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CAREER CRIMINAL PROGRAM

(AN OVERVIEW)

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## I. THE PROBLEM AND APPROACH

The Career Criminal Program is based upon the theorem that a relatively small group of offenders commit a disproportionately large number of serious offenses. Therefore, to reduce the occurrence of serious crimes while at the same time making more effective use of the limited resources of the criminal justice system, repeat offenders should be identified quickly, prosecuted without unnecessary delays and "incapacitated" for substantial periods by incarceration.

Available studies do indicate that a substantial, indeed an inordinate, amount of serious crime in America is committed by a relatively small number of "career criminals".

For example, of the 23,178 defendants convicted in the U.S. District Courts during 1970, 12,722 or 61.9% had prior criminal records. Source Book on Criminal Statistics, 1973, p 322.

A full one-third of the prisoners in federal penal institutions had been committed to penal insitutions three or more times previously. Kassembaum, Prison Treatment and Parole Survival, 1971, p 296.

A longitudinal study of felony cases handled by the United States Attorney's Office of the District of Columbia over a period of several years indicated that only 7% of the defendants accounted for fully 25% of the criminal cases handled in the office during that time span.

These studies are reinforced by data at the National Legal Data Center<sup>1</sup> from various Career Criminal Projects which indicates that the 6,519 defendants "disposed-of" before September 1, 1977 by reporting Projects had an average of 11 non-juvenile arrests, an average of 3 prior non-juvenile misdemeanor convictions and an average of 3 prior non-juvenile felony convictions.

The studies and data are confirmed by a recent Rand study (dated August 1977) entitled, "Criminal Careers of Habitual Felons", which at page 115 concluded:

"According to their own statements, this sample of offenders had committed many serious crimes ... of the nine offense types considered. The average number was 20 per offender per year of street time." (emphasis added)

The Rand study goes on to conclude that:

"The level of criminal activity was not constant but declined with age ... Previous studies of criminal behavior, based on official records, have found that participation in crime declines with age. A unique contribution of this study is the finding that the level of criminal activity diminishes even among those who remain active in crime.

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1. The National Legal Data Center, Inc., is funded by a grant from L.E.A.A. as the National Clearinghouse for the Career Criminal Program. It provided technical assistance and automated data services to State Block and locally funded Projects as well as to Projects funded with L.E.A.A. Discretionary Funds.

Though the level declined, there was a certain steadiness about the sample's crime."

An even more striking conclusion of the Rand study is found on page 116:

"Most (offenders) believed that their resumption of crime (after incarceration) could not have been deterred. For those who believed it could have been deterred, certainty of apprehension would have been the most influential factor."

This conclusion gives credence to the theory espoused over 200 years ago by Cesare Beccaria in his essay, Of Crimes and Punishments, that the swift and certain apprehension and punishment of the guilty will have significant deterrent effect on crime rates and perpetrator attitudes.

While the Rand study contains a number of qualifiers because of the size of the group, the method of its selection, etc., its conclusions are consistent and confirm the opinions of many current members of the criminal justice community and in particular persons connected with Career Criminal Programs.

With this empirical background and experience in mind a conclusion of the Rand study under "Policy Implications" (at page 120) seems inescapable:

"The continuing criminal activity of this sample in the face of frequent arrests, convictions, and incarcerations is an indication of the inability of previous rehabilitation, deterrence, and prevention

efforts to curtail their criminal behavior. The primary alternative for counteracting such offenders is a greater reliance on incapacitation. Incapacitation policies are intended to assure the conviction and prolonged incarceration of serious habitual offenders, once arrested. The rationale is obvious: Offenders cannot commit crimes against the community while in prison, and they are not likely to be able to make up for lost time after release if the probability of reincarceration is high."

The criminal justice system however has significant problems in apprehending and convicting "career criminals: much less assuring that the "probability of reincarceration is high" and doing either in a timely manner. Urban prosecutor's offices are besieged by burgeoning caseloads, hamstrung by reluctant and uncooperative witnesses, and unable to routinely assign experienced prosecutors to the most serious cases. As a result, they were forced to routinely dismiss cases or to plea bargain them down to minor offenses.

