor of the view that all rules should be binding is the analogy of administrative rulemaking outside the criminal adjudication system. Against it—and in favor of advisory rules—is the argument that law enforcement presents a special case, and that the freedom of law enforcement officials to respond to emergencies or unusual situations should not be compromised. The Alternatives Study takes no position on this issue, but it does recognize its critical importance.

An equally important issue, itself incompletely resolved, is whether agency rulemaking in the criminal adjudication system is subject to Federal and state "administrative procedure acts." These statutes dictate procedural formats for devising rules, and provide in particular for notice to the public and the solicitation of public views as parts of the usual, non-emergency rulemaking process. "Open" rulemaking may be initially distasteful to criminal justice agencies. Where some subject-matters are concerned, it may even be inappropriate. Nevertheless, while recognizing that the final word on statutory minima has not been heard, the Alternatives Study concludes that procedural standards for law enforcement rulemaking should be developed immediately:

Recommendation No. 11. Police, prosecution, and alternatives program rulemaking procedures should be designed with reference to the general legal principles governing administrative rulemaking. All rules governing the exercise of discretion should be arrived at by a process which:

- Gives the community (or potentially affected elements of the community) notice of any proposed rule's content.
- Provides members of the public with a fair opportunity to make their views on the proposal known.
- Publicizes the content of rules arrived at, both inside and outside the rule-making agency.

For some *particular* exercises in law enforcement agency rulemaking, it may be necessary and appropriate to omit one or several of these three steps. Such exceptions, however, should always be individually justified: the rulemaking process itself should not be modified to accommodate exceptional instances of rulemaking.

3. *Legal research on alternatives.* Further research into legal issues is urgently needed. We offer, as a recommendation, the following agenda:

Recommendation No. 12. Research should be undertaken on the following topics, with appropriate support from LEAA, the National Science Foundation, and similar organizations:

- Academic Projects
  - —Prosecutor discretion regarding alternatives including diversion
  - —Confidentiality of service program records

—Law of experimentation in criminal justice research
—Legal concepts of coercion and voluntariness
—Standards and goals for "negotiated justice"

- Survey/Impact Study Projects
  —The present and future state of probation sentencing
  —The law and practice of criminal record expungement
  —Trial court receptivity to procedural change
  —The law of speedy trial and effects of speedy trial reform
  —The organization and impact of victim compensation plans
  —The status and effects of bail reform
  —Alternatives litigation and its effects
- Demonstration/Evaluation Projects
  —Effects of increased legal services in early stages of pretrial intervention
  —Feasibility of pretrial intervention for "high-risk" cases
  —Implementation of model rules for discretionary law enforcement activities
  —Feasibility of law adjudication of petty criminal cases ("community courts")
  —Formalized defendant-court negotiation at sentencing ("contract sentencing")
  —Feasibility of "day-fining" in criminal trial courts

An explanation of each topic and a justification for its inclusion on the agenda are given in the Alternatives Report.

C. Organizational and Public Policy Issues and Recommendations

Evaluative and legal issues are only a small part of the problems encountered in attempts to introduce alternative procedures and programs into a criminal justice system. These alternatives have implications for the criminal courts as well as the community. Many of these implications were also the subject of study.

The purpose of this effort was not to prepare a "cookbook" telling the reader how to implement a given alternative in a particular jurisdiction. Rather, we examined the "workings" of the court and criminal adjudication system from several perspectives, and used these to raise a variety of practical issues to be weighed in planning and implementing appropriate alternatives.

The Alternatives Study discusses broader issues of public policy raised by alternative programs and policy options. Any proposed alternative, for example, which takes inadequate account of community sentiments is doomed to failure. One way to analyze the impact of an alternative is to differentiate between the "concerned community," whose elected or appointed officials approve a change, and the smaller "affected community" (e.g., neighborhood or ethnic community) on which a policy decision will have the most direct impact.

Examination of these issues should be required in future planning efforts. We realize that this will mandate much more extensive preplanning of the introduction of alternatives into our adjudicatory system. Nevertheless, we make the following recommendation, which, linked to Recommendation No. 1 on planning and Recommendation No. 14 on funding, is discussed later in this report:

Recommendation No. 13. In planning strategies for change in the criminal courts, more consideration should be given to:

- Community acceptance of the proposed change.
- The impact of the proposed change on other agencies in the criminal justice system—specifically, foreseeable but overlooked adverse consequences.
- Assessing in detail the effect of the proposed change on the role we expect our courts to play in our society—specifically, its effects on the basic values implicit in our perceptions of our criminal courts.

D. Problems in the Implementation of Alternatives

The focus of the Alternatives Study has been on alternatives which have been developed in response to perceived inadequacies in our criminal adjudication system. In a broader sense, it is a monograph about innovation and change and all their attendant problems. The following subsections contain some thoughts on this process of change.

1. *Identification and resolution of new problems.* Perhaps one of the major difficulties in reform

is the identification and resolution of new problems. Solutions are proposed for old problems—but until they are tried it is difficult to anticipate whether or not this process is simply one of substituting new problems for old ones. Much of the Alternatives Report is cautionary in nature, not out of a sense that efforts to develop new alternatives have been a wasteful expenditure of time and resources, but out of an awareness that it is time to take stock of our progress. Our society's experiences with alternatives have pointed out a number of new problems which should be resolved before we accept unquestioningly our first preliminary indicators of success—or failure—and expand and institutionalize our use of alternatives. In regard to these new problems, the purpose of the Alternatives Study is not so much to provide "the answers," but to explore systematically these problems, which must be answered by future experience.

Evaluations increase our knowledge of the impact—and the wisdom—of alternatives. Thus, other things being equal, we suggest strategies which will provide the maximum amount of useful information. But evaluations alone will not provide us with answers to all the important policy issues raised by the use of alternatives—analytical insights by experienced practitioners and theoreticians alike may be just as useful. A blending of evaluative technique and these analytical insights would be the ideal.

Similarly, legal issues give us an additional insight into the policy issues raised by the use of alternatives—especially when we examine the possible adverse impact that our alternatives programs and procedures may have on the clients they are supposed to serve. But, again, the view thus offered is incomplete.

Many of the issues are raised by the very newness of the alternative strategies and programs discussed. Will the same results be achieved when pilot programs are expanded to serve an increasingly significant percentage of defendants? Are results achieved in one jurisdiction replicable in others? Will efforts to replicate projects deemed successful inhibit the development of other new and innovative alternatives? Are these alternatives having any impact on the criminal justice system? Can an institutional base be developed for programs after pilot funding expires? Our ability to answer these questions is inadequate. Yet, because these programs are new and seen as humane, they are allowed to continue without evaluations which address these questions.

2. *Integration and institutionalization.* The questions about institutionalization and integration of alternatives into the criminal adjudication system raise points which deserve further elaboration. First, the two terms are not synonymous. Institutionalization implies the development of a more permanent base for pilot efforts, specifically including a more regular provision of funding than through Federal or other grants. But acquisition of a purchase-of-service contract with the city or county, or a commitment for regular funding from United Way, does not guarantee that the program or the agency administering it will receive the necessary support and cooperation from other criminal justice agencies—that is, integration into and acceptance by the criminal adjudication system. Client-service programs are under the sword of Damocles. The type of "acceptance" by other criminal justice agencies implied by the term "integration" may make the program too "Establishment" in orientation to gain and hold client support and confidence necessary for a successful operation. We do not yet know how to prevent "integration" from becoming "co-option."

3. *Funding policy.* Many of the problems of institutionalization and integration are compounded by funding-cycle problems. First, LEAA guidelines on continued funding programs, as administered by the State Planning Agencies, are inflexible and take inadequate account of the difference between institutionalization and integration, differences in local circumstances, and differences in programs. Perhaps the major problem is the annual funding cycle. As the planning process becomes more and more intricate and lengthy, as the number of regulations applicable to LEAA grants multiples, and as project refunding takes a larger and larger portion of state block grants each year, the process of deciding whether to refund projects becomes more and more lengthy in at least some states. In one, the application is required nine months prior to the time second-year funds can be made available to a project. Yet, it may take from one to three months for a project to get underway.

Where an evaluation must be submitted concurrent with a refunding application, a project may be judged on the basis of a hastily conducted evaluation relying on the first three months to six months of a project's life—certainly an inadequate basis for a considered decision on refunding. Further anxieties about difficulties in being refunded may plague

project staff almost from the day the project begins operation. These are less-than-optimal circumstances for guaranteeing project success.

Second, under LEAA policies the sole criterion concerning integration of a new alternative project into the ongoing operations of the criminal adjudication system seems to be the ability of a project to locate increasingly larger shares of matching funds under highly-technical "hard match" requirements. These requirements have barred the use of project income (a sign of a project's economic viability) as a match, and have specified that only certain forms of appropriations or contributions will be accepted as evidence of a community's support for a program.

These policies have resulted in termination of sound projects which simply have had inadequate time to demonstrate their worth to the community. They have also led to the development by projects of a number of ingenious strategems to secure continuing LEAA support. For example, some projects, funded by the Department of Labor's Manpower Administration until they could become "institutionalized," were then deemed qualified for LEAA funding for another three years as "innovative pilot" programs. In net result, the LEAA refunding process shares much in common with the plea bargaining system so roundly condemned by the National Advisory Commission on Standards and Goals—the benefits do not necessarily go to the most deserving, but to the project directors who know the "insides" of the system the best.

Recommendation No. 14. LEAA should undertake to develop more flexible guidelines concerning the refunding of projects, which will not rest solely on a community's commitment of increasing shares of "hard match," but which will incorporate other criteria for institutionalization and integration. Different criteria and funding cycles should be developed for different types of programs.

Recommendation No. 15. LEAA should establish guidelines and criteria that would permit SPAs to make initial funding commitment of two or three years for specified types of programs, where timely demonstration of success or failure is impossible to achieve in a one-year funding cycle.

CHAPTER IV. ALTERNATIVES AND THE FUTURE OF THE CRIMINAL ADJUDICATION SYSTEM

Alternatives to date have been a mixed blessing. Some have clearly contributed to resolving problems facing our criminal courts at an apparently reasonable cost; some have not. Several are fraught with yet unresolved legal and policy questions. Judgments on the extent to which many alternatives are responsive to the problems of our criminal courts are difficult, if not impossible, because needed evaluative information is lacking. Given the existing evidence of the effect alternatives can have on restoring and enhancing the values we expect to find in our criminal adjudication process—and a greater emphasis upon proper planning—the likelihood is that alternatives can and should plan a key role in changing the future system of justice in America.

Comprehensive alternatives planning can have a substantial impact on the way in which alternatives are utilized. The first section of this chapter presents an argument for the need to reorder our priorities in the use of alternatives. In particular, too much emphasis may have been placed in recent years on pretrial intervention as a panacea for the ills of the criminal adjudication system. On the other hand, inadequate attention has been paid to the potential of various forms of decriminalization, more effective case screening, enhanced pretrial release programs, rulemaking procedures, community courts, and special projects and procedures to aid the victims of crime. The chapter deals next with the impact of alternatives on crime control and upon the quality of justice. Finally, we conclude on a speculative note, dealing with the role of alternatives in charting the future course of our criminal adjudication process.

A. Reordering Priorities for the Use of Alternatives: Alternatives with Unrealized Potential

This project's matrix—or an equivalent organizational scheme—permits better planning for rational change in the criminal justice system by considering a broad range of alternatives for solving particular dysfunctions in the criminal adjudication system. This section discusses one alternative, pretrial intervention, which may be overutilized, and several alternatives which have been given inadequate consideration, including case screening, decriminalization, community courts, and administrative rulemaking.

1. *Other alternatives and the role of pretrial intervention programs.* Of alternatives operating within the framework of the conventional system, case review or pretrial intervention programs have received the widest attention and enthusiasm from criminal justice agencies. The Alternatives Study devoted considerable attention to classifying sub-models of intervention programming and to an analysis of legal, evaluative, and organizational implications of pretrial intervention programs. We express concern over the proliferation of these programs without adequate planning or assessment of their responsiveness to criminal justice problems, their impact on the criminal justice system, their procedures to safeguard the legal rights of defendants, and their plans to document results by effective, independent evaluation.

Many of these programs are relatively expensive, service a relatively small number of defendants, and accept a high proportion of relatively low-risk cases, at least some of which would be better candidates for screening out of the criminal justice process in the absence of these programs. Comprehensive alternatives planning requires that other types of alternatives which are less expensive and less restrictive of defendants' rights—such as pretrial release programs, more effective case screening, and decriminalization —be considered before substantial additional resources are devoted to pretrial intervention programming. In their efforts to establish a "good track record" and avoid "risk-taking," some pretrial intervention programs engage in the wasteful and repressive practice of "creaming"—taking only "low-risk" de-

fendants better served (at no risk to society) by decriminalization or prosecutorial case screening.[1]

There is a need for procedures to draw a clearer line between screening, which involves no further control over the defendant, and pretrial intervention, which entails an evaluation of the defendant's performance during the period of suspension of proceedings. To reduce the imposition of pretrial intervention upon unnecessary cases, we urge consideration for a requirement of prosecutor certification that the case selected for a pretrial intervention program is one that is likely to proceed further through the criminal justice process but for the pretrial intervention program. The creation of a more effective balance between screening and pretrial intervention would also be much enhanced by a more active role for defense counsel in advising defendants about entering a pretrial intervention program.

Pretrial intervention, as now conducted by courts, prosecutors, and court- or prosecutor-directed "independent" agencies, is also an alternative which poses a substantial threat to the secured Constitutional rights of individual defendants. Screening out should, therefore, be preferred in all available cases.

The defects of intervention programming are correctable, but at a real cost: the economic cost of providing more institutional safeguards to intervention participants, and the non-economic cost of so modifying intervention programs as to make them potentially inconsistent with the theoretical-therapeutic rationale of intervention.

Future consideration of intervention, therefore, should emphasize the need for experimentation with alternatives which share some goals and methods with pretrial intervention, but are less inherently problematic. Prime examples are the "clusters" of decriminalization (statutory or pursuant to agency rules), case screening, enhanced pretrial release (e.g., ROR with optional service delivery), defense preparation for sentence (e.g., services and non-case-related counseling provided through public defenders offices), and special probation sentencing (e.g. renewed efforts in probation with new patterns of financing and/or staff support). These clusters were presented in Figures 4-6, above.

The potential result of such substitutions could be a functional equivalent to pretrial intervention programming with the following particular advantages:

- Flexibility of both "intake" and "outcome," without potential offense to constitutional principles.
- Responsiveness to judicial supervision at all times.
- Substantial integration with existing criminal justice agencies.
- Absence of any institutional features tending to encourage the continued alternative processing of marginal minor cases—which tend to relieve the problem of "system glut" artificially (and perhaps only temporarily)—rather than to give impetus to the screening out of questionable cases by discretionary decision-makers.

Future consideration of intervention programming should also emphasize the need to generate more true screening activity by legislatures, police, and prosecutors. Better implementation of the "cluster" of screening alternatives (Figure 4 in Chapter II of this report) is likely to prove a partial substitute for intervention.

Our comments on pretrial intervention are summarized in the following recommendation:

Recommendation No. 16. Pretrial intervention programs should be required to demonstrate that:

- Decriminalization is inappropriate for the types of cases considered eligible under the intervention program's proposed guidelines.
- Screening out of the criminal justice system is inappropriate for the types of cases considered eligible under the intervention program's proposed guidelines.
- Safeguards have been devised to insure that only prosecutable cases are considered for pretrial intervention.

2. *The utility of decriminalization.* Criminal courts are often bogged down by having to deal with cases for which there are no alternative methods of disposition, but which by all reasonable criteria ought to be handled in a different manner. In most jurisdictions, minor offenses occupy disproportionately large amounts of criminal justice resources.

Substantial attention was devoted to decriminalization as one response to this problem. We distinguished between legislative and administrative decriminalization. We distinguished further between administrative *ad hoc* decriminalization and the new regulated forms. In the latter category, police departments' uniform policies on non-arrest and prosecutors' offices uniform policy on non-prosecution are

emerging approaches to the more conventional, unregulated, *de facto* decriminalization.

The study distinguished three types of statutory decriminalization:

- *Outright decriminalization.* The approach has been conventionally advocated but has not been widely adopted. It involves the removal of particular offenses from statutory prohibition without any further attempt to penalize, regulate, or provide treatment.
- *Reclassification.* This involves a down-grading of the criminal penalty for particular categories of offenses rather than eliminating them completely from the criminal code. This approach proves wise and expedient where the legislature recognizes that the conduct involved cannot be effectively deterred by criminal sanctions, but desires to "place itself on record" as disapproving of the conduct.
- *Substitution of a non-criminal response.* Instead of prescribing criminal definitions and penalties for certain conduct, the legislature may establish a procedure for regulating and responding to it by a mechanism intended to have a non-penal purpose. The adoption of the substitution approach often suggests a legislative judgment that the conduct formerly defined as criminal ought to be handled as a public health or an administrative problem without penetration into the criminal process.

We have stressed previously the proportion of police, prosecutor, and court resources devoted to offenses such as public drunkenness, housing code violations, traffic, and other regulatory offenses that could be candidates for statutory decriminalization. Effective planning in a systematic fashion, as suggested by the classification system presented in this study, should include decriminalization alternatives to conventional adjudication.

Additionally, we conclude that there is a need and an opportunity for LEAA to provide leadership in encouraging responsible efforts to achieve both statutory and *de facto* decriminalization. Outright decriminalization, which has not had a great success in revisions of state penal codes in the past decade, has not had a fair test due to lack of strong leadership from influential criminal justice agencies. We therefore recommend that:

Recommendation No. 17. Criminal justice planning and funding bodies should provide the necessary leadership and support in encouraging statutory and *de facto* decriminalization.

3. *The potential for community courts and mediation forums.* One major alternative, "community courts," has an academic constituency but literally no grassroots or local criminal justice system support. Our analysis indicates that community courts represent a "new way" with difficult promise.

The term "community court" describes a non-official adjudicative body with lay members drawn from a geographically or functionally defined community. It signifies an adjudicatory forum[2] in which findings and dispositions are reached by non-professional, part-time decision-makers with ties to the area (whether a small rural town or an urban neighborhood). The relevant area might be the one in which the complainant or the person complained against resides or in which the act complained of occurred. The definition is intended to be inclusive rather than exclusive. Institutions qualifying under it could differ in many significant respects. Ranges of subject-matter jurisdiction, methods of acquiring jurisdiction over particular matters, procedural routines and requirements for representation, dispositional powers, and provisions for appeals are only the most obvious examples.

Even with this definition's inclusiveness, few real-life examples of community courts exist in this country. The institutions which are perhaps the closest to fitting the definition—although not necessarily to furthering the purposes which community courts might serve—are the student courts of colleges and universities, some of which hear matters involving drug law violations and shoplifting, as well as internal disciplinary infractions, and impose institutional sanctions for all classes of matters heard.

The programs, examined by the study, which come the closest to satisfying this definition of community courts are those which mediate or arbitrate citizen disputes. These include the Columbus Night Prosecutor Program,[3] the Philadelphia 4-A Project,[4] the District of Columbia Citizen's Complaint Center,[5] the Boston Urban Court Program[6] and a number of similar projects. Generally these programs are concerned with intrafamily disputes or disputes between previously-acquainted people in which the police have declined to make an arrest. The most frequently imposed sanction is that the parties stay away from each other. The theory behind these projects is that the alleged criminal event is a symptom of an underlying dispute which cannot be resolved by an adjudication process culminating in a decision that one party is "guilty" and the other blameless.

But in many respects these projects differ little from the older, informal practice of "sergeant's hearings" in metropolitan police departments, the role a judge sometimes plays in a city's lower court, or the practices of lay magistrates in many jurisdictions, in which an official cloaked with apparent or real authority permits both sides to ventilate their side of a dispute and admonishes the offending party to stop harrassing the other or the official "will throw the book at him."[7] Indeed, it was suggested by the Philadelphia 4-A Project that the program arose to fill a void created by the abolition of neighborhood magistrates in that city a few years earlier.

The vitality of our "justice of the peace courts," in the face of efforts by judicial reform bodies to abolish them, suggests that American soil is not necessarily infertile for the growth of the community-court concept. Of course, because of their official status and powers of imprisonment, Justice Courts and other lay magistrate systems do not fall within our definition of community court.

The English lay magistrate system bears examination, but not because it could be transplanted from its unique cultural environment to serve as a model for this country. It is worthy of study because this institution reflects values different from those implicit in our own criminal adjudication system and may offer important lessons to be learned to aid in forging community courts more responsive and responsible to the needs of the community than is our criminal adjudication system. Lay magistrates dispose of approximately 98 percent of the criminal cases and 88 percent of the felonies in England. Appointed by the Lord Commissioner upon nomination by a board composed of members of the community to be served, these community residents volunteer their services for a minimum of 20 days a year to serve on three-person panels to dispose of the bulk of the country's criminal cases.

The use of community notables to serve on panels to settle allegations of criminality has been traced back to the pre-Anglo "community moot."[8] While substantial efforts have been made to expand magistracy to include more women and working-class magistrates, and to make more visible and formal the appointment process, the institution remains in large part controlled by magistrates from the middle and upper classes, appointed through an "old school tie" network. Indeed, since women from the upper classes have more time to donate to judicial service, expansion of the roles to include more women may well have served to counteract efforts to broaden the class base of the institution.[9]

Because the English lay magistracy is an officially sanctioned institution with power to impose imprisonment for up to six months, with a maximum of two consecutive sentences, it does not fall within our definition of a community court. Nor is the direct analogy to American "justices of the peace" appropriate. Unlike the English lay magistrates, our justices of the peace are paid officials who are elected to serve for a fixed term. In many states, the justices of the peace require no formal training; in only a few states does the level of training equal that given the English magistrates before and during their first year in office, nor do American justices of the peace sit on panels when adjudicating cases. There are, however, many similarities between the English and American lay judges, especially in the manner in which they deliver an individualized "rough-hewn" justice reflecting community sentiments and values. While powers of imprisonment are limited to a period of a year or less in England and in most American jurisdictions, both the English and the American magistrates can and do employ such tailor-made penalties as on-the-spot restitution, informal community service, and evenings or weekends in jail.

Neither the English lay magistrate nor the American justice of the peace system constitute a model community court, but they offer important clues. Similar analogies, as we have seen earlier, can be made between community courts and labor union internal hearing procedures, the People's Courts of Eastern European nations, the Popular Tribunals of Cuba, the Kpelle Moot and similar institutions in African tribal governments, and the conflict-resolution mechanisms of the Cheyenne Indians.[10] Another model, New York City's Jewish Conciliation Board, is described by James Yaffe in the book, *So Sue Me!*[11] This Board is not simply a rabbinical *Beth Din*. It was founded in 1920, out of a realization that immigrant Jews with a different cultural perspective and little command of English were not adequately served by the American court system. Jews and gentiles alike can consent to have a panel of a rabbi, a lawyer, and a "businessperson" (broadly defined to include recognized figures in the Jewish community) hear cases involving intrafamily disputes, differences between acquaintances, landlord-tenant matters, and disputes over money. Yiddish is used frequently in the proceedings because often it better reflects the values of the Jewish community. Proceedings are publicized by the Jewish community Yiddish news-

paper, the *Daily Forward*. Although the board may be outgrowing its usefulness, given the assimilation of the Yiddish-speaking immigrant Jews into the broader fabric of the city, the author suggests that "blacks, chicanos, ethnic minorities, all those who feel intimidated, misunderstood, and betrayed by the 'outside' courts should seriously consider setting up 'conciliation boards,' with alterations, of course, to reflect their own values and mores."[12]

Legal anthropologists who have studied the legal systems in more "primitive" cultures contrast the "tyrannical" law imposed by colonial powers or conquering tribes or nations with the "organic" law reflected in such indigenous institutions as the Kpelle Moot and the pre-Anglo English folk-law "community moot." Yaffe's suggestions of ethnic "conciliation boards" arises out of a realization of what this distinction in legal forms means to the relatively powerless in a heterogeneous society. Recognition that lay magistrates bring an informal and community perspective to bear on the adjudication of criminal cases is one of the most frequently cited reasons for preservation of the English or "justice of the peace" systems in parts of this country. While use of law students in mediation hearings in the Columbus Night Prosecutor program cannot be properly characterized as an effort to involve the community in the resolution of citizen complaints, similar projects for the mediation or arbitration of citizen disputes in other jurisdictions have made active efforts to recruit laypersons as hearing officers. These include the Philadelphia 4-A projects, the Forum of the Bronx Neighborhood Youth Project, the East Palo Alto Community Youth Responsibility Project, and the Boston Urban Court Project.[13] In one way or another, all these institutions represent forums fairly characterized as more responsive to the community they serve than our conventional urban criminal adjudication system.

It should be observed that the adversary process may be less conducive to resolution of certain criminal disputes than the negotiation model, exemplified by such projects as the Columbus Night Prosecutor Program. In conventional adjudication, both parties in a dispute are expected to present the most self-serving construction of events consistent with selected facts, leaving to the other side to highlight inconsistent facts. Determination of the "ultimate facts" of a case is left to the hearing officer. In negotiation, by contrast, the goal is to find a mutually accommodating position. While the adversary approach has been our traditional technique in all criminal cases, we believe other approaches are more appropriate for certain types of cases.

Community courts may not only be a positive step for more effective justice but may further serve as a cohesive factor in the community. James Q. Wilson characterizes predatory crime as both a cause and an effect of the disintegration of the community, and advances the thesis that urban crime (and, increasingly, suburban crime) can be attributed to the outward migration of those in a community who have a stake in enforcing community mores.[14] Reversing this thesis, one can speculate that community courts and other forums based on mediation/arbitration models could offer one means of crime reduction through reinstituting residents' commitment to the community, much in the same fashion that the Jewish Conciliation Board served to preserve the sense of community in the Jewish population of a large, anonymous city.

We have characterized the conventional adjudication system as an elaborate fact-finding process incorporating the values of authority-legitimation, predictability, neutrality, impartiality, objective search for truthfulness, finality, and reviewability. In mediation and arbitration projects, the forum's authority stems from voluntary consent, rather than from powers granted by the state. Decisions are not reviewable in the sense that criminal trials can be reviewed on appeal or trial *de novo*. The role of the mediator, however, is not totally neutral, impartial, or objective; if the mediator feels that one party is being unreasonable and inflexible in its position, he may well ally forces with the opposite party in order to push more effectively toward reconciliation. Yet these projects—and community courts—can promote a swifter and more individualized justice, in part because these forums have much greater flexibility in fact finding and dispute settlement, and much more latitude in dispositions.

