Publication 3

PROMIS RESEARCH PROJECT (Prosecutor's Management Information System)

Curbing the Repeat Offender: A Strategy for Prosecutors

INSLAW
Institute for Law and Social Research
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

PROMIS RESEARCH PROJECT

Publication 3

PROMIS Research Project Topics:

1. Overview and interim findings
2. Enhancing the policy-making utility of crime data
3. **The repeat offender as a priority for prosecutors**
4. Police effectiveness in terms of arrests that result in convictions
5. The prosecuting attorney as a manager
6. The high-fear crimes of robbery and burglary
7. The low-conviction crime of sexual assault
8. Prosecuting cases involving weapons
9. Prosecution of such "victimless crimes" as gambling, prostitution, and drug offenses
10. Scope and prediction of recidivism
11. Geographic and demographic patterns of crime
12. Impact of victim characteristics on the disposition of violent crimes
13. Female defendants and case processing
14. Analysis of plea bargaining
15. Analyzing court delay
16. Pretrial release decisions
17. Sentencing practices

Curbing the Repeat Offender: A Strategy for Prosecutors

Institute for Law and Social Research
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Table of Contents

List of Exhibits 3
Foreword 4
Preface 5
Acknowledgments 7

I. Repercussions of Careers in Crime 8
The repeat offender: new findings
Indications of change
II. Prosecuting the Recidivist: A Framework for Crime Control 12
Repeat offenders and crime control
A technique for putting policy into practice
III. Case Study: Recidivism and the Prosecutory Response to It in Washington, D.C. 15
Recidivist-related cases and attrition
The prosecutory environment in 1973 and 1974
Did repeat offender cases receive priority attention?
Reconciling the finding with office policy
Repeat offender strategy in 1976
IV. A Closer Look at the Analytical Technique As Applied in the District of Columbia 18
Measuring the probability of conviction
In conclusion
Appendix: Data Elements Used in the Analysis of Felony-Processing Priorities 22

This project was supported by Grant Numbers 74-NI-99-0008, 75-NI-99-0111, and 76-NI-99-0118 awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document do not necessarily represent the official position or policies of the U.S. Department of Justice.
Printed in the United States of America
International Standard Book Number: 0-89504-002-6
Library of Congress Catalog Card Number: 77-71197

List of Exhibits

1. Recidivism in Washington, D.C., As Measured by Rearrests, Reprosecutions, Reconvictions: Felonies and Serious Misdemeanors 9
2. Other Cases Pending for Defendants Under Criminal Indictment in Federal Court on February 1, 1976: Washington, D.C. 10
3. Cases Involving Defendants on Conditional Release at Time of Arrest: Washington, D.C., 1974 11
4. Overall Approach to Prosecuting Recidivists 13
5. Effect of Different Numbers of Lay Witnesses and the Recovery of Tangible Evidence on the Probability of Conviction for Selected Felony Offenses: Washington, D.C., 1974 21

Foreword

This report by the Institute for Law and Social Research (INSLAW) raises a question that should concern every prosecution office in this country: Are the admittedly scarce investigative and prosecutive resources being harnessed to achieve the maximum results for the community?

Using the data from the computerized PROMIS (Prosecutor's Management Information System) files of the United States Attorney's Office for the District of Columbia, INSLAW found that a disproportionately large volume of the street crime cases in the Superior Court was accounted for by a small number of repeat offenders. In fact, a mere 7 percent of the arrestees accounted for almost one-fourth of the court's case load over a period of about five years. These 7 percent were arrested in the nation's capital for felonies or serious misdemeanors on at least four separate occasions during the period.

As INSLAW points out, the figures imply that the future work load of the court system and the level of crime in the community could be reduced by making a special effort to convict these highly prolific offenders and to incapacitate them through incarceration.

By applying rigorous statistical tools to the PROMIS data, INSLAW attempted to infer whether prosecutors were in fact making such special efforts in the felony cases involving repeat offenders for the years 1973 and 1974.

The statistical analyses failed to uncover any evidence that prosecutors were devoting extra efforts to cases simply because they involved repeat offenders. On the contrary, the inherent convictability of a case appeared to be the most important consideration to the prosecutors. The higher the intrinsic convictability, the greater the prosecutive effort. The seriousness of the current offense was found to exert a secondary but much less powerful influence on the amount of prosecutive effort devoted to the cases.

There is a special irony in this study for me. I was the Chief of the Superior Court Division of the U.S. Attorney's Office for most of 1973, one of the two years included in this study. I was also one of the earliest and most persistent proponents of the creation and development of PROMIS, which now has become the source of evidence of management problems during my tenure as Chief of the Division.

The need to devote special attention to the prosecution of repeat offenders involved in serious misdemeanor cases was clear to us much earlier and, consequently, we established a Major Violators Unit to devote extra pre-trial attention to the repeat offenders' cases on our misdemeanor assembly line.

In retrospect, the same logic that led to the creation of the Major Violators Unit for misdemeanors should have prompted us to create a similar unit for repeat offenders in felony cases at the same time. I think the fact that we had felonies assigned to specific experienced prosecutors after indictment lulled us into forgetting that, in the preindictment stage, felonies were handled in the same assembly-line, mass production fashion as misdemeanors.

In 1976, the U.S. Attorney's Office, in conjunction with the Metropolitan Police Department, launched Operation Doorstop. Under this program, experienced prosecutors and investigators remove repeat offender cases from the preindictment felony assembly line for extra effort. Early indications are that the program is having significant success in increasing the conviction rate in such cases.

Although I regret that we did not realize the need for such a felony unit during my tenure, I find some satisfaction in the fact that I was later able to put our experience with the misdemeanor Major Violators Unit to good use. While Deputy Administrator of the United States Law Enforcement Assistance Administration, my experience with the Major Violators Unit became the primary catalyst for the creation of the Career Criminal Program.

This pathbreaking study by INSLAW in effect provides the intellectual framework for the Career Criminal Program, as well as the empirical evidence of its need. One of the most salient points of this study is that you cannot rely entirely on "spontaneous combustion" in reaching management objectives. Our policy guidelines on the importance of repeat offender cases were not enough. What was lacking, until Operation Doorstop, was a mechanism or tool for assuring that those policy guidelines were implemented.

CHARLES R. WORK
JANUARY 1977
WASHINGTON, D.C.

Preface

In keeping with statements of previous commissions, a 1973 report of the National Advisory Commission on Criminal Justice Standards and Goals highlighted a basic idea on which an effective and evenhanded criminal justice process depends: "Official judgment in criminal justice, as in other policy areas, is not likely to be sounder than the available facts." *(Criminal Justice System,* p. 2.)

The publications of the PROMIS Research project present findings derived from what is probably the richest source of criminal justice facts ever gathered within a jurisdiction: 100,000 "street crime" cases (felonies and serious misdemeanors) processed by District of Columbia prosecutors over a six-year period. Up to 170 facts on each case are stored in PROMIS (Prosecutor's Management Information System), facts that help fill the information gap which has long existed between arrest and incarceration, a void that has seriously impeded informed decisions by policymakers in most jurisdictions.

Exploiting these facts in the District of Columbia, staff members of the Institute for Law and Social Research (INSLAW) analyzed data that arose out of normal operations and generated a wide range of findings pertaining to what some observers regard as the criminal justice system's nerve center—the prosecution and court arena. This empirical research has yielded recommendations regarding criminal justice priorities, policies, and procedures.

Funded by the Law Enforcement Assistance Administration, the PROMIS Research Project is a demonstration of how automated case management information systems serving the prosecutor and court can be tapped in order to provide timely information by which criminal justice policymakers may evaluate the impact of their decisions. The significance of this demonstration is by no means restricted to the District of Columbia. At this writing, approximately 50 state and local jurisdictions throughout the nation have implemented PROMIS, or are planning to do so. In the foreseeable future, PROMIS is expected to be operational in as many as 100 jurisdictions.

Hence, many areas in the United States are, or soon will be, in a particularly advantageous position to benefit from the types of insights—and the research methodology employed to obtain them—described in the reports of the PROMIS Research Project. There are 17 publications in the current series, of which this is Number 3. A noteworthy feature of this series is that it is based primarily on data from a prosecution agency. For those accustomed to hearing the criminal justice system described as consisting, like ancient Gaul, of three parts—police, courts, and corrections—the fact that most of the operations of the system can be assessed from the perspective of an agency usually omitted from the system's description may come as a surprise. The major topics addressed by these publications are summarized as follows:

1. *Overview and interim findings.* Presenting highlights of interim findings and policy implications of the multiyear PROMIS Research Project, the report provides thumbnail sketches of INSLAW studies in such areas as police operations when analyzed in terms of the percentage of arrests resulting in conviction, prosecution operations as viewed from the standpoint of their potential impact on crime control, and criminal justice system effectiveness as viewed from the victim's vantage point as well as from a crime-specific perspective. Findings related to robbery, burglary, sexual assault, and "victimless crimes" are summarized. Further analyses pertain to recidivism, female offenders, victims of violent crimes, court delay, plea bargaining, bail, sentencing, and uniform case evaluation, among other topics.

2. *Enhancing the policy-making utility of crime data.* Why do statistics that are valuable indicators of the performance of individual agencies often tend to obfuscate the combined, systemwide effectiveness of those same agencies? How might the collection of crime data be improved to enhance their utility to policymakers? Addressing these questions, INSLAW made various statistical adjustments so that court, prosecutory, police, and victimization data could be compared to obtain systemwide performance measures for various crimes and to analyze at what points—from victimization to conviction—criminal incidents dropped out of the criminal justice process.