"Career Criminals" know how to effectively manipulate this situation and the results therefrom were predictably disappointing. As Professor van den Haag noted in his recent work, "Punishing Criminals", the proportion of offenses which result in prison sentences rests at about one percent of the total number of actual crimes committed.

The percentage of those incarcerated did not rise markedly even for career criminals.

For example, a study of all adult males convicted of felonies in the State of Wisconsin for the time span 1954 through 1959, disclosed that 63% of those who had previously been convicted of another felony were still granted probation; moreover a full 41% of those who had 2 or more prior felony convictions were still granted probation for the subsequent offense. "Probation vs. Imprisonment for Similar Types of Offenders," Journal of Research in Crime and Delinquency, July 1965, p 2.

In Los Angeles County, only 6% of those convicted of burglary, who had a serious prior record, were sent to prison; only 12% of those convicted of burglary who had already served a prior prison term were sent back. The Prosecution of Adult Felony Defendants in Los Angeles County: a Policy Prospective, Report No. R-1127-DOJ, p 109.

Thus the Career Criminal Program was conceived as a means of focusing on the habitual criminal offender so as to stop the apparently existing system of "revolving door criminal justice."



## II. BACKGROUND OF THE CAREER CRIMINAL PROGRAM

The Career Criminal Program is the result of an initiative announced by the President of the United States in an address to the International Association of Chiefs of Police on September 24, 1974, in Washington, D.C.<sup>2</sup> The President restated his support of the Career Criminal Concept in a message to Congress and illustrated the nature of the problem presented by career criminals in noting that, "in one city over 60 rapes, more than 200 burglaries, and 14 murders, were committed by only 10 persons in less than 12 months. But unfortunately, this example is not unique."

The President directed the Law Enforcement Assistance Administration to undertake a program which would concentrate prosecutorial resources upon those individuals who habitually commit such serious crimes as murder, rape, aggravated assault, armed robbery and burglary. Thus, the Career Criminal Program came into being.

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<sup>2</sup>The concept of an LEAA funded Career Criminal Program began in August of 1974, when Mr. Charles R. Work, the then Deputy Director for Administration of LEAA, addressed a memo to the Attorney General of the United States, the Honorable William S. Saxbe, in which attention was drawn to the unacceptably high level of criminal activity in the nation. Mr. Work's memo proposed the implementation of a Career Criminal Impact Program to combat repeat criminal activity whereby the focus of the program would be public prosecutors, assisted by a centralized clearinghouse to collect, pool and monitor data, and to render all forms of technical assistance.

Within days of receiving this memo, Attorney General Saxbe convened a meeting of senior Justice Department officials, district attorneys, and National Legal Data Center representatives, to explore the issues raised by Mr. Work. The address by President Ford on September 24, 1974, followed shortly after this meeting.

Pursuant to this Presidential initiative, the Law Enforcement Assistance Administration, in 1975, initially awarded Discretionary Funds to eleven (11) Career Criminal Projects in major population areas. The site of the first Project to be funded was New Orleans, Louisiana in May of 1975. Following in chronological order of funding were: Detroit, Michigan; Boston, Massachusetts; San Diego, California; Houston, Texas; Salt Lake City, Utah; Columbus, Ohio; Kalamazoo, Michigan; Indianapolis, Indiana; Dallas, Texas; and Manhattan, New York.

Subsequently, Career Criminal Projects were funded at Rhode Island (Statewide); Louisville, Kentucky; Albuquerque, New Mexico; St. Louis, Missouri; Memphis, Tennessee; Las Vegas, Nevada; Portland, Oregon; San Francisco, California; Portsmouth, Virginia; Minneapolis, Minnesota; Baton Rouge, Louisiana; and Clearwater, Florida. Discretionary Funds Awards to a few additional Projects are also expected in conjunction with other LEAA programs.