It should be recognized that support for flexible, informal, and individualized disposition of cases without adequate procedures to safeguard the rights of the accused could prove the breeding ground for a "kangaroo court," amounting to state sanctioning of vigilantism. The study urges consideration of community courts to promote some of the values leading to more humane and individualized treatment of offenders and to enhance their reintegration into the community—but only on condition that appropriate limitations be imposed to ensure fair process and outcome.

Although community courts (and other forums based on mediation/arbitration models) possess great potential, the paucity of real-life examples in the United States suggests the need for selective experimentation. We therefore recommend special funding of programs to give community courts a fair, practical test.

Recommendation No. 18. Programs should be undertaken to experiment more broadly with the development and use of community courts, under circumstances which permit deliberated, fair, and equitable decisions and which insure that sanctions are reasonable.

4. *The need for rulemaking procedures.* Like community courts, the cluster of rulemaking alternatives appears to have attracted more support in theoretical discussions than in actual practice. But like community courts, the implementation of this process—subject to certain important qualifications stated in the Alternatives Study—would be legally permissable, relatively inexpensive, and potentially beneficial in relieving "system glut."

One theme of this study, highlighted by the discussion of legal issues in agency rulemaking powers leading to Recommendation No. 12 above, is that many of the abuses seen in our criminal justice system can be attributed to the secret and unfettered discretion exercised by criminal justice agencies. Matters of grave public concern, as well as matters of concern to the defendants most affected by the decisions, are the result of "informal" policies and practices.

Police and prosecutor policies on whether to prosecute cases involving intrafamily assaults, writers of bad checks, men who solicit prostitutes, or people possessing a marijuana cigarette, are virtually unreviewable. Yet they have the potential of affecting more defendants than can be served by expensive pretrial intervention programs.

Similarly, all too often the decision to terminate a defendant from a pretrial diversion program unfavorably—and perhaps prosecute him more vigorously because of his "failure"—are unreviewable. More comprehensive, general, and equally applicable rules for the exercise of police and prosecutional discretion are likely to resort to criminal process and to pretrial intervention.

Recommendation No. 19. Thoughtful consideration should be undertaken to requiring criminal adjudication system agencies to follow specified procedures, which provide for publication and review by affected agencies and the public, in promulgating rules which govern that agency's relations with other agencies, defendants, victims, or the public. The rulemaking provisions of the Federal Administrative Procedures Act might well serve as a model.

5. *The safeguarding of victims.* In our exploration of alternatives, we found few which showed adequate concern for citizens twice victimized—first by the criminal and then by the criminal adjudication system. Criminal adjudication agencies and planners are only recently expressing appropriate concern for victims who are offered inadequate assistance—financial or otherwise—with their newfound problems. Yet victims are required to take time away from work and family repeatedly to attend court only to see the case adjourned or continued. When the case ends (and, perhaps, the defendant returned to the victim's own neighborhood on probation), the victim continues as the most ignored person in the system of justice. Special attention has focused of late on the plight of the rape victim and the elderly victim. This is a good start, but more is needed.

Recommendation No. 20. Proposals for change in the criminal adjudication system should be required to assess the impact of such change on the victims of crime, and to include strategies to alleviate their problems.

Recommendation No. 21. Technical assistance should be provided to communities in solving the problems faced by victims of crime, along the pattern of existing efforts to provide technical assistance to courts, police, and corrections, and of the evaluation technical assistance effort proposed in Recommendation No. 7. It should begin as a clearinghouse offering technical assistance concerning model programs for rape victims (since so much has already been done in this area to date) but expand its efforts to include programs for victims in general.

The belated attention to the failure of the criminal justice system to cope with the problems of crime victims should not result in measures which might abuse the rights of defendants. Thus the study opposes the practice of giving the victim an absolute veto over a defendant's participation in pretrial intervention programs. It questions programs which condition participation by an accused on a payment of restitution as an expression of "moral guilt," when defendants entering such programs before trial

are presumed not guilty under the Constitution. And programs requiring indigent defendants to make restitution, as a condition of probation or participation in a pretrial intervention program, are well-advised to heed the lesson of *Tate vs. Short*,[15] wherein the U.S. Supreme Court voided the practice of jailing without further inquiry indigent defendants unable to pay the fine when sentenced to "$30 or 30 days."

A number of approaches are possible which would instill in defendants found guilty a sense of their responsibility to the victim as well as to society. Imposing a requirement of restitution on those defendants able to pay goes part way toward this goal. Restitution could be enforced by civil judgment. The district attorney of one jurisdiction has proposed a "revolving fund" for victim compensation, replenished by funds obtained by subrogation of victims' civil claims. A system patterned after the Scandinavian "day-fining" procedures (discussed in Chapter II of this report) could be employed. Under the "day-fine" system the severity of an offense is expressed by the number of days' worth of fine a defendant shall pay. The judge (aided by an investigation if the prosecutor does not believe the defendant's representations) then determines how much a defendant, with great frugality, can afford to pay per day. This sentencing sanction could be turned into a program for the benefit of victims if fines, rather than disappearing into a county's "general fund," were put into a fund for crime victims.

Reflecting back to arbitration forums and community courts, we note that they are better able to give defendants an awareness of their responsibility toward victims. One proposal, submitted for funding consideration after the completion of the Alternatives Study fieldwork, would require a juvenile defendant, adjudicated delinquent in a community forum, to attend a session at which he is confronted by the victim, under the guidance of a specially trained social worker. At these sessions, plans for restitution or service to the victim (such as cleaning the store of a robbed merchant on Saturdays, or carrying groceries for an elderly victim) could be formulated. Similar experiments have been instituted in England in recent years.

B. Alternatives and Crime Control

Alternatives which seek decriminalization and redefinition of what is a crime have great crime-reduction potential. This assertion is not merely a semantic exercise. While one standard definition of the level of crime is contained in the Major Offenses statistics of the Federal Bureau of Investigation's Uniform Crime Reports, the crimes which are clogging our courts are intoxication and traffic offenses, minor misdemeanors, and the like. If we would recognize that traffic violations, breaches of housing codes, and similar transgressions are usually administrative problems rather than acts of criminals—recognize the futility of attempting to use the criminal sanction to control the types of behavior evinced by "victimless crimes" such as private consentual sex acts, possession of small amounts of relatively harmless drugs, and public intoxication—and realize that under specified circumstances, screening out of cases is the most appropriate method of dealing with a particular offender—then the number of arrests and court cases would reduce dramatically. Crime figures will cease to show dramatic increases which often reflect merely a police department or prosecutor's policy to "crack down" on specified minor crimes during a given time.

Of course, this does nothing directly to affect the number of rapes, robberies, and murders plaguing our society. The alternatives examined have shown no direct effect on the rate at which these more serious crimes are committed or on the recidivism of those participating in alternative programs. Some alternatives, such as pretrial intervention programs, have been undertaken with these goals in mind. But our findings echo those of Roberta Rovner-Pieczenik in her study of evaluations of several pretrial intervention projects funded by the Department of Labor:[16]

> Was participation in PTI (Pretrial Intervention programs) responsible for decreases in recidivism following program termination? Program conclusions are affirmative. A reevaluation of statistics and methodology, however, does *not* support these conclusions. Confidence cannot be placed in program findings of long-term decreases in recidivism. There exist too many uncertainties in the evaluation methodology to conclude the issue positively or negatively." (author's italics)

In short, the alternatives we examined have made no demonstrable, direct contribution to the reduction of serious crime. Nor should have such claims been made by them. While some have, perhaps inappropriately, espoused crime reduction goals, their value to the criminal adjudication system lies in

other realms. It is abundantly clear that we should look to alternatives for values such as more humane and individualized criminal justice, not for crime reduction.

This said, we can point to a number of indirect ways in which alternatives can lead to crime reduction. First, and most obvious, is that alternatives which remove minor cases from the criminal adjudication system or expedite their processing permit a badly needed reallocation of scarce criminal justice resources to the task of swift and just adjudication of serious criminal offenses. They offer, for example, the opportunity to concentrate efforts on increasing the number of felonies going to trial. Not only would this provide more appropriate disposition of cases now being bargained away, but it would place the court and prosecution in position to secure pleas more appropriate for the crimes actually committed.

Second, alternatives in appropriate circumstances may be able to offer early and individualized programs for the rehabilitation of offenders. In the long run, rehabilitation may have more lasting influence on the conduct of given offenders than either specific deterrence or incapacitation. The rehabilitation hypothesis has two major crime-reduction approaches. One looks to rehabilitation of serious offenders in order to prevent future crime by these offenders. The other seeks to identify and rehabilitate minor offenders before they continue a life of crime which leads inexorably to more and more serious offenses. Both approaches promise a reduction in crime. (Such approaches assume that we can identify defendants who might benefit from rehabilitation measures, place them in appropriate programs, and modify their behavior in such a way that they are deterred from future crime. But to date no program has been able to satisfactorily demonstrate success at any step in this path. Indeed many programs, in order to demonstrate early success and avoid taking undue risks, accept many first offenders who would do as well if released from the criminal justice system rather than be subjected to a regimen of weekly talks with counselors and other therapy.)

Third, alternatives which require defendant participation pending trial and which monitor their behavior during this period have a specific, short-term deterrent value. Programs which enforce sanctions such as prosecution for "bail-jumping" when conditions of supervised pretrial release are breached, or unfavorable termination from pretrial intervention programs when subsequent crimes are committed, may deter defendants from crime during this specific pretrial period.

The fourth—and perhaps the most speculative—connection between alternatives and crime reduction is the premise that more humane and individualized treatment of offenders may engender additional respect for our courts and institutions of government. In the words of Professor George J. Cole:[17]

> It is . . . at the local level that the individual has contact with the legal process. Although most citizens will not ever appear in court or at the police station, their perception of the quality of justice will greatly affect their willingness to abide by the laws of the community.

Respect for courts and government might not prevent the commission of murders, robberies, and rapes. But it might promote conformity by some casual and minor offenders.

C. Alternatives and the Quality of Justice

If alternatives cannot and do not, as a general matter, directly further the objective of "crime control," it is nevertheless true that they can and do contribute to the fulfillment of other widely acknowledged goals for the administration of criminal justice. These are goals closely associated with the concept of "quality of justice" as distinguished from "crime control" and possibly even "effectiveness of justice."

Alternatives, for example, can do much to promote "individualization of treatment" in both predisposition case handling and in dispositions. With the exceptions of "decriminalization," on the one hand, and such "victim-centered" alternatives as "restitution sentencing," on the other, the alternatives identified by the study are—when functioning according to their design—relatively more sensitive to the individual characteristics of suspected, charged, or convicted persons than the conventional modes of criminal case processing which they parallel, supplement, or supplant. And this generalization holds true for alternatives as apparently diverse as "one-way diversion" by police, "pretrial intervention," and "community courts."

Closely allied with the goal of individualization—but ultimately distinct from it—is the objective of "humanitarianism." A review of the history of the alternatives movement reveals its relationship to a growing perception of the excessively or arbitrarily

harsh effects of conventional criminal case processing—pre- and post-disposition—on the accused persons. The best functioning alternatives, programmatic and non-programmatic, display both a real capacity for flexibility and a practical concern with mitigating the human damage which is a frequent—and obviously undesirable—byproduct of the conventional case processing machinery. Somewhat less widely recognized as a value inherent in the concept of "qualify of justice"—but no less important in the view of the study—is offender "participation." As a general matter, most alternatives operate to provide suspected, charged, and convicted persons with more frequent and numerous opportunities to speak and be heard than does conventional processing. Moreover, the defendant's voice is heard in alternatives programs and projects on matters which have conventionally been considered outside his or her competence—those which relate to disposition and sentence rather than to culpability. Beyond question, the ventilation of the justice system with new opportunities for such "participation" serves to strengthen the claims of legitimacy and to reduce accusations of authoritarianism.

Another "quality of justice" value which is responsible for many alternatives—although not all—is "community involvement." Highly traditional views of the law and legal institutions may call into question the desirability of any development which tends to detract from their impression of removed objectivity. It is the conclusion of the study, however, that a contemporary consensus calls for decreasing the distance between the community and the institutions of adjudication and justice. Moreover, even the most formal ideal models of adjudication in Anglo-American law have provided (and continue to provide) for limited community participation through the jury and the grand jury—institutions which may not be as well adapted to the modern justice needs as some other community-oriented alternatives. Particular alternatives provide for active citizen and community agency roles in case processing, ranging from that of "diversion agent," through those of "referral resource" or "volunteer supervisor," up to that of "lay magistrate." Moreover, alternatives give community members important, although secondary, roles in such important adjudication-related activities as law enforcement agency policy- and rulemaking. And, unlike conventional case processing, alternatives do not tend, as a matter of design, to avoid receiving the views or addressing the needs of the victims of crime. How much "community involvement" in the administration of justice is optimal is an open question. But what seems clear is that the conventional system provides too little, and that alternatives can be employed to provide significantly more.

D. The Alternatives Movement: A Bellwether of New Trends in American Justice

To this point, our summary report has been practical in its approach. We have asked, and tried to answer, such questions as what alternatives are, what court and system problems an alternatives "movement" may be responding to, what alternatives can (and cannot) do, and what values alternatives promote.

A lasting important question remains, however. It is one with no direct bearing on the planning and implementation processes, and no impact upon improving crime control or the administration of justice. What do the existence of new "alternatives" and the growth of the alternatives movement reveal about present and future assumptions and aspirations in America's view of criminal justice? Begun as an attempt to classify and analyze a diversity of criminal justice reform activities, the work of the Alternatives Study was not intended to yield any answer to this query. But some reflections on the "significance" of alternatives were a natural byproduct of the staff work. An attempt is made here to organize those reflections into (1) findings as to what examination of the alternatives movement clearly discloses about principal trends in thinking and belief about our criminal adjudication system, and (2) conclusions as to some important secondary implications—so-called policy "correlates"—of these trends. In a sense, we take in this chapter the advice we gave in chapter one, that is, to think broadly about alternative paths and court reform, and to think specifically and concretely about the ramifications of each for the criminal adjudication system.

Our first finding is that the alternatives movement, viewed as a whole, reveals that the therapeutic response to the crime problem has not disappeared, but is significantly blunted or deflected in the design and implementation of alternatives. The "rehabilitative ideal" has lost luster, but alternatives do not—as a whole—represent or foreshadow its abandonment. Rather, they indicate a generalized effort to refurbish the ideal by setting more practical and relatively modest rehabilitative goals for ventures

into offender treatment through newly christened "alternatives," and by placing new limitations on the means to be employed by the state in achieving those goals.

One exemplary contrast is that between the theory and practice of a diversionary alternative such as pretrial intervention, on the one hand, and conventional custodial imprisonment, on the other. In the "alternative" program, therapeutic goals—such as vocational upgrading or reduction of drug dependency—are relatively concrete, if not obviously attainable. In conventional incarceration, no useful statement of particular treatment goals is even possible, since the aim of therapeutic imprisonment—however little honored in fact—is the "reform" of the "whole individual." With the narrowed therapeutic objectives of alternatives programming come other restrictions. In terms of available time and money, and of authority to restrict or control, conventional correctional authorities have options and opportunities to "treat" offenders which are definitionally denied to the state in alternative programming.

Nor is the contrast between the therapeutic goals and resources of conventional modes of offender treatment and those of alternative modes apparent only when imprisonment is taken as an example of the conventional. It is equally clear when, for example, diversionary programs for drug abusers or mentally disturbed persons are weighed in the balance with the institutional, "non-penal civil commitment" schemes that the conventional criminal justice system has "spun off" for the disposition of these cases. Again, the alternative programs—although therapeutic in approach, like their conventional "civil" counterparts—define their aims and means more modestly.

Associated with the therapeutic retrenchment generally characteristic of alternatives is a shift in the conception of what constitutes effective treatment. The correctional and medical models of offender treatment posed by the conventional system are, in the characterization of Francis Allen,[18] essentially "conservative" ones in the sense that they are designed exclusively to identify and repair those defects of the individual—rather than of the society—which would prevent his or her successful functioning as a law-abiding person. The treatment process envisioned by alternatives, however, is one which deals with the offender in context by respecting the community ties and associations which conventional offender treatment disrupts, and which also conceptualizes offender problems (and thus treatment goals) in contextual terms. For the diversionary program which "treats" by developing offender employment potential, for example, the "problem" of unemployment is neither "in" the offender nor "in" the business community; rather, it is a product of their interaction. Much the same can be said of a police crisis intervention alternative which handles incidents of intrafamily violence; the problem is between the offender and his family group, and not "in" either. "Treatment" for "problems" of this character necessarily implies changes in the offender, but it also involves developing concessions on the part of the people and institutions among which he or she lives. Such treatment "works" when the offender-community interaction is no longer a destructive one; whether this change occurs because the individual has been reformed or because the community context has been modified is finally irrelevant, so long as a new *modus vivendi* has been developed.

In much therapeutic alternative programming, the goal of treatment is thus no longer the "cure" of the offender; instead it has become "accommodation." And this shift—away from unrealistic or overboard treatment objectives and toward an emphasis on functional solutions in the community context—is clearly a part of the rethinking of the "rehabilitative ideal" which the alternatives movement illustrates.

In a very real sense, the alternatives movement represents the "last stand" of the "rehabilitative ideal." Under attack from all ideological quarters—with conservatives questioning their objectives and liberals their techniques—proponents of offender treatment have at last been stimulated to undertake a series of experiments which could render their most basic assumptions open to verification or disproof. Therapeutic alternatives programs can state their treatment goals with relative clarity and specificity, and, at least during their experimental states, they can be given adequate financial and non-financial support. Evaluation of their effects—on participants, on the criminal justice system, and on society at large—is possible, even if adequate attempts at evaluation have not yet been made. If fairly supported and properly evaluated alternatives fail to realize their goals, the continuing value of the "rehabilitative ideal" itself will necessarily be subject to increased—and increasingly well-founded—questioning.

Our second conclusion is that the alternatives—or, more accurately, elements of the alternatives movement—exemplify the rise of an original and potentially important new approach to the social

management of deviant conduct: a non-penal, non-therapeutic approach. In itself, this approach is a philosophical substitution for the conventional penal, medical-therapeutic, and correctional-therapeutic approaches, just as particular programmatic and non-programmatic alternatives are substitutions or modifications of dysfunctional elements of the conventional criminal justice system. Like some of the approaches to which it is an alternative, this approach is disposition-centered. Unlike those approaches, however, this approach does not operate to focus the adjudication decision on the question of what disposition an accused or convicted offender *deserves* by reason of his or her guilt. Instead, it works to direct primary concern onto the question of what disposition will work to promote legitimate societal ends. Thus, in particular alternatives embodying this approach, fact-finding on the issue of culpability is de-emphasized, while negotiation, among both non-official and official parties, is given new stress.

Crisis intervention, arbitration and mediation of disputes involving alleged criminal conduct, community court adjudication, and even structured plea bargaining and "contract sentencing," are among the particular alternatives in which this new approach can be seen to operate. Each is a conflict resolution system which emphasizes the composition of past differences, and the imposition on the differing parties of prospectively effective terms and conditions governing their future relations. From the nature of these settlement dispositions, these alternatives can be seen to be potentially, if not actually, non-penal. And by their very nature, these alternatives embody an approach which is non-therapeutic. Although they may operate to identify and fill individual service needs, their consensual design assumes the essential competence of all parties to the settlement—including the offender or alleged offender—to control their future conduct.

Nor is the non-penal, non-therapeutic approach to be observed only in alternatives which seek resolution of disputes on a case-by-case basis. A legislative or administrative deliberation, resulting in a decision to "decriminalize" some category of disapproved conduct, is also a process of conciliation—leading to a new understanding between society at large and various sub-classes of its members, and imposing prospective duties and responsibilities upon both. In effect, the various decriminalization-related alternatives represent "collective bargaining" under the non-penal, non-therapeutic approach, while the particular case-centered alternatives reviewed above represent the fulfillment of that approach through individualized negotiations.

If the two major trends just noted—toward a modification of the therapeutic model of offender treatment and toward a non-penal, non-therapeutic approach to criminal dispute settlement—should, in fact, emerge as dominant ones in the next decades of American criminal justice reform, certain effects will necessarily be felt at every stage and level of this system. These are the effects which the Alternative Study staff has identified as the "correlates," or major secondary policy implications, of the alternatives movement.

One of the most important of the correlates of alternatives is the decentralization of criminal and quasi-criminal adjudication. In recent decades, the general tendency in criminal court reform, and court reform generally, has been toward the increased concentration of judicial power in few persons and in few places—and in increasingly fewer, less popular, and more professional institutions. The rise of alternatives, however, suggests that the era of centralization may be at an end as a general matter, and that this tendency may even be subject to selective reversal in years to come.

If the alternatives movement represented no more than a new approach to offender adjudication, it would not, of course, have decentralization of alternatives as a necessary correlate. The "community corrections" concept, for example, depends upon the performance of criminal sentence (or sentence like dispositions) at dispersed locations, but it does not necessitate that a sentence or disposition be announced by any particular adjudicative institution. But the alternatives movement is not primarily concerned with treatment. Rather, it is concerned with changing the ways in which dispositions, whether therapeutic or non-therapeutic, are arrived at. Its promise is no greater than the strength of new or existing local institutions to assume new burdens.

A quick review of the sorts of agencies and groups which are given authority over the fates of individual offenders and offender groups in various alternatives confirms the conclusion just stated. Local police departments, prosecutors' offices, social service agencies, community organizations, and courts of limited or special jurisdictions are among the mainstays of alternatives planning—whether the particular alternative in question is a pretrial intervention program, a rulemaking scheme, a special sentencing procedure, an arbitration/mediation mechanism, or a

proposal for a "community court." And inherent in the concept of alternatives is the notion of "local option": what works for one community, whether it is a set of substantive rules governing individual conduct or a procedure to deal with rulebreaking, need not—and often will not—work for another.

Decentralization of criminal adjudication has its risks; danger of increased inefficiency, arbitrariness, and inequity among them. But a commitment to the alternatives movement as a mode of reform is a commitment to cope with these risks through sound local planning and management, rather than through institution building alone.

And with the risks come benefits, of which gains in levels of popular participation in—and understanding of—adjudication are perhaps the most important. The existence of the historical institutions for providing citizen roles in criminal justice, principally the grand and petit juries, have come to assume less and less influence and satisfaction for lay participants as the size, complexity, and concentration of the justice system has grown. If American society as a whole is seriously devoted to promoting "popular" justice *alongside* "professional" justice, alternatives—and decentralization—may prove essential.

The second major "correlate" of the alternatives movement is the acceptance of the place of official discretion in criminal case processing. For perhaps too long, the literature of criminal justice, and the thinking it reflects, have been divided on the issue of discretion. Perhaps too often, debate has been between two schools of thought and opinion: one tending to admit but decry the extent of discretionary power, and another tending to minimize its real importance while defending its theoretical legitimacy.

Alternatives take a middle course, by simultaneously surfacing, regulating, and legitimizing discretionary powers. And this is as true of those alternatives which create new discretionary decisions (as, for example, does pretrial intervention) as it is of those which are designed to change the way in which familiar discretionary decisions are made (as is, for example, police rulemaking). If the alternatives movement takes firm hold, future debates over the virtues of "full enforcement" versus "selective enforcement," or over the historical/legal/theoretical bases of law enforcement officers' "inherent" authority to interpret the criminal laws, will become increasingly sterile as time passes.

The rise of alternatives represents a growing recognition of discretion as an inevitable element of the American justice system. In addition, it represents the beginning of a process by which those who exercise discretion in law enforcement—and those who are affected by its exercise—will be required to think with new sophistication about what distinguishes "useful" discretionary powers from "destructive" ones, and to build new institutions accordingly. In this sense, at least, a critical acceptance of discretionary power is a true correlate of the alternatives movement.

Finally, the elements of the alternatives movement, the trends it reflects, and the correlates it implies are too many and various to allow any conclusion by the Alternatives Study "for or against" alternatives. In any event, no such conclusion would be of much practical value.

The alternatives movement is not the product of detailed planning or prior calculation. Rather, it is a fortuitious coming together of a number of essentially spontaneous developments in American criminal justice, responding to the perceived dysfunctions of conventional criminal adjudication. Alternatives reflect diverse strategies for change. The newer forms of justice arise from the recognition that our criminal courts—patterned on an adversary model for the resolution of social conflicts—often are an inappropriate societal response to the processing of alleged offenders, especially those involved in minor criminal offenses and other offenses involving no substantial factual dispute. The development of particular alternatives can—and should—be watched, aided, checked, and even occasionally forestalled. But the alternatives movement has its own important and undeniable vitality.

REFERENCES

Chapter I: Alternatives and Adjudication

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[2] Edward L. Barrett, Jr., "Criminal Justice: The Problem of Mass Production," *The Courts, the Public and the Law Explosion,* ed. Jones (Englewood Cliffs, New Jersey: Prentice-Hall, 1965) p. 87.

[3] National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime* (Washington, D.C.: U.S. Government Printing Office, 1973), p. 15.

[4] Lewis R. Katz, Lawrence B. Litwin, and Richard H. Bamberger, *Justice Is the Crime: Pretrial Delay in Felony Cases* (Cleveland: Case Western Reserve University Press, 1972) pp. 155-157.

[5] See, e.g., *Bellamy et. al. v. Judges and Justices,* et. al., 41 A.D. 2d 196 (N.Y. Sup. Ct., App. Div., 1st Jud. Dept., 1973) (dismissed on merits and on ground not a proper class action), *aff'd without opn.,* 32 N.Y. 2d 866 (1973). The Plaintiff's Memorandum reprinted and analyzed in 8 *Crim. L. Bull.* 459 et. seq. (1972).

[6] Prosecutor's screening policies, for example, are rarely embodied in policy guidelines or manuals. Policy statements are issued to subordinates through memos circulated in response to specific cases, or more frequently by oral tradition. Joan E. Jacoby, *Summary of Pre-Trial Screening Evaluation: Phase I* (Washington, D.C.: Bureau of Social Science Research) (pre-publication draft) pp. 4-7. This report presents a methodology which enables prosecutors to examine office records to determine whether their screening policy is being carried out—and, by inference, determine whether case records reflect implicit policy decisions where none have been articulated. See also, National Center for Prosecution Management, *The Prosecutor's Screening Function: Case Evaluation and Control* (Chicago: National District Attorneys Association, 1973), pp. 7-10, 12-15; John Hollister Stein and Bert H. Hoff, *Paralegals and Administrative Assistants for Prosecutors* (Chicago: National District Attorneys Association, 1975), pp. 17-20; W. Jay Merrill, Marie N. Milks, and Mark Sendrow, *Prescriptive Package: Case Screening and Selected Case Processing in Prosecutors' Offices* (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration).