3. *The repeat offender as a priority for prosecutors.* After describing the disproportionate share of the criminal justice work load accounted for by repeaters (whether defined as those rearrested, reprosecuted, or reconvicted), the report suggests that greater emphasis on the prosecution of recidivists may be an appropriate strategy from a crime-control standpoint. A method is presented by which prosecutors could implement and monitor such a strategy.

4. *Police effectiveness in terms of arrests that result in convictions.* What can the police do to reduce the enormous volume of arrests that do not result in a conviction? After describing the magnitude of this problem, the publication analyzes three aspects of the question: apprehension procedures, legal and institutional factors, and personnel characteristics. Police-related factors that influence the likelihood of conviction are analyzed, as are the reasons given by prosecutors for rejecting arrests. Policy implications of the research findings are emphasized throughout the report.

5. *The prosecuting attorney as a manager.* Focusing on "street crime" prosecutions, the research analyzes the cumulative impact of various case-level prosecutory decisions, such as those relating to case rejections, nolles, dismissals, pretrial

release recommendations, plea bargaining, and sentencing. Broad discretionary power exercised by prosecutors over the fate of *individual* cases is contrasted to the role played by prosecutors in providing *overall* direction to policies and priorities of the criminal justice system. Examples of policies that harness the prosecutor's power over individual cases to achieve systemwide objectives and priorities are presented. The research focuses on the challenge of measuring, monitoring, and enforcing priorities and evenhandedness in a large, high-volume court system.

6. *The high-fear crimes of robbery and burglary.* Comprising a substantial portion of the prosecutor's work load, robbery and burglary are analyzed from the perspectives of the victim, defendant, and court case. Robberies and burglaries are traced from victimization through disposition; defendants in those cases are compared to other arrestees in terms of their characteristics and criminal career patterns; prosecution of robbery and burglary cases and sentencing of convicted defendants are explored in detail. Policy implications of the findings are highlighted throughout.

7. *The low-conviction crime of sexual assault.* From victimization to sentencing, the report traces the processing of sexual assault cases and indicates the reasons why those cases are more likely to fall out of the system than other types of cases. Characteristics of victims and defendants are described, particularly the recidivism patterns of the latter. Findings are discussed in terms of their policy implications.

8. *Prosecuting cases involving weapons.* Analyzing how District of Columbia weapons-related statutes are applied by prosecutors, the publication contrasts the handling of cases in which a weapon is used—such as robbery—to those involving possession only. Recidivism patterns of the two sets of defendants are analyzed. The findings and their impact on policy are likely to have applicability beyond the jurisdiction studied.

9. *Prosecution of such "victimless crimes" as gambling, prostitution, and drug offenses.* These crimes are examined from arrest to sentencing. By what process are decisions made to enforce laws proscribing victimless crimes and to prosecute offenders? Is this process different from that utilized with regard to nonvictimless crimes? What factors affect decisions regarding enforcement and prosecution? To what extent are criminal justice resources allocated to combat victimless and nonvictimless crimes? What are the policymaking ramifications? These and other questions are addressed by the report.

10. *Scope and prediction of recidivism.* This report describes the nature and extent of the repeat-offender problem in the District of Columbia in terms of three definitions of recidivism: rearrest, reprosecution, and reconviction. By tracking a group of defendants over a number of years, INSLAW identified the habitual offenders by crime category and analyzed their patterns of crime switching. A predictive technique is developed to identify defendants who are most likely to recidivate within the same jurisdiction. Policy implications are highlighted.

11. *Geographic and demographic patterns of crime.* Of significance to policymakers, this report analyzes the geographic distribution of offenses and arrests in the District of Columbia and the residential patterns of the defendants. Possible differential processing by the criminal justice system of defendants from different areas is explored.

12. *Impact of victim characteristics on the disposition of violent crimes.* Analyzing how the victims' age, race, sex, relationship to offender, and other characteristics affected the case processing of violent crimes, INSLAW research views the victim both as a decision maker (in terms of his or her behavior as a witness) and as an influence on the decisions made by prosecutor, judge, and jury.

13. *Female defendants and case processing.* The types of crimes for which females are arrested are compared to those for which males are apprehended. Differential handling of cases by sex is analyzed. The implication of the research findings for policy formulation is presented.

14. *Analysis of plea bargaining.* After describing the nature and extent of plea bargaining in the District of Columbia, the report explores the impact of work load, codefendants, and recidivism on plea rates. Looking at charge reduction, pretrial detention, and sentencing, INSLAW researchers analyze plea negotiations from the standpoint of both defendant and prosecutor. Suggestions aimed at enhancing the equity and efficiency of the plea bargaining process are offered.

15. *Analyzing court delay.* Probing the data recorded in PROMIS regarding the elapsed time between various case-processing events, and comparing actual case-processing times to standards advocated by national commissions, the report attempts to isolate the determinants of delay and its impact on case dispositions. The publication also explores the reasons for continuances and the effect of nonprocedural continuances on delay, and addresses the policy implications of the findings.

16. *Pretrial release decisions.* The range of possible pretrial release decisions in the District of Columbia is analyzed, including cash bond, surety, third-party custody, personal recognizance, and preventive detention. Factors influencing the likelihood of various pretrial release decisions are probed. Methods of using data commonly available at the bail hearing for the purpose of predicting crime on bail and flight are explored.

17. *Sentencing practices.* Focusing on the Superior Court of the District of Columbia, the research seeks to identify how the incarceration rates and lengths of sentences are affected by the characteristics of the defendant and his or her criminal history as well as by the seriousness of the charge for which the conviction was secured, and other factors. These analyses attempt to measure the consistency and evenhandedness of the sentencing process.

Obviously, research is not a panacea. Much knowledge about crime must await better understanding of social behavior. And research will never provide the final answers to many of the vexing questions about crime. But, as the President's Commission on Law Enforcement and Administration of Justice observed in 1967: ". . . when research cannot, in itself, provide final answers, it can provide data crucial to making informed policy judgments." (*The Challenge of Crime in A Free Society*, p. 273.) Such is the purpose of the PROMIS Research Project.

WILLIAM A. HAMILTON
PRESIDENT
INSTITUTE FOR LAW
AND SOCIAL RESEARCH
WASHINGTON, D.C.

Acknowledgments

So many individuals and agencies have made valuable contributions to this and the other reports of the PROMIS Research Project that full acknowledgment of their assistance would consume more pages than are available here.

Of critical importance to the success of the PROMIS Research Project has been the farsighted, progressive stance of the United States Attorney's Office for the District of Columbia, both in terms of its willingness to permit INSLAW to submit many of its operations to detailed examination and in terms of its active assistance regarding the development, analysis, and dissemination of data. The office is deserving of great admiration and respect.

INSLAW is also indebted to the Superior Court of the District of Columbia, which has been extremely generous in making data available for the project's studies and in helping researchers assess the meaning of the statistics.

Similarly, we have received exemplary cooperation from many other District of Columbia agencies, including the Metropolitan Police Department, Public Defender Service, the D.C. Bail Agency, and the Department of Corrections. Among other forms of assistance, they have facilitated access to data and to persons who have provided valuable insights.

Of invaluable assistance in reviewing, evaluating, and critiquing the research plans, methodologies, and findings are the project's national and local advisory committees, whose members are listed below and whose generous help is gratefully acknowledged.

National Advisory Committee: Robert A. Shuker (Chairman), Chief, Superior Court Division, United States Attorney's Office for the District of Columbia; Colonel Curtis Brostron, Secretary, St. Louis Board of Police Commissioners; The Honorable William L. Cahalan, Wayne County (Detroit) Prosecuting Attorney; The Honorable William H. Erickson, Justice, Supreme Court of Colorado; Professor Edith E. Flynn, College of Criminal Justice, Northeastern University; Paul L. Friedman, Attorney, Washington, D.C.; Mr. Phillip H. Ginsberg, Attorney, Seattle, Washington; Lester C. Goodchild, Senior Attorney, Temporary State of New York Commission on Judicial Conduct, Buffalo, New York; Professor Willie King, Antioch School of Law, Washington, D.C.; Professor Albert J. Reiss, Jr., Institution for Social and Policy Studies, Yale University; Professor Leslie T. Wilkins, State University of New York, Albany; Professor Marvin E. Wolfgang, Director, Center for Studies in Criminology and Criminal Law, University of Pennsylvania; and Professor Hans Zeisel, University of Chicago Law School.

Local Advisory Committee: Bruce D. Beaudin, Director, District of Columbia Bail Agency; William Golightly, Assistant Director for Administration, Office of the Director, Department of Corrections, Washington, D.C.; The Honorable Harold H. Greene, Chief Judge, Superior Court of the District of Columbia; J. Patrick Hickey, Director, Public Defender Service, Washington, D.C.; Assistant Chief Burtell Jefferson, Metropolitan Police Headquarters, Washington, D.C.; Dr. Irving A. Wallach, Director, Office of Criminal Justice Plans and Analysis, Washington, D.C.; and The Honorable Earl J. Silbert, United States Attorney, Washington, D.C.

Without the funding and support of the Law Enforcement Assistance Administration (LEAA), U.S. Department of Justice, the PROMIS Research Project would not exist. A special debt of gratitude is owed to Alvin Ash of LEAA's System Development Division for his farsighted and steadfast support of PROMIS—its development, nationwide transfer, and research potential. INSLAW is also grateful to LEAA's National Institute of Law Enforcement and Criminal Justice for its encouragement and advice, particularly that of Cheryl V. Martorana, Chief of the Courts Division of the National Institute.

Finally, no list of acknowledgments about PROMIS would ever be complete with mentioning the role of Charles R. Work. His creative imagination and determination were indispensable to the origination and growth of the whole PROMIS program.