As an integral part of the Career Criminal Program, LEAA also funded the National Legal Data Center, Inc. (NLDC), as the national clearinghouse for the Program to provide coordination, monitoring and technical assistance services for LEAA and the Career Criminal Projects. One of the services of the clearinghouse is to provide assistance in the design, development, implementation and operation of Career Criminal Projects. Another service is a computerized information system which contains a basic profile of each defendant and information about each defendant's experience with the criminal justice system for all "career criminals" prosecuted by reporting Projects. All information is handled without names or other individual identifiers in conformity with LEAA

Privacy Guidelines. This data base is used to provide monthly performance reports and management information to reporting Projects and LEAA, and as the source of comprehensive statistics and information for project evaluations. It has also proven to be a fruitful source of information for researchers into habitual criminality and numerous related areas as there was no similar data base in existence.

Since LEAA Discretionary Funds are only "salt" or "seed" monies for the development of innovative programs and successful programs are replicated without the direct support of Discretionary Funds to such projects, LEAA funds the clearinghouse to provide its services to non-Discretionary Funded Projects as well as those receiving the awards of LEAA Discretionary Funds.

Thus, through some foresight by LEAA, when the initial indicators proved that the Career Criminal Program could, and did in fact work, the clearinghouse was able to begin and assist in replication even before any of the comprehensive, detailed and time-consuming formal evaluations of the initial projects were completed.

The sites of Career Criminal Projects operating without LEAA Discretionary Funds are too numerous to list in this subchapter. Some of these projects are operating without any additional funds by a prioritization of existing personnel and resources.

The first Career Criminal Project using only local resources was developed with the assistance of the NLDC in the Ventura County District Attorney's Office at Ventura, California.

It began operations in the summer of 1976, and was followed by similarly supported Projects in Fort Worth, Texas; West Palm Beach, Florida; Santa Barbara, California; Akron, Ohio; Canton, Ohio; and Sacramento, California. Additional locally funded Projects are in operation or under development.

Statistics on the Career Criminal Program nationwide along with additional information provided by the LEAA clearing-house have been used by prosecutors to secure additional funding for Career Criminal Projects from a variety or combination of sources, e.g., local funds (i.e., County, City, etc.), State Block Funds awarded by a State Planning Agency (SPA), and most recently from state general revenue funds (in California).

Several states have made awards of LEAA State Block funds to support Career Criminal and/or Major Offender Projects through their State Planning Agencies. Michigan and Ohio have made awards to the largest numbers of Prosecutor's Offices to support Career Criminal Projects. The SPA in Ohio has made awards on a one-by-one basis, while the SPA in Michigan has used a unique approach. It simultaneously made awards to nine new Career Criminal Projects. The Michigan approach is also unique in that the SPA also funded a special project within the Prosecuting Attorneys Association of Michigan (PAAM) to provide specialized support to the Michigan projects.

The PAAM Project is designed in part to provide support to Michigan projects by rendering assistance in dealing with matters unique to Michigan and other matters specifically under Michigan Law and Procedure. It has prepared a special manual dealing with Michigan's Habitual Offender Statute and plans a manual

specifically for Career Criminal Project Prosecutors in Michigan. The PAAM Project has made extensive use of the technology and expertise developed by the LEAA Discretionary Funded Projects at Detroit and Kalamazoo, as well as that of other Discretionary Funded Projects and the NLDC.

California was the first state to appropriate state general revenue funds to support a series of Projects throughout the state. On September 15, 1977, the California Legislature

passed the "California Career Criminal Prosecution Program"<sup>3</sup> which appropriated 3 million dollars annually to fund career criminal units in District Attorneys' Offices. The vote on passage of the bill (SB 683) was by no means a narrow margin. The Assembly approved by a vote of 68-2 and the Senate vote was 39-0. Governor Brown signed the bill on September 29, 1977.

Thus, the Career Criminal Program has proven that the concept of using LEAA Discretionary Funds to support pilot or experimental projects which, if successful, will be continued and replicated without the direct support of Discretionary Funds, can and does work.

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<sup>3</sup>In summary, the legislation authorized the SPA to establish a funding procedure based upon applications submitted by District Attorneys desiring to establish a unit which meets certain guidelines requiring "vertical representation", reduced caseload, limited plea bargaining, etc. The bill also established certain selection criterias.

It appears that the California Legislature passed the bill in light of the successes of the LEAA funded San Diego Project and locally supported projects established at Ventura, Sacramento and Santa Barbara, with the assistance of the NLDC. The state Senate also invited members of the clearinghouse staff to testify on the achievements nationally of Career Criminal Projects.