One notable exception to the general absence of written prosecutorial screenings and guidelines is California District Attorneys Association, *Uniform Crime Charging Standard* (California: CDAA, December, 1974), which outlines office procedures for case acceptance or rejection, handling of witnesses and victims, obtaining warrants and extraditions, granting immunity, and the like; analyzes legal aspects of crime charging; and contains sample pleading forms. The preface to the Standards states that this may be the first effort to promulgate standards or policies on a region- or state-wide basis.

[7] National Advisory Commission, *op. cit. supra* at note 3, pp. 15-16.

[8] Kenneth C. Davis, *Discretionary Justice: A Preliminary Inquiry* (Urbana: University of Illinois Press, 1971), p. 22.

[9] James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975), p. 173.

[10] Harvey G. Friedman, "Some Jurisprudential Considerations in Developing an Administrative Law for the Criminal Pre-trial Process," 51 *Journal of Urban Law* 433-4 (1974).

[11] Herbert L. Packer, *The Limits of the Criminal Sanction* (Palo Alto, California: Stanford University Press, 1968), Chapter 2, "Justifications for Criminal Punishment," pp. 35-62; Nicholas N. Kittrie, *The Right to Be Different: Deviance and Enforced Therapy* (Baltimore: Johns Hopkins Press, 1971), p. 5.

[12] Karl Llewellyn and E. Adamson Hoebel, *The Cheyenne Way,* (Norman, Oklahoma: University of Oklahoma Press, 1941).

[13] James Gibbs, "The Kpelle Moot," in *Law and Warfare,* ed. P. Bohannon, (Garden City, New York: Natural History Press, 1967), p. 277.

[14] Severin-Carlos Versele, "Public Participation in the Administration of Justice," 27 *Int'l Rev. of Crim. Pol.* 9,10 (1969).

[15] See, e.g., Richard Danzig, "Towards the Creation of a Complimentary, Decentralized System of Criminal Justice," 26 *Stanford L. Rev.* 1, 42-3 (1973) and citation in notes 118-22; Comment, "Community Courts: An Alternative to Conventional Criminal Adjudication," 24 *American U.L. Rev.* 1253, 1274-85 (1975) and citations therein (article based in part on work of the Alternatives Study).

[16] Fredric W. Maitland, "Origins of Legal Institutions," in *The Life of the Law* ed. J. Honnold (New York: Free Press, 1964), p. 9.

[17] Richard Danzig, *op. cit. supra* at note 15.

[18] William L. F. Felstiner, "Influences of Social Organization on Dispute Processing," 9 *Law & Soc. Rev.* 63 (1974); Richard Danzig and Michael J. Lowy, "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner," 9 *Law & Soc. Rev.* 675 (1975); William L. F. Felstiner, "Avoidance as Dispute Processing: An Elaboration," 9 *Law & Soc. Rev.* 695 (1975).

[19] Felstiner prefers the term "dispute processing" to "dispute settlement" because a significant amount of dispute processing is not intended to settle disputes, that a greater amount does not do so, and that it is often difficult to know whether a dispute which has been processed has been settled, or even what the dispute was about in the first place. Felstiner, *op. cit.* "Influences of Social Organization on Dispute Processing," p. 63, note 1.

[20] John Hollister Stein and Bert H. Hoff, *Paralegals and Administrative Assistants for Prosecutors* (Washington, D.C.: National District Attorneys Association, 1975) pp. 29-46; Raymond T. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution* (Chicago: American Bar Foundation, 1974), National Institute of Law Enforcement and Criminal Justice, *An Exemplary Project: Citizen Dispute Settlement. The Night Prosecutor Program of Columbus, Ohio,* (Washington, D.C.: U.S. Government Printing Office, 1974).

[21] Comment, "Community Courts: An Alternative to Conventional Adjudication," *op. cit. supra* at note 15, pp. 1271-4.

[22] J. Michael Keating, Jr., Virginia A. McArthur, Michael K. Lewis, Kathleen Gilligan Sebelius, and Linda R. Singer, *Prescriptive Program Package. Toward a Greater Measure of Justice: Grievance Mechanisms in Correctional Institutions.* (Washington, D.C.: Center for Correctional Justice) (prepublication draft).

[23] Lon L. Fuller, "Collective Bargaining and the Arbitrator," 1963 *Wisc. L. Rev.* 3, 19 (1963), elaborating on definitions in "Adjudication and the Rule of Law," in *Law and Behavioral Sciences*, eds. Friedman and Macauley (Indianapolis: Bobbs-Merrill, 1969) p. 740 *et. seq.*

[24] See, e.g., Morton Bard, *Family Crisis Intervention: From Concept to Implementation* (Washington, D.C.: U.S. Government Printing Office, 1973).

[25] See, e.g., Raymond I. Parnas, "Police Discretion and Diversion of Incidents of Intra-family Violence," 36 *Law & Contemp. Probs.* 539 (1971); Nimmer, *op. cit. supra* at note 20, pp. 31-2.

[26] See notes 7-17 to Chapter IV, *infra,* for citations to literature on relevant mediation/arbitration projects.

[27] The Supreme Court announced numerous decisions in the area of criminal justice in the 1960s which significantly reformed criminal justice procedures. These cases are described in *The Criminal Law Revolution: 1960-1972* (Washington, D.C.: Bureau of National Affairs, 1973). The cases include *Gideon v. Wainright,* 372 U.S. 335 (1963) (right to counsel); *Mapp v. Ohio* 367 U.S. 643 (1961) (search and seizure); *Escobedo v. Illinois,* 378 U.S. 478 (1964) (right to counsel before questioning); *Miranda v. Arizona,* 384 U.S. 476 (1966) (warnings on right to silence and right to counsel before questioning); and *In Re Gault,* 387 U.S. 1 (1967) (due process in juvenile proceedings). In the early 1970s, the court continued this trend with such decisions as *Baldwin v. New York,* 399 U.S. 66 (1970) (right to jury trial); *Argersinger v. Hamlin,* 407 U.S. 25 (1972) (right to free counsel for indigents risking imprisonment); and *Gagnon v. Scarpelli,* 411 U.S. 778 (1973) (applying *Morrissey* to probation revocation).

[28] David E. Aaronson and John P. Sweeney, "Criminal Law Reform in the District of Columbia: An Assessment of Needs and Directions," 24 *American Univ. L. Rev.* 207, 220 (1975). The discussion of approaches to decriminalization in this article is based on research performed during the Alternatives Study.

[29] Perhaps the most frequently cited examples of judicial reorganization measures are those of New Jersey (1948), Colorado (1962), and the District of Columbia (1970). Similar reforms have recently occurred in such states as Maryland (1968), Illinois (1962, 1970), North Carolina (1971), Connecticut (1961), Georgia (1973, 1975), Kentucky (1975), Kansas (1973), and Virginia (1975). Technical assistance has been requested from American University's Criminal Courts Technical Assistance Project to implement judicial reorganization measures in South Dakota (1972), Virginia (1973), and Alabama (1973) and to plan judicial reorganization in Kentucky (1975), West Virginia (1974), and Kansas (1973). In addition, comprehensive studies advocating judicial reorganization, prepared by citizens' groups and study teams for the states of Wisconsin, Connecticut, and New York, are on file in the Criminal Courts Technical Assistance Project library. And even this list represents only an unscientific sampling of activity in this area.

[30] *Criminal Justice,* Fall 1975, pp. 4-5 (Newsletter of the American Bar Association Section on Criminal Justice). The American Bar Association placed the American criminal justice system on trial at its 1975 Annual Meeting in Montreal, Canada. Former United States Supreme Court Justice Thomas Clark presided. Prosecutor John M. Price, District Attorney of Sacramento, California, presented and prosecuted a four-count indictment alleging that:

- The criminal justice system is a fantasy and not a fact.
- The critical parts of the criminal justice system are inefficient and self-serving fiefdoms.
- The system discriminates against the poor and the powerless.
- The system refuses to be honest with itself.

For the defense, former Watergate Special Prosecutor Leon Jaworski offered a "plea in mitigation" in which he did not deny these allegations. He pointed out instead that change and crisis are not new to the criminal adjudication system, and that on the whole, the system is much more just than it was 50 years ago.

[31] The American Bar Association Project on Standards for Criminal Justice began its efforts in August of 1964, and the last volume of Standards was approved by ABA's House of Delegates in February 1973. The 18 volumes cover a full range of subjects including the urban police function, fair press and free trial, the prosecution and defense functions, the role of the Public Defender, sentencing, guilty pleas, and electronic surveillance. The compendium volume, *Standards Relating to the Administration of Criminal Justice* (1974), devotes 466 pages to setting forth the standards alone. Individual volumes also include detailed commentaries. More recently, the ABA Commission on Standards of Judicial Administration has published the first of a planned series of volumes on judicial administration. *The Standards Relating to Court Organization* (tentative draft, 1973) is supplemented by two supporting studies: Geoffrey C. Hazard, Jr., Martin D. McNamara, and Irving F. Sentilles III, *Court Finance and Unitary Budgeting* (Chicago: American Bar Association Commission on Standards of Judicial Administration, 1973); and Maureen Soloman, *Caseflow Management in the Trial Court* (Chicago: American Bar Association Commission on Standards of Judicial Administration, 1973).

[32] See, e.g., President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967) and the 11 volumes of Task Force reports and supporting studies cited therein; National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime* (Washington, D.C.: U.S. Government Printing Office, 1973) and the Task Force reports cited therein. Titles include *Police, Courts, Corrections, Criminal Justice System,* and *Community Crime Prevention.*

[33] The American Assembly, established by Dwight D. Eisenhower at Columbia University in 1950. This body holds at least two sessions a year, at which experts debate such pressing social problems as population control, overcoming world hunger, and the future of American transportation. Their most recent meeting at Stanford Law School in June of 1975 reconsidered law and a changing society and stressed the need for experimentation in our criminal adjudication system. The Assembly concluded:

a. The juvenile and adult criminal justice systems require continued re-examination and improvement in order to protect not only the individuals accused of crime, but also the victims of crime and the public as a whole. Special consideration is particularly essential with regard to: the range of punishable offenses; the absence of guidelines for the exercise of discretion by officials at every level, including police, prosecutors, defense attorneys, judges, probation and parole officers, and correction officials; the purposes and effects of sentencing; incarceration; and the treatment of ex-offenders. Resources sufficient to accomplish necessary improvements must be made available.

   (It should be pointed out that their proposed responses to the explosion of civil litigation parallel recomendations for the criminal adjudication system which will be made in this monograph. Specifically, they recommended:)

b. Experiments should be tried in the creation of other types of local or neighborhood courts. Such courts should be designed to dispense with formalities to the maximum extent. Devices which might be dispensed with are pleadings, discovery, extensive appeal rights, and some or perhaps all participation by lawyers. Such a court might consider controversies involving significantly higher amounts than those within the present jurisdictional limits of small claims courts, using judicially trained presiding officers, with the availability of process and injunctive relief.

c. Informal techniques of dispute resolution, including arbitration, mediation, and conciliation, should be institutionalized. In developing these informal techniques, the use of non-lawyers to provide dispute-resolving assistance in a variety of categories should be permitted.

American Assembly of Law and a Changing Society II, *Final Report,* (unpublished 27-page report on Assembly held at Stanford Law School, Palo Alto, California, June 26-29, 1975).

[34] President's Commission on Law Enforcement and Administration of Justice, *op. cit. supra* at note 32; 42 U.S.C. SS 3711 *et. seq.*

[35] These publications include: Eleanor Harlow and J. Robert Weber, *Diversion from the Criminal Justice System*; Edwin M. Lemert, *Instead of Court: Diversion in Criminal Justice System*; Eleanor Harlow, *Intensive Intervention: An Alternative to Institutionalization*; Laboratory of Community Psychiatry, Harvard Medical School, *Competency to Stand Trial and Mental Illness*; Daniel Glaser, *Routinizing Evaluation: Getting Feedback on Effectiveness Of Crime and Delinquency Programs*; Franklin E. Zimring, *Perspectives on Deterrence*; Austin T. Turk, *Legal Sanctioning and Social Control*; and others.

[36] See, e.g., American Bar Association Commission on Correctional Facilities and Services, National Pretrial Intervention Service Center, *Sourcebook in Pretrial Criminal Justice Intervention Techniques and Action Programs* (Washington, D.C.: ABA National Pretrial Intervention Service Center, 2nd ed., 1974); Roberta Rovner-Pieczenik, *Pretrial Intervention Strategies: An Evaluation of Policy-Related Research and Policymaker Perceptions* (Washington, D.C.: ABA National Pretrial Intervention Service Center, 1974); Joan Mullen *et. al., Pre-Trial Services: An Evaluation of Policy Related Research* (Cambridge, Massachusetts: Abt Associates, Inc., 1974); Abt Associates, *Pretrial Intervention: A Program Evaluation of Nine Manpower-Based Pretrial Intervention Projects Developed under the Manpower Administration, U.S. Department of Labor* (Cambridge, Massachusetts: Abt Associates, Inc., 1974).

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[37] One example of such an administrative tribunal is New York State's Administrative Adjudications Bureau, presently operating in New York City, Buffalo, and Rochester. This project has been designated by LEAA as an Exemplary Project. See LEAA, *Administrative Adjudication Bureau of the New York State Department*

of Motor Vehicles of Traffic Offenses (Washington, D.C.: U.S. Government Printing Office, 1975) 17 pp.

[38] Elizabeth W. and James A. Vorenberg, "Early Diversion from the Criminal Justice System: Practice in Search of a Theory, *Prisoners in America*, ed. Lloyd Ohlin (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973) (an American Assembly publication—see note 3, *supra*).

[39] See, e.g., Joan Mullen, *The Dilemma of Diversion: Resource Materials on Adult Pre-Trial Intervention Programs.* (Washington, D.C.: U.S. Government Printing Office, 1975).

[40] National Advisory Commission, *op. cit. supra* at note 32 p. 37.

[41] Note, "Pretrial Diversion from the Criminal Process," 83 *Yale L.J.* 827, 835 (1974).

[42] Donald J. Newman, *Introduction to Criminal Justice* (Philadelphia: J.B. Lippincott, 1975), p. 391.

[43] *Loc. cit.*

[44] Norval Morris, *The Future of Imprisonment* (Chicago: University of Chicago Press, 1974), pp. 9-12.

[45] See, e.g., Nicholas N. Kittrie, *The Right to Be Different: Deviance and Enforced Therapy* (Baltimore: Johns Hopkins University Press, 1971); Thomas Szasz, *The Myth of Mental Illness* (New York: Hoeber-Harper, 1961).

[46] Ernest C. Friezen, Jr., Edward C. Gallas, and Nesta M. Gallas, *Managing the Courts* (Indianapolis: Bobbs-Merill, 1971), p. 14.

[47] Lewis R. Katz, *op. cit. supra* at note 4, p. 69.

[48] As reported in *New York Times*, September 15, 1975.

[49] B. Jaye Anno and Bert H. Hoff, *Refunding Evaluation Report on the Municipal Court of Philadelphia's 4-A (Arbitration-As-An-Alternative) Project* (Washington, D.C.: Blackstone Associates, Inc. 1975).

[50] *Op. cit supra* at note 18 and 19.

[51] Francis Allen, *The Borderland of Criminal Law* (Chicago: University of Chicago Press, 1968); Nicholas N. Kittrie, *op. cit. supra* at note 45.

[52] Administrative Office of Pennsylvania Courts, *Fifth Annual Report on Judicial Case Volume: As Reported by the Courts of Common Pleas of the Commonwealth of Pennsylvania for 1974* (Philadelphia: Administrative Office of Pennsylvania Courts, 1975). Data has been extracted from tables on pages 6 ("Dispositions of Criminal Cases by Categories"), 71 ("Philadelphia County Municipal Court") and 24-83 ("Individual Judicial Districts: 1971-72-73-74 Caseload Comparison").

[53] These sites were Boston, Massachusetts; Chicago, Illinois; Columbus, Ohio; Denver, Colorado; Des Moines, Iowa; Erie, Pennsylvania; Flint, Michigan; Kansas City, Missouri; Chestertown, Kent County, Maryland; Minneapolis, Minnesota; New York, New York; Oakland, California; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Portland, Oregon; Sacramento, California; San Francisco, California; Toledo, Ohio; Wichita Falls, Texas; and Washington, D.C.

Chapter II: A Typology of Alternatives

[1] Connecticut Citizens for Judicial Modernization, *Evaluation of Various Proposals for Reorganization and Unification of the Trial Courts and for Reducing Caseload* 49, 51 (Commission to Study Reorganization and Unification of the Courts, January 10, 1974).

[2] *Ibid.* pp 54-55.

[3] See Chapter I notes 24-26. See, e.g., *The Citizen Dispute Settlement Project: An Exemplary Project* (Washington, D.C.: U.S. Government Printing Office, 1974) (an LEAA publication); Bert H. Hoff, *Final Evaluation Report, The Philadelphia*

4-A Project: Arbitration as an Alternative to Criminal Courts, July 1, 1973-June 30, 1974 (Washington, D.C.: Blackstone Associates, Inc., 1974).

[4] 401 U.S. 395 (1971).

[5] See, generally, Anne H. Rosenfeld, *An Executive Summary of Research: MAP Program Outcomes in the Initial Demonstration States* (College Park, Maryland: American Correctional Association, 1975) (Research Document #7).

[6] This categorization is presented in Charles H. Sheldon, *The American Judicial Process: Models and Approaches* (New York: Dodd, Mead & Company, 1974) pp. 9-15, "The Uses of Models in Social Science."

[7] *Op. cit. supra* at Chapter I note 32, pp. 8-9.

[8] See, e.g., Sheldon, *op. cit. supra* at note 6, pp. 24-49; Stuart S. Nagel, Chapter 12, "Multiple Correlation of Judicial Backgrounds and Decisions." *Improving the Legal Process: Effects of Alternatives* (Lexington, Massachusetts: Lexington Books, 1975).

[9] One example of such an administrative tribunal is New York State's Administrative Adjudications Bureau, presently operating in New York City, Buffalo, and Rochester. This project has been designated by LEAA as an Exemplary Project. See LEAA, *Administrative Adjudication Bureau of the New York State Department of Motor Vehicles of Traffic Offenses* (Washington, D.C.: U.S. Government Printing Office, 1975) 17 pp. A more detailed operations manual on this alternative should be published shortly, under the auspices of the Technology Transfer Division of the National Institute of Law Enforcement and Criminal Justice, LEAA. See also, Commission's Task Force on Administrative Adjudication of Traffic Violations, *Report* (Albany: New York State Department of Motor Vehicles, October 15, 1969) 144 pp.; George D. Brandt, "Instituting Administrative Penalties in Lieu of Criminal Prosecutions: The Manhattan Experience," *Basic Traffic Cases Manual* ed. B. James George, Jr. (Detroit: Center for the Administration of Justice, Wayne State University Law School, 1975) Chapter 13, pp. 135-47; Sidney Berke, "The New York Administrative Adjudication System," ed. B. James George, Jr. Chapter 14, pp. 149-73; National Highway Safety Advisory Committee Task Force on Adjudication, *Final Report* (Washington, D.C.: U.S. Department of Transportation, National Highway Safety Advisory Committee, June, 1973) 47 pp.

[10] Alternatives involving "administrative" handling of offenses include:

I. A. 1. c.: Substitution of non-criminal response for criminal sanction
II. A. 1. a.: Creation of Administrative Tribunal: Consumer Complaint
b.: Creation of Administrative Tribunal: Professional Malpractice
c.: Creation of Administrative Tribunal: Other Subject Matters
VIII. A. 1. a.: Creation of Administrative Tribunal: Traffic Offenses
b.: Creation of Administrative Tribunal: Other Regulatory Offenses

[11] "Screening" alternatives which do not involve service delivery or referral of the matter to another forum include:

II. B. 1. a.: Complaint Evaluation According to Priorities: Subjective, case-by-case
II. B. 1. b.: Complaint Evaluation According to Priorities: Objective, Standard Criteria to Distribute Resources
III. B. 1. a.: Departmental rulemaking: Process Rules
III. B. 1. b.: Departmental rulemaking: Substantive Rules
IV. C. 1. a.: Case Evaluation for Initial Charge Decision: Centralization of Charging function
IV. C. 1. b.: Case Evaluation for Initial Charge Decision: Formalization of Charging function

IV. C. 2. a.: Case Evaluation for Review of Charge Decision: Centralization of Review Function
IV. C. 2. b.: Case Evaluation for Review of Charge Decision: Rulemaking Governing Review

[12] "Pretrial Intervention" alternatives (labelled "Case Review Intervention" on the Matrix, are found at:
IV. B. 3.: Police Case-Review Intervention
IV. C. 4.: Prosecutor Case-Review Intervention
IV. D. 1.: Court Case-Review Intervention
IV. F. 1.: Agency Case-Review Intervention
VI. C. 1.: Prosecutor Case-Review Intervention

Each of these alternatives is sub-categorized to reflect whether or not the program involves a contractual understanding with the defendant as to case outcome, and whether or not services are provided.

[13] *Ibid.*

Chapter IV: Alternatives and the Future of the Criminal Adjudication System

[1] See Chapter I notes 38 through 45 *supra,* and accompanying text, for critiques of pretrial intervention.

[2] The question of what is an "officially constituted" court is more complicated than would appear at first blush. The term is narrower than "officially sanctioned," as well it must be, since no "community court" could function without the explicit or implicit approval of a legislature, court, prosecutor, or police department. Nor is the distinction between government agencies and non-goverment bodies sufficient by itself. Take the example of another agency, an independent Public Defender agency with an independent and self-perpetuating Board, which receives virtually all of its funding under purchase-of-service contracts with government. Employees may or may not qualify for participation in the government's health or retirement plan. A city charter may specify that an agency which discharges government functions (as indigent defense in many states) and receives virtually all its funding from city government is a government agency. It would appear that such an organization *is* a government agency for some purposes, and is *not* for some. Nor is the issue clarified when one examines whether the organization is created or permitted by legislation or court rule. Although many pretrial release agencies and pretrial intervention programs operate under legislative sanction or court rule, few are designated to be an arm of the court or of the state. The degree of regulation to which an agency is subject under legislation or court rule may be informative; a high degree of regulation and control of day-to-day functions suggests that the agency is a *quasi*-government agency. But some degree of government control should be expected of *any* "community court," if only to insure the safeguards of due process and limit the sanctions which the body can impose.

[3] See, e.g., *An Exemplary Project: Citizen Dispute Settlement. The Night Prosecutor Program of Columbus, Ohio.* (Washington, D.C.: U.S. Government Printing Office, 1974) (U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice).

[4] See, e.g., Bert H. Hoff, *Final Evaluation Report: Philadelphia 4-A Project, August 1, 1973-March 1, 1974. Arbitration as an Alternative* (Washington, D.C.: Blackstone Associates, Inc., March 15, 1974) (project under auspices of American Arbitration Association, National Center for Dispute Settlement): B. Jaye Anno and Bert H. Hoff, *Refunding Evaluation Report on the Municipal Court of Phila-*

delphia's 4-A (Arbitration-As-An-Alternative) Project. (Washington, D.C.: Blackstone Associates, Inc., 1975) (project transferred to Municipal Court auspices).

[8] See, e.g., John Hollister Stein, Bert H. Hoff, and Richardson White, Jr., *Paralegal Workers in Criminal Justice Agencies: an Exploratory Study,* (Washington, D.C.: Blackstone Associates, Inc., 1973) (Appendix IV, pp. 484-8). This view contrasts with the one presented in the Alternatives Study.

[6] For an overview of dispute-resolution centers and their relation to family crisis intervention, see Raymond I. Parnas, "The Judicial Response to Intra-Family Violence," 54 *Minne. L. Rev.* 585 (1970); Raymond T. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution.* (Chicago: American Bar Association, 1974).

[7] See Parnas, *op. cit. supra* at note 6; Subin, *Criminal Justice in a Metropolitan Court,* (Washington, D.C.: U.S. Department of Justice, Office of Criminal Justice, 1966) p. 54.

[8] John Honnold, "Origins of Legal Institutions," *The Life of the Law,* (New York: Free Press of Glencoe, 1964) p. 8.

[9] See generally Michael Zander, *The English Magistrate* (June 18, 1974) unpublished report prepared for the American University Law Institute's project on Alternatives to Criminal Adjudication.

[10] See generally Richard Danzig, "Towards the Creation of a Complementary, Decentralized System of Criminal Justice." 26 *Stanford L. Rev.* 1 (1973); Comment, "Community Courts: An Alternative to Conventional Criminal Adjudication" 24 *American U. L. Rev.* (1253) (1975) and sources cited therein.

[11] James Yaffe, *So Sue Me!: The Story of a Community Court.* (New York, Saturday Review Press, 1972).

[12] *Ibid.*, at pp. 268-9.

[13] See sources cited in note 8-12, *supra,* and Statsky, "Community Courts: Decentralizing Juvenile Jurisprudence" *3 Capital U.L. Rev.* 1 (1974) (Bronx Neighborhood Youth Diversion Forum); Urban and Rural Systems Associates, *Evaluation of the Community Youth Responsibility Program: East Palo Alto, California. Second Program Year.* (San Francisco: USRA, 1973); Justice Resources, Inc., *The Urban Court Project* (unpublished progress report submitted to Law Enforcement Assistance Administration, U.S. Department of Justice, 1975).

[14] James Q. Wilson, "Crime and the Community," in *Thinking About Crime* (New York: Basic Books, 1975) Chapter 2, at pp. 21-39).

[15] 401 U.S. 395 (1971).

[16] Roberta Rovner-Pieczenik, *Pretrial Intervention Strategies: An Evaluation of Policy-related Research and Policymaker Perceptions.* (Washington, D.C.: American Bar Association Commission on Correctional Facilities and Services, National Pretrial Intervention Service Center, 1974).

[17] *Politics and the Administration of Justice* (Beverly Hills: Sage Publications, 1973) p. 18.

[18] Francis Allen, *The Crime of Politics: Political Dimensions of Criminal Justice* (Cambridge: Harvard University Press, 1974).