Even though we have received outstanding cooperation from the above individuals and agencies, INSLAW does not intend to imply that there is always perfect agreement about the conclusions of our research.

Ultimate responsibility for the research and the interpretation of the data rests with INSLAW. Staff members Brian E. Forst and Kathleen B. Brosi assumed primary responsibility for the research and analyses on which this report is based. They are indebted to William D. Falcon for organizing this presentation of their research, much of which appeared in a more technical version in the January 1977 *Journal of Legal Studies*, under the title "A Theoretical and Empirical Analysis of the Prosecutor." And they wish also to acknowledge Sidney H. Brounstein for his helpful comments, and Kristen M. Williams for many of the recidivism statistics contained herein. Katherine Falkner carried the principal typing and proofreading burden, and did so in a conspicuously effective and supportive manner.

WILLIAM A. HAMILTON
PRESIDENT
INSTITUTE FOR LAW
AND SOCIAL RESEARCH
WASHINGTON, D.C.

I Repercussions Of Careers in Crime

It's hard for me to understand how an individual . . . can be charged the number of times he was charged . . . and no one seems to have done anything about it.—Governor of Maryland (1976), wondering how the jurisdiction in which a murder defendant compiled an extensive criminal history could have failed to note this and permitted him to remain at large.[1]

Our biggest problem is the lack of protection of the people from the criminal elements in our society. We should begin to be less tolerant with repeat offenders . . . We should stop protecting the criminal until we can guarantee victims the same protection.—Hospital Administrator (1975), Hawaii.[2]

These two comments are symptomatic of heightened awareness among the general public and government officials of crimes committed by the habitual criminal. And the media—both reflecting and generating this awareness—seem to have stepped up coverage of the problem with in-depth reports on the more dramatic examples.[3]

Though the impact of recidivists has been at least intuitively known by prosecutors and other criminal justice officials for many years, pressure to do something about repeaters may be at an unprecedented level.

Recognizing the problem is one matter. Responding to pressure to take effective action is something else.

As with other components of the criminal justice system, prosecutory time and budgets are limited. In the absence of additional resources, devoting more attention to cases involving defendants with extensive criminal records would mean diverting some resources from nonrecidivists' cases, perhaps even rejecting more of them for prosecution than otherwise would have been permitted.

To what extent would this be justified?

What are appropriate guidelines to assist prosecutors in deciding whether cases involving recidivists should be carried forward or receive extra attention at the expense of other cases?

How may a consistent policy in this area be developed and monitored, especially in those high case load jurisdictions where a burgeoning volume of work precludes the collective memory of office staff from even recalling which among the hundreds of weekly incoming cases involve defendants with extensive criminal histories—assuming such defendants were identified in the first place?

Those are precisely the types of questions addressed by a prosecutory approach developed by INSLAW through its ongoing LEAA-funded research program. To assess the implications of this approach, however, a review of recent insights into the impact of repeat offenders on society and on the criminal justice system's work load is warranted.

The Repeat Offender: New Findings

Traditionally, the impact of the habitual criminal has been illustrated by media and officials alike by publicizing dramatic examples, such as these:

- A former U.S. Attorney General highlighted the career of (1) a burglary suspect who was arrested and freed on bail 11 times in 17 months without standing trial and (2) a suspected thief and forger who was arrested and freed on bail 17 times over 30 months without coming to trial.[4]
- A Boston newspaper published the profile of a habitual offender who, over the years, appeared in Greater Boston courts 40 times on at least 50 charges, including kidnapping, rape, armed robbery, and receiving stolen goods.[5]
- The 1975 White House message to Congress on crime noted that, in less than a year, 10 persons committed 274 crimes in one jurisdiction: 200 burglaries, 60 rapes, and 14 murders.[6]

Frequently cited is a landmark study of 10,000 juveniles whose criminal involvement, if any, was tracked until they reached age 18. Findings revealed that those committing five or more offenses accounted for only 6 percent of the youths but were responsible for more than 50 percent of the reported delinquencies and approximately 66 percent of reported violent crimes attributed to the 10,000.[7]

More recently, an analysis based on New York State crime data led researchers to conclude that 80 percent of solved crimes are committed by recidivists. Regarding the 70 percent of crimes never solved, "the most likely possibility is that they are committed by the same group of recidivists. . . ."[8]

INSLAW's LEAA-funded research resulted in the development of a profile of 45,575 persons arrested for nonfederal felonies or serious misdemeanors in Washington during the 56-month period ending September 1975. As the first group of three paired bars in Exhibit 1 indicates, a relatively small percentage of persons account for a disproportionate number of arrests. For example, those arrested four or more times within the 56-month period represented only 7 percent of arrestees but accounted for 24 percent of the arrests, which is a substantial portion of the work load for police and screening prosecutors.

A similar relationship applies regarding persons who experienced multiple prosecutions and convictions. Exhibit 1 illustrates that those prosecuted at least four times during the period constituted 6 percent of persons prosecuted but were defendants in 20 percent of the prosecutions. Regarding persons convicted three or more times during the period studied, they comprised 5 percent of those convicted but 15 percent of the convictions. The apparent conclusion is that a small number of individuals represent a significant portion of the prosecutor's and court's work load, not to mention the disproportionate impact those recidivists have on citizens who are the victims of crime.

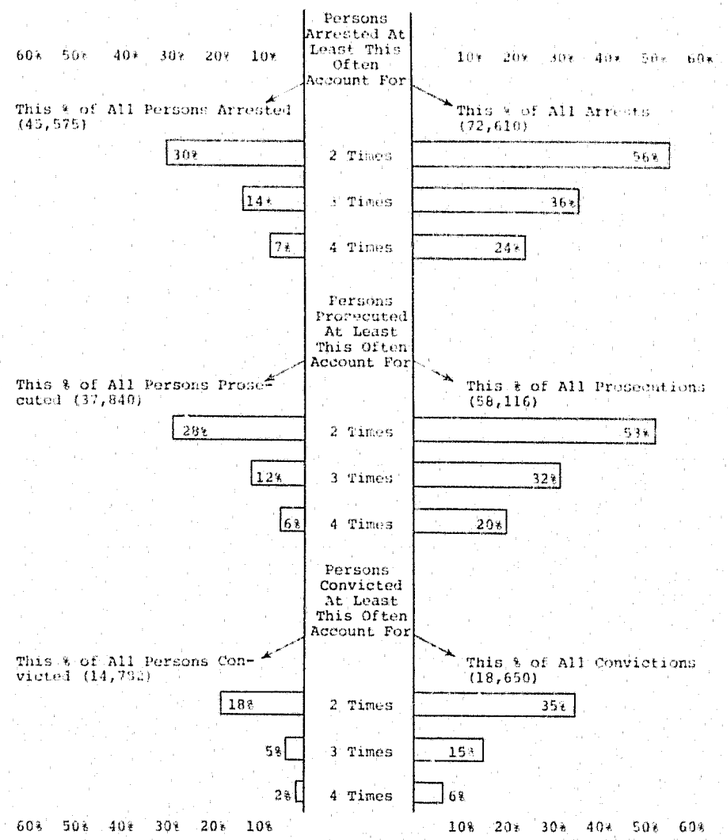
The statistics of Exhibit 1 are likely to understate the repeat-offender problem, for they are based only on those crimes resulting in arrests and include only those arrests prosecuted in the Superior Court of the District of Columbia, whose jurisdiction encompasses local "street crime" cases (that is, arrests processed by the U.S. District Court in Washington or by the courts in the neighboring Maryland and Virginia suburbs are excluded).

Looking at the repeat-offender problem from a different perspective, Exhibit 2 indicates that about 23 percent of 180 defendants under criminal indictment in the U.S. District Court in Washington also had other cases pending either in that court or in the local court (D.C. Superior Court).

For selected crimes, Exhibit 3 illustrates the percentage of D.C. Superior Court cases involving defendants who were arrested while on conditional release. Significantly, 26 percent of all felony cases involved such defendants, 32 percent of burglary cases, 31 percent of robbery cases, and 28 percent of murder cases.

EXHIBIT 1

Recidivism in Washington, D.C., as Measured by Rearrests, Reprosecutions, Reconvictions: Felonies and Serious Misdemeanors
(January 1, 1971, through August 31, 1975)



Data Source: PROMIS (Prosecutor's Management Information System) U.S. Attorney's Office, Superior Court Division, Washington, D.C.

Statistics such as the foregoing reinforce the already widely held belief that habitual criminals, while relatively few in number, generate a major problem for society and for the criminal justice process.

Indications of Change

Reflecting past concern about recidivists, repeat-offender statutes or habitual-offender laws have been enacted in many states. Designed to permit stiffer sentences for repeaters, the legislation also is often used by prosecutors to provide leverage for plea bargaining. More recently, some

[1] As quoted in *The Washington Star*, April 25, 1976, p. A1.

[2] Dale Tarnowieski *et al.*, *Not of One Mind* (New York: AMACOM, 1976), p. 27.

[3] For example, "Why Criminals Go Free," *U.S. News and World Report*, May 10, 1976, p. 40; further examples are in the next section.

[4] Richard Kleindienst, "Is Crime Being Encouraged?" (A speech delivered before the National District Attorneys Association, March 7, 1973), p. 1.

[5] *Boston Sunday Herald Advertiser*, July 13, 1975, p. A3.