### III. ELEMENTS OF THE PROGRAM

The design and operation of a prosecutorial Career Criminal Project must accommodate the substantive and procedural law of the jurisdiction within which the Project will operate. It must also reflect the major crime and criminal justice system problems as perceived by the prosecutor from pre-existing cases and other sources of data and information. While many prosecutors have consulted with local police agencies to gain their insight and perceptions and to develop cooperation and a special support, a number of prosecutors have established a citizens advisory board for their projects.<sup>4</sup> This group is generally composed of members representing a broad variety of interests in the community which makes it clear that the board is not dominated by law enforcement. All members, including representatives of the judiciary and law enforcement, serve in their capacity as citizens to advise and comment to the prosecutor on such things as target crimes, selection criteria, operations and most significantly, policy decisions affecting the project. While such groups have their largest impact during project development, they frequently continue to meet periodically to review statistics and information about the project, watching for abuses of prosecutorial discretion, the effective priority utilization of resources and recommending changes in policy, procedures, etc. when needed. Such groups have also proven helpful by providing broad

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4 - The first "Career Criminal Program Citizens Advisory Board" was established by the then Kalamazoo County Prosecutor, Donald A. Burge, for the Project at Kalamazoo, Michigan. The Board consisted of an inordinately large number of members but created an extremely broad base. It advised the prosecutor in a number of areas and was particularly helpful in the formation of specific policies concerning the project.

based support and awareness in the community of the problem and the approach and an understanding of the problems of achieving the ultimate goal of reducing serious crimes in the jurisdiction.

While there is no "standard" format or operational set-up for a Career Criminal Project there are several concepts or elements which are necessary ingredients for a successful project and are common to virtually all now existing Career Criminal Projects. When designing, developing and implementing a Career Criminal Program, "Intervention Point" Analysis<sup>5</sup> is usually used to deal with these ingredients. An alternative method is to deal with the ingredients in an "operation" content consolidated conceptually. The latter of these two methods is used in this overview.

#### EARLY IDENTIFICATION, SCREENING AND SELECTION

Cases are selected for priority prosecution by a Career Criminal Project by the uniform application of a predetermined and announced selection criteria. There is no uniform criteria or type of criteria. The selection criteria for each project are developed individually. Thus, the criteria reflects the policies and priorities of the jurisdiction's prosecutor and the resources available

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5 - Intervention Point Analysis has proven a very effective method for actual planning and the transfer of specific techniques, procedures, structures, etc. It has been supplemented by a "five stage" analysis of the criminal justice system supported by a special flow charting technique developed by NLDC to combine Intervention Point and Operational Analysis and facilitate the use of Intervention Point Analysis throughout the criminal process.

to the project.<sup>6</sup>

While the focus of the Program is on violent and/or serious offenses, the selection criteria consider the criminal as well as the offense(s) by utilizing the defendants prior criminal record. Some criteria also employ other types of information about the defendant and the defendant's known criminal activity to determine whether priority prosecution is merited. Some of the more offender based criteria permit the acceptance of the defendants who may not have a significant or lengthy record of prior convictions because of their ability or luck at avoiding apprehension or "beating the system" when apprehended in the past. The use of this type of approach, however, requires quality, reliable information from additional and/or special police or investigative resources to make the determination that the defendant is in fact a "Career Criminal".

Selection criteria fall within three major classifications: (1) weighted point systems, (2) specific crime classifications, or (3) non-crime specific criminal record criteria. (A number of selection criteria contain a specific exclusion of all but stranger against stranger offenses while others consider the relationship between the defendant and victim in the scoring system.)

Selection criteria are sometimes developed to assure the inclusion of all defendants who can be charged under status enhancement laws (e.g. second or habitual offender statutes) where

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6 - Career Criminal Projects range in staff from one-half an attorney to seventeen (17) attorneys with a full complement of supporting personnel.



such laws are available. These criteria may mirror the enhancement statute prerequisites as<sup>a</sup> the entire criteria or include the prerequisite along with other factors which permits the acceptance of defendants who could not be so charged. In either approach the maximum effective utilization of sentence enhancement laws is generally considered in the selection criteria as well as in operating policies.