APPENDIX A. ALTERNATIVES TO CONVENTIONAL ADJUDICATION: AN OVERVIEW OF FOREIGN LEGAL SYSTEMS*

A. Why the Comparative Approach?

Adjudication is a process common to all legal systems; it is only the way that process is conducted that differs from system to system. The most important lesson from the comparative approach is that the nature of adjudication itself is unchangeable but that different systems—by reason of historical, cultural, social, and other factors—have evolved adjudicatory organs and processes adapted to their peculiar needs. The comparative approach develops into a search for better ways of doing the same essential legal task. For the present study, this has meant a review of a wide range of other systems to see if their way of handling the adjudicatory function was distinctively different from the United States approach; whether it was objectively better in terms of efficiency, economy of effort, and overall satisfaction; and whether any organs or processes were capable of adaptation to current United States needs. Such an approach has to take account not only of the formal structure of the systems compared but their real workings in dynamic terms. Relevance must always be the keynote, and it should be noted that legal ideas and institutions are fragile plants; they do not flourish in alien soil. Massive technology transfer cannot be expected from the comparative approach, but it can stimulate new, original thought so as to give rise to needed solutions. Most important, it can materially assist in the definition of the problem itself so as to place it in proper perspective.

B. Criminal Adjudication: The Common Ground

Adjudication is the exercise of decision-making power in the framework or context of a judicial proceeding. In such a context, there is no alternative to the adjudication function; it is an integral part of the dynamic structure of every developed legal system. Implicit in the notion is the exercise of the powers of choice according to a pre-existing normative scheme rather than by reference to the caprice of the individual or individuals in whom the power is vested. Thus comparative studies focus on the way adjudication is carried out and by whom, for it is through these features that the significant differences are expressed.

Adjudication involves the following elements:

1) A regularly constituted legal system.
2) A controversy or dispute, of which the legal system takes cognizance, involving a choice between competing claims of some other or others.
3) An individual or individuals in whom the power to resolve that dispute is reposed.
4) The obligation to exercise the choice involved according to certain rules and procedures.

Comparative studies show that certain features tend to distinguish criminal adjudication from other forms of judicial decision-making. There are few principles of universal validity, but the following may be regarded as of significant generality:

1) Criminal process, in a developed society, is distinguished by activity of a state agent representing the interests of the community.
2) In the abstract, no true equality is possible between the parties to the dispute to be adjudicated.
3) The criminal process is always governed by some rules limiting the prosecutional powers in the interest of some approximation to fairness, and it is the function of the adjudicatory organ to secure compliance with these.
4) The rules governing the criminal process are distinctively different from those governing other types of process under the same legal system.

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While immense and irreconcilable differences exist in the handling of criminal cases among the major legal systems, the following common elements emerge from a comparative overview:

1) State initiative, direction, and control are never surrendered in important criminal proceedings, although procedural safeguards and rights of defense accorded the accused person may serve to improve his relatively inferior status as a party to those proceedings.
2) Criminal activity is perceived as a threat to the public interest and the principles of collective living so that society's reaction through the criminal process is a characteristic protective response. It is the nature of the perceived threat, rather than the enormity of the act or the magnitude of its consequences, that calls forth the particular state response bearing the distinctive characteristics of criminal proceedings.
3) Comparative evidence shows popular participation in the decision-making process to be sufficiently favored as to make it a significant element in criminal proceedings.
4) The criminal justice process always serves, to a greater or lesser degree, as a form of public catharsis. In punishing the criminal, society is symbolically purging itself, and the criminal process is an outward, visible sign of that cleansing. Much of what is called general deterrence, too, is posited upon making a public example of the criminal.
5) There is a vague body of anti-social conduct recognized in all developed societies as having a commonly reprehensible character and which is, accordingly, treated as criminal. Because of the nature of the conduct sanctioned, there would be strong opposition to its being dealt with in any other forum or by any other procedure than that traditionally assigned to what are conventionally understood to be appropriate for criminal matters.

C. Different Ways of Doing the Same Thing

In the United States, the ideal traditional adjudication of the criminal case has been assigned to a judge and jury or, in certain circumstances, to a judge alone. The pretrial phase may involve a greater or lesser participation by a popular organ of inquiry, the Grand Jury. More and more, pressure of work and the exigencies of the system itself have forced abandonment of many traditional formalities in favor of what is essentially an extrajudicial settlement of the case through the medium of plea bargaining. This latter is an attempt to accelerate disposition of the matter, through an economy of adjudicative effort and resources at the expense of some of the elements usually considered necessary to the attainment of the ends of the criminal justice system. Do foreign systems experience similar institutional and procedural distortions and have any of them created better ways of handling these problems?

Before answering this question, a number of general observations are worth making. Most procedures and institutions are firmly rooted in the past; even those political systems which have undergone a complete revolution usually return, without too great a delay, to conventional, time-honored methods of criminal adjudication. There is an observable cycle predicating a break with formality, then an inevitable return to formality once more. All systems have in common the fact that human beings must determine what the facts are and apply the principles or rules to those facts so as to achieve what is felt to be a just result. Whatever the adjudicative method, the result must be perceived to be manifestly just or the system will be felt to be somehow lacking. Delay, excessive formalism, attention to procedure rather than substance—all these defeat the ends of justice. Yet somehow the symbolic trappings of criminal adjudication must be preserved so as to satisfy a real, deep-seated need. Process must never be allowed to become an end in itself so that the real event giving rise to the need for adjudication is lost in a welter of meaningless mystique. Most systems represent the outcome of a struggle to balance these considerations amid a welter of internal and external pressures that vary according to time and place. All comparisons must be conditioned to an understanding of this dynamic process.

The most favorable result is one that would allow the preservation of traditional forms while allowing their gradual adaptation to altered circumstances. Popular participation in the criminal justice process in the United States has been substantially reduced through the decline of jury trial in consequence of plea bargaining. In England, too, jury trial has dramatically declined, but popular participation has been preserved in large measure through the adjudication of quite serious criminal cases before tribunals of lay magistrates advised by a professional law clerk. The apparent absence of the plea bargaining

syndrome in England is accounted for by the adjudication of approximately 90 percent of criminal cases by these tribunals, the Magistrates' Courts, which preserve many of the traditional formalities while offering speed and convenience in the disposal of cases, giving rise to large numbers of guilty pleas in response to the apparent advantages of this court.

While the United States has moved increasingly towards judicial specialization, other countries have felt the need to strengthen and increase the element of popular participation in the process of criminal adjudication. The Peoples' Tribunals and Comrades' Courts of the socialist countries afford such an example, while in the Soviet Union a professional judge sits with lay assessors to adjudicate some cases, a model which many think would improve the English Magistrates' Courts system. The use of the jury in both France and Sweden—with lay and judicial members voting as equals, but with lay members in a majority—reflects similar considerations.

The history of the jury shows the original participation by lay members as witnesses in the case; later, by a subtle shift of function, they become judges of fact. A logical development, recognizing advances in education and changing social and cultural patterns, would be their incorporation as full members of the adjudicatory body, subordinated to the professional judge only in matters of law reserved to his or her special competence. Popular participation in the adjudication process serves as an effective expression of social disapproval, which is particularly evident in the case of the Comrades' Courts and Peoples' Tribunals, the functioning of which often carries heavy political or ideological overtones.

Alternatives involving the withdrawal of criminal matters from the regular judicial ambit of reference and their determination in some other forum is not widely practiced in the Continental systems. Prosecutorial discretion is minimal in countries such as West Germany and comparatively high in England where, in consequence, many potentially justiciable issues do not reach the coutrs at all. What is known in England as the "police caution" is extensively used, although this is not strictly an alternative to conventional adjudication but rather to prosecution. These practices give rise to what the French have termed "dejudicialization," which constitutes a *de facto* decriminalization by the organs of justice rather than by the legislature. Such action is rarely taken on purely procedural considerations, being, rather, a response to some deep underlying dissatisfaction with the substantive content of the criminal law. Another alternative to conventional criminal adjudication, requiring the approval of a judge, is the West German penal order. This is an application, by the public prosecutor to the judge, setting out the matters in issue and requesting the specific punishment. The case is thus removed from the ordinary processes of adjudication and moves, without further ado, into the sentencing phase. The defendant may exercise his right to go to trial. The judge must apply the penalty requested or send the case for trial. This is somewhat like the formalization of a plea bargaining situation.

D. A Court is a Court is a Court

The comparative search for new forms of trying criminal cases is really a disappointing one. The more these appear to change, the more they are seen, in a very real sense, to remain the same. There is an educational or exemplary value in criminal procedure which can best be sustained, in major criminal disputes, through something approximating the conventional organs of criminal adjudication. It is for this reason that administrative tribunals seem to have so little employment in this area, being reserved for 1) matters of comparatively slight importance, such as traffic offenses carrying little social stigma; 2) matters in the sphere of the public administration proper, for example, internal disciplinary purposes; and 3) matters properly within the scope of administrative law. Comparative evidence suggests very little inclination toward the extension of administrative tribunals to hear and decide serious criminal cases. In minor matters, the conventional organs of adjudication have sometimes modified their procedures to deal, administratively, with cases otherwise requiring greater formality, such as guilty pleas by mail in certain cases before the English Magistrates' Courts. Generally, administrative procedures, though informal at the start, soon tend to give place to a structure not unlike that of the regular organs of justice. This is but another example of the aphorism that old concepts demonstrate a remarkable power of resurgence under all systems.

E. Conventional Adjudication, Administrative Sentencing

Conventional adjudication involves both a guilt determination and a dispositional phase. It is in the dispositional phase that comparative evidence shows

modern penological thinking at work. It has long been realized, under many systems, that while the conventional organs of adjudication are perhaps essential, in a symbolic sense, to a determination of guilt or innocence in a criminal matter, the consequences flowing from that determination are not always appropriately dealt with in that forum. Comparatively speaking, there has not been a great deal of experimentation with sentencing panels, distinct from the tribunal entrusted with the trial of the issue of guilt or innocence, but sentence review boards are quite common, including those (as in China) which have power to make immediate changes in the sanction imposed by the court. Almost everywhere, it is now tacitly recognized that trial courts are not technically equipped to make satisfactory dispositions in accordance with the dictates of modern penology. Alternatives vary from country to country but there are roughly four major groupings:

1) Systems in which the execution of the sentence imposed by the trial court is left exclusively to a separate, administrative agency.

2) Systems in which the execution of the sentence, while remaining the exclusive responsibility of a separate administrative agency, is under occasional review by either the court or the prosecutor or both.

3) Systems in which judicial review of the execution of the sentence is regularly provided for, and the administrative body responsible for the execution of the sentence is required, in the ordinary course, to submit certain of its operations to the courts' scrutiny.

4) Systems in which a special judge is charged with the responsibility for overseeing the execution of the sentence according to the terms imposed by the trial court.

It is this last, represented by the French *juge de l'application des peines* and the Italian *guidice di sorveglianza*, that are of particular interest by reason of their extensive authority over the actual execution phase of criminal sentencing. Comparative experience suggests that, if it is possible to separate the determination of guilt or innocence, institutionally, from the disposition and execution process, this latter should be supervised by a judicial officer with special responsibilities extending perhaps, to modification of the sentence, its suspension, and grant and revocation of parole.

F. The Profession and the Problem

The most influential factor in the reform of any legal system is the professional class. Practitioners produce, perpetuate, and, when they perceive the need, reform the legal system. Without their tacit assent and (in many cases) active collaboration, reform is simply not possible and alternatives are not feasible. Much of the search for alternatives is a reaction to the feeling that conventional criminal adjudication is cumbersome, overly technical, and unresponsive to social needs. Many of these criticisms can be laid, not unjustifiably, at the lawyer's door. Nearly every legal system in the world, theoretically, allows the representation of an accused person by a professional advocate in a criminal proceeding. Indeed, some systems are so jealous of "lawyers' rights" that they do not even allow the defendent to represent himself. Comparative studies, however, show that there is a wide gulf between the formal guarantees of legal representation and the quality of that representation which the defendent in fact receives before the courts.

Comparative studies indicate a number of universal truths about professional intervention in the process of criminal adjudication.

1) It does have a substantial impact on the freedom of choice of the decision-maker. While intervention cannot preclude arbitrariness, it always canalizes the decision-making processes and circumscribes them with restrictive formulae according to the pre-established dictates of the system. Because of the way lawyers work, and indeed must work, some sort of adherence to this framework of rules is assured.

2) The effectiveness or otherwise of professional intervention is determined in large measure by:
   a) The relative independence of the Bar.
   b) The vigor and persistence of the intervention.
   c) The perceived role of the lawyer, through his own and other eyes.

Comparative differences are largely a matter of style, and this is dictated by perceptions of the lawyer's role, patterns of legal education, legal traditions, and the lawyer's assigned or assumed role in the criminal justice process. Lawyers do not readily change their work habits even when to do so would be advantageous. While comparative studies clearly show the lawyers' influence in shaping the criminal

process, the real value of their participation has to be assessed in the context of each particular legal system. The lawyers' approach to problem solving is markedly similar in all systems, the differences mainly residing in whether their intervention does or does not make a real difference in the criminal adjudication. Comparative materials strongly suggest that no viable alternative to conventional criminal adjudication can be constructed so as to exclude lawyers, certainly not in matters of importance, or to limit, in large measure, their practice before the organs entrusted with the administration of criminal justice.

G. Lessons from the Comparative Experience

There seem to be no novel or unusual forms of criminal adjudication in other countries which might be readily adapted or adopted as alternatives to the forms currently in use throughout the United States. There is, indeed, little evidence that other countries have been markedly more successful in evolving speedier, more efficient, more economical, or more acceptable institutions and procedures. Even those systems differing radically, in the social and political sense, from the United States—such as those of the socialist countries—have restricted the use of Comrades' Courts and Community Meetings to matters of comparatively slight gravity, where the informality of the proceedings is intended to provide opportunity for the expression of social reproach and re-education rather than a penal sanction. Clearly, notwithstanding the political and ideological differences, there is room for the consignment, in the United States, to similar volunteer, community organizations of relatively minor infractions, but it is unlikely that this would materially contribute to the solution of some of the grave problems motivating a search for alternatives to conventional criminal adjudication.

A good system of criminal adjudication is one that has a high degree of acceptability, as measured by the absence of serious conflict in its operation. If there is a high degree of substitution of informal for formal practices, it can be said with a fair amount of confidence that the former is broadly unacceptable to a majority of those subject to it. Open proceedings give rise to fewer dissatisfactions than closed ones—hence the distaste for the administrative tribunal as an organ of criminal adjudication. Comparative studies suggest the need for a new type of popular participation in the United States to compensate for the decline in the jury system. The evolution of a hybrid tribunal—perhaps of lay assessors drawn from the community base, working together with a professional judge—should be possible without doing violence to the fundamental precepts or structure of the United States system. Such a tribunal, having regard to today's levels of general education, could be entrusted with the adjudication of criminal cases of considerable gravity. In terms of speed, efficiency and overall satisfaction, the English lay magistrates and the Soviet Peoples' Assessors seem to be models worth serious consideration. In both these cases, the more traditional legal structures and procedures are retained, but they have been trimmed and demystified so as to produce a considerable degree of speed and economy of effort.

In many countries, there is a rapidly accelerating move towards decriminalization. Instead of a search for alternative models of criminal adjudication in the interests of improving the administration of criminal justice, the obsolete and the non-useful are eliminated so as to make existing organs more efficient. In a commonsense fashion, the process of decriminalization is a real alternative to conventional adjudication, in that a portion of the workload ordinarily assigned to the system's judicial apparatus is formally removed from it and simply disappears from the system's cognizance, being subsumed under the general category of conduct permitted by law and not subject to challenge, review, and adjudication. Once more, the process is a very limited one and cannot be expected to make an impact upon the area of major crime, save in the indirect sense of permitting a greater allocation of resources to deal with this.

Comparative studies show a marked disinclination to entrusting the formal imposition of a criminal sanction, save in cases of minor importance, to organs or functionaries whose role in the administration of criminal justice is not a judicial one, especially in those cases where the ordinary role or functions of such bodies or persons is potentially in conflict with, or ought properly to be subordinate to, the one judging or determining the criminal cause. Foreign systems have not favored consigning judicial functions to police or prosecutors: the rule against being judge and party in the same case is almost universally respected, at least formally. Foreign legal systems generally seem to have retained a respect for the professional judge and the regular courts which transcends all considerations of convenience. This, more than anything else, appears to explain

why there seems to be so little search elsewhere for drastic alternatives involving a displacement of the judicial fact-finding function for major criminal disputes. The function of imposing sentence, however, is a different matter. Comparative experience suggests that alternatives to conventional sentencing practices are worthy of serious consideration. Alternatives vary from country to country but together they are testimony to the increasing recognition that trial courts are not technically equipped to make satisfactory dispositions in accordance with the dictates of modern penology.

APPENDIX B. THE ALTERNATIVES MATRIX

The Alternatives Matrix is a classification system devised as a tool for analyzing the relationships among various alternatives and actors in the criminal justice process. It compares both programmatic and nonprogrammatic alternatives. The matrix does not endorse any one program or procedure as better than another, nor does it empirically attempt to portray the existing state of the art. Weighted values are not assigned to any alternatives.

The sections of this appendix:

- Describe the nature and purposes of the matrix and its axes, including definitions of each "decision" along the horizontal axis.
- Explain the procedure for identifying and locating alternatives on the matrix.
- Explain the theory of submodels, which are subentries for certain matrix items.

Definitions of the terms used in each matrix cell will be found in section C of this appendix.

A. Development of a Classification System

Alternatives to conventional criminal case processing can occur at every major decision stage in the criminal adjudication process and can be administered by a variety of public and private agencies both in and out of the criminal adjudication system. Until now, however, little or no effort has been made to comprehensively and systematically classify the range and nature of these alternatives. This project took as one of its principal tasks the development of such a classification system. This system is presented in the form of a two-dimensional matrix.

The matrix has horizontal and vertical axes. Across the horizontal axis are listed the principal steps or "decisions" in the criminal justice process. The vertical axis lists actors who participate in or direct the steps listed across the horizontal axis. Actual and possible alternative programs or activities that might result from the interaction of actors and steps in the process are described in the matrix cells. To be considered appropriate for inclusion, however, all items had to be plausible and defensible. Any alternative included, therefore, could exist.

The most difficult step in developing the matrix was identifying alternatives for inclusion. We proceeded in two ways. We began by asking, "What could theoretically occur, and what non-conventional activities might we expect to find at any given intersection of a decision with an actor?" We reviewed the literature to understand the historical and ideological character of the criminal justice system in relation to the functions of the actors. This first approach was essentially deductive, based on an understanding of the roles, powers, and problems of the actors. If we concluded that a certain activity was arguably feasible and desirable, even if we could not find an actual example, we included it on the matrix.

Our second method was inductive. We attempted to classify activities identified through a telephone survey and site visits. If an activity suited our definition of an alternative, we placed it in a matrix cell based upon its particular characteristics and structure. When a project or procedure did not fit in any previously deduced cell, one was created to accommodate it. Although this description may oversimplify our procedure, it is helpful in understanding our process of classification.

We do not imply by the presentation of the matrix that this is the only appropriate classification system. A classification scheme serves the purposes of analysis most adequately if it provides exhaustive and mutually exclusive categories—a place for every item and no item located in more than one category.

Within each cell, the distinctions among alternative models refer to differences in general structural components of the alternative rather than to operations, style, or the particular characteristics of individual programs. Structure, for our purposes, refers to a consideration of objectives and the devices consistently established to achieve such objectives. Attempting to classify by structure presents problems, since judgments must be made about the kinds of information that may be valid in devising a struc-

tural classification. We cannot examine the unique features of given programs since this defeats the purpose of classification. However, sometimes a program's operational routine itself is structural in character or reflects structural components.

The practical realities of a program may thwart its structure. A prosecutor, for example, may try to behave as if exercising judical authority. Any actor may perform, actively or implicitly any other actor's function. An individual, therefore, can change the structure of a program through a shift in roles or identities. To minimize this problem when collecting information, we relied primarily on site visits and other systematic observations of programs. Less important were organization charts and written statements by the staff unless they represented the only available information.

B. The Horizontal and Vertical Axes: Rationale and Definition

1. *The horizontal axis.* Each of the eight "decision" columns of the horizontal axis represents 1) a major decision point in the progress of a case through the criminal justice system, and 2) a phase in the chronology of the criminal process. Some series of complex or chronologically extended "decisions" have been collapsed into one column since the matrix is diagramatically two-dimensional. For example, Column VI (Decisions on Pretrial Motions and Applications) consists in the main of a number of primarily judicial decisions. Column IV (Decision to Charge) also represents a series of decisions, which have been collapsed but which may extend over a period of weeks. As noted in the asterisked footnotes on the matrix, Decision IV may precede or overlap with Decisions III, V, and VI.

All of these decisions indicate a proximate location or staging area for given types of alternatives. Although an alternative is placed in one cell at the earliest point of its occurrence or impact, some alternatives, such as intervention, may appear in sequential columns. An item is discussed at the earliest point where it has significant impact.

The horizontal axis, with its eight "decisions," obviously cannot describe all events or processes that every reader might understand to be a part of the "criminal process." But because the focus of this study is on the problems of the trial courts, the horizontal axis has been limited to those steps in the process corresponding to or embracing alternatives with a readily discernible affect on the courts. Activities such as public education or crime prevention, while important in any balanced discussion of criminal justice, are not reflected or included in any horizontal axis "decision" item. This is because their relations to court functioning, although undoubtedly real, are indirect. This report uses the term "criminal adjudication system" to include those criminal justice system activities that directly affect the courts, and excludes those that influence only indirectly the operation of the court.

This study's policy of excluding activities that only indirectly affect the trial court is applied most stringently to those activities that, in the chronology of a case, occur *after* adjudication. These include both conventional and innovative forms of correctional handling of convicted offenders. As a cause of problems or sources of solutions for the trial courts, correctional policy has a tenuous position. Its relation to trial court functioning is both uncertain and extremely complex. When considered together with limitations on the scope of the study imposed by the grant and resource limitations, this explains why postadjudication activity does not receive more attention.

The structure and flow of decisions on the horizontal axis do not necessarily correspond to a traditional textbook description of the criminal process; most have been developed primarily for the analytical purposes of the Alternatives Study. Where definitions from other sources have been clear and unambiguous, we have used them, or at least part of them. The eight "decision" columns of the horizontal axis are described in the following paragraphs.

Column I. "Decision to Define Conduct as Crime" refers to the legislature's exercise of its authority to determine what conduct or status will be deemed punishable and what sanctions or response may be applied. Our definition diverges from the traditional since we propose a functional view of the criminal justice system. That is to say, apart from the text of the law, we must ask: Is a given conduct sanctionable? Is it penal? This definition of legislatively defined crime is generally congruent with a standard definition but may include some forms of proscribed conduct with civil sanctions that would be excluded by a standard definition.

Column II. "Decision to Focus Attention on a Suspect" refers to actions by criminal justice system officials in particular classes of cases, occurring prior to the formal initiation of criminal proceedings.

These actions involve the identification of classes of potential defendants as targets of scrutiny, either because they are the subjects of recurrent complaints or because their status or characteristics make them appropriate subjects for intensive investigation. This scrutiny may have different outcomes; prosecution may be most typical. Arrest without prosecution, referral out of the justice system, and other responses are also possible outcomes.

Column III. "Decision to Arrest" refers to the taking into custody of an individual by police officers, for more than momentary detainment, on the basis of a definite allegation or suspicion of criminality. For an arrest to occur, according to our functional definition: a person must 1) be detained, however briefly, and 2) be held with the purpose of making a criminal charge. Without this charge in mind, there can be no arrest.

This definition avoids the controversy in the literature regarding the law of search and seizure or the law of probable cause. It is purposely not an objective definition, and it depends on the state of mind or intention of the officer. Because our report is concerned with subjective decisions of criminal adjudication system actors, only a subjective definition is acceptable. Equally important, a selection of a definition of arrest which excluded police-initiated "stops" for non-law enforcement purposes is not intended to imply that such stops are not legitimate or lawful. It is simply not within the scope of our definition of arrest.

Column IV. "Decision to Charge" refers to one of a series of decisions identifying the particular legal prohibitions, which a particular defendant will stand accused of violating for purposes of further criminal proceeding. The "Decision to Charge" might be described as a process or continuing series of decisions. This process may begin prior to arrest (for example, if the policeman has a particular charge in mind prior to making the formal arrest), and is not concluded until the filing of *final* formal charging papers, which need not occur at any fixed time except that it must precede trial.

A police officer, typically an arresting officer or immediate supervisor, may formulate a "charge" at or before the time that control over the progress of the case is relinquished to the prosecuting attorney.

Usually a prosecutorial charging action is preceded by a police action. This sequence will be assumed, unless otherwise specified. In exceptional cases, such as organized crime or large-scale drug prosecutions, prosecutorial action may precede any police action. The prosecuting attorney, in turn, may, in the course of processing the case, independently formulate one or more charges. He or she may also reduce or increase the arrest charge, or add or subtract charges, in accordance with any new information received or any negotiations with the defendant. In some jurisdictions, the prosecutorial charge may be modified or reformulated by the grand jury. Moreover, the filing of formal papers (i.e., prosecutorial information or grand jury indictment) need not conclude the charging process, since procedures exist in all criminal courts for the withdrawal, usually with judicial approval, of formal charging papers and for the substitution of others in their place.

Whatever stage of the charging process is under consideration and whatever level of formality or informality the official choice of charge under consideration may possess, the essence of the "Decision to Charge" is the exercise of official discretion to select from among a large number of possible official accusations of criminality those particular accusations which will be, for the purposes of case processing, laid against a particular defendant.

Column V. "Decision to Release Defendant Pending Trial or Disposition" refers to the judicial or administrative determination of whether, and on what terms and conditions, an individual charged with a criminal offense will be permitted to remain in or return to the community during the period between first accusatory contact (usually an arrest) and the final disposition.

The release decision (the "bail decision"), made at least once for each person charged, may be repeatedly reconsidered by the original decision-maker or reviewed by other decision-makers during the time preceding disposition. Thus it represents a series or potential series of official choices rather than a unique act.

In conventional practice, the decision-makers most often associated with this release determination are the magistrate and the first-level trial judge. The proceeding at which the decision most often occurs is known by various names in different jurisdictions, including "first appearance," "arraignment," and "bail hearing."

Column VI. "Decision on Pretrial Motions and Applications" refers to any one of a variety of judicial determinations made pursuant to a request for a ruling from one of the parties in a criminal

case, after the filing of a formal accusatory document with the court by the state.

This variety of decisions is necessarily a broad category, embracing decisions on rulings sought for a wide range of substantive, tactical, and administrative purposes. It includes, for example, the motion for continuance or delay, the motion for suppression of allegedly illegally seized evidence, and the application for pretrial discovery.