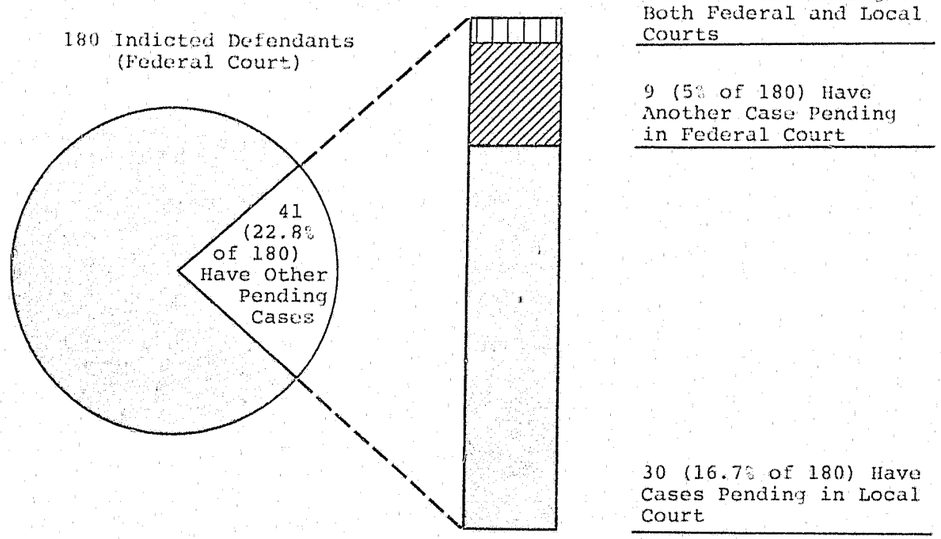
[6] President Gerald R. Ford, *Message on Crime to the Congress of the United States*, June 19, 1975.

[7] The study was conducted by Marvin Wolfgang and his associates at the University of Pennsylvania. Only about one-third of the 10,000 juveniles committed reported crimes; of those who did, 18 percent (or 6 percent of all 10,000) were responsible for more than half of all the recorded delinquencies of the group.

[8] Shlomo and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," *Law and Society Review*, Summer 1975, p. 597.

EXHIBIT 2

Other Cases Pending for Defendants Under Criminal Indictment in Federal Court on February 1, 1976
(Washington, D.C.)



Data Source: PROMIS (Prosecutor's Management Information System), U.S. Attorney's Office, Superior Court Division, Washington, D.C.

jurists have advocated the development of methods to assist judges assess the relative seriousness of the offense and prior record of the defendant in connection with sentencing decisions.[9]

Others, including Chief Justice Warren Burger, have suggested that the seriousness of the crime and the extent of the defendant's prior criminal record be consistently included among those factors influencing case-scheduling priorities.[10]

James Q. Wilson, a noted scholar, has also voiced concern about the habitual criminal: "Most serious crime is committed by repeaters. What we do with first offenders is probably far less important than what we do with habitual offenders."[11]

The 1975 White House message on crime said much the same thing: "These relatively few persistent criminals who cause so much worry and fear are the core of the problem. The rest of the American people have a right to protection from their violence."[12]

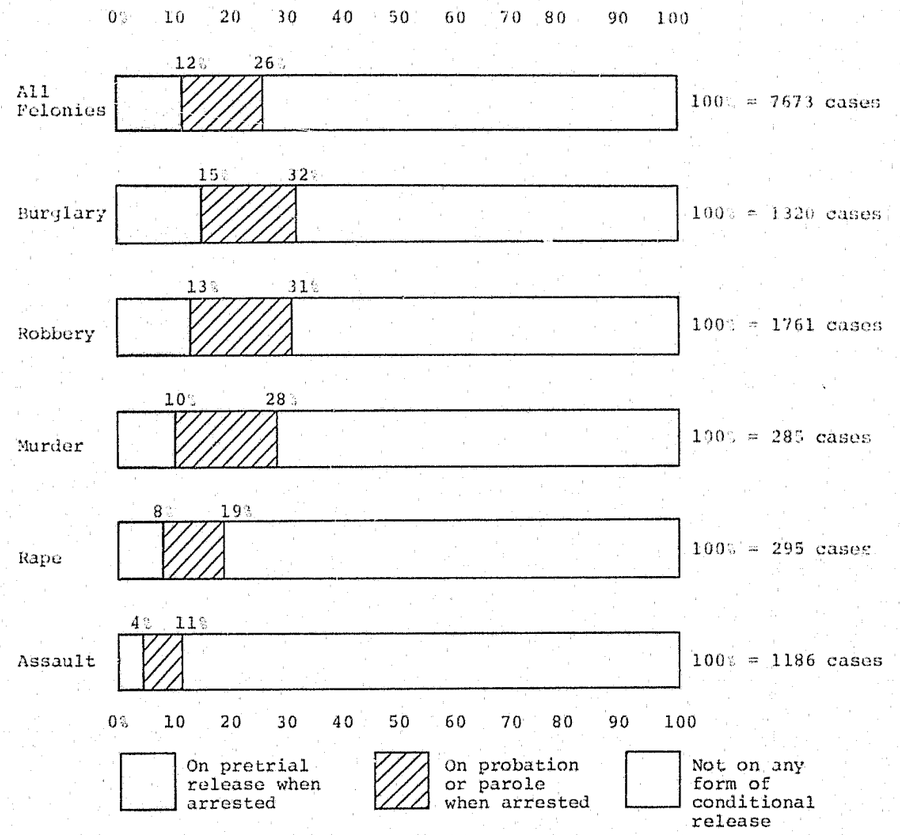
Citizens themselves seem to be increasingly vocal over the issue. For example, a budding citizen organization is proposing to focus its activities "on the habitual, serious offender who despite multiple arrests and convictions is free for long periods awaiting trial and soon after conviction is at large again." The group plans "to put such pressures on the criminal justice system as are needed to assure that the relatively small population of habitual, violent offenders is incarcerated in order to eliminate the inordinate danger which they present to the community."[13]

A proposed strategy that may help prosecutors focus on the serious repeat offender is outlined on the following pages. The approach is based on INSLAW's empirical research on the extent to which case-processing priorities (1973-74) of District of Columbia "street crime" prosecutors were affected by the seriousness of the crime, the extensiveness of the defendant's criminal history, and the probability of conviction (see Chapter III).

[9] Marvin E. Frankel, *Criminal Sentences: Law Without Order* (New York: Hill and Wang, 1973).
[10] Warren E. Burger, "The Image of Justice" (Remarks delivered to the Second Circuit Judicial Conference, Manchester, Vermont, September 10, 1971). See also National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), p. 95: "Priority scheduling recognizes habitual offenders, violent offenders, and professional criminals as major contributors to the crime problem. Differential treatment of these few offenders for scheduling purposes will be a positive contribution to reducing crime and assuring safer streets."
[11] James Q. Wilson, *Thinking About Crime* (New York: Basic Books, Inc., 1975), p. 199.
[12] President Gerald R. Ford, *op. cit.*
[13] Draft prospectus for the Nicky Solomon Foundation, Washington, D.C., 1976.

EXHIBIT 3

Cases Involving Defendants on Conditional Release at Time of Arrest: Washington, D.C., 1974



Data Source: PROMIS (Prosecutor's Management Information System), U.S. Attorney's Office, Superior Court Division, Washington, D.C.

II Prosecuting the Recidivist: A Framework for Crime Control

Typically, prosecuting attorneys are confronted with an incredible mix of cases, involving a wide spectrum of crimes, testimonial evidence of varying quality, and an assortment of defendants ranging from the innocent to the habitual criminal. In view of its limited resources, the prosecutor's office must exercise its substantial powers of discretion when deciding which cases to prosecute and how intensively.[1]

Given the disproportionately large share of crime committed by repeat offenders, prosecutors seem more than justified in structuring their discretion so that an appropriate percentage of time and staff is focused on recidivists, even though this might mean that other cases with as much or more evidence and involving less frequent or less serious offenders would have to be rejected or pursued with less-than-normal intensity.

Put another way, even though a recidivist's case may be a relatively difficult one for the prosecutor to "win" in trial, prosecutors need not reject it automatically; rather, the chances of conviction could be enhanced by assuring the case receives a thorough investigation and preparation.

This is similar to the decision typically made when a district attorney is confronted with a relatively weak case (which may or may not involve a recidivist), but one that involves a particularly serious crime: because of the gravity of the offense, the case is accepted for prosecution and carefully prepared.

Likewise, though evidentiary difficulties may be present, a recidivist's case (which may or may not involve a serious crime) could generally be accepted and receive special attention because it involves a habitual criminal as determined by the extensiveness and recency of the defendant's criminal history.

Repeat Offenders and Crime Control

Such decisions are analogous to an investment whereby a person reduces current purchases of consumer items in favor of acquiring a capital asset such as a stock whose appreciation prospects and dividends comprise the potential for greater benefits over the long term. Similarly, the prosecutor may have to give up some convictions in the current period by diverting some office resources from relatively convictable cases to more difficult but still convictable ones involving repeat offenders, in order to secure a greater reduction in future crime rates and future work loads that is likely to follow the incarceration of those whose criminal histories reflect their relatively high potential for future criminality.

This reduction in future crime is likely to result from the swift prosecution and incarceration of recidivists, which would not only incapacitate the defendants but quite possibly deter their like-minded associates at large as well.

Such a policy appears likely also to reduce recidivism in serious crime. It is noteworthy that homicide arrests in the District of Columbia during 1973 involved defendants who were substantially more likely than other defendants to have prior arrests; 72 percent of homicide defendants had at least one previous arrest, as compared with 56 percent for the others. This suggests that homicide may be the culmination of a violent criminal career and that some homicides could have been deterred under a more aggressive program of targeting on repeat offenders.