Screening occurs at the earliest possible time and is conducted in accordance with a formalized procedure by an experienced assistant prosecutor. The importance of thorough and competent screening cannot be overstressed because it serves as the prosecutor's control on the quality of intake and sets priorities to a certain degree for the utilization of the resources of each component of the system that may follow from the exercise of prosecutorial discretion.

The project's selection criteria are applied at or before (through police) screening to achieve the earliest possible identification of defendants meeting the criteria. Many projects attempt this early identification by familiarizing law enforcement officers with the selection criteria. Where the criteria is complex or has scoring which must be done by the project, a preliminary or threshold criteria is given to law enforcement. The officer can use this criteria when prioritizing police resources and in a number of projects may "present" a qualifying case directly to an assistant in the project. Where officers are encouraged to go directly to the project another formal procedure is usually used as a "back-up" to assure that all eligible defendants are considered at prosecutorial

screening. The selection criteria or threshold criteria also allow the officer to know when, (even before "presenting" a case) the project should be contacted. Some projects have at least one attorney on call to the police agencies 24 hours a day.

Early identification of Career Criminal defendants has two primary purposes: 1) to permit a project attorney to prepare for and make a substantial presentation from the first bail setting hearing forward, and 2) intensify investigatory efforts using the police and/or investigators on loan to the project from local police agencies or which are part of the prosecutor's staff. The investigation not only cures curable flaws but assures a more solid case and appropriate charging (i.e., not under-charging) of "career criminals."

A police department's crime analysis unit and committed special investigative support can be valuable tools for a career criminal project.

A management information system such as PROMIS (PRO secutors Management Information Systems) is also an important and valuable tool as it enables the prosecutor to single out cases for intensive preparation, priority scheduling and assignment of the most experienced prosecutors.

#### PRIORITY PROCESSING & VERTICAL REPRESENTATION

Virtually all Career Criminal projects attempt to expediate the processing of cases against "career criminals" at as many points as possible with a variety of techniques. Projects have found that they can, by constitutionally permissible procedures,

file an indictment or other accusatory pleading directly with the general jurisdiction felony court thereby eliminating preliminary proceedings in the lower level courts. This one procedure alone can eliminate anywhere from weeks to months of case processing time. Priority processing also may involve a priority docketing of all court events in "Career Criminal" cases. It may also involve a similar priority for Grand Jury time. The importance of the prosecutor's control of court dockets either by law, practice or default, should be obvious. In some jurisdictions, special courts have been either designated or added to hear cases against "Career Criminals" to assure priority dispositions.

Vertical representation, where the same assistant prosecutor prepares for and handles all events concerning a case through its conclusion, is used by virtually every DF project. Vertical prosecution eliminates many of the inherent problems of horizontal representation where several different assistant prosecutors may handle a case at different stages or events or even on different days of the same event, with each assistant having little time to prepare and little knowledge of the facts much less the "luxury" of meeting or interviewing witnesses or the investigating officer(s). Vertical representation begins not later than a preliminary or Grand Jury hearing and usually begins even earlier, e.g. at the initial filing stages, from the point where a project attorney is contacted by police during the course of an investigation, etc.

To assure that full prosecutorial efforts are available in career criminal cases, project attorneys are assigned a substantially lighter caseload than the main office attorneys. While the actual

level varies from project to project because of a multitude of factors it is generally not greater than one-half the case load level of felony assistants in the main office. This lower case load level permits a project to assume that every case can and will go to trial if necessary. The attorneys have time to prepare for each court event and when needed coordinate furthering investigation.. The attorneys also have the time to interview witnesses and pay attention to numerous details rather than leaving them to chance. All of this is to assure that the best reasonably possible case is presented for the People.

The additional time is also needed to utilize to the maximum feasible extent, sentence enhancement laws such as second or habitual offender statutes, dangerous offender statutes, firearms use enhancement statutes, etc. Additional time also permits the project attorneys to prepare for and present a vigorous case for the violation of probation or parole and incarceration when defendants enjoyed such a status while committing additional crimes. If this occurs before disposition of the current charge(s) it assures that the defendants will be incapacitated pending the current adjudication and imposition of an additional sentence.