This category is included in the matrix not because alternatives to each of the particular judicial decisions are either necessary or available, but because the time interval during which those decisions are made, and the procedural posture in which cases stand when they are made, suggest the potential of this phase as a staging point for innovation in criminal case processing.

Column VII. "Decision to Try or to Accept Plea" refers to the means by which the issue of culpability, raised by a pending criminal trial, will be settled. It is a judicial decision, heavily influenced by other participating actors—prosecutors, defense attorneys, and probation officers. As the heading suggests, the decision is one between modes ranging from the highly visible and highly formal to the informal and near invisible. In the conventional process, all modes have at least one critical common feature, the participation of a judicial officer.

Conventionally, the "Decision to Try or to Accept Plea" is a choice between several modes of terminating a case—trial, plea of guilty, or dismissal. Choices may also be made within these modes, e.g., trial by jury or trial by judge. But the problem of choices within modes is not addressed in this study.

Column VIII. "Decision to Sentence" refers to the selection by a presiding judicial officer of remedies, penalties, or sanctions for imposition upon a convicted defendant.

The sentencing decision has two distinct dimensions. The first is a qualitative dimension that refers to the *kind* of sentence that will be imposed—prison vs. probation or a fine. It expresses the types of available responses. The second is a quantitative dimension that measures *how much* of the sentencing alternative is imposed—whether in days, dollars, or some other terms. For our purposes in this discussion, the quantitative dimension should not be confused with the severity of the sentence, because severity involves *both* the qualitative *and* quantitative dimension of the sentencing decision.

Although the conventional system of case processing vests broad discretion, along both dimensions, in the sentencing judge, these sentencing decisions are, as a matter of institutional structure, strongly influenced by the positions of other criminal justice system actors.

The types of sentences examined in Column VIII are considered from the perspective of the sentencing court, since it remains beyond the scope of this study to treat in depth post-sentence correctional treatment and management. The majority of system actors exercise no direct influence over these matters.

2. *The vertical axis.* The actors listed on the vertical axis represent the plausible universe of decision-makers directly affecting the criminal justice process. At the point on the matrix where an "actor" row and a "decision" column intersect, that actor is the main source or focus of the alternative —he would devise, authorize, or operate the alternative listed.

We exercise some discretion in choosing the class of actors F through I. Actors F and G, for example, could have been compressed or expanded. Although we believe these descriptions exhaust the way actors may affect the criminal process, it is not necessarily the only manner of classification—especially with respect to the ways in which non-criminal justice actors can affect the system. To the extent that there are other actors not listed, their functions have been included with the listed actor with whom they are most closely affiliated. For example, legal paraprofessionals would belong under "Defense Bar" or "Prosecutor," private police under "Police." In fact, private law enforcement has been excluded not because it lacks importance, but because this study's focus is on official and quasi-official action, and because of the difficulty of analyzing private law enforcement. Otherwise, we have excluded all private action except where it substitutes for public action.

Corrections and other postadjudication actors have been excluded because of our focus on trial courts. The vertical axis, however, does imply consideration of every level of government—Federal, State, and local. Unless otherwise indicated, the definition of each actor derives from conventional definitions. The nine categories of actors can be seen on the Alternatives Matrix which is presented on a nearby page.

C. Definitions of Terms Used in the Matrix

This section contains an outline presenting our definitions for all of the terms used in the matrix. It is organized by "Decision" column and then subdivided by "Actor" row headings, and formally by categories within the cell.

I. DECISION TO DEFINE CONDUCT AS A CRIME: the legislature's exercise of authority to determine what conduct or status will be deemed punishable and what sanctions or response may be applied.

A. Legislatures

1. *Statutory decriminalization*
   a. *Pure decriminalization:* the removal of particular offenses or classes of offenses from the statutory law without any further legislation to penalize or regulate the previously prohibited conduct.
   b. *Reclassification:* the downgrading of the criminal penalty for particular categories of offenses without elimination from the criminal code.
   c. *Substitution of a noncriminal response for the criminal sanction:* the abolition of criminal prohibitions and penalties for a given conduct or status in connection with legislation establishing a procedure for regulating or responding to it.

B. Police Departments

1. *Uniform departmental policy of nonarrest*
   a. *Formal written policy: de facto* decriminalization formalized in internal written rules barring arrests for selected criminal offenses.
   b. *Informal policy: de facto* decriminalization based on informally communicated tradition disfavoring arrests for selected criminal offenses.

C. Prosecutor Offices

1. *Uniform policy or non prosecution*
   a. *Formal written policy:* early case screening by classes of cases rather than on a case-by-case basis and formalized in written rules.
   b. *Informal policy:* early case screening by classes of cases rather than on a case-by-case basis according to informally communicated traditions.

D. Trial Courts

1. *Judicial refusal to permit enforcement of particular statutes: de facto* decriminalization through trial court dismissal of cases for reasons related to discriminatory enforcement policies or other constitutional violations.

I. *Appellate Courts*

1. *Judicial decriminalization*
   a. *Violation of substantive rights:* decriminalization through appellate court findings that statutes or ordinances violate substantive rights.
   b. *Inadequate drafting:* decriminalization through appellate court findings that statutes or ordinances are vague, overbroad or otherwise inadequately drafted.

II. DECISION TO FOCUS ATTENTION ON A SUBJECT: actions involving the identification of classes of potential defendants as targets of scrutiny by criminal adjudication system officials, prior to the formal initiation of criminal proceedings in particular cases.

A. Legislatures

1. *Creation of administrative tribunal:* the use of official nonjudicial agencies' fact-finding and sanctioning procedures to regulate behavior traditionally within the purview of the criminal courts.
   a. *Consumer complaint:* the use of administrative tribunals to receive, investigate, and conciliate consumer complaints of unfair trade practice.
   b. *Professional malpractice:* the use of administrative tribunals to "police" various professions through licensing and review of citizen complaints.
   c. *Other subject matters:* the use of administrative tribunals to regulate behavior in subject matter

areas other than commercial and professional conduct.

B. Police Departments

1. *Complaint evaluation according to priorities:* allocation of police resources based on the importance of the complaint and the priorities of the department.
   a. *Subjective: case-by-case:* a system of complaint assessment in which expert subjective decisions are made in individual cases.
   b. *Objective: Standard criteria to distribute resources:* a system in which guidelines or rules establish what kinds of complaints will receive priority.
2. *Variation in patrol practices:* patrol practices which differ from routine, non-specific patrol employing large numbers of patrol units distributed generally throughout the jurisdiction.
   a. *Concentration on prevention and detection of target offenses:* redistribution of existing patrol units to focus on higher crime areas.
   b. *Deemphasis on outreach:* reduction in levels of police patrol with remaining units concentrated on higher crime areas and response to complaints.

C. *Prosecutor Offices*

1. *Office policy on investigation:* the exercise of prosecutorial influence over police investigations of particular classes of crime pursuant to prosecutorial enforcement priorities.
2. *Special offense oriented unit:* full-time assignment of a prosecutor or group of prosecutors to a specified class of offenses and offenders.
   a. *Specialized bureau:* a unit with responsibility for a specified class of offenses or offenders existing within the office of a prosecutor of general jurisdiction.
   b. *Special prosecutors:* a bureaucratically distinct prosecuting unit with a specialized mandate and jurisdiction either superseding or concurrent with that of the local, non-specialized prosecutor.
3. *Citizen complaint evaluation center:* a branch of the prosecutor office assigned to receive and screen criminal complaints.

F. Public Noncriminal Justice and Private Agencies

1. *Prearrest case finding:* affirmative actions by public and private agencies, outside the criminal adjudication system, to locate and assist arrest-prone persons.
   a. *Persons requiring medical services:* programs that replace or avoid the criminal process by providing voluntary medically-oriented treatment, such as alcohol detoxification treatment for chronic public inebriates.
   b. *Juveniles:* programs to identify, contact, and provide services to juveniles liable to adjudication as predelinquents or delinquents.
   c. *Other special populations:* programs to identify and provide services to other special groups with arrest-prone characteristics.

III. DECISION TO ARREST: the taking into custody of an individual by police officers for more than momentary detention on the basis of a definite allegation or suspicion of criminal behavior.

A. Legislatures.

1. *Statutory provision for field citation release:* authorization of the issuance of citations in lieu of arrest by police officers ordering an individual to appear in court for the commencement of judicial proceedings.
   a. *Permissive:* legislation authorizing, but not requiring, the use of citation procedure by police officers.
   b. *Mandatory:* legislation requiring the use of citation procedure for particular classes of cases.

B. Police Departments

1. *Departmental rulemaking:* an internal police department process, usually

conducted with some degree of public consultation, resulting in a set of specific guidelines, standards, or rules governing police arrest discretion.

a. *Process rules:* procedural rules describing how to make a discretionary decision, rather than what decision to make, and describing discrete steps in the making of particular kinds of decisions.

b. *Situational rules:* substantive rules proscribing the desired outcome of police decisions involving arrest discretion.

2. *Implementation of field citation release:* the police election, with or without legislative authorization, to issue citations in lieu of arrest.

3. *Crisis intervention:* a police response other than arrest or formal admonition to requests for assistance, involving interpersonal and other disturbances, consisting of direct or indirect service delivery.

4. *Referral to social services:* the election by a police officer to suggest or require, in lieu of arrest, that an individual participate in a program or receive a service. (This alternative is distinguished from a police decision to forego arrest *conditional* on an individual's future performance in a program; see IV.B.3, below.)

a. *Noncoercive:* a referral in which an individual is informed that non-cooperation will not lead to arrest.

b. *Coercive:* a referral in which an individual is led to believe that non-cooperation will result in arrest.

5. *Referral to arbitration:* a police response to a potential arrest situation consisting of a recommendation that disputing parties submit their controversy to a non-judicial third party for resolution. The process of resolution may involve mediation as well as formal arbitration.

a. *Specialist-binding:* referral to a third party with either legal education or extensive training in arbitration and mediation, leading to a decision which has the same effect as a judicial ruling.

b. *Specialist-advisory:* referral to a specially trained or experienced third party, leading to a decision which is non-enforceable on the parties.

c. *Nonspecialist-binding:* referral to a third party with limited training who is qualified to resolve disputes largely by virtue of membership in the community in which they arise, leading to a binding decision.

d. *Nonspecialist-advisory:* referral to a non-specialist third party, leading to a decision which is non-enforceable.

C. *Prosecutor Offices*

1. *Prosecutor assigned to police station:* the provision of direct prosecutorial advice to police on potential arrest decisions and/or charging subsequent to arrest.

2. *Joint police-prosecutor rulemaking:* a cooperative internal process leading to the formulation of guidelines or rules governing police arrest discretion and prosecutorial charge discretion, reflecting the policies of both participating agencies.

a. *Process rules:* procedural rules describing how to make a discretionary decision, rather than what decision to make, and describing discrete steps in the making of particular kinds of decisions.

b. *Situational rules:* substantive rules describing the desired outcome of particular decisions involving arrest or charging.

3. *Complaint referral to civil courts:* a systematic prosecutorial screening practice involving a recommendation that the complaining witness, in cases not prosecuted, seek a judicial civil remedy.

D. *Trial Courts*

1. *Review of police discretion:* trial court rulings that limit or control selective

enforcement practices and policies of the police.

a. *Injunctive, declaratory and other equitable and extraordinary remedies:* an anticipatory, judicial bar against a police enforcement policy.

b. *Civil damages:* a judicial award of money damages, arising from a finding that police enforcement practices have violated individual rights.

c. *Criminal prosecution:* a criminal conviction of a police officer, arising from a complaint of abuse of discretionary arrest power.

d. *Adverse case consequences from misuse of police power:* regulation of police by trial court rulings in criminal cases, wherein (1) the case is dismissed or the defendant is acquitted, (2) additional burdens of proof are required, or (3) certain forms of evidence are excluded.

2. *Review of requests for arrest warrants:* an increase in the number and types of cases submitted to judicial decision-makers by police for a probable cause review prior to making an arrest.

G. Citizens/Volunteers

1. *Community monitoring of police practices:* regular citizen participation in influencing, reviewing, or communicating about police enforcement policies.

I. Appellate Courts

1. *Review of police discretion:* the review of trial court rulings resulting in generalized decisions on the appropriateness of police enforcement practices.

a. *Statutory or constitutional prohibition on practices:* decisions based on a statutory or constitutional prohibition.

b. *Failure to provide equal protection:* decisions based on a failure by police to conduct enforcement evenhandedly.

2. *Court rule authorizing field citation release:* use of appellate court rule-making power to authorize field citation release, achieving the same purpose as legislative authorization. (See III.A.1, above).

IV. DECISION TO CHARGE: one of a series of official decisions which identify the particular legal prohibitions, which a particular defendant will stand accused of violating, for purposes of further criminal processing. The "decision to charge" might be described as a process or continuing series of decisions. This process may begin prior to arrest and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial.

A. Legislatures

1. *Changes in grand jury function:* legislation altering either the indictment or investigative functions of the grand jury.

a. *Elimination:* abolition of all grand jury functions as to some or all criminal cases.

b. *Preservation as investigating body:* abolition of the grand jury indictment function with maintenance of a limited power to conduct independent investigations of criminal activity.

2. *Restrictions on plea bargaining:* legislative limitations on the practice by which a defendant elects to enter a plea of guilty on the basis of promises or expectations of concession by agents of the justice system relating to sentencing or the disposition of other charges.

a. *Abolition:* legislation prohibiting any form of the practice of plea bargaining.

b. *Prohibition in certain predesignated cases:* legislation prohibiting plea bargaining or some aspects of the practice for certain offenses or offender classes.

c. *Regulation of negotiating practices:* legislation to ensure the fairness and acceptability of the practice by providing for a regulariza-

tion of the procedure and/or an increase in its visibility.

B. Police Departments

1. *Departmental rulemaking:* a form of police rulemaking (see definition III.B.1, above) which is designed to avoid overcharging or to standardize the charging of similarly situated persons.
   a. *Formalization of charging process:* rules for general departmental use in describing situations in which particular charging decisions are indicated, or identifying and weighting factors influencing charging discretion.
   b. *Centralization of charging function:* rules concentrating the final discretionary authority over charging in a police specialist.
2. *Diversion of juveniles (at police intake screening):* the informal disposition of juvenile cases by the exercise of police discretion without further involvement of the justice system. (This process resembles intake and "adjustment" procedures followed by some juvenile probation departments. See definition IV.H.1, below.)
   a. *Minimal service:* police diversion of juveniles without provision for counseling or other services.
   b. *Extensive service program:* police diversion of juveniles through referral to agencies or individuals providing rehabilitative services.
3. *Police department case-review intervention:* a form of suspension of criminal processing during which an individual can influence the disposition of the case against him by his conduct or performance. The police department exercises authority over the intake function (case selection) and in some instances the termination function (return of cases for criminal processing). The suspension involves a delay in referring the case to the prosecutor or in preparing a police charge.
   a. *Contract/service:* an intervention program involving a definite mutual understanding between criminal justice authorities and participants, providing for ending further criminal prosecution or other specific outcome, upon successful performance, and the systematic delivery of services during the period of suspension.
   b. *Contract without service:* an intervention program involving a definite mutual exchange of promises but not providing for service delivery on a systematic basis.
   c. *Non-contract/service:* an intervention program where no dismissal or other outcome is promised in return for successful program participation but in which services are systematically delivered to participants.
   d. *Non-contract without service:* an intervention program in which no specific outcome is promised to intervention participants and in which services are not systematically provided.

C. Prosecutor Offices

1. *Case evaluation for initial charge decision:* a procedure for early prosecutorial review and screening of potential criminal cases, subsequent to the first charge by police and prior to filing formal charges.
   a. *Centralization of charging function:* concentration of the early screening function in experienced prosecutors assigned on a long-term basis.
   b. *Formalization of charge process:* the making of rules or guidelines to standardize the charging of similarly situated persons (See IV.B.1, above).
2. *Case evaluation for review of charge decision:* internal screening of initial prosecutorial charging decisions prior to filing of formal charges.
   a. *Centralization of review function:* designation of an experienced pros-

ecutor or a special bureau to perform the review function.

b. *Rulemaking governing review:* rules or guidelines for general prosecutor office use in performing the review function.

c. *Consultation with defense counsel:* the practice of offering defendants in predesignated classes of cases the opportunity to influence the final prosecutorial charging decision.

3. *Evaluation and weighting for noncharge purposes:* prosecutorial case screening to guide noncharge related decisions, such as to offer an opportunity to plead, to refer to a pretrial intervention program, to recommend a special sentence, and the like.

4. *Prosecutor case-review intervention:* a form of pretrial intervention in which the prosecutor controls intake and termination (See IV.B.3, above, for definition of Case Review Intervention.) Suspension of proceedings occurs pursuant to the prosecutor's discretionary powers to delay charging or modify charges already filed.
   a. *Contract/service:* see definition IV.B.3, above.
   b. *Contract without service:* see definition IV.B.3, above.
   c. *Non-contract/service:* see definition IV.B.3, above.
   d. *Non-contract without service:* see definition IV.B.3, above.

5. *Referral to arbitration:* prosecutorial response to an arrest or complaint by referral to arbitration. (See definition of Arbitration in III.B.5, above.)
   a. *Specialist-binding:* see definition III.B.5, above.
   b. *Specialist-advisory:* see definition III.B.5, above.
   c. *Non-specialist-binding:* see definition III.B.5, above.
   d. *Non-specialist-advisory:* see definition III.B.5, above.

6. *Restrictions on Plea Bargaining:* Prosecutorial self-regulation in the practice of plea negotiation. (See definition of plea bargaining in IV.A.2, above.)
   a. *Rules dictating centralization of bargaining function:* designation of an experienced prosecutor to review all proposed plea bargains before their conclusion.
   b. *Rules describing criteria:* the making of rules or guidelines for general prosecutor office use identifying and weighting factors to be considered in the practice of plea bargaining.

D. *Trial Courts*

1. *Court case-review intervention:* a form of pretrial intervention in which the judicial officer controls intake and termination. (See definition of Case-Review Intervention in IV.B.3, above.) Suspension of proceedings occurs after filing of formal charging document with the court.
   a. *Contract/service:* see definition IV.B.3, above.
   b. *Contract without service:* see definition IV.B.3, above.
   c. *Non-contract/service:* see definition IV.B.3, above.
   d. *Non-contract without service:* see definition IV.B.3, above.

2. *Review of prosecutorial discretion:* trial court rulings that limit or control selective enforcement practices and policies of the prosecutor.
   a. *Injunctive, declaratory, and other equitable and extraordinary remedies:* an anticipatory bar against a prosecutor charging policy.
   b. *Adverse case consequences from misuse of prosecutorial power:* regulation of the prosecutor by trial court rulings in criminal cases wherein 1) the case is dismissed or the defendant acquitted, 2) additional burdens of proof are required, or 3) certain forms of evidence are excluded.

3. *Supervision of plea bargaining:* action by trial judge, not pursuant to authorizing statute or court rule, to regularize

the practice of plea bargaining. (See IV.A.2, above, for definition of Plea Bargaining.)

a. *Increasing the visibility of the bargain:* action to make the terms of the bargain a matter of public record.

b. *Increasing judicial participation:* action to increase the active judicial role in the negotiation of guilty pleas and/ scrutiny of the negotiated agreements.

c. *Other modes of supervision:* other judicial actions to ensure the fairness and acceptability of plea bargaining practice.

4. *Referral to arbitration:* judicial referral to criminal disputes to arbitration. (See IV.C.5, above, for definition of Arbitration.

a. *Specialist-binding:* see definition III.B.5, above.

b. *Specialist-advisory:* see definition III.B.5, above.

c. *Nonspecialist-binding:* see definition III.B.5, above.

d. *Non-specialist-advisory:* see definition III.B.5, above.

F. *Public non-criminal justice and private agencies*

1. *Agency case-review intervention:* a form of pretrial intervention in which practical control over intake is exercised by a public or private agency not part of the formal criminal justice system. The agency may or may not exercise authority over termination. Suspension of proceedings is formally accomplished by the action of justice system actors based on the agency's recommendation (see IV.B.3, above, for definition of Case-Review Intervention.)

a. *Contract/service:* see definition IV.B.3, above.

b. *Contract without service:* see defition IV.B.3, above.

c. *Non-contract/service:* see definition IV.B.3, above.

d. *Non-contract without service:* see definition IV.B.3, above.

H. *Probation and Parole Officers*

1. *Diversion of juveniles (at intake screening):* the non-judicial disposition of juvenile cases at the initial point of formal contact with the juvenile justice system through the exercise of discretionary authority of juvenile probation workers.

I. *Appellate Courts*

1. *Review of prosecutorial discretion:* the review of trial court rulings resulting in generalized decisions on the appropriateness of prosecutorial charging practices.

a. *Statutory or constitutional prohibition on practices:* decisions based on statutory or Constitutional prohibition against the practice in question.

b. *Failure to provide equal protection:* decisions based on a prosecutorial failure to conduct charging evenhandedly.

2. *Standardization of plea bargaining:* the exercise of appellate court powers to regularize or limit the practice of plea bargaining (see IV.A.2, above, for definition of plea bargaining.)

a. *Under rulemaking power:* the exercise of inherent appellate court rulemaking power to create standards and guidelines for plea bargaining in trial courts.

b. *Through case decisions:* decisions of general applicability on criminal appeals involving the practice of plea bargaining.

V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OF DISPOSITION: the judicial or administrative determination whether, and on what terms and conditions, an individual charged with a criminal offense will be permitted to remain in or return to the community during the period between first accusatory contact with the criminal justice system and the final disposition.

A. *Legislatures*

1. *Statutory bail reform:* legislation directing one or more alterations in the traditional money bail system.

a. *Release on recognizance:* provision for release of defendants on their unsecured promise to appear in court.

b. *Conditional release:* provision for release of defendants not eligible for release on recognizance on acceptance of judicially imposed nonfinancial conditions, such as reporting requirements, restrictions on travel and on living arrangements, third-party custody, receipt of treatment or services, and/or other obligations.

c. *Cash deposit bond:* provision for release upon deposit of a fixed percentage of required money bail with the court as an alternative to commercial bonding.

d. *Abolition of professional surety bonding:* the replacement of the traditional money bond bail system with other methods, such as release on recognizance, conditional release, and cash deposit.

B. *Police Departments*

1. *Station house release:* procedures for police administrative decisions to release defendants pending trial, pursuant to legislative or judicial delegation of authority.

a. *Master bond schedule:* a system of station house release in which financial conditions of release are predetermined according to the offense charged.

b. *Station house citation:* a nonfinancial system of station house release in which the defendant is issued a citation (see III.A.1, above, for definition of Citation) after a police-initiated investigation of eligibility.

C. *Prosecutor Offices*

1. *Uniform office policy on pretrial release:* policies and guidelines to increase fairness, consistency, and appropriateness in recommendations to the judge on pretrial release.

a. *Rules to achieve consistency:* rules and guidelines designed to achieve similar recommendations in similar cases, incorporating criteria for decision-making or prescribing recommendations for particular classes of cases.

b. *Guidelines emphasizing close scrutiny:* rules and guidelines for particular classes of cases in which special attention should be devoted to arriving at release recommendations.

D. *Trial Courts*

1. *Options of instituting reform procedures in the absence of an authorizing statute or rule:* the adoption by trial judges, individually or collectively, of certain pretrial release procedures without special authorization.

a. *Conditional release:* the use of judicially imposed nonfinancial conditions.

b. *Nominal bond:* the use of minimal financial conditions within the means of low-risk defendants.

c. *Release on recognizance:* release of low-risk defendants on an unsecured promise to appear, without special authorization from a legislature or appellate court.

F. *Public Non-criminal Justice and Private Agencies*

1. *Implementation of bail reform through bail eligibility investigation:* provision of support services in the administration of non-financial conditions of pretrial release, including interviewing of defendants, formulation of release recommendations, and post-release supervision.

a. *Independent screening and/or service agency:* use of public or private agencies not formally affiliated with the court to provide support services.

b. *Mixed model: Probation department and independent agency:* cooperation of court-affiliated probation departments and non-affiliated

public or private agencies to provide support services.

G. *Citizen/Volunteers*

1. *Community bail funds:* creation of revolving funds to assist low risk indigent defendants in meeting financial conditions of release with administrative mechanism for screening applicants for assistance.
2. *Organized third party custody:* creation of a network of volunteers available to assume responsibility for defendants released on a condition of special supervision.

H. *Probation and Parole Officers*

1. *Bail eligibility investigation:* use of probation departments to provide systematic pretrial release support services to trial judges. (See V.F.1, above, for definition of support services.)

I. *Appellate Courts*

1. *Bail reform under rulemaking power:* formal rulemaking actions by the state's highest appellate courts promulgating bail reform procedures or elaborating legislatively established procedures; and appellate decisions incorporating rules affecting the administration of pretrial release.
   a. *Authorizing rules:* establishment of reformed release systems (see V.A.1, above) or procedures for their implementation through the exercise of inherent supervisory rulemaking power.
   b. *Decisions influencing implementation of bail reform:* the use of appellate court decisions with general prospective effect to promote reformed release systems.

VI. DECISIONS ON PRETRIAL MOTIONS AND APPLICATIONS: any one of a variety of judicial determinations made pursuant to a request for a ruling from one of the parties in a criminal case after the filing of a formal accusatory document with the court.

A. *Legislatures*

1. *Statutory authorization for intervention:* legislative action providing for the suspension of criminal proceedings in individual cases with final disposition to depend on the defendant's performance during the period of suspension (see IV.B.3, above).
   a. *Mandatory:* legislation requiring that specified classes of offenders be permitted to participate in pretrial intervention.
   b. *Permissive:* legislation authorizing criminal adjudication system officials to exercise discretion in selecting defendants for participation in pretrial intervention.

C. *Prosecutor Offices*

1. *Prosecutor case-review intervention with limited judicial participation:* a form of pretrial intervention (see IV. B.3, above, for definition of intervention) involving cases in which formal charges have been filed where the prosecutor controls intake and termination, subject to a pro forma requirement of judicial approval.
   a. *Contract/service:* see definition IV.B.3, above.
   b. *Contract without service:* see definition IV.B.3, above.
   c. *Non-contract/service:* see definition IV.B.3, above.
   d. *Non-contract without service:* see definition IV.B.3, above.

D. *Trial Courts*

1. *Omnibus pretrial hearing:* requirement of consolidation of pretrial motions for judicial consideration in a single proceeding.