The incapacitation effect of taking recidivists out of circulation is apt to be substantial. According to one study: "If we send every convicted mugger and robber to prison for five years, we could reduce this type of violent crime by a factor of five. It will take two to three years for the policy to be effective, for this is the time span needed to convict the majority of recidivists."[2]

Concentrating more resources on cases involving repeat offenders does not mean ignoring the strength of the evidence (as reflected by the probability of conviction) or the seriousness of the crime. It does mean district attorneys should consider investing prosecutory time in cases whose evidence is of below-average quality if and when recidivists are involved, just as prosecutors often do if and when a defendant has committed a heinous crime. This overall approach is illustrated by Exhibit 4.

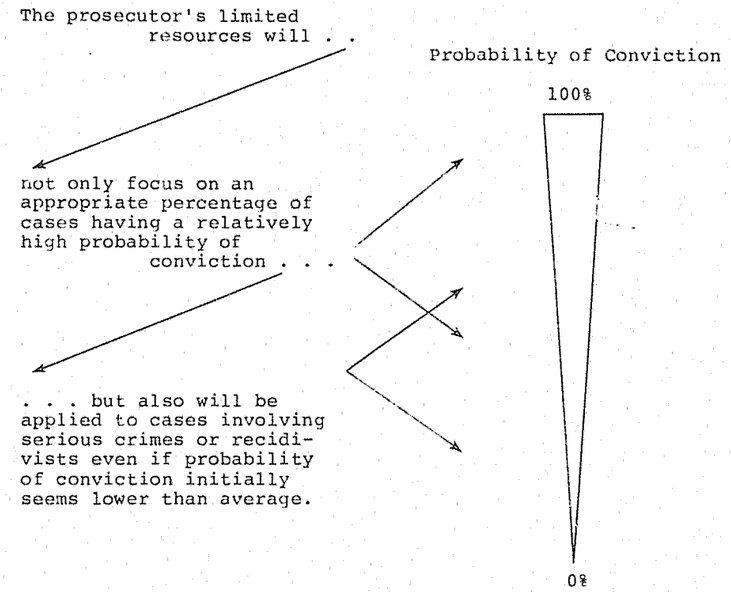
Obviously, if the prosecutor's office seeks to win as many cases as possible during the year ahead, its priorities will be determined exclusively by its assessment of the strength of evidence and its enhanceability: the greater the perceived probability of conviction per unit of prosecutory resource to be expended for a given case, the more likely the case will be carried forward and receive the needed preparation. Likely exceptions to such a policy would be prosecution of relatively weak cases when they involve especially serious crimes.

But if a district attorney is interested in pursuing a strategy whose purview includes maximizing future reductions in the crime rate (and prosecutory work load), office priorities will be governed by indications that the defendant is a repeat offender *as well as* (not instead of) the strength of evidence and seriousness of the crime.

The greater the prosecutor's desire to affect the future crime rate, the more weight he or she will give to the indications that the defendant is a repeat offender. How much more weight should be assigned is a question that each prosecutor's office must decide for itself. Given that decision, how might such a policy be applied on an evenhanded, systematic basis to the myriad cases urban prosecutors must process?

EXHIBIT 4

Overall Approach to Prosecuting Recidivists



A Technique for Putting Policy into Practice

Translating the foregoing policy into practice requires careful management of prosecutory discretion to assure that it is systematically and evenhandedly applied. The goal is to treat similar cases similarly. In effect, an evenhanded prosecutory policy for repeaters requires adherence to past prosecutive precedents in much the same way as court decisions are governed by judicial precedent.

But due to the typical prosecutor's enormous work load, this cannot be achieved by careful analysis of each recidivist's case individually and comparison with past cases to determine whether or how intensively to carry it forward.

However, there is a rough "proxy" for this kind of research. It is by no means infallible. The exercise of independent judgment by prosecuting attorneys is still required. Nonetheless, this proxy enables one to channel the recidivist-oriented policy described earlier (Exhibit 4) from the theoretical plane to the operational level.

This proxy can estimate the probability of conviction, the gravity of the crime, and the extensiveness of the defendant's criminal history and, in conformance with the relative importance the office attaches to those three factors, can indicate (among other things) those cases that are prime candidates for more intensive preparation. The proxy is actually a statistical technique, or "model," that can express office policy in quantitative terms. Used in conjunction with a computer, the technique is an automated high-speed mathematical substitute for the type of research and decision making that would otherwise have to be done manually, if at all.[3]

This technique may be described as an automatic filtering device or a sieve that, when placed in the stream of cases, can pick out those that seem to warrant prosecution because their characteristics match office criteria in terms of extensiveness of the accused's criminal record, the seriousness of the offense, and the probability of conviction (as measured by the strength of the evidence). This is analogous to the Internal Revenue Service's use of computers to scan the multitude of tax returns in order to red-flag those containing items that meet certain criteria (for instance, charitable contributions that are abnormally large in relation to reported income).

The technique might be utilized in a way that permits screening assistants to request the computer (1) to take into account for a given case the probability of conviction, the gravity of the offense, the defendant's criminal history, and (2) to display on the T.V.-like screen of the computer terminal an indication of the amount

[1] Commenting on the discretionary authority of the prosecutor, a prominent criminologist writes, "By legal authority and by practice, U.S. prosecutors have the greatest discretion in the formally organized criminal justice network." Albert J. Reiss, "Discretionary Justice in the United States," *International Journal of Criminology and Penology*, May 1974, p. 195.

[2] Shlomo and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," *Law and Society Review*, Summer 1975, p. 605.

[3] This assumes, of course, that the prosecutor's office collects and stores in a computer appropriate data for the statistical technique to "work on"—that is, information on the accused's crime and criminal history and various elements indicative of the strength of the evidence (probability of conviction). Jurisdictions that have implemented PROMIS (Prosecutor's Management Information System) already routinely collect that data, and much more, on each case.

of prosecutory effort that seems justified by those three characteristics of the case.[1]

If the statistical technique has been designed to give extra weight to a defendant's criminal history, the computer-calculated estimate for the amount of prosecutory effort to allocate to a repeat offender's case could be large even though the probability of winning a conviction might be indicated as low, say 16 percent (about one-half the average for all "street crime" arrests in the District of Columbia, for example). One interpretation of this small figure is that, even though the evidence as it now stands seems of poor quality, the accused's criminal history (and/or seriousness of the crime) is such that the office appears justified in allocating more prosecutory attention than for most other cases in order to preserve or gather additional evidence so that the likelihood of a conviction could be enhanced.

On the other hand, the estimated low probability of conviction could signify (1) the defendant is, in fact, innocent, or (2) though he or she is guilty, the evidence is so poor that no amount of future prosecutive effort would secure a conviction. Hence, a proper interpretation of the computer-calculated estimate of prosecutive effort requires the exercise of independent judgment by screening prosecutors, who have at their fingertips many more facts than are taken into account by the statistical technique. In the example, the 16 percent probability of conviction may be acceptable considering the criminal history of the defendant, but totally unacceptable if the evidence were tainted by patently illegal search and seizure—something a prosecutor would usually be aware of but a factor not among the data currently evaluated by the statistical technique. (The various elements the technique considers when determining "probability of conviction" are described beginning in Chapter IV.)

In addition to (or instead of) being used on a *prospective* basis to help district attorneys determine whether a case should be more carefully prepared in accordance with a recidivist-oriented policy, the technique is appropriate for utilization *retrospectively*. That is, it could serve as an auditing tool, whereby all cases (or a particular prosecutor's cases) processed at the screening stage during a *past* period (for example, the preceding month) are analyzed by the computer to spot those cases that seem as if they should have received more attention, but did not, and vice versa.

For example, the prosecutor's computer, programmed to use the statistical technique, could scan the preceding month's incoming cases and red-flag 20 of those that were rejected for prosecution or terminated soon after acceptance even though they involved arrestees whose criminal histories were extensive enough to have apparently warranted more intensive prosecution efforts according to office criteria.

The jackets of the 20 cases could be retrieved from the files and examined. Some, upon a closer look, may indeed have warranted rejection or dismissal; as indicated earlier, the technique that red-flagged them is not infallible—the judgment of prosecuting attorneys must still be applied, but preferably after the automated statistical analysis greatly narrows the cases to a manageable number so that attorney judgment can be brought to bear.

Though not perfect, the statistical technique permits what otherwise would have been impossible: a reasonable, systematic, and evenhanded application—prospectively and retrospectively—of a prosecutive policy that focuses on recidivists to an appropriate degree (Exhibit 4).

INSLAW staff are currently modifying the technique so it can be applied at successive prosecutive stages, taking into account changes in the probability of conviction either because new evidence was uncovered (or prior evidence invalidated) or, for example, because the case is closer to trial and this may induce the defendant to negotiate a plea. Once modified, the technique would be able to provide information along the lines of the following example:

- Probability that arrest will end in conviction: 10 percent.
- Probability of an arrest resulting in an indictment: 16 percent.
- Probability of a plea if the defendant is indicted: 48 percent.
- Probability of a guilty verdict if the case goes to trial: 79 percent.

Yet another application of the notion of case priorities might center on its use before a prosecutor's office consciously formulates a recidivist-oriented policy. Decisions that relate to whether cases actually went forward can be analyzed as a basis to determine the relative weight given to criminal histories, seriousness of the crimes, and probabilities of conviction.

If the finding is that little or no weight was attached to the defendants' criminal histories, what are the implications of this for a firmer policy toward recidivists, assuming this were desired? As noted earlier, such a finding would not imply that the probability of conviction and the seriousness of the crime should be ignored.

However, a firmer prosecutory policy toward repeaters might involve establishing a career criminal unit and accepting more cases involving recidivists even when the strength of the evidence and seriousness of the crime are marginal. To add those cases might require accepting fewer cases of other types, in the absence of additional resources.