#### PLEA BARGAINING

Career Criminal Projects take a "no bargain" or at the least a very "limited" plea bargaining policy with respect to both charges and sentences. This policy is formalized and announced to the extent possible consistent with the exercise of prosecutorial discretion along with procedures for the approval of any reduction. These procedures require the specific approval of several people in

the office - not uncommonly the prosecutor or the chief assistant. "Administrative" type of plea bargains are entirely eliminated as the reasons (overworked prosecutors, court backlogs, etc.) are not applicable to Career Criminal cases. Where "quid pro quo" bargains are allowed they are scrutinized very carefully and that which the prosecutor gets from the bargain must be very substantial before such a bargain is considered. Plea bargains of "necessity" are more commonly recognized - but only as a last resort. Some projects have taken the position that as long as a prima facie case can be shown they would rather take a case against a "career criminal" to trial and lose entirely than engage in bargaining.

The only type of "bargain" which is relatively common is analogous to "kicking a dead horse" because there is no substantial purpose to be served by the prosecution of an additional charge or charges. This occurs when further prosecution would not increase the defendant's sentence exposure as any additional sentences would be concurrent and no greater and/or there is, from a legal or practical viewpoint, no potential for consecutive or enhanced sentences.

#### POST CONVICTION

When a "Career Criminal" is found guilty the project or a project attorney will request the most appropriate sentence based upon the present charge(s), the defendant's criminal history, and other information about the defendant which may be properly considered. Where permitted an assistant prosecutor will make the recommendation with the court which sets forth the factual basis for the recommendation and then appearing in person at the sentencing.

Where a direct recommendation is not permitted, a recommendation can be made through the agency preparing the pre-sentence report. In either case the project acts to assure that the investigators preparing a pre-sentence report for the court has the benefit of all of the appropriate information available to the prosecutor's office.

It is not uncommon for projects to encourage the victim(s) to appear with the prosecutor at the sentence hearing and where permitted and appropriate to testify. Victims may also be encouraged to write to the court with their recommendation through the agency preparing the pre-sentence report in addition to or in lieu of appearing at the sentence hearing.

Most career criminal projects track convicted "career criminals" after sentencing and commitment. They immediately request notification from correctional authorities whenever a "career criminal" is to be considered for parole whether or not state law requires such notification and may also file a written statement of facts and appropriate recommendations even before parole is considered. When notice of a parole hearing is given the project will act to assure that the parole authorities are fully informed about the defendant's criminal history, the nature of the crime(s) which resulted in the confinement, and other appropriate information about the defendants. Where permitted, a project attorney may appear at the hearing and encourage the victim(s) to appear and if permitted testify or at the least to write the parole authorities concerning the defendants consideration for parole.

Thus, a career criminal project continues its involvement with cases beyond guilt adjudication where prosecutors customarily stop. The cost effectiveness of such post-conviction uses of prosecutorial resources is illustrated by one project's estimate that it takes an average of approximately forty (40) hours to convict a defendant and have the defendant sent to prison but takes an average of not more than six (6) hours to keep the defendant there. This saves the prosecutor an average of at least thirty-four (34) hours compared to reconvicting the defendant for crimes committed while on parole and resentencing to prison and saves the time of law enforcement agencies and the courts and their related personnel and overhead costs.

It also benefits the community by preventing the criminal activities of these defendants which the Rand study (supra) concluded averaged twenty (20) serious crimes a year!

#### IV. LEGAL ISSUES

The concept of special handling within the system, i.e. being brought to trial as soon as possible consistent with due process, prosecution by experienced and competent trial attorneys, etc. has been challenged but without success. The courts apparently have not been very impressed by the argument that a defendant has a right to a "customary" prosecution, i.e. by less than fully prepared prosecutors who may not have much experience and are still developing competence as criminal trial attorneys. The defense attorney objecting to their clients receiving the most speedy trial consistent with due process faces an interesting dilemma as in the past it was usually the same attorneys who were objecting when they didn't receive such speedy trials. Unless the attorney can articulate and show to the court fundamental reasons for not going to trial so soon, the defense is left with the argument (either express or implied) that the defendant has a right to set back and wait for the quality of the prosecution's case to deteriorate with age in the hope of increasing the chances of acquittal.