I. *Appellate Courts*

1. *Court rule authorizing intervention:* action by the state's highest appellate courts to authorize the conduct of pretrial intervention. (See VI.A.1, above, for parallel legislative action.)
2. *Implementation of speedy trial right:* the exercise of appellate court powers to set limits within which a defendant must be brought to trial and sanctions for failure to bring the defendant to to trial within these time limits.
   a. *Under rulemaking power:* the use

of the highest appellate court's inherent supervisory authority to set limits on trial delay.

b. *Through case decision:* the use of precedential decision making in individual cases to set limits on trial delay.

VII. DECISION TO TRY OR TO ACCEPT PLEA: Official procedures through which issues of guilt raised in pending criminal cases are resolved by contested trial, plea of guilty, or dismissal.

A. *Legislatures*

1. *Creation of admininstrative tribunal:* the use of official, non-judicial agency fact finding procedures and sanctions to regulate behavior traditionally within the purview of the criminal courts.

a. *Traffic offenses:* the use of administrative tribunals to adjudicate parking and minor moving violations and to impose fines or license related sanctions.

b. *Other regulatory offenses:* the use of administrative tribunals to adjudicate violations of minor criminal offenses designed to promote public health, welfare, and safety.

D. *Trial Courts*

1. *Courts of special jurisdiction:* official criminal courts handling only cases involving particular alleged offenses (e.g., narcotics, traffic, etc.) or accused offenders with particular characteristics, (e.g., juveniles or family members).

G. Citizen/Volunteers

1. *Community courts:* non-official adjudicative bodies with lay members drawn from a geographically or functionally defined community which are established to find facts and impose sanctions for criminal (and other disapproved) behavior by persons in the community.

a. *Formal cession of authority/consent of parties*: community courts which acquire the power to act on certain criminal matters, traditionally reserved for official courts, through legislative authorization and through the consent of complainants and persons complained against.

b. *Formal cession of authority/no consent of parties*: community courts which acquire the power to act on certain criminal matters without consent of parties through legislative authorization.

c. *No cession of authority/consent of parties*: community courts exercising adjudicative power over criminal matters through informal understandings with agencies of the official criminal adjudication system and through the consent of the parties.

d. *No cession of authority/no consent of parties*: community courts exercising adjudicative power, without regard to the consent of parties, through informal understandings with official criminal adjudication system agencies.

VIII. DECISION TO SENTENCE: the selection by a presiding judicial officer of remedies, penalties, or sanctions for imposition upon a convicted defendant.

A. *Legislatures*

1. *Statutory provisions of alternatives to custodial sentencing*: legislation encouraging judicial dispositions involving conditional post conviction release.

a. *Expanded use of probation*: legislation designed to increase probation sentencing by providing additional financial and other support to local supervisory agencies.

b. *Special conditions of probation*: legislation permitting or encouraging the use of probation sentencing in cases where this judicial option would or could not previously have been considered. Such legislation involves the authorization of treatment conditions of probation, combinations of probation and custodial sentencing, and other terms of

probation in addition to supervision.

2. *Restitution*: legislation authorizing sentences requiring payments by convicted persons to victims.
   a. *Mandatory*: legislation requiring restitution to victims as a condition of sentence in certain cases.
   b. *Permissive*: legislation allowing sentencing judges the option of imposing restitution.
3. *Victim compensation*: an official procedure to reimburse from public funds victims of crime for injuries and losses suffered.
4. *Mixed restitution—victim compensation plan*: an official procedure to reimburse victims of crime, for injuries and losses suffered, from a fund derived in whole or in part through payments by convicted offenders.

C. *Prosecutor Offices*

1. *Uniform policies on sentencing recommendation*: a form of prosecutorial rulemaking (see III.B.1, above, for definition of Rulemaking) designed to increase the appropriateness and consistency of prosecutor office positions on particular judicial sentencing decisions.
   a. *Rules to achieve consistency*: rules or guidelines for general prosecutor office use to standardize sentencing recommendations in the cases of similarly situated persons.
   b. *Guidelines emphasizing close scrutiny*: rules or guidelines designed to focus special attention on sentencing recommendations in cases involving particular offenses or offender types.

D. *Trial Courts:*

1. *Non-statutory innovative sentencing*: the use of judicial discretion to impose forms of sentences not explicitly authorized by legislation or appellate court rule.
   a. *Restitution:* sentences requiring payments by convicted persons to victims. (See VIII.A.2, above, for parallel definition.)
   b. *Public service:* sentences requiring convicted persons to perform uncompensated work for a public agency or non-profit organization.
   c. *Special probation to services:* sentences requiring persons on post-conviction release status to participate in programs of treatment or rehabilitation.
   d. *Unusual sanctions:* sentences involving symbolic punishment, public humiliation, corporal punishment, and other infrequently imposed sentences.
2. *Contract sentencing:* a procedure by which the condition of a defendant's sentence and the objectives of the defendant after sentencing are made the subject of a limited negotiation between judge and defendant, resulting in a written document.
3. *Sentencing boards (Lay participation):* participation of professionals and community members from outside the criminal adjudication system in a group which consults with trial judges on particular sentencing decisions.
   a. *Advisory:* a sentencing board with the limited power to recommend dispositions which the trial judge may follow or disregard.
   b. *Binding:* a sentencing board, of which the trial judge is generally a member, with the power to devise sentences to be imposed.
4. *Sentencing panels (Multi-judge):* participation of judges, in addition to the judge who has presided over a determination of guilt in a criminal case, as members of a group charged with the consideration of the sentencing decision in that case.
   a. *Advisory:* a sentencing panel with the limited power to recommend dispositions which the trial judge may follow or disregard.
   b. *Binding:* a sentencing panel with the power to devise sentences to be imposed.

E. *Defense Bar*

1. *Organized defense planning for sentence:* a systematic program or procedure by which defense attorneys, either individually or through a unit of a public defender's office, plan for sentencing by anticipating the postconviction service needs of clients or by other assistance.
   a. *Presentencing reports:* defense assumption of responsibility for delivery to the court of an objective summary of critical facts concerning a client's personal history, criminal record, and service or treatment needs with or without a specific sentence recommendation. This presentence report may be in addition to, or in lieu of, one prepared by an official arm of the court.
   b. *Voluntary service rehabilitation programs:* defense action to assure that clients participate in treatment or rehabilitative programs while awaiting final disposition of their cases and to inform the sentencing court of any favorable results from such participation.

F. *Public Non-criminal Justice and Private Agencies*

1. *Voluntary service rehabilitation programs:* provision to defendants of opportunities, outside the criminal adjudication system, for voluntary participation in treatment or rehabilitative programs with provision for reporting on that participation to a sentencing court in the event of conviction.
2. *Presentence reports:* preparation of presentence reports (see VIII.E.1, above, for definition of Presentence Report) by employees of agencies or organizations not formally affiliated with the court.

G. *Citizen/Volunteers*

1. *Community presentence investigation and recommendation:* the preparation of presentence reports (see VIII.E.1, above for definition of Presentence Report) by uncompensated part-time community volunteers working under the supervision of a criminal justice agency.

H. *Probation and Parole Officers*

1. *Presentence investigation and sentence recommendation:* an increase in the number and/or quality of official presentence reports (see VIII.E.1, above, for definition of Presentence Report) prepared for use by the sentencing judge.
   a. *Expanded use:* preparation of official presentence reports in cases where this procedure has not been traditionally used, including relatively less serious cases.
   b. *Increase in intensity:* preparation of official presentence reports based on improved investigations and containing additional detail.

I. *Appellate Courts*

1. *Appellate review of sentencing:* the exercise of appellate review over trial court sentencing decisions to improve the appropriations and consistency of sentencing.
   a. *Pursuant to general power of review:* limited appellate court review through the authority to set aside illegal sentences and to correct extreme abuse of discretion by the trial court.
   b. *Pursuant to statutory scheme:* relatively more general appellate court review through legislative authorization to reconsider the suitability of trial court sentencing decisions in some or all classes of criminal cases.

APPENDIX C. LIST OF ALTERNATIVES ILLUSTRATING THE MAJOR CLASSIFICATIONS OF THE MATRIX

I. Decriminalization (Decision to Define Conduct as a Crime)*

A. By Legislative Act
  1. Statutory decriminalization
    a. Illinois Criminal Code—Ill. Rev. Stat. 141, Sec. 47 (relating to homosexual behavior).
    b. Oregon Criminal Code—Oreg. Rev. Stat. 167.207 (relating to marijuana).
    c. New York City: Administrative Adjudication Bureau (relating to traffic offenses).
    d. District of Columbia Alcoholic Rehabilitation Act of 1967—D.C. Code Ann., 24-524 (non-penal alternatives for handling public drunks).
    e. Maine's Uniform Alcoholism and Intoxication Treatment Act (22-254, Sec. 1377).
    f. California Penal Code, Section 647 (providing for civil confinement of public drunks in lieu of arrest).

B. By Police Departments
  1. Uniform departmental policy of non-arrest
    a. District of Columbia Metropolitan Police Department, General Order, Traffic Enforcement (August 1, 1974) (providing that motorists are not to be stopped for passing red lights between 3:00 a.m. and 6:00 a.m.).

C. By Prosecutor Offices
  1. Uniform policy of non-prosecution
    a. Prosecutor's Office in Major Eastern City (confidentiality requested) (shoplifters not prosecuted for thefts under $2.50).
    b. County Prosecutor's Office in Maryland (non-prosecutions of adultery law).

D. By Trial Courts.
  1. Judicial refusal to permit enforcement of particular statutes
    a. *District of Columbia v. Norfleet,* D.C. Superior Ct. No. 7124-71 (Oct. 12, 1972) ("lewd, obscene and indecent act" unconstitutionally vague and overbroad).
    b. *U.S. v. Moses et. al,* D.C. Superior Court, No. 17778-72. (relating to soliciting for prostitution).
    c. *U.S. v. Grady,* D.C. Superior Court, No. 46126-73. (relating to possession of marijuana).

E. By Appellate Courts (Refers to Matrix 1, I)
  1. Judicial decriminalization
    a. *Robinson v. California,* 370 U.S. 660 (1962) (relating to public drunkenness).
    b. *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972). (vagrancy statute declared unconstitutional because of inadequate drafting and discriminatory enforcement).

II. Procedures for Screening Suspects (Decision to Focus Attention on a Subject)

A. By Legislatures
  1. Creation of Administrative Tribunal
    a. Montgomery County, Maryland, Consumer Affairs Office.

* The language in parenthesis after each major classification corresponds to the terminology used in the matrix.

B. By Police Departments
   1. Complaint Evaluation According to Priorities and Variation in Patrol Practices
      a. Kansas City, Missouri Police Department [See George L. Kelling, et. al., *The Kansas City Preventive Patrol Experiment,* A Summary Report (Washington, D.C.: The Police Foundation, 1974)].

C. By Prosecutor Offices
   1. Office Policy on Investigation and Special Offense Oriented Units
      a. Consumer Protection Unit, Prosecutor's Office, Flint, Michigan.
      b. New York Special Prosecutor's Office.

D. By Public Non-criminal Justice and Private Agencies (Refers to Matrix II, F)
   1. Prearrest Case Finding
      a. Manhattan Bowery Project, Manhattan, New York.
      b. Boston Alcohol Detoxification Project.
      c. Junction 13, Portsmouth, New Hampshire (a juvenile justice program to reduce the number of young people who become involved in the juvenile justice system).

III. Police Arrest Alternatives (Decision to Arrest)

A. By Legislative Act
   1. Statutory provision for field citation release
      a. Virginia Code, Section 19.1-92.1.
      b. California Penal Code, Ch. 5c, Sec. 853.5-853.8.
      c. Michigan Code of Criminal Procedure, Sec. 28.868 (2).
      d. Florida Stat. Ann. 901.28 (1974).
      e. Oregon Rev. Stat., Sec. 133.045, 13.055 (1969).
      f. Pennsylvania Rule of Criminal Procedure, Part I, Rule 51-53.
      g. Ohio Rules of Criminal Procedure, Rule 4.1, Optional Procedure in Minor Misdemeanor Cases, (A)—(G).

B. By Police Departments
   1. Departmental rulemaking
      a. Police Department, Dayton, Ohio [See Dayton Police Department, Office of Public Information, *Towards Richer Policy,* n.d.; Project on Law Enforcement Policy and Rulemaking, College of Law, Arizona State University, "Model Rules for Law Enforcement: Stop & Frisk" and "Search Warrant Execution" (June 1973)]
      b. Police Department, Dayton, Ohio, Office of Public Information (May 18, 1973) (relating to arrests for pornography).
      c. Police Department, Dayton, Ohio, Office of Public Information, *Police Brief* (January 24, 1974) (relating to proposed rule for handling curfew violations).
      d. District of Columbia Metropolitan Police Department, General Order, *Handling of Juveniles,* Series 305, No. 1 (March 4, 1973).
      e. District of Columbia Metropolitan Police Department, General Order, *Handling of Intoxicated Persons,* Series 501, No. 3 (Dec. 1, 1971).
   2. Implementation of field citation release
      a. Police Department, Oakland, California, Departmental Order 70-1/m-7, Citations for Adult Misdemeanors (October 20, 1970), pursuant to California Penal Code, Sec. 853.5-853.6 [See Floyd Feeney, "Citation in Lieu of Arrest: The New California Law," 25 *Vanderbilt Law Review* 367 (1972); ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Pre-Trial Release* (1968). 23, 32].
      b. Police Department, San Francisco, California, Office of the Chief of Police, General Order No. 125 (September 25, 1972), pursuant to California Penal Code, Sec. 853.5-853.6.
      c. Police Department, Chicago, Illinois (pursuant to Illinois Rules of

Practice, Rule 501, the police officer takes the driver's license and issues a voucher with a date stamped on it signifying when defendant must appear in court, in lieu of bail, for traffic offenses more serious than those usually handled by ticket citation).

3. Crisis intervention
   a. Police Department, New York City, Family Crisis Intervention Unit [See Raymond Parnas, "Police Discretion and Diversion of Incidents of Intra Family Violence" 36 *Law and Contemporary Problems* 542 (1971); M. Bard, "Family Crisis Intervention: From Concept to Implementation." Prepared for the NILECJ, LEAA, U.S. Dept. of Justice; M. Bard, "The Role of Law Enforcement in the Helping System," 7 *Community Mental Health Journal* 155 (1971)].
   b. Police Department, Oakland, California, Family Crisis Intervention Unit (See Parnas article above cited for a discussion of this project).
   c. Police Department, Charlotte, North Carolina, Family Crisis Intervention Unit [See James W. McPhiston, *The Training of Police in Family Crisis Intervention,* Family & Children's Service, Charlotte, N.C. (1973)].
   d. Police Department, Louisville, Kentucky, Family Crisis Intervention Unit.
   e. Police Department, Wheaton, Illinois, Family Crisis Intervention Unit.
4. Referral to social services
   a. District of Columbia Metropolitan Police Department, General Order, Series 308, No. 4 (June 9, 1974), entitled "Hospitalization of the Mentally Ill."
   b. Vera Institute of Justice, New York City, Project Outreach (from September-November, 1972).
   c. St. Louis Detoxification Program, Police Department, St. Louis, Missouri.
5. Referral to arbitration
   a. Philadelphia 4-A Program, Philadelphia, Pennsylvania.

C. By Prosecutor Offices
1. Prosecutor assigned to police station
   a. Police Department, Houston, Tex.
2. Complaint referral to civil courts
   a. Citizen's Complaint Center, U.S. Attorney's Office for the District of Columbia (including referrals to Family Division, Superior Court of the District of Columbia).

D. By Trial Courts
1. Review of police discretion
   a. *Bargain City U.S.A., Inc. v. Dilworth,* Philadelphia Court of Common Pleas, 1960 (See *Philadelphia Legal Intelligencer,* June 22, 1960, Col 1, 1) (trial court grant of injunction against Police Department for discriminatory enforcement of blue law).
   b. *D.C. v. Norfleet,* Superior Court No. 71214-71 (October 12, 1972) (injunctive relief granted upon a finding that police were arbitrarily contacting employers of defendants arrested for homosexual behavior).
   c. *O'Shea v. Littleton,* District Court, Chicago, Illinois, No. 72-953 (1972) (injunctive relief denied in a class action civil rights suit).
   d. *United States v. Wilson,* Superior Court of the District of Columbia, No. 69-7673 (1969) (decision that the enforcement practice of arresting only women in prostitution cases was unconstitutional discrimination against women).

E. Appellate Courts (Refers to Matrix III, 1)
1. Review of police discretion
   a. *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972) (vagrancy statute declared unconstitutional because of inadequate drafting and discriminatory enforcement).
   b. *Easter v. District of Columbia,* 361

F. 2nd 50 (D.C. Cir. 1966) (violaton of constitution and statute to convict chronic inebriate of public intoxication).

c. *Powell v. Texas,* 392 U.S. 514 (1968) (conviction of public intoxication does not violate Eighth Amendment's proscription of cruel and unusual punishment).

d. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886) (conviction for improperly operating laundry in violation of statute reversed on equal protection grounds where statute only enforced against persons of Chinese ancestry).

2. Court rule authorizing field citation release

a. Supreme Court of Arkansas, adoption of Rule 5.2, prepared by the Arkansas Criminal Code Commission.

IV. Alternatives to the Initiation of Prosecutions (Decision to Charge)

A. By Legislative Act

1. Changes in grand jury function

a. Illinois Constitution (1970 revision permits the legislature either to abolish or limit the use of grand jury; See Duff and Harison, "The Grand Jury in Illinois: To Slaughter a Sacred Cow," 1973 *Illinois Law Forum* 635).

b. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (1973) 74 (recommends that grand jury indictment not be required in any criminal proceeding, but suggests that grand jury investigating function be preserved).

2. Restrictions on plea bargaining

a. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (1973) 46 ("As soon as possible, but in no event later than 1978, negotiations between prosecutors and defendants —either personally or through their attorneys—concerning concessions to be made in return for guilty pleas should be prohibited").

b. New York Penal Code, Sec. 220.10, 6(a) and (b) (the so-called New York State Drug Law regulating concession of charge, concession of sentence, etc.).

c. Proposals for regulating plea bargaining procedures (responding to problems of lack of formal procedures and lack of visibility of process). See American Bar Association, *Standards Relating to Pleas of Guilty*; National Conference of Commissioners on Uniform State Laws, *Uniform Rules of Criminal Procedure*; American Law Institute, *A Model Code of Pre-Arraignment Procedure*; United States Congress, *Revised Federal Rules of Criminal Procedure*; President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Courts.*

d. Oregon Rev. Stat., Sec. 168-175 (1973) (Oregon has implemented many of the proposals of the American Bar Association, *Standards Relating to Pleas of Guilty*).

B. By Police Departments

1. Diversion of juveniles (at intake screening)

a. Youth Division, Police Department, Chicago, Illinois (See Chicago Citizens Committee on the Family Court, *Bulletin,* No. 4 (April, 1965); Chicago Police Department, Youth Division, *Annual Report* (1964).

2. Police case review intervention

a. Police Social Service Project, Wheaton, Illinois.

C. By prosecutor offices

1. Prosecutor case review intervention

a. Citizen's Probation Authority, Genesee County, Flint, Michigan.

2. Referral to arbritation

a. The Night Prosecutor Program, Columbus, Ohio.

b. Philadelphia 4-A Program, Philadelphia, Pennsylvania.

3. Restrictions on plea bargaining
   a. District Attorney's Office of Philadelphia, Pennsylvania. [See testimony of Arlen Specter, former District Attorney, that Philadelphia disposed of only 32 percent of cases by plea bargaining and that most of these were non-negotiated pleas. Select Committee on Crime, House of Representatives, *Hearings, Street Crime in America* (93rd Congress, 1st Session, May 1, 1973).]
   b. Rules on Plea Bargaining in Manhattan's District Attorney's Office. [See Richard H. Kuh, *Plea Bargaining*, Memorandum to Legal Staff (August 14, 1974; *Sentencing*, Memorandum to Legal Staff (March 12, 1974).]

D. By Trial Courts
   1. Court case-review intervention
      a. Boston Court Resources Project, Boston, Massachusetts. [See Abt Associates, *Report on the Operations of the Boston Court Resources Project* (Washington: U.S. Department of Labor, 1972).]
      b. Operations Midway, Mineola, New York (operates within the Probation Department of Nassau County).
   2. Supervision of plea bargaining
      a. Participation of Judge W. Hoffman, U.S. District Court for the Eastern District of Virginia, in the plea negotiation of former Vice President Agnew. [See Warren Weaver, "Sentence Backed by Agnew's Judge," *The New York Times* (January 9, 1975), 18, Col. 1).]

E. By Public Non-criminal Justice and Private Agencies (Refers to Matrix IV, F)
   1. Agency case-review intervention
      a. Metropolitan Dade County Pretrial Intervention Project, Dade County, Florida. [See Metropolitan Dade County Pretrial Intervention Project, *Eighteen Month Project Report* (July, 1973).]

F. By Probation and Parole Officers (Refers to Matrix IV. H)
   1. Diversion of juveniles (at intake screening)
      a. 601/602 Diversions Projects, Probation Department, Sacramento County, California. [See R. Baron and F. Feeney, Preventing Delinquency Through Diversion—*The Sacramento County Probation Department 601 Diversion Project* (The Second Year Report, 1973) (California Center for the Administration of Criminal Justice, University of California at Davis).]
      b. Impact Offenders Program—Diversion of Youthful Offenders, Baltimore, Maryland.

G. By Appellate Courts (Refers to Matrix IV. I)
   1. Review of prosecutorial discretion
      a. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Snowden v. Hughes*, 321 U.S. 1 (1944); *Oyler v. Boles*, 368 U.S. 448 (1962) (standards for determining constitutional violation under the Equal Protection Clause: 1) the discrimination must be deliberate and purposeful; the defendant must show improper motives on the part of the prosecutor in the charging decision; and 2) the defendant must demonstrate "that the discrimination was based on a characteristic of class which separates it from those who were not prosecuted.")
      b. *United States v. Falk*, 479 F. 2nd 616 (7th Cir. 1973) [a case substantially lowering the burden of proof required to raise the equal protection argument; see Comment, "The Ramifications of *U.S. v. Falk* on Equal Protection from Prosecutorial Discrimination," 65 *J. Cr. L. P. S. & Crim.* 62 (March, 1974)].

2. Standardization of plea bargaining
   a. *Bryan v. United States*, Cr. L. 2109 (April 4, 1974) (U.S. Court of Appeals for 5th Circuit) (regulations providing for disclosure of existence and details of plea agreement to prevent potential deceptions).
   b. *United States v. Gallington*, Cr. L. 2296 (December 12, 1973) (guidelines for plea bargaining).

V. Changes in Pretrial Release (Decision to Release Defendant Pending Trial or Disposition)

A. By Legislative Act
   1. Statutory bail reform
      a. The Federal Bail Reform Act of 1966, 18 U.S.C. Sec. 3141 et. seq.
      b. Illinois Rev. Stat. Ch. 38, Sec. 110-113 (1974) [the only state to abolish altogether the professional surety bonding system performed by professional bondsmen; see Wice, Paul B. *Bail & Its Reform: A National Survey*, U.S. Department of Justice, LEAA-NILE (Washington, D.C., October, 1973)].

B. By Public Non-criminal Justice and Private Agencies (Refers to Matrix, V. F.)
   1. Implementation of bail reform through bail eligibility investigation
      a. Pretrial Services Agency, Brooklyn, New York (an independent bail agency as a semi-private corporation which reviews all criminal cases for release on recognizance and supervised release).
      b. District of Columbia Bail Agency.

C. By Citizens/Volunteers (Refers to Matrix V, G)
   1. Organized third-party custody
      a. Quaker House, Washington, D.C.

D. By Appellate Courts (Refers to Matrix V, I)
   1. Bail reform under rulemaking power
      a. Pennsylvania Court Rules, Ch. 4000, "Bail."

VI. Alternatives at the Pretrial Stage (Decision on Pretrial Motions and Applications)

A. By Legislative Act
   1. Statutory authorization for intervention
      a. The Narcotic Addict Rehabilitation Act, 18 U.S.C. 4251 et seq., 28 USC 2901 seq., 42 U.S.C. 3411 et. seq.
      b. California Penal Code, Sec. 1000 (drug diversion provisions).

B. By Prosecutor Offices (Refers to Matrix VI, C)
   1. Prosecutor case-review intervention (with limited judicial participation)
      a. Manhattan Court Employment Project, New York, New York (potential participants are screened after arraignment and a one-week continuance; if accepted, a 90-day continuance is requested from the judge, which is almost always granted, for the client to receive program services).
      b. Accelerated Rehabilitative Disposition Program, Philadelphia, Pennsylvania.

C. By Trial Courts (Refers to Matrix, VI, D)
   1. Omnibus pretrial hearing
      a. American Bar Association, *Standards Relating to Discovery & Procedure Before Trial* (1970) 111 [endorses the concept of an omnibus pretrial hearing; see Miller, "The Omnibus Hearing: An Experiment in Federal Crminial Discovery," 5 *San Diego L. Rev.* 293, (1968); Nimmer, The Omnibus Hearing: *An Experiment in Relieving Inefficiency, Unfairness and Judicial Delay* (American Bar Foundation, 1971); T. Clark, "The Omnibus Hearing in State & Federal Courts," 59 *Cornell L. Rev.* 761 (1974)].

D. By Appellate Courts (Refers to Matrix VI, I)
   1. Court rule authorizing intervention
      a. Rules 175-85, Pennsylvania Rules

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of Criminal Procedure, Pennsylvania Supreme Court (1972), appearing in Purdons Pennsylvania Statutes, supp. 1973, West Publishing Company (court rules for the implementation of Accelerated Rehabilitative Disposition).

2. Implementation of speedy trial right
   a. Rule 1100, Pennsylvania Rules of Criminal Procedure, (1973) 627.
   b. Rule 3.191 Florida Rules of Criminal Procedure, (1973) 59-63.
   c. Sec 795.2 Iowa Criminal Code, 118-121.
   d. *State v. Gorham,* 206 N.W. 2nd 908 (1973) (Iowa Supreme Court adoption of speedy trial rule by case law).