A tougher stance toward habitual criminals might mean policies that result in a reduced preindictment nolle prosequi rate for cases involving recidivists, more intensive efforts to secure stringent bail conditions and revocation of probation and parole, a speedier handling of these cases, and more intensive preparation of repeaters' cases, such as more thorough investigative work and better communication with witnesses.[5]

[1] The indication representing the amount of prosecutory effort could be based on past experience of the office, on current office policy (which may give more weight to the criminal history factor than was done in the past), or on the importance an individual assistant prosecutor may wish to assign to criminal history, offense seriousness, and probability of conviction.

[5] Causes of, and solutions for, witness problems are treated in Institute for Law and Social Research, *Witness Cooperation—With a Handbook of Witness Management* (Lexington, Mass.: Lexington Books/D.C. Heath and Company, 1976).

III Case Study: Recidivism and The Prosecutory Response To It in Washington, D.C.

The foregoing statistical technique was applied to prosecutory operations in Washington, D.C., in order to obtain an overall indication of the extent to which the recidivist-oriented approach illustrated by Exhibit 4 was reflected during the processing of street-crime felonies in 1973 and 1974. That is, to what degree were case-processing priorities in 1973 and 1974 affected by the seriousness of the crime, the extensiveness of the defendant's criminal history, and the probability of conviction?

The prior record of the defendants appeared to have virtually no independent influence on actual office case-processing decisions, which were moderately influenced by the seriousness of the crime and heavily determined by the strength of the evidence. Prior to a more detailed discussion of these findings, a few comments about the prevalence of repeat-offender cases, the attrition of cases, and the conditions under which prosecutors had to work during the period studied are in order.

Recidivist-Related Cases and Attrition

Statistics on recidivism in the District of Columbia for 1973 are similar to those reported earlier for the 56-month period ending September 1975. For example, of the 15,460 local street-crime cases (including 6,750 felonies) prosecutors received in 1973:

- 9 percent of the defendants had at least ten previous arrests, exclusive of those for such relatively minor matters as disorderly conduct and traffic violations.
- 22 percent of all defendants had at least five prior arrests.
- 17 percent of the defendants were arrested at least twice during the 12-month period
- 12 percent had at least two cases pending simultaneously in the local court having jurisdiction over street-crime cases.
- 20 percent of all defendants were on some form of conditional release at the time of their arrest, including about one-third of all robbery and murder defendants.

Regarding felonies only, 62 percent involved defendants with arrest records; 51 percent included defendants arrested during the previous five years; and 11 percent involved defendants with ten or more prior arrests.

Against this backdrop of recidivism, the attrition or fallout of cases during prosecution and adjudication was such that less than one of three arrests resulted in a conviction for anything. Of all felonies received by prosecutors in 1973, 23 percent were refused prosecution; 30 percent, nolled or dismissed; 2 percent, ignored by the grand jury; 3 percent, found not guilty; and 31 percent, found or pled guilty. (About 12 percent were still open by the end of 1973.) Therefore, even if arrested (and the chance of that for some offenses appears to be less than 5 percent[1]), the habitual offender seemed likely to escape conviction. Similar conditions prevailed in 1974.

The Prosecutory Environment in 1973 and 1974

Several reasons help to explain why felony cases—and a significant number of recidivists—fell out of the system after arrest but prior to the point where a plea or trial could occur.

For instance, an INSLAW study in 1973 found that the leading reason recorded by District of Columbia prosecutors to explain rejected or dropped cases was insufficient cooperation by lay (nonpolice) witnesses. According to prosecutors, witness noncooperation accounted for nearly 40 percent of the cases refused prosecution or subsequently dropped by prosecutors or dismissed by the court.

Witness problems appeared, in large part, to be caused by procedures that led to breakdowns in communications between police or prosecutor and witnesses. Of a sample of 2,997 witnesses, for instance, one in four could not be located at the address recorded by police at the crime scene. Thus, future communication with those witnesses—such as requests to appear at a lineup or in court—was severed. If these witnesses were regarded as essential, prosecutors probably had little choice except to reject or drop cases.

Also contributing to the noncooperation problem was insufficient sensitivity by police and prosecutor to witnesses' fear of reprisal, which the study found was fairly common. Nor, apparently, did police, prosecutor, or court sufficiently inform witnesses

[1] See PROMIS Research Project Report No. 2, *Expanding the Perspective of Crime Data: Performance Implications for Policymakers*. For example, in 1973 there were an estimated 8,600 commercial burglary victimizations in the District of Columbia and 196 arrests for the crime.

about what was expected of them or when or where it was expected. The net effect seemed to be an often confused witness who, despite the best of intentions, did not appear at the prosecutor's office or in court on time or even at all.

So that the resources available in 1973 and 1974 could keep pace with a burgeoning case load, the prosecutor's office processed misdemeanors and preindictment felonies in a mass-production, assembly-line fashion, where responsibility for a case and its witnesses shifted repeatedly from one prosecutor to another as the case proceeded from one prosecutive or court event to another. As with a manufacturer's assembly line, responsibility for a case was fragmented among several persons and time was at a premium. When someone was unable to supply a key prosecutive component, such as effective communications with witnesses, the case stood an excellent chance of being rejected, dropped, or dismissed—time pressures were often too great to permit identification of inadvertent errors, much less their correction.

Such a system left little or no time for prosecutors to determine why witnesses did not show up. Nor did operating conditions allow prosecutors to prepare cases as thoroughly as they otherwise might have. The prosecutor's office, for example, did not have the budget to employ investigators, who could have enhanced the evidence in cases involving repeat offenders.

Resource constraints may also help explain the practice of utilizing the least experienced attorneys of the office at the beginning of the assembly line—that is, at case intake and screening. These less experienced prosecutors could not generally have been expected to be as knowledgeable as veterans in such areas as interviewing witnesses, establishing a rapport with victims, initiating action to build up cases so they could withstand rigorous scrutiny at subsequent prosecutive stages, and developing effective relationships with police investigators, who might have been prevailed upon to do additional spade work. The ability to perform such functions is likely to be especially critical when screening prosecutors deal with cases of habitual criminals, for many of these defendants seem to be extremely skillful in exploiting weaknesses that develop during prosecution and adjudication.

The heavy case load in 1973 and 1974, in relation to prosecutory and judicial resources, surely affected the length of time cases were pending in the system, which, in turn, had an impact on how effectively repeat offenders could be prosecuted. In 1973, for example, the average indicted felony spent 124 days in the system, from case screening to final disposition. Felonies that went to trial were in the system an average of 181 days. Average time from case screening to indictment was 36 days. The time a given case is pending between the various stages of case processing appears to be an important factor bearing on the likelihood that the defendant will fail to appear for a court proceeding. Delay tends to increase the failure-to-appear rate, which, in turn, is likely to mean further delay, during which time evidence could sour and witnesses' memories fade, thus reducing the probability of conviction.

Also, it is clear that the longer a defendant is on the street awaiting trial—especially a repeat offender—the more likely he or she is to commit another crime pending disposition of the current case. This would be particularly probable in jurisdictions where pretrial release criteria are generous. In 1973, over 80 percent of the "street crime" defendants in the District of Columbia were released pending disposition of their cases.

One way for the prosecutor's office to deal with such pressures on limited resources is to increase the proportion of recidivists' cases that would be among the 30 percent or so resulting in convictions. This objective could be accomplished by advancing repeat-offender cases and systematically devoting more effort to them in order to maintain a high level of witness cooperation and generally enhance the quality of evidence to increase the likelihood that the case will meet the trial standard of "beyond a reasonable doubt."

Indeed, senior prosecutors have stated that office policy was and is to devote extra effort to potentially convictable cases that involve repeat offenders.

INSLAW research findings indicate that such a policy might well focus on repeaters who are arrested not only for felonies but also for misdemeanors. This is so because many habitual criminals appear often to diversify their offenses.[2] Many repeat offenders do not appear to commit felonies exclusively. A recidivist arrested on a misdemeanor charge today may well have a string of prior felony arrests and vice versa. Obtaining a conviction in a current misdemeanor case might prevent a future felony.

Did Repeat Offender Cases Receive Priority Attention?

The foregoing statistics regarding the 1973-74 prosecutory environment in the District of Columbia were obtained from information stored by prosecutors in PROMIS (Prosecutor's Management Information System),[3] whose extensive body of data on each case also encompasses those items used to analyze how case-processing priorities are affected by the seriousness of the offense, the gravity of the defendant's criminal history, and the probability of conviction. (The Appendix lists more fully the data used in the analysis.)

The analysis of the felony processing priorities suggested that the prosecutory effort given a case was generally insensitive to the defendant's criminal history: that is, cases involving repeaters were given priority only to the extent that convictions seemed relatively likely to result. The fact that the defendant was a recidivist did not reveal itself as having a separate, independent impact on the prosecutor's decision to allocate resources to the case.

Such a finding does *not* mean that few recidivists were convicted or that the majority of felony convictions involved first offenders. Indeed, the conviction rate was higher for repeat offenders than for others. However, the findings suggest that this results from recidivists' cases being inherently more convictable, and not from the consistent implementation of a policy that targeted on repeaters per se. Witness problems were less likely in cases involving repeat offenders; the prosecutor was able to use leverage in plea bargaining in these cases, leverage that results both from repeat offender statutes and multiple pending cases; the nature of the crimes committed by repeaters appears to have made their cases inherently more convictable; and defendants who revealed ineptness by being frequently arrested cannot be expected to have contributed as much toward the defense of their cases as other defendants.

Case-processing priorities did appear sensitive to the seriousness of the offense that gave rise to the case. Put another way, prosecutors were found to direct more effort toward felonies involving relatively serious crimes than they would have if they had been interested only in maximizing the probability of conviction.