The limited or no plea bargaining policies of Projects and their charging of defendants under habitual offender statutes and other sentence enhancement statutes have also been challenged.

Most Courts have held such matters to be within the "wide discretion" of the prosecutor.<sup>7</sup>

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<sup>7</sup> - Commonwealth v. Coyne, 363 N.E. 2d (1977), at 258 and "The decision to negotiate with a defendant about the terms of a guilty plea rests solely in the prosecutor's discretion. See Newman v. United States, 127 U.S. App.D.D. 263, 382 F.2d 479, 480-482 (1967) id



A few Courts however have taken a look at the criteria and method used by prosecutors to select defendants for special treatment to assure that insidious "selective enforcement" violative of due process and equal protection did not occur. A case on point is State v. Nixon, 10 Wash.App 355, 517 p.2d 212 (1973). The Courts opinion in Nixon, after describing in detail the formal criteria and procedure used by the King County Prosecutor's Office to determine which defendants would be charged as habitual criminals, commented "Parenthetically, we find present here no laxity in enforcement but rather an objective approach consistent with pragmatic and due process values.

This type of judicial review of the exercise of prosecutorial discretion illustrates one of the advantages of using an objective type of criteria to select "Career Criminals".

Career Criminal Projects have dealt with a number of issues raised under second or habitual offender, dangerous offender, and other enhancement statutes. These questions turn on statutory construction, procedures, etc. and the "courts have almost universally rejected various and sundry constitutional challenges to general habitual offender statutes.<sup>8</sup> Dangerous Offender statutes however, have been found to have problems of vagueness in determining exactly what is meant by terms such as "dangerous offender", "mentally disturbed offender" or a "professional criminal".

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8 - "State Habitual or Dangerous Offender and Selected Firearms use Enhancement Law", Ronald W. Sabo, NLDC Projects Coordinator, 1975, at page 5

Many of the habitual offender statutes have been relatively unused by prosecutors in recent times. Primarily, this appears to have been prompted chiefly by the complex and restrictive nature of many such statutes coupled with an awesome case load which has made prosecutors hard pressed to stand firm for trial on the main charged felony, let alone any "optional extra" enhancement allegations or charges. Therefore a brief summary of the NLDC publication, "State Habitual or Dangerous Offender Statutes and Selected Firearms Use Laws" follows to provide a condensed description and background of such laws.

The habitual offender, from a legalistic standpoint, is the designation given a distinct group of persons, who because of their past involvement in crime (almost universally measured by convictions) can be incarcerated for terms which exceed the normal punishment for a specific offense. Such "habitual offenders", once adjudged in a court of law as such, are subsequently sentenced for their "habitual offender" status, rather than for any single specific offense committed.

The special dangerous offender is the designation given a distinct group of persons under more modern statutes which do not use prior convictions as the sine qua non for the enhancement of the normal punishment for a specific offense. Special dangerous offender statutes normally require a psychological finding that the individual is "dangerous" or "mentally disturbed" or rely upon proof that the individual is a "professional criminal" without specific reliance upon prior convictions.

Other statutes enhance the normal punishment for a specific offense through the use of a distinct allegation that the individual used a firearm in the commission of the offense.

The majority of habitual offender statutes did not exist until the early 1900's when the crime rate began to rise and repeat offender behavior was becoming more and more apparent. The law subsequently stepped in to increase the deterrent effect of penal sanctions. The general underlying philosophy supporting the recidivism statutes is that deterrence can only be secured by increasing the punishment as the offenders increase their violations of the law. Though the penalties involved have changed, increasing the punishment for recidivists is still the dominant method used to control the habitual offender's behavior.<sup>9</sup>

The Gladstone Committee Report of 1895, which is generally recognized as a landmark in the history of progressive penology, first suggested that a system of ten sentences for repeat offenders be created. The committee theorized that punishing offenders for a particular offense was almost useless; they considered the offender's real offense to be the willful persistence in the deliberately acquired habit of crime. The committee's recommendations for the treatment of habitual offenders were institutionalized in the Prevention of Crime Act of 1908, which authorized courts to sentence offenders to periods of preventive detention. The wide scale momentum to implement

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9 - The following historical discussion of habitual offender statutes is condensed from Brown, "The Treatment of the Recidivist in the United States", 23 Canadian L. Rev. (1954)

such laws and the effectiveness of penal treatment. Recidivism was becoming a problem and the law stepped in to increase the deterrent effect of penal sanctions. Loss of liberty was envisioned primarily as a deterrent but it was recognized that should it fail to serve that purpose, it would still protect society by isolating the offender for lengthy periods.