VII. Alternatives to Adjudicatory Tribunals (Decision to Try or to Accept Plea)

A. By Trial Courts (Refer to Matrix VII, D)
   1. Courts of special jurisdiction
      a. Youth Court, Cook County, Illinois (for boys over 17 but under 25, established in 1914).
      b. Women's Court, Cook County, Illinois (established in 1908).
      c. Narcotics Court, Cook County, Illinois (established in 1951) (the judges in narcotics court learn a great deal of "street knowledge" about drug treatment and use from talking to the daily parade of offenders before them).
      d. Shoplifting Court, Cook County, Illinois (established in 1973).
      e. Special Narcotics Parts, New York [special narcotics court of the New York Supreme Court; see Art. 5, Chapter 462 of the Laws of 1971 (June 17, 1971); created at the urging of former Governor Nelson Rockefeller as a part of the state's attempt to "get tough" with drug offenders].

B. By Citizens/Volunteers (Refers to Matrix VII, G)
   1. Community courts
      a. University Judicial Committee, Provisional Student Code, Boston University, Boston, Massachusetts [Boston University Provisional Student Code, Chapter 2 (1973); imposes discipline for such offenses as damaging university property as well as academic misconduct; by custom in non-serious cases municipal law enforcement authorities will not assert jurisdiction].
      b. Jewish Conciliation Board, New York, New York (founded in 1920 on assumption that Jews with a different cultural perspective and little command of English were not adequately served by American court system; Jews and gentiles alike can consent to have a panel of a rabbi, a lawyer, and a person from the community hear cases involving intrafamily disputes, financial disputes, and landlord-tenant matters).
      c. Compare, the Forum of the Bronx Neighborhood Youth Project, the East Palo Alto Community Youth Responsibility Project, and the Boston Urban Court Project. [See, Comment, "Community Courts: An Alternative to Conventional Criminal Adjudication,"[24] *American U. Law Rev.* 1253 (1975); Richard Danzig, "Towards the Creation of a Complementary, Decentralized System of Criminal Justice," [26] *Stanford Law Rev.* 1 (1973).]

VIII. Alternatives at the Sentencing Stage (Decision to Sentence)

A. By Legislative Act
   1. Statutory provision of alternatives to custodial sentence
      a. Probation Subsidy Program, State of California [expanded use of probation in which the state provides payments to counties for each person sentenced to probation who could have been sentenced to a state institution; see Robert L.

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Smith, *The Quiet Revolution*, U.S. Department of HEW, Social & Rehabilitation Service, Youth Development & Delinquency Prevention Administration (Washington, D.C. 1972)].

b. Florida Rules of Criminal Procedure, Rule 3.670.

c. Iowa Code, Sec. 789.A.1 (1974 Supp.) (the Iowa statute, and the above Florida rule, permit the suspension of an entry of conviction and, upon completion of supervised service, eliminate or modify the record of conviction).

2. Restitution, victim compensation and mixed restitution-victim compensation
   a. California Gov't Sec. 13960-66, 13970-76 (West. Supp. 1972) (California was first state to enact victim compensation legislation in 1965; plan includes a limited use of mixed restitution-victim compensation since individuals convicted of violent crimes can be ordered to pay up to $10,000 into the victim compensation fund based on ability to pay).
   b. New York Exec. Law, Sec. 620-35, as amended 1972 (McKinney 1972) (victim compensation law administered by an independent agency, the Crime Victim Compensation Board, which reviews all claims for compensation).
   c. Md. Ann. Code, Art. 26A, Sec. 1-17 (Supp. 1971) [victim compensation law; everyone convicted of an offense (excluding minor traffic violation) is assessed a $5 court cost to be paid into the victim compensation fund (Article 26A, Sec. 17); see, generally, Comment, "Crime Victims' Compensation—Title I of the Proposed Victims of Crimes Act of 1973: An Analysis," 1 *Fordham Urban Law Journal* 421 (1973); Glenn E. Floyd, "Victim Compensation: A Comparative Study," 9 *Trial* 14 (1972)].

B. By Trial Courts (Refer to Matrix VIII, D)
   1. Innovative non-statutory sentencing
      a. Portland Alternative Community Service Program, Portland, Oregon (misdemeanor offenders can be sentenced to volunteer work in various social service agencies with the defendant's agreement; see *Alternative Community Service Program*, Multnomah County District Court, Portland, Oregon, n.d.).
      b. Treatment Alternatives to Street Crime (TASC Program), Miami, Florida (most participants enter program as a result of special probation sentencing to receive services—treatment for drug addiction).
      c. Florida defendant convicted of second-degree murder sentenced to pay for the support of the widow and children for the rest of his life (*The New York Times*, November 19, 1973, 63, Col. 4).
      d. New York physician convicted of attempted manslaughter sentenced to work for 2 years in the medical clinic of a jail while being allowed to keep his private practice (*The New York Times*, August 12, 1974, 61, Col. 2).
      e. White defendant convicted of firing a rifle into an interracial couple's house sentenced to probation on condition that he attend weekly breakfast and prayer sessions of a predominantly black church to teach defendant "what it's like to live in a black community" (*The New York Times*, June 15, 1974, 26, Col. 1).
   2. Contract sentencing
      a. Portland Alternative Community Service Program, Portland, Oregon.
      b. Compare contract parole programs now operating in a few states [see American Correctional Association, *Mutual Agreement Programming, an Overview* (A.C.A., College Park, Maryland, 1974)].

3. Sentencing panels
    a. Federal District Court for the Eastern District of Michigan [Although first tried in this court in 1966 and endorsed by the President's Commission on Law Enforcement and Administration of Justice, the Federal Probation Authority, and the National College of State Trial Judges as a significant method to reduce disparity in sentencing, sentencing boards are virtually nonexistent in practice; see Robert E. Jones, "How to Operate a Sentencing Council," 9 *Trial Judges Journal* (April, 1970)].

C. By Defense Bar (Refers to Matrix VIII, E)
    1. Organized defense planning for sentence
        a. Criminal Defense Division's Diversion Project, Legal Aid Society of New York.
        b. Offender Rehabilitation Service, Public Defender Agency, Washington, D.C. [See *Rehabilitative Planning Services for the Criminal Defense* (LEAA-NILE, October, 1970)].
        c. Alternative Program of the Metropolitan Public Defender, Portland, Oregon.
        d. Presentence Counseling Project, Seattle-King County, Washington.

D. By Public Non-Criminal Justice and Private Agencies (Refer to Matrix VIII, F)
    1. Voluntary service rehabilitation program
        a. Volunteer Opportunities, Inc. (VOI), New York, New York (in this program, begun in 1969, defense attorneys usually requested an adjournment of one to six months before sentence was passed during which time the defendant would participate in the program, resulting in the final sentence; the client's participation could begin at the pretrial release stage).
        b. Bronx Community Sentencing Project, New York, New York (no longer in existence; an example of a non-criminal justice system sentencing program operated under the sponsorship of the Vera Institute of Justice; objective was to quickly produce short form presentence reports on defendants convicted of misdemeanors).

E. By Probation and Parole Officers (Refers to Matrix VIII, H)
    1. Presentence investigation and sentence recommendations
        a. Probation Office, Wichita Falls, Texas (expanded use and increased intensity of presentence investigation, with some reports including results of personality, aptitude, and psychological tests, and write-up of interviews with the defendant).

F. By Appellate Courts (Refer to Matrix VIII, I)
    1. Appellate review of sentencing
        a. *United States v. Wiby,* 278 F.2d 500 (7th Cir. 1960) defendant's Fifth Amendment rights violated where defendant was given a much harsher sentence because he stood trial when his codefendant pled guilty; sentence viewed as an illegal condition on the right to go to trial).
        b. *United States v. McKinney,* 427 F.2nd 449 (6th Cir. 1970) *United States v. Daniels* 429 F.2d 1273 (6th Cir. 1970); *United States v. Griffin,* 434 F.2d 740 (6th Cir. 1970) (U.S. Court of Appeals for Sixth Circuit applying a broader standard of review, abuse of discretion, rather than illegality of the sentence, in cases where the defendants were sentenced to maximum terms in prison upon conviction; sentences held not to be based on any rational standard for defendant conduct but rather based on the trial courts' feelings about

the type of violation, ignoring defendants' presentence reports).

c. S. 716, 93rd Congress (1974) [proposed Federal standard for broader appellate review of sentencing decisions; allows for review by certification of all felony convictions which result in imprisonment under a standard of "excessive sentence" with power either to remand or to impose its own sentence; see D. A. Thomas, "Appellate Review of Sentences and the Development of Sentencing Policy: The English Experience," 20 *Alabama Law Review* 123 (1968)].

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	II. DECISION TO DEFINE CONDUCT AS A CRIME	III. DECISION TO FOCUS ATTENTION ON A SUBJECT	IV. DECISION TO ARREST	V. DECISION TO CHARGE*	VI. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DIPOSITION**	VII. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VIII. DECISION TO TRY OR TO ACCEPT PLEA	IX. DECISION TO SENTENCE
A. LEGISLATURES	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Function** a. Elimination b. Preservation as investigating body **2. Restrictions on Plea Bargaining** a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	**1. Statutory Bail Reform** b. C n i c. Cash deposit bond d. Abolition of professional surety bonding	**1. Statutory Authorization for Intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	. . ta u ory rov - - o tives to Custodial Sentencing a. Expanded use of probation b. Special conditions of pro a. Mandatory b. Permissive 3 Victim Compensation 4. Mixed Restitution-Victim Ce pensation Plan
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria to distribute resources **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules b. Situational rules **2. Implemenation of Field Citation Release** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Departmental Rulemaking** a. Formalization of charging process b. Centralization of charging function **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3. Police Department Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Station House Release** a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial Charge Decision** a. Centralization of charging function b. Formalization of charge process **2. Case Evaluation for Review of Charge Decision** a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel **3. Evaluation and Weighting for Noncharge Purposes** **4. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory **6. Restrictions on Plea Bargaining** a. Rules dictating centralization of bargaining function b. Rules describing criteria	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies on Sentencin Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing clo scrutiny
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination		**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **2. Review of Prosecutorial Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power **3. Supervision of Plea Bargaining** a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory Innovative S tencing** a. Restitution b. Public service **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Multi-Judg** a. Advisory b. Binding
E. DEFENSE BAR								**1. Organized Defense Planning Sentence** b. Voluntary service rehabil tion programs
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or			**1. Voluntary Service Rehabilita Program** **2. Presentence Reports**

VIII. DECISION TO SENTENCE

1. Statutory Provision of Alternatives to Custodial Sentencing
   a. Expanded use of probation
   b. Special conditions of probation
2. Restitution
   a. Mandatory
   b. Permissive
3. Victim Compensation
4. Mixed Restitution-Victim Compensation Plan

1. Uniform Policies on Sentencing Recommendation
   a. Rules to acheive consistency
   b. Guidelines emphasizing close scrutiny

1. Nonstatutory Innovative Sentencing
   a. Restitution
   b. Probation to services
2. Contract Sentencing
3. Sentencing Boards (Lay Participation)
   a. Advisory
   b. Binding
4. Sentencing Panels (Multi-Judge)
   a. Advisory
   b. Binding

Organized Defense Planning for Sentence
b. Voluntary service rehabilitation programs

Voluntary Service Rehabilitation Program
Presentence Reports

FIGURE V

Alternatives Matrix Highlighting Alternatives to Screening and Diversion

F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			**1. Voluntary Service Rehabilit Program** **2. Presentence Reports**
G. CITIZENS/ VOLUNTEERS			**1. Community Monitoring of Police Practices**		**1. Community Bail Funds** **2. Organized Third-Party Custody**		**1. Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence Inv gation and Recommendation**
H. PROBATION AND PAROLE OFFICERS				**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**			**1. Presentence Investigation a Sentence Recommendation** a. Expanded use b. Increase in intensity
I. APPELLATE COURTS	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		**1. Appellate Review of Sentencing** a. Pursuant to general power review b. Pursuant to statutory scheme

* The "Decision to Charge" (IV) might be described as a process or continuing series of decisions. This process may begin prior to arrest, and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial. Consequently, the "Decision to Charge" overlaps and penetrates, chronologically, other "decisions" displayed on the horizontal axis.

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

		1. **Voluntary Service Rehabilitation Program** 2. **Presentence Reports**
1. **Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties		1. **Community Presentence Investigation and Recommendation**
		1. **Presentence Investigation and Sentence Recommendation** a. Expanded use b. Increase in intensity
ourt Rule Authorizing Intervention **nplementation of Speedy Trial ght** Under rulemaking power Through case decision		1. **Appellate Review of Sentencing** a. Pursuant to general power of review b. Pursuant to statutory scheme

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F. **PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES**		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Inter** a. Contract/service b. Contract without servic c. Noncontract/service d. Noncontract without se
G. **CITIZENS/ VOLUNTEERS**			**1. Community Monitoring of Police Practices**	
H. **PROBATION AND PAROLE OFFICERS**				**1. Diversion of Juveniles (at intake screening)**
I. **APPELLATE COURTS**	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Di** a. Statutory or constitut practices b. Failure to provide equal **2. Standardization of Plea Ba** a. Under rulemaking powe b. Through case decisions

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eview Intervention rvice hout service /service without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			**1. Voluntary Service Rehabilitation Program** **2. Presentence Reports**
	1. Community Bail Funds **2. Organized Third-Party Custody**		**1. Community Courts** a. Formal cession of authority/consent of parties b. Formal cession of authority/no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence Investigation and Recommendation**
venlles **ding)**	**1. Bail Eligibility Investigation**			**1. Presentence Investigation and Sentence Recommendation** a. Expanded use b. Increase in intensity
ecutorial Discretion r constitutional prohibition on ovide equal protection **of Plea Bargaining** aking power e decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		**1. Appellate Review of Sentencing** a. Pursuant to general power review b. Pursuant to statutory scheme

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		1. Voluntary Service Rehabilitation Program 2. Presentence Reports
	1. Community Courts a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	1. Community Presentence Investigation and Recommendation
		1. Presentence Investigation and Sentence Recommendation a. Expanded use b. Increase in intensity
ourt Rule Authorizing Interven- plementation of Speedy Trial Under rulemaking power Through case decision		1. Appellate Review of Sentencing a. Pursuant to general power of review b. Pursuant to statutory scheme

Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeated-
e process. It may be modified at any time prior to conviction. In contrast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DISPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISI TO SENT
A. LEGISLATUS	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Function** a. Elimination b. Preservation as investigating body **2. Restrictions on Plea Bargaining** a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	**1. Statutory Bail Reform** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	**1. Statutory Authorization for intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	**1. Statutory Provisi tives to Custodial S** a. Expanded use o b. Special conditi tion **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensati** **4. Mixed Restitution pensation Plan**
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria to distribute resources **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules b. Situational rules **2. Implemenation of Field Citation Release** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Departmental Rulemaking** a. Formalization of charging process b. Centralization of charging function **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3. Police Department Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Station House Release** a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial Charge Decision** a. Centralization of charging function b. Formalization of charge process **2. Case Evaluation for Review of Charge Decision** a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel **3. Evaluation and Weighting for Noncharge Purposes** **4. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory **6. Restrictions on Plea Bargaining** a. Rules dictating centralization of bargaining function b. Rules describing criteria	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies o Recommendation** a. Rules to acheive c b. Guidelines emph scrutiny
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination		**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **2. Review of Prosecutorial Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power **3. Supervision of Plea Bargaining** a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory In tencing** a. Restitution b. Public service c. Special probatio d. Unusual sanctio **2. Contract Sentencin** **3. Sentencing Boards (Lay Participation)** a. Advisory b Binding **4. Sentencing Panels (** a. Advisory b. Binding
E. DEFENSE BAR								**1. Organized Defense Sentence** a. Presentence repo b. Voluntary servi tion programs

FIGURE B-1
Alternatives Matrix

VIII. DECISION TO SENTENCE
1. Statutory Provision of Alternatives to Custodial Sentencing a. Expanded use of probation b. Special conditions of probation **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victim Compensation Plan**
1. Uniform Policies on Sentencing Recommendation a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
1. Nonstatutory Innovative Sentencing a. Restitution b. Public service c. Special probation to services d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b Binding **4. Sentencing Panels (Multi-Judge)** a. Advisory b. Binding
1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
1. Voluntary Service Rehabilitation

E. **DEFENSE BAR**							**1. Organized Defense Plannin Sentence** a. Presentence reports b. Voluntary service reha tion programs
F. **PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES**		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency		**1. Voluntary Service Rehabili Program** **2. Presentence Reports**
G. **CITIZENS/ VOLUNTEERS**			**1. Community Monitoring of Police Practices**		**1. Community Bail Funds** **2. Organized Third-Party Custody**	**1. Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence In gation and Recommendation**
H. **PROBATION AND PAROLE OFFICERS**				**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**		**1. Presentence Investigation Sentence Recommendation** a. Expanded use b. Increase in intensity
I. **APPELLATE COURTS**	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision	**1. Appellate Review of Sentenc** a. Pursuant to general pow review b. Pursuant to statutory sch

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** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

Courts
cession of authority/ of parties
cession of authority/ nt of parties
ion of authority/con- arties
ion of authority/no of parties

1. **Community Presentence Investigation and Recommendation**

1. **Presentence Investigation and Sentence Recommendation**
   a. Expanded use
   b. Increase in intensity

1. **Appellate Review of Sentencing**
   a. Pursuant to general power of review
   b. Pursuant to statutory scheme

made at least once, and may be repeated- conviction. In contrast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DIPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
A. LEGISLATURES	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Function** a. Elimination b. Preservation as investigating body **2. Restrictions on Plea Bargaining** a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	**. tatutory a orm** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	**. Statutory Authorization for Intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	**1. Statutory Provision of Alter tives to Custodial Sentencing** a. Expanded use of probation b. Special conditions of prol tion **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victim Co pensation Plan**
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria to distribute resources **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules b. Situational rules **2. Implemenation of Field Citation Release** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Departmental Rulemaking** a. Formalization of charging process b. Centralization of charging function **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3. Police Department Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Station House Release** a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial Charge Decision** a. Centralization of charging function b. Formalization of charge process **2. Case Evaluation for Review of Charge Decision** a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel **3. Evaluation and Weighting for Noncharge Purposes** **4. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory **6. Restrictions on Plea Bargaining** a. Rules dictating centralization of bargaining function b. Rules describing criteria	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies on Sentencin Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing clo scrutiny
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination		**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **2. Review of Prosecutorial Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power **3. Supervision of Plea Bargaining** a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory Innovative S tencing** a. Restitution b. Public service c. Special probation to servi d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Multi-J** a. Advisory b. Binding
E. DEFENSE BAR								**1. Organized Defense Planning Sentence** a. Presentence reports

	VIII. DECISION TO SENTENCE
...tive	1. **Statutory Provision of Alternatives to Custodial Sentencing** a. Expanded use of probation b. Special conditions of probation 2. **Restitution** a. Mandatory b. Permissive 3 **Victim Compensation** 4. **Mixed Restitution-Victim Compensation Plan**
	1. **Uniform Policies on Sentencing Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
	1. **Nonstatutory Innovative Sentencing** a. Restitution b. Public service c. Special probation to services d. Unusual sanctions 2. **Contract Sentencing** 3. **Sentencing Boards (Lay Participation)** a. Advisory b. Binding 4. **Sentencing Panels (Multi-Judge)** a. Advisory b. Binding
	1. **Organized Defense Planning for Sentence** a. Presentence reports

FIGURE I

Alternatives Matrix Highlighting "Decision" Columns and Actor Rows

E. DEFENSE BAR							**1. Organized Defense Pla Sentence** a. Presentence reports b. Voluntary service reh tion programs
PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency		**1. Voluntary Service Rehabil Program** **2. Presentence Reports**
G. CITIZENS/ VOLUNTEERS		**1. Community Monitoring of Police Practices**			**1. Community Bail Funds** **2. Organized Third-Party Custody**	**1. Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence I gation and Recommendatio**
H. PROBATION AND PAROLE OFFICERS				**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**		**1. Presentence Investigatio Sentence Recommendation** a. Expanded use b. Increase in intensity
I. APPELLATE COURTS	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting	**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory		**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		**1. Appellate Review of Sente** a. Pursuant to general po review b. Pursuant to statutory sch

* The "Decision to Charge" (IV) might be described as a process or continuing series of decisions. This process may begin prior to arrest, and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial. Consequently, the "Decision to Charge" overlaps and penetrates, chronologically, other "decisions" displayed on the horizontal axis.

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE
A. LEGISLATURES	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Funct** a. Elimination b. Preservation as investigati **2. Restrictions on Plea Bargai** a. Abolition b. Prohibition in certain pre c. Regulation of negotiation
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria to distribute resources **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules b. Situational rules **2. Implemenation of Field Citation Release** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Departmental Rulemaking** a. Formalization of charging b. Centralization of chargin **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3. Police Department Case-I** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without serv
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial C** a. Centralization of charging b. Formalization of charge p **2. Case Evaluation for Review** a. Centralization of review f b. Rulemaking governing rev c. Consultation with counsel **3. Evaluation and Weighting poses** **4. Prosecutor Case-Review Inte** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory **6. Restrictions on Plea Bargaini** a. Rules dictating centraliz function b. Rules describing criteria
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination		**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervent** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi **2. Review of Prosecutorial Disc** a. Injunctive, declaratory, and extraordinary remedi b. Adverse case consequence power **3. Supervision of Plea Bargaini** a. Increasing the visibility of b. Increasing judicial partici c. Other modes of supervisio **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory
E. DEFENSE BAR				
PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Interve** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without serv

IV. DECISION CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DIPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
Jury Function investigating body **en Bargaining** certain predesignated cases negotiation practices	**tatutory a orm** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	**Statutory Authorization for Intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	**1. Statutory Provision of Alternatives to Custodial Sentencing** a. Expanded use of probation b. Special conditions of probation **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victim Compensation Plan**
emaking of charging process of charging function **nilles** **g)** **e** **ce program** **sent Case-Review Intervention** **ce** **out service** **ervice** **ithout service**	**1. Station House Release** a. Master bond schedules b. Station house citation			
es Initial Charge Decision of charging function of charge process **or Review of Charge Decision** of review function verning review ith counsel **Weighting for Noncharge Pur-** **Review Intervention** **ce** **out service** **ervice** **ithout service** **ation** **ding** **isory** **binding** **advisory** **en Bargaining** **g centralization of bargaining** **g criteria**	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies on Sentencing Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
w Intervention **ce** **ut service** **ervice** **ithout service** **itorial Discretion** **claratory, and other equitable** **ary remedies** **onsequences from prosecutorial** **n Bargaining** **visibility of the bargain** **cial participation** **f supervision** **ation** **ding** **isory** **binding** **advisory**	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory Innovative Sentencing** a. Restitution b. Public service c. Special probation to servi-- d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Multi-J--** a. Advisory b. Binding
				1. Organized Defense Planning Sentence a. Presentence reports b. Voluntary service rehabilitation programs
ew Intervention **ce** **ut service** **ervice** **ithout service**	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency			**1. Voluntary Service Rehabilit-- Program** **2. Presentence Reports**

VIII.
DECISION
TO SENTENCE

itive

1. **Statutory Provision of Alternatives to Custodial Sentencing**
   a. Expanded use of probation
   b. Special conditions of probation
2. **Restitution**
   a. Mandatory
   b. Permissive
3. **Victim Compensation**
4. **Mixed Restitution-Victim Compensation Plan**

1. **Uniform Policies on Sentencing Recommendation**
   a. Rules to acheive consistency
   b. Guidelines emphasizing close scrutiny

1. **Nonstatutory Innovative Sentencing**
   a. Restitution
   b. Public service
   c. Special probation to services
   d. Unusual sanctions
2. **Contract Sentencing**
3. **Sentencing Boards (Lay Participation)**
   a. Advisory
   b. Binding
4. **Sentencing Panels (Multi-Judge)**
   a. Advisory
   b. Binding

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

FIGURE I

Alternatives Matrix Highlighting "Decision" Columns and Actor Rows

E. DEFENSE BAR				
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review I** a. Contract/service b. Contract without se c. Noncontract/servic d. Noncontract withou
G. CITIZENS/ VOLUNTEERS			**1. Community Monitoring of Police Practices**	
H. PROBATION AND PAROLE OFFICERS				**1. Diversion of Juveniles (at intake screening)**
I. APPELLATE COURTS	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutoria** a. Statutory or cons practices b. Failure to provide eq **2. Standardization of P** a. Under rulemaking p b. Through case decisi

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				1. **Organized Defense Pla[illegible] Sentence** a. Presentence reports b. Voluntary service rehab tion programs
e-Review Intervention /service without service ract/service ract without service	1. **Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			1. **Voluntary Service Rehabilit Program** 2. **Presentence Reports**
	1. **Community Bail Funds** 2. **Organized Third-Party Custody**		1. **Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/con- sent of parties d. No cession of authority/no consent of parties	1. **Community Presentence I[illegible] gation and Recommendation**
Juveniles reening)	1. **Bail Eligibility Investigation**			1. **Presentence Investigation Sentence Recommendation** a. Expanded use b. Increase in intensity
rosecutorial Discretion or constitutional prohibition on provide equal protection **tion of Plea Bargaining** lemaking power case decisions	1. **Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	1. **Court Rule Authorizing Intervention** 2. **Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		1. **Appellate Review of Sentenc** a. Pursuant to general pow review b. Pursuant to statutory sch

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

	1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
	1. Voluntary Service Rehabilitation Program **2. Presentence Reports**
Community Courts **a. Formal cession of authority/ consent of parties** **b. Formal cession of authority/ no consent of parties** **c. No cession of authority/consent of parties** **d. No cession of authority/no consent of parties**	**1. Community Presentence Investigation and Recommendation**
	1. Presentence Investigation and Sentence Recommendation a. Expanded use b. Increase in intensity
	1. Appellate Review of Sentencing a. Pursuant to general power of review b. Pursuant to statutory scheme

decision—is made at least once, and may be repeated-time prior to conviction. In contrast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DISPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
A. LEGISLATURES	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Function** a. Elimination b. Preservation as investigating body **2. Restrictions on Plea Bargaining** a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	**1. Statutory Bail Reform** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	**1. Statutory Authorization for Intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	**1. Statutory Provision of Alt** **tives to Custodial Sentenc** a. Expanded use of probatio b. Special conditions of tion **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victim pensation Plan**
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria to distribute resources **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules b. Situational rules **2. Implemenation of Field Citation Release** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Departmental Rulemaking** a. Formalization of charging process b. Centralization of charging function **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3, Police Department Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Station House Release** a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial Charge Decision** a. Centralization of charging function b. Formalization of charge process **2. Case Evaluation for Review of Charge Decision** a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel **3. Evaluation and Weighting for Noncharge Purposes** **4. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory **6. Restrictions on Plea Bargaining** a. Rules dictating centralization of bargaining function	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies on Sent Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing cl scrutiny
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination	**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **2. Review of Prosecutorial Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power **3. Supervision of Plea Bargaining** a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory Innovative tencing** a. Restitution b. Public service c. Special probation to servi d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Multi-J** a. Advisory b. Binding
E. DEFENSE BAR								**1. Organized Defense Planning Sentence** a. Presentence reports b. Voluntary service rehabi tion programs
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency			**1. Voluntary Service Rehabili Program** **2. Presentence Reports**