Prosecutive effort was found to have been especially sensitive to the strength of evidence (probability of conviction)—about ten times more sensitive than to the seriousness of the crime.

To summarize, the prior record of defendants was found to have had virtually no independent influence on office case-processing priorities, which appear to have been moderately influenced by the seriousness of the crime and heavily determined by the strength of the evidence.

Reconciling the Finding with Office Policy

Prosecutors in the District of Columbia consider the finding that their prosecutive effort in 1973 and 1974 was not influenced by defendants' criminal histories to be at variance with their own experience and intuition. As noted earlier, senior prosecutors report that it was and is a matter of office policy to devote extra effort to potentially convictable cases that involve repeat offenders.

One possible explanation for the paradox of an expressed office policy on repeat offenders and a statistical finding that fails to disclose evidence of the policy may lie in the lack of suitable tools for monitoring and enforcing the policy. One way that senior prosecutors monitor adherence to policies is to review the daily calendars that have been annotated to reflect dismissals and associated reasons, the nature of plea settlements, and so forth. These calendars, however, do not contain any characterization of the seriousness or extensiveness of the defendant's prior criminal record, thereby depriving top management of the type of feedback by which to evaluate whether the office policy is being consistently followed by assistant prosecutors.

Under such conditions, it is understandable that assistant prosecutors would inadvertently deviate from office policy, for their instinctive criterion of success appears to focus more on conviction rates than on allocation of more time to the prosecution of repeat offenders.

The typical prosecutive management system might be described as one where rank-and-file prosecutors are given extensive latitude in the handling of cases. The management system may generally intrude on this latitude only to the point of requiring special accountability for a relatively small portion of the work load: those cases involving very serious crimes.

In a small-town environment where prosecutors would recognize the names of repeat offenders, the prosecutory management system might typically also hold rank-and-file prosecutors to a special level of accountability regarding the habitual offender. But in a large, urban office, the collective memory of the staff is not likely to recognize recidivists by name, and, consequently, the office is deprived of a "handle" to use when communicating priorities on that issue, whereas the legal charges constitute a "handle" to use when evaluating whether assistants are allocating sufficient time to cases involving serious crimes.

The rating that PROMIS generates to reflect the gravity of each defendant's criminal history is intended to be the "handle" or "proxy" for the seriousness of the accused's criminal record. However, in the jurisdiction studied, the ratings did not appear to have been utilized extensively.[4]

Given the foregoing conditions, the finding that, in 1973 and 1974, a defendant's criminal history did not have an independent effect on prosecutive effort is not necessarily inconsistent with top-management policy to the contrary.

Repeat Offender Strategy in 1976

Recent developments indicate that the implementation of top-management policy regarding prosecution of recidivists seems much more effective in 1976 than in prior years.

Both the police and the court have also taken recent steps to deal more effectively with aspects of the repeat-offender problem.

Launched in August 1976 by the Metropolitan Police Department and the U.S. Attorney's Office for the District of Columbia, whose Superior Court Division prosecutes local street-crime cases, a special unit (Operation Doorstop) is staffed by four experienced prosecutors and six police investigators, who focus exclusively on the serious, habitual criminal. According to the prosecutor's office, the objective of Operation Doorstop is to "stop the revolving-door justice that permits repeat offenders to escape the punishment they deserve."[5]

Press accounts,[6] among other sources, have highlighted some of the policies governing Operation Doorstop:

- Repeat offenders are investigated, as appropriate, after arrest by the unit's prosecutors and police officers to build as strong a case as possible in order to minimize the chances of subsequent dismissals and to maximize the probabilty of conviction. (Similarly, the police department itself seems to be even more aware than in the past that arrests must be of a quality that they not only are accepted for prosecution but also can withstand closer scrutiny at later prosecutive stages.)
- A case involving a habitual criminal is not passed from one prosecuting attorney to another, assembly-line fashion; rather, it receives detailed attention from one prosecutor.
- Career criminals arrested while on probation or parole can expect the unit to try to hold them in jail while seeking to expedite the revocation of parole or probation. (The Superior Court has ruled that a probationer or parolee charged with a serious offense may be held without bond for five days, to permit sufficient time for a decision regarding revocation.) During its first 2 months, the unit identified 60 repeaters: 52 were jailed because of failure to make high bail or because of revocation of parole or probation.

---

[2] Kristen M. Williams and Kathleen B. Brosi, "A Description of Patterns of Recidivism in the District of Columbia," INSLAW paper, November 1976.

[3] PROMIS has been designated as an Exemplary Project by LEAA. Such a designation is reserved for criminal justice programs judged outstanding, worthy of national attention, and suitable for adoption by other communities. "Street crime" prosecutors in Washington, D.C., rely upon PROMIS to help them manage more effectively an annual work load involving allegations of 8,500 serious misdemeanors and 7,500 felonies.

[4] The PROMIS rating reflecting the gravity of the defendant's criminal history is being restructured by INSLAW in an attempt to enhance the rating's utility and acceptance.

[5] Earl J. Silbert, U.S. Attorney for the District of Columbia, as quoted in the *Washington Post*, August 12, 1976.

[6] *Washington Evening Star*, August 11, 1976; *Washington Post*, August 12, 26, and October 19, 1976.

- Case-processing time is said to have been significantly reduced; for example, indictments have been returned within eight days of arrest. And the court is reported to have agreed to attempt to schedule preliminary hearings in a manner that will conserve the unit members' time in court.
- Realization by the police and prosecutor's office of the importance of witness management appears heightened. For example, the Metropolitan Police Department has produced a training film—for viewing at roll call—to acquaint officers with the scope and significance of the witness noncooperation problem and to instruct them in new procedures.
- Criteria for pretrial release are being tightened. To keep repeat offenders off the streets, preventive detention procedures are expected to be used more frequently than in the past. In a related matter, legislation is pending that would reduce the likelihood of pretrial release for those arrested while already on conditional release (bail, probation, parole).

Thus the conditions under which District of Columbia prosecutors now work with regard to targeting on repeat offenders—in terms of the resources, procedures, and assistance from other criminal justice components—seem to be markedly improved in relation to the prosecutory environment of 1973 and 1974.

IV A Closer Look At the Analytical Technique As Applied in the District of Columbia

The number of days District of Columbia prosecutors carried each case was used by INSLAW researchers as an indication of the amount of effort allocated to the felony case by the office.

Some may question whether the figure representing the number of days a prosecutor carries a case is an accurate enough proxy for the prosecutive effort or resources allocated to the case for the figure to have been used by INSLAW to draw inferences about the relative importance the District of Columbia prosecutor's office attached, in 1973 and 1974, to the seriousness of the crime, the gravity of the defendant's record, and the probability of conviction.

However, INSLAW is persuaded that the number-of-days figure is a suitable proxy even though it is less than perfectly correlated with the true amount of prosecutive effort in felony trial cases (if, indeed, one could imagine a perfect measure of prosecutory effort). The decision to carry forward a felony at each stage of prosecution appears, with few exceptions, to be equivalent to the decision to allocate more resources to the case.

To elaborate, in the District of Columbia, about one-fourth of all felonies were rejected by the prosecutor at initial screening in 1973. Those rejected, obviously, received less prosecutive effort and were in the system for less time than those accepted. Slightly more than half of those that were accepted were indicted in 1973. Indicted felonies were in the system 109 days longer, on average, than other cases originally accepted as felonies; we know that indicted felonies received more prosecutive attention per case than unindicted felonies. At the next stage, 27 percent of the indicted felonies went to trial. Indicted cases that went to trial were in the system 78 days longer, on average, than those that were dropped or involved guilty pleas; in all likelihood, the former received more attention per case than the latter. Similar conditions prevailed in 1974.

Other facts also support the soundness of using time-in-system as a proxy measure of the amount of prosecutive effort or resources allocated to a case. If the cases that the prosecutor viewed as most important were, in fact, speeded through the system so that time-in-system were not a good measure of prosecutory priorities, then one would expect to find empirically that cases with the best evidence and those involving the most serious offenses would be in the system for *shorter* periods than other cases. However, an examination of the facts indicates that these presumably important cases were, during the period studied, in the system *longer*. This operational reality belies the notion that time-in-system might be an unreasonable measure of prosecutory case-processing priorites.

In short, we are not aware of any factors that would make errors in the proxy measure (number of days the case is carried) distort the study's findings, reported earlier.[1]

Another reasonable question to pose is this: If felony cases involving defendants with criminal histories received no more prosecutive effort than other felony cases, could this have been caused by a greater tendency for defendants with prior records to plead guilty (rather than risk going to trial), and not by any lack of concern by the prosecutor about the defendant's record? The data indicate that felony cases accepted by the prosecutor and involving defendants with prior arrest records were no more likely to leave the D.C. Superior Court with a plea of guilty than felony cases accepted by the prosecutor and involving defendants with previously "clean" records (33.5 percent for both groups), and were more likely to go to trial (19.8 percent and 13.9 percent, respectively).