During the 1920's most states in the Union enacted "specific" recidivism statutes. These laws provided for increased punishment if the crime for which the person was convicted was the same as the one for which he had previously been convicted. For example, upon conviction for a second burglary offense, the offender would be sentenced to life imprisonment. However, if the offender's successive convictions were for different crime types, notwithstanding the number of convictions, no additional penalty would be incurred.

As time passed, most states replaced their "specific" statutes with "general" recidivism or habitual offender statutes, which provided for increased punishment for a repetition of crimes generally, whether or not the earlier offense was the same as the latter one. Currently, virtually every state has attempted to deal with the repeat offender by enacting some type of law specifically designed to deal with this designated group of individuals.<sup>10</sup>

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10 - The absence of a general habitual, dangerous offender or enhancement law in a few states in no doubt explained by the general sentencing law which mandates consecutive sentencing. (e.g. Alabama and Mississippi).

Recently, many observers of the criminal justice system have noted that "general" recidivism statutes are faulty in terms of both theoretical reasoning and practical application.<sup>11</sup> Most importantly, the legal criteria for implementing general habitual offender statutes are based solely upon the number of prior convictions and criminal justice research has shown that such criteria are no longer suitable for distinguishing first offenders from the habitual offender. We can no longer be certain that a first conviction represents the defendant's first crime. It may mark only the defendant's first experience of bad luck in a career dedicated to crime. Thus, as Rubin has suggested, such laws may well be ineffective since they serve to isolate from society only a group of unfortunate inadequates.

In response to such criticisms, the federal government and some states have enacted "special dangerous offender statutes" which allow for enhanced punishment based upon psychological, sociological or other demographic factors in the defendant's history unrelated to the existence of former prior felony convictions.

Since Career Criminal Projects focus upon recidivists and have additional resources and time they have the opportunity to test the current efficacy of habitual and other enhancement statutes by charging them when the facts warrant and then proceeding to trial on them, if required.

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<sup>11</sup> - S. Rubin, The Law of Criminal Correction, 2nd Ed., 451-64 (West Pub. 1973)

## V. NATIONAL PROGRAM RESULTS

Although a formal evaluation of the national Career Criminal Program has yet to be completed, preliminary information indicates that the program is achieving its goals of speeding up the prosecution of repeat offenders and incarcerating more of them for the crimes which they have committed.

Statistics based upon analysis of 5,340 defendants who were convicted on 8,250 charges disclosed that the aggregate conviction rate was 94.4%.

Even more importantly the data discloses that prosecutors are not watering down charges in attempts to obtain guilty pleas to lesser offenses in order to achieve a high conviction rate. Specifically, 89.3% of the convictions obtained in all the career criminal jurisdictions were to the most serious felony as originally charged. To understand the significance of this figure it should be compared, for example, with Los Angeles County, which overall in the year 1974 only convicted 29% of its defendants on the highest felony as originally charged. Los Angeles County is not singled out because it might be unique among urban prosecutors' offices, rather it is cited to show the norm with which Career Criminal Project figures can be contrasted.

Again, a figure which is more important than the conviction rate is the incarceration rate achieved by Career Criminal Projects, i.e., the percentage of those defendants convicted who were sentenced to serve prison terms. At this point the reader should initially remember the data presented in Section I of this paper

wherein it was noted for example, that in the whole State of Wisconsin, an incarceration rate of only 59% was achieved with convicted felony defendants who had two or more prior felony convictions. Remember also as set forth in that section that in Los Angeles County in 1974 only 12% of the burglars with prior felony convictions were incarcerated in state prison. Latest figures show the aggregate average of the Career Criminal Projects reporting to the clearinghouse is a 92% incarceration rate on convicted defendants.