FIGURE II

Use of the Alternatives Matrix as a Problem Solving Tool

VII. N TO TRY CCEPT PLEA	VIII. DECISION TO SENTENCE
of Administrative ffenses ulatory offenses	1. Statutory Provision of Alternatives to Custodial Sentencing a. Expanded use of probation b. Special conditions of probation 2. Restitution a. Mandatory b. Permissive 3 Victim Compensation 4. Mixed Restitution-Victim Compensation Plan
	1. Uniform Policies on Sentencing Recommendation a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
cial Jurisdiction	1. Nonstatutory Innovative Sentencing a. Restitution b. Public service c. Special probation to services d. Unusual sanctions 2. Contract Sentencing 3. Sentencing Boards (Lay Participation) a. Advisory b. Binding 4. Sentencing Panels (Multi-Judge) a. Advisory b. Binding
	1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
	1. Voluntary Service Rehabilitation Program 2. Presentence Reports

E. **DEFENSE BAR**						**1. Organized Defense Planning Sentence** a. Presentence reports b. Voluntary service rehabilitation programs
F. **PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES**		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations	**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency		**1. Voluntary Service Rehabilitation Program** **2. Presentence Reports**
G. **CITIZENS/ VOLUNTEERS**		**1. Community Monitoring of Police Practices**		**1. Community Bail Funds** **2. Organized Third-Party Custody**	**1. Community Courts** a. Formal cession of authority/consent of parties b. Formal cession of authority/no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence Investigation and Recommendation**
H. **PROBATION AND PAROLE OFFICERS**			**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**		**1. Presentence Investigation Sentence Recommendation** a. Expanded use b. Increase in intensity
I. **APPELLATE COURTS**	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting	**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision	**1. Appellate Review of Sentenci** a. Pursuant to general pow review b. Pursuant to statutory sche

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1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

1. **Community Presentence Investigation and Recommendation**

1. **Presentence Investigation and Sentence Recommendation**
   a. Expanded use
   b. Increase in intensity

1. **Appellate Review of Sentencing**
   a. Pursuant to general power of review
   b. Pursuant to statutory scheme

nd may be repeated-
ast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DISPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
A. LEGISLATURES	1. Statutory Decriminalization a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	1. Creation of Administrative Tribunal a. Consumer complaint b. Professional malpractice c. Other Subject matters	1. Statutory Provision for Field Citation Release a. Permissive b. Mandatory	1. Changes in Grand Jury Function a. Elimination b. Preservation as investigating body 2. Restrictions on Plea Bargaining a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	1. Statutory Bail Reform a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	1. Statutory Authorization for Intervention a. Mandatory b. Permissive	1. Creation of Administrative Tribunal a. Traffic Offenses b. Other regulatory offenses	1. Statutory Provision of Alternatives to Custodial Sentencing a. Expanded use of probation b. Special conditions of probation 2. Restitution a. Mandatory b. Permissive 3 Victim Compensation 4. Mixed Restitution-Victim Compensation Plan
B. POLICE DEPARTMENTS	1. Uniform Departmental Policy of Nonarrest a. Formal written policy b. Informal policy	1. Complaint Evaluation According to Priorities a. Subjective: Case-by-case b. Objective: Standard Criteria 2. Variation in Patrol Practices a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	1. Departmental Rulemaking a. Process rules b. Situational rules 2. Implementation of Field Citation Release 3. Crisis Intervention 4. Referral to Social Services a. Noncoercive b. Coercive 5. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nons cialist - advisor	1. Departmental Rulemaking a. Formalization of charging process b. Situational rules 2. Diversion of Juveniles (at intake screening) a. Minimal service b. Extensive service program 3. Police Department Case-Review Intervention a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	1. Station House Release a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	1. Uniform Policy of Non prosecution a. Formal written policy b. Informal policy	1. Office Policy on Investigation 2. Special Offense Oriented Units a. Specialized bureaus b. Special prosecutors 3. Citizen Complaint Evaluation Center	1. Prosecutor Assigned to Police Station 2. Joint Police-Prosecutor Rulemaking a. Process rules b. Situational rules 3. Complaint Referral to Civil Courts	1. Case Evaluation for Initial Charge Decision a. Centralization of charging function b. Formalization of charge process 2. Case Evaluation for Review of Charge Decision a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel 3. Evaluation and Weighting for Noncharge Purposes 4. Prosecutor Case-Review Intervention a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service 5. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory 6. Restrictions on Plea Bargaining a. Rules dictating centralization of bargaining function b. Rules describing criteria	1. Uniform Office Policy on Pretrial Release a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	1. Prosecutor Case-Review Intervention a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		1. Uniform Policies on Sentencing Recommendation a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
D. TRIAL COURTS	1. Judicial Refusal to Permit Enforcement of Particular Statutes a. Generalized by injunction or declaration of law b. Case-by-case determination		1. Review of Police Discretion a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power 2. Review of Requests for Arrest Warrants	1. Court Case-Review Intervention a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service 2. Review of Prosecutorial Discretion a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power 3. Supervision of Plea Bargaining a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision 4. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule a. Conditional release b. Nominal bond c. Release on recognizance	1. Omnibus Pretrial Hearing	1. Courts of Special Jurisdiction	1. Nonstatutory Innovative Sentencing a. Restitution b. Public service c. Special probation to services d. Unusual sanctions 2. Contract Sentencing 3. Sentencing Boards (Lay Participation) a. Advisory b. Binding 4. Sentencing Panels (Multi-Judge) a. Advisory b. Binding
DEFENSE BAR								1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		1. Prearrest Case Finding a. Persons requiring medical service b. Juveniles c. Other Special populations		1. Agency Case-Review Intervention a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	1. Implementation of Bail Reform Through Bail Eligibility Investigation a. Independent screening and/or service agency			1. Voluntary Service Rehabilitation Program 2. Presentence Reports

FIGURE III

Alternatives Matrix Highlighting the Case-load Reduction Cluster

VIII. DECISION TO SENTENCE

1. **Statutory Provision of Alternatives to Custodial Sentencing**
   a. Expanded use of probation
   b. Special conditions of probation
2. **Restitution**
   a. Mandatory
   b. Permissive
3. **Victim Compensation**
4. **Mixed Restitution-Victim Compensation Plan**

1. **Uniform Policies on Sentencing Recommendation**
   a. Rules to acheive consistency
   b. Guidelines emphasizing close scrutiny

1. **Nonstatutory Innovative Sentencing**
   a. Restitution
   b. Public service
   c. Special probation to services
   d. Unusual sanctions
2. **Contract Sentencing**
3. **Sentencing Boards (Lay Participation)**
   a. Advisory
   b. Binding
4. **Sentencing Panels (Multi-Judge)**
   a. Advisory
   b. Binding

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

			1. **Organized Defense Planning Sentence** a. Presentence reports b. Voluntary service rehabil tion programs
teview Intervention ervice ithout service t/service t without service	1. **Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency		1. **Voluntary Service Rehabilitat Program** 2. **Presentence Reports**
	1. **Community Bail Funds** 2. **Organized Third-Party Custody**	1. **Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	1. **Community Presentence Inv gation and Recommendation**
avenile **ning)**	1. **Bail Eligibility Investigation**		1. **Presentence Investigation Sentence Recommendation** a. Expanded use b. Increase in intensity
secutorial Discretion or constitutional prohibition on rovide equal protection **n of Plea Bargaining** naking power se decisions	1. **Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	1. **Court Rule Authorizing Intervention** 2. **Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision	1. **Appellate Review of Sentenci** a. Pursuant to general pow review b. Pursuant to statutory sche

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

1. **Community Presentence Investigation and Recommendation**

1. **Presentence Investigation and Sentence Recommendation**
   a. Expanded use
   b. Increase in intensity

1. **Appellate Review of Sentencing**
   a. Pursuant to general power of review
   b. Pursuant to statutory scheme

nd may be repeated-
rast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE
A. LEGISLATURES	1. Statutory Decriminalization a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	1. Creation of Administrative Tribunal a. Consumer complaint b. Professional malpractice c. Other Subject matters	1. Statutory Provision for Field Citation Release a. Permissive b. Mandatory	1. Changes in Grand Jury Func a. Elimination b. Preservation as investigat 2. Restrictions on Plea Barg a. Abolition b. Prohibition in certain pre c. Regulation of negotiation
B. POLICE DEPARTMENTS	1. Uniform Departmental Policy of Nonarrest a. Formal written policy b. Informal policy	1. Complaint Evaluation According to Priorities a. Subjective: Case-by-case b. Objective: Standard Criteria 2. Variation in Patrol Practices a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	1. Departmental Rulemaking a. Process rules b. Situational rules 2. Implementation of Field Citation Release 3. Crisis Intervention 4. Referral to Social Services a. Noncoercive b. Coercive 5. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nons ialist - advisor	1. Departmental Rulemaking a. Formalization of chargin b. Centralization of chargin 2. Diversion of Juveniles (at intake screening) a. Minimal service b. Extensive service program 3. Police Department Case-I a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi
C. PROSECUTOR OFFICES	1. Uniform Policy of Non prosecution a. Formal written policy b. Informal policy	1. Office Policy on Investigation 2. Special Offense Oriented Units a. Specialized bureaus b. Special prosecutors 3. Citizen Complaint Evaluation Center	1. Prosecutor Assigned to Police Station 2. Joint Police-Prosecutor Rulemaking a. Process rules b. Situational rules 3. Complaint Referral to Civil Courts	1. Case Evaluation for Initial Cl a. Centralization of charging b. Formalization of charge p 2. Case Evaluation for Review o a. Centralization of review fu b. Rulemaking governing rev c. Consultation with counsel 3. Evaluation and Weighting f poses 4. Prosecutor Case-Review Inter a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi 5. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory 6. Restrictions on Plea Bargaini a. Rules dictating centraliza function b. Rules describing criteria
D. TRIAL COURTS	1. Judicial Refusal to Permit Enforcement of Particular Statutes a. Generalized by injunction or declaration of law b. Case-by-case determination		1. Review of Police Discretion a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power 2. Review of Requests for Arrest Warrants	1. Court Case-Review Interventi a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi 2. Review of Prosecutorial Disc a. Injunctive, declaratory, and extraordinary remedie b. Adverse case consequences power 3. Supervision of Plea Bargaini a. Increasing the visibility of b. Increasing judicial particip c. Other modes of supervisio 4. Referral to Arbitration a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory
FENSE BAR				
BLIC NCRIMINAL STICE AND IVATE AGENCIES		1. Prearrest Case Finding a. Persons requiring medical service b. Juveniles c. Other Special populations		1. Agency Case-Review Interven a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without servi

IV. ECISION CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DIPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
ury Function investigating body **n Bargaining** ertain predesignated cases egotiation practices	1. **Statutory Bail Reform** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	1. **Statutory Authorization for Intervention** a. Mandatory b. Permissive	1. **Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	1. **Statutory Provision of Alives to Custodial Sentencing** a. Expanded use of probation b. Special conditions of pr tion 2. **Restitution** a. Mandatory b. Permissive 3 **Victim Compensation** 4. **Mixed Restitution-Victim C pensation Plan**
emaking f charging process f charging function **ties**) e program **ent Case-Review Intervention** e t service rvice hout service	1. **Station House Release** a. Master bond schedules b. Station house citation			
Initial Charge Decision f charging function f charge process **Review of Charge Decision** f review function verning review th counsel **eighting for Noncharge Pur-** **eview Intervention** e t service rvice thout service **tion** **ing** sory binding dvisory **a Bargaining** centralization of bargaining criteria	1. **Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	1. **Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		1. **Uniform Policies on Sentencing Recommendation** a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
Intervention e t service rvice hout service **orial Discretion** aratory, and other equitable ry remedies nsequences from prosecutorial **Bargaining** sibility of the bargain al participation supervision **tion** ng ory inding dvisory	1. **Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	1. **Omnibus Pretrial Hearing**	1. **Courts of Special Jurisdiction**	1. **Nonstatutory Innovative Sentencing** a. Restitution b. Public service c. Special probation to services d. Unusual sanctions 2. **Contract Sentencing** 3. **Sentencing Boards (Lay Participation)** a. Advisory b. Binding 4. **Sentencing Panels (Multi-Judge)** a. Advisory b. Binding
				1. **Organized Defense Planning for Sentence** a. Presentence reports b. Voluntary service rehabilitation programs
v Intervention t service vice out service	1. **Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with			1. **Voluntary Service Rehabilitation Program** 2. **Presentence Reports**

FIGURE III

Alternatives Matrix Highlighting the Case-load Reduction Cluster

VIII. DECISION TO SENTENCE

1. **Statutory Provision of Alternatives to Custodial Sentencing**
   a. Expanded use of probation
   b. Special conditions of probation
2. **Restitution**
   a. Mandatory
   b. Permissive
3. **Victim Compensation**
4. **Mixed Restitution-Victim Compensation Plan**

1. **Uniform Policies on Sentencing Recommendation**
   a. Rules to acheive consistency
   b. Guidelines emphasizing close scrutiny

1. **Nonstatutory Innovative Sentencing**
   a. Restitution
   b. Public service
   c. Special probation to services
   d. Unusual sanctions
2. **Contract Sentencing**
3. **Sentencing Boards (Lay Participation)**
   a. Advisory
   b. Binding
4. **Sentencing Panels (Multi-Judge)**
   a. Advisory
   b. Binding

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

E. DEFENSE BAR							**1. Organized Sentence** a. Presente b. Voluntar tion prog
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency		**1. Voluntary S Program** **2. Presentence**
G. CITIZENS/ VOLUNTEERS			**1. Community Monitoring of Police Practices**		**1. Community Bail Funds** **2. Organized Third-Party Custody**	**1. Community Courts** a. Formal cession of authority/ consent of parties b. Formal cession of authority/ no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community gation and R**
H. PROBATION AND PAROLE OFFICERS				**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**		**1. Presentence Sentence Rec** a. Expanded b. Increase in
I. APPELLATE COURTS	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision	**1. Appellate Rev** a. Pursuant review b. Pursuant t

* The "Decision to Charge" (IV) might be described as a process or continuing series of decisions. This process may begin prior to arrest, and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial. Consequently, the "Decision to Charge" overlaps and penetrates, chronologically, other "decisions" displayed on the horizontal axis.

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continous process.

		1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
		1. Voluntary Service Rehabilitation Program **2. Presentence Reports**
	1. Community Courts a. Formal cession of authority/consent of parties b. Formal cession of authority/no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence Investigation and Recommendation**
		1. Presentence Investigation and Sentence Recommendation a. Expanded use b. Increase in intensity
le Authorizing Interven- **...tion of Speedy Trial** **rulemaking power** **h case decision**		**1. Appellate Review of Sentencing** a. Pursuant to general power of review b. Pursuant to statutory scheme

f Disposition" (V)—the bail decision—is made at least once, and may be repeated-
-s. It may be modified at any time prior to conviction. In contrast to the "Decision

	I. DECISION TO DEFINE CONDUCT AS A CRIME	II. DECISION TO FOCUS ATTENTION ON A SUBJECT	III. DECISION TO ARREST	IV. DECISION TO CHARGE*	V. DECISION TO RELEASE DEFENDANT PENDING TRIAL OR DISPOSITION**	VI. DECISION ON PRETRIAL MOTIONS AND APPLICATIONS	VII. DECISION TO TRY OR TO ACCEPT PLEA	VIII. DECISION TO SENTENCE
A. LEGISLATURES	**1. Statutory Decriminalization** a. Pure decriminalization b. Reclassification: Downgrading to summary offense status c. Substitution of noncriminal response for criminal sanction	**1. Creation of Administrative Tribunal** a. Consumer complaint b. Professional malpractice c. Other Subject matters	**1. Statutory Provision for Field Citation Release** a. Permissive b. Mandatory	**1. Changes in Grand Jury Function** a. Elimination b. Preservation as investigating body **2. Restrictions on Plea Bargaining** a. Abolition b. Prohibition in certain predesignated cases c. Regulation of negotiation practices	**1. Statutory Bail Reform** a. Release on recognizance b. Conditional release c. Cash deposit bond d. Abolition of professional surety bonding	**1. Statutory Authorization for Intervention** a. Mandatory b. Permissive	**1. Creation of Administrative Tribunal** a. Traffic Offenses b. Other regulatory offenses	**1. Statutory Provision of Alternatives to Custodial Sente** a. Expanded use of prob b. Special conditions o tion **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victi pensation Plan**
B. POLICE DEPARTMENTS	**1. Uniform Departmental Policy of Nonarrest** a. Formal written policy b. Informal policy	**1. Complaint Evaluation According to Priorities** a. Subjective: Case-by-case b. Objective: Standard Criteria **2. Variation in Patrol Practices** a. Concentration on prevention and detection of target offenses b. Deemphasis on outreach	**1. Departmental Rulemaking** a. Process rules **2. Implemenation of Field Citation** **3. Crisis Intervention** **4. Referral to Social Services** a. Noncoercive b. Coercive **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisor	**1. Departmental Rulemaking** a. Formalization of charging process b. Centralization of charging function **2. Diversion of Juveniles (at intake screening)** a. Minimal service b. Extensive service program **3. Police Department Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Station House Release** a. Master bond schedules b. Station house citation			
C. PROSECUTOR OFFICES	**1. Uniform Policy of Non prosecution** a. Formal written policy b. Informal policy	**1. Office Policy on Investigation** **2. Special Offense Oriented Units** a. Specialized bureaus b. Special prosecutors **3. Citizen Complaint Evaluation Center**	**1. Prosecutor Assigned to Police Station** **2. Joint Police-Prosecutor Rulemaking** a. Process rules b. Situational rules **3. Complaint Referral to Civil Courts**	**1. Case Evaluation for Initial Charge Decision** a. Centralization of charging function b. Formalization of charge process **2. Case Evaluation for Review of Charge Decision** a. Centralization of review function b. Rulemaking governing review c. Consultation with counsel **3. Evaluation and Weighting for Noncharge Purposes** **4. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **5. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding **6. Restrictions on Plea Bargaining** a. Rules dictating centralization of bargaining function b. Rules describing criteria	**1. Uniform Office Policy on Pretrial Release** a. Rules to achieve consistency b. Guidelines emphasizing close scrutiny	**1. Prosecutor Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service		**1. Uniform Policies on S Recommendation** a. Rules to acheive consist b. Guidelines emphasizin scrutiny
D. TRIAL COURTS	**1. Judicial Refusal to Permit Enforcement of Particular Statutes** a. Generalized by injunction or declaration of law b. Case-by-case determination		**1. Review of Police Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Civil Damages c. Criminal prosecution d. Adverse case consequences from misuse of police power **2. Review of Requests for Arrest Warrants**	**1. Court Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service **2. Review of Prosecutorial Discretion** a. Injunctive, declaratory, and other equitable and extraordinary remedies b. Adverse case consequences from prosecutorial power **3. Supervision of Plea Bargaining** a. Increasing the visibility of the bargain b. Increasing judicial participation c. Other modes of supervision **4. Referral to Arbitration** a. Specialist - binding b. Specialist - advisory c. Nonspecialist - binding d. Nonspecialist - advisory	**1. Option of Instituting Reform Procedures in Absence of an Authorizing Statute or Rule** a. Conditional release b. Nominal bond c. Release on recognizance	**1. Omnibus Pretrial Hearing**	**1. Courts of Special Jurisdiction**	**1. Nonstatutory Innovati tencing** a. Restitution b. Public service c. Special probation to sc d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Mult.** a. Advisory b. Binding
E. DEFENSE BAR								**1. Organized Defense Pla Sentence** a. Presentence reports b. Voluntary service ref tion programs
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			**1. Voluntary Service Re Program** **2. Presentence Reports**

VII. ISION TO TRY O ACCEPT PLEA	VIII. DECISION TO SENTENCE
n of Administrative ic Offenses regulatory offenses	**1. Statutory Provision of Alternatives to Custodial Sentencing** a. Expanded use of probation b. Special conditions of probation **2. Restitution** a. Mandatory b. Permissive **3 Victim Compensation** **4. Mixed Restitution-Victim Compensation Plan**
	1. Uniform Policies on Sentencing Recommendation a. Rules to acheive consistency b. Guidelines emphasizing close scrutiny
of Special Jurisdiction	**1. Nonstatutory Innovative Sentencing** a. Restitution b. Public service c. Special probation to services d. Unusual sanctions **2. Contract Sentencing** **3. Sentencing Boards (Lay Participation)** a. Advisory b. Binding **4. Sentencing Panels (Multi-Judge)** a. Advisory b. Binding
	1. Organized Defense Planning for Sentence a. Presentence reports b. Voluntary service rehabilitation programs
	1. Voluntary Service Rehabilitation Program **2. Presentence Reports**

FIGURE IV

Alternatives Matrix Highlighting the Case Screening Cluster

E. DEFENSE BAR								**1. Organized Defense Planning for Sentence** a. Presentence reports b. Voluntary service rehabilitation programs
F. PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations		**1. Agency Case-Review Intervention** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service	**1. Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			**1. Voluntary Service Rehabilitation Program** **2. Presentence Reports**
G. CITIZENS/ VOLUNTEERS			**1. Community Monitoring of Police Practices**		**1. Community Bail Funds** **2. Organized Third-Party Custody**		**1. Community Courts** a. Formal cession of authority/consent of parties b. Formal cession of authority/no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	**1. Community Presentence Investigation and Recommendation**
H. PROBATION AND PAROLE OFFICERS				**1. Diversion of Juveniles (at intake screening)**	**1. Bail Eligibility Investigation**			**1. Presentence Investigation and Sentence Recommendation** a. Expanded use b. Increase in intensity
I. APPELLATE COURTS	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting		**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Standardization of Plea Bargaining** a. Under rulemaking power b. Through case decisions	**1. Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	**1. Court Rule Authorizing Intervention** **2. Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		**1. Appellate Review of Sentencing** a. Pursuant to general power of review b. Pursuant to statutory scheme

* The "Decision to Charge" (IV) might be described as a process or continuing series of decisions. This process may begin prior to arrest, and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial. Consequently, the "Decision to Charge" overlaps and penetrates, chronologically, other "decisions" displayed on the horizontal axis.

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continuous process.

1. **Organized Defense Planning for Sentence**
   a. Presentence reports
   b. Voluntary service rehabilitation programs

1. **Voluntary Service Rehabilitation Program**
2. **Presentence Reports**

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1. **Community Presentence Investigation and Recommendation**

1. **Presentence Investigation and Sentence Recommendation**
   a. Expanded use
   b. Increase in intensity

1. **Appellate Review of Sentencing**
   a. Pursuant to general power of review
   b. Pursuant to statutory scheme

is made at least once, and may be repeated to conviction. In contrast to the "Decision

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END

E. **DEFENSE BAR**			
F. **PUBLIC NONCRIMINAL JUSTICE AND PRIVATE AGENCIES**		**1. Prearrest Case Finding** a. Persons requiring medical service b. Juveniles c. Other Special populations	**1. Agency Case-Review Interventi** a. Contract/service b. Contract without service c. Noncontract/service d. Noncontract without service
G. **CITIZENS/ VOLUNTEERS**		**1. Community Monitoring of Police Practices**	
H. **PROBATION AND PAROLE OFFICERS**			**1. Diversion of Juveniles (at intake screening)**
I. **APPELLATE COURTS**	**1. Judicial Decriminalization** a. Violation of substantive rights b. Inadequate drafting	**1. Review of Police Discretion** a. Statutory or constitutional prohibition on practices b. Failure to provide equal protection **2. Court Rule Authorizing Field Citation Release** a. Permissive b. Mandatory	**1. Review of Prosecutorial Discret** a. Statutory or constitutiona practices b. Failure to provide equal prot **2. Standardization of Plea Bargai** a. Under rulemaking power b. Through case decisions

- The "Decision to Charge" (IV) might be described as a process or continuing series of decisions. This process may begin prior to arrest, and is not concluded until the filing of final formal charging papers, which need not occur at any fixed time except that it must precede trial. Consequently, the "Decision to Charge" overlaps and penetrates, chronologically, other "decisions" displayed on the horizontal axis.

				1. **Organized Defense Planning for Sentence** a. Presentence reports b. Voluntary service rehabilitation programs
Intervention service ice out service	1. **Implementation of Bail Reform Through Bail Eligibility Investigation** a. Independent screening and/or service agency b. Mixed model: Probation with independent agency			1. **Voluntary Service Rehabilitation Program** 2. **Presentence Reports**
	1. **Community Bail Funds** 2. **Organized Third-Party Custody**		1. **Community Courts** a. Formal cession of authority/consent of parties b. Formal cession of authority/no consent of parties c. No cession of authority/consent of parties d. No cession of authority/no consent of parties	1. **Community Presentence Investigation and Recommendation**
	1. **Bail Eligibility Investigation**			1. **Presentence Investigation and Sentence Recommendation** a. Expanded use b. Increase in intensity
rial Discretion nstitutional prohibition on equal protection **ea Bargaining** power isions	1. **Bail Reform Under Rulemaking Power** a. Authorizing rules b. Decisions influencing implementation of bail reform	1. **Court Rule Authorizing Intervention** 2. **Implementation of Speedy Trial Right** a. Under rulemaking power b. Through case decision		1. **Appellate Review of Sentencing** a. Pursuant to general power of review b. Pursuant to statutory scheme

** The "Decision to Release Defendant Pending Trial of Disposition" (V)—the bail decision—is made at least once, and may be repeatedly reconsidered or reviewed, during the charge process. It may be modified at any time prior to conviction. In contrast to the "Decision to Charge" (IV), it is not a continuous process.

	1. **Organized Defense Planning for Sentence** a. Presentence reports b. Voluntary service rehabilitation programs
	1. **Voluntary Service Rehabilitation Program** 2. **Presentence Reports**
nity Courts nal cession of authority/ ent of parties nal cession of authority/ onsent of parties cession of authority/con- of parties cession of authority/no ent of parties	1. **Community Presentence Investigation and Recommendation**
	1. **Presentence Investigation and Sentence Recommendation** a. Expanded use b. Increase in intensity
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