What about the validity of defining a defendant's criminal history in terms of prior arrests (rather than convictions) and of using this as an indicator of recidivism and a predictor of future criminality by the defendant? For purposes of statistical analysis, at least, arrest data seem valid[2] for these reasons among others:

- Arrests are likely to be correlated with convictions if only because the latter cannot occur without the former.
- Exhibit 1 illustrated that a small number of persons accounted for a disproportionately large number of arrests, prosecutions, *and* convictions. This phenomenon would be highly unlikely if arrests were not correlated with convictions and recidivism.
- Two researchers report: "The best data on recidivism we have are those based on arrests . . . This is regrettable, for intuitively we hesitate to use arrest data. . . . Fortunately, there are several very exhaustive studies investigating this problem, each involving several thousand arrests. Both showed that above 90 percent of the arrests investigated were based on solid evidence, and the reasons charges were dismissed or reduced to misdemeanors were not related to the weight of the evidence but were extraneous (desire to reduce court loads, unwillingness of the witness to appear in court, etc.)."[3]
- A preliminary report of ongoing INSLAW research on recidivism suggests, "Past criminal history seems to be a good predictor of future criminal activity." (Of the six items used to define "criminal history," all but one—use of an alias—pertained to prior arrests.[4])
- An alternative measure of recidivism was used, but this did not significantly change the findings. Recognizing that the number of prior arrests is unlikely to be perfectly correlated with the number of prior offenses or convictions, and that the most adept repeat offenders might have the fewest arrests, INSLAW attempted to minimize this problem in a subsequent analysis by using another measure of criminality: whether the victim in the current case knew the defendant prior to the crime. This was done on the theory that persons who choose illegal activities as an "occupation" will be inclined to select strangers as their victims to reduce the likelihood of being apprehended. The introduction of this factor did not materially alter the conclusion of the earlier work.

Other INSLAW research has found that defendants with prior convictions are relatively more likely to be convicted in the future. Is not this inconsistent with the present finding that, in 1973 and 1974, the criminal histories of defendants in the District of Columbia had no bearing on the amount of prosecutive effort devoted to their cases? No, because recidivists, by definition, are arrested more frequently than other types of defendants and, therefore, have a greater exposure to conviction. Whether these arrests received prosecutive attention appeared to depend primarily on the likelihood of conviction, secondarily on the seriousness of the crime, and not at all on the defendant's criminal history.

Although findings indicated a lack of special concern during 1973 and 1974 about repeat offenders by prosecutors in the jurisdiction studied, perhaps this really reflected legal constraints and not prosecutor preferences. That is, to the degree that the findings reveal an indifference about defendants with criminal records, it may be the law's indifference rather than the prosecutor's. However, it would seem naive to ignore the simple fact that the prosecutor does have latitude in allocating resources to cases and in electing to drop cases, and can increase the likelihood of conviction in a given case by becoming thoroughly acquainted with its details and by initiating investigative activities. Hence, while prosecutory discretion is limited, the prosecutor appears to have an opportunity to concentrate resources on cases involving repeat offenders.

Measuring the Probability of Conviction

As noted previously, the statistical technique prosecutors can use to monitor repeat-offender policies generates estimates of the probability that a given case will end in conviction. The method does so by considering whether various factors, relating to the strength of the evidence, such as those listed below, are present (see Appendix). Note that some of the seven strength-of-evidence items listed below are not evidence per se but, for purposes of analysis, are valuable as indicators of (or proxies for) the strength of evidence:

- Witnesses constitute a measure of the amount of testimonial evidence on behalf of the government in a case.
- Tangible evidence refers to such items as recovered stolen property, weapons, etc.
- Days between offense and arrest is included because of the expectation that, as the time gap widens, the quality of testimonial evidence will decline.
- Victim is a business or institution; if so, one would anticipate that a better case will result because of the availability of employees paid by the employer to make court appearances, guards, cameras, and the like.
- Defendant's criminal history: as described in greater detail in Chapter III, cases involving repeat offenders can be expected to be more convictable than others because witness problems are less likely and the prosecutor's plea bargaining leverage is enhanced, among other reasons.
- Involves a stranger-to-stranger situation; if so, the expectation is that testimonial evidence would be less difficult to obtain from the victim than when the victim and defendant knew one another prior to the offense, in which case fear of reprisal might be a more important factor.
- Age of the defendant: older defendants are anticipated to be more experienced and interested in beating the system than are young suspects.
- Number of codefendants: complications are expected to increase as

[1] Errors would have to be nonrandom ones to distort the findings, such as those that would have been generated had the prosecutor's office consistently followed the practice of accelerating the processing of recidivists' cases, but not of cases involving stronger evidence or more serious offenses.

[2] Future research will utilize conviction data to define criminal history in order to determine if the findings will be different from those based on arrest data.

[3] Shlomo and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," *Law and Society Review*, Summer 1975, pp. 592-593.

[4] Kristen Williams, *Preliminary Report: Predicting Recidivism with PROMIS Data—Preliminary Results from the Analysis of Defendants in 1973* (Washington: INSLAW, April 1975).

the number of codefendants in a case increases.

The strength-of-evidence items above are listed in descending order of their impact on the probability of conviction. As indicated, witnesses and tangible evidence are the top determinants of whether a prosecution will result in a conviction. Exhibit 5 indicates the extent to which their presence enhances the chances of conviction.

In Conclusion . . .

The standard on screening criteria proposed by the National Advisory Commission on Criminal Justice Standards and Goals states that "the prosecutor should consider the value of a conviction in reducing future offenses, as well as the probability of conviction and affirmance of that conviction on appeal."

When considering the value of carrying a case forward, prosecuting attorneys are asked to take into account "the offender's commitment to criminal activity as a way of life: the seriousness of his past criminal activity, which he might reasonably be expected to continue. . . ."[5]

The general strategy and the case rating technique[6] described on these pages are wholly consistent with the Commission's recommendation and constitute a reasonable response to the plea of the citizen quoted at the beginning of this report: "We should begin to be less tolerant of repeat offenders."

As a Justice Department spokesman remarked, "It is just a question of putting . . . your professional prosecutors—competent, experienced, full-time lawyers—against the professional criminal. When this happens, it is no contest. With proper screening of defendants to make sure that resources specially set aside are actually used on the professional criminal, the results have shown that the likelihood of indictment, the likelihood of conviction—usually by plea, but often through a well-prepared and well-tried case leading to a guilty verdict—and the likelihood of appropriate sentencing are all increased. The only thing that decreases—as it should—is the amount of time between indictment and ultimate disposition."[7]

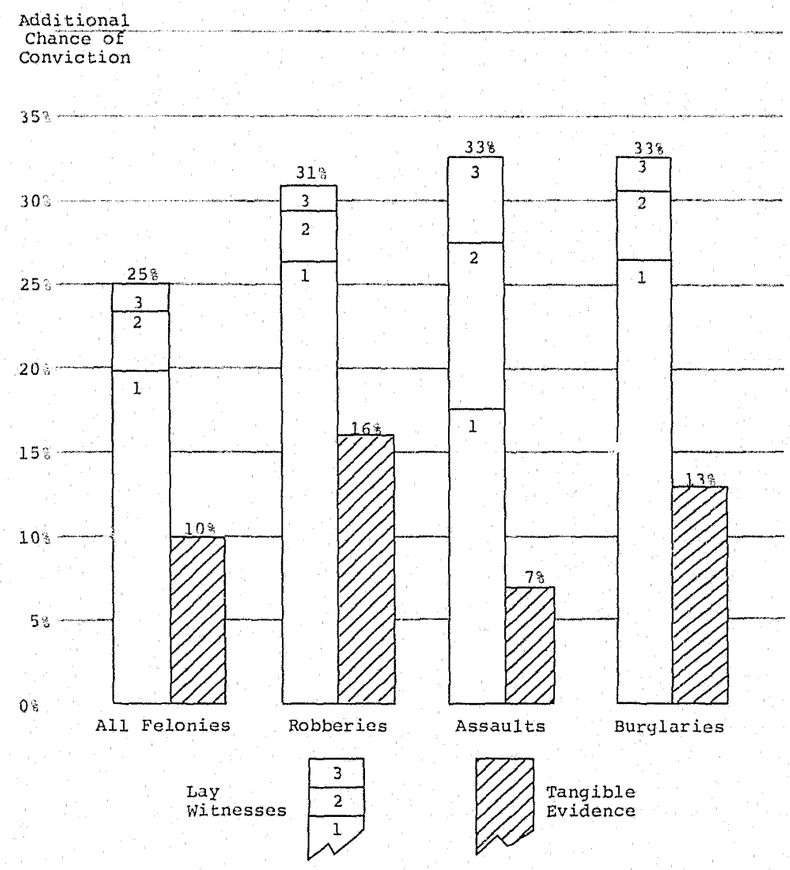
[5] National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), p. 20.

[6] Additional information about the technical aspects of the analytical technique discussed here is contained in an article by INSLAW staff members: Brian E. Forst and Kathleen Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," *Journal of Legal Studies*, Volume 6, January 1977.

[7] Richard L. Thornburgh, Assistant Attorney General, Criminal Division, U.S. Department of Justice—as quoted in *LEAA Newsletter*, June 1976, p. 2.

EXHIBIT 5

Effect of Different Numbers of Lay Witnesses and the Recovery of Tangible Evidence on the Probability of Conviction for Selected Felony Offenses
(Washington, D.C.: 1974)



Appendix

Data Elements Used in the Analysis of Felony-Processing Priorities

(Washington, D.C., 1973-1974)
Data Elements

Seriousness of the offense that gave rise to the case:
- Sellin-Wolfgang index of crime seriousness
- Maximum sentence in years associated with the most serious charge brought by police officer

Defendant's criminal history:
- Number of known prior arrests
- Whether arrested within past 5 years

Probability that the defendant in the case will be convicted . . .
- As Estimated by Strength-of-Evidence Indicators:
- Number of nonpolice witnesses cited by police at time of arrest
- Whether stolen property, weapon, or other tangible evidence was recovered
- Number of days between offense and arrest
- Whether the victim is a business or institution
- Defendant's criminal history
- Whether a stranger-to-stranger crime
- Age of defendant in years
- Number of codefendants

Number of days the prosecutor carries the case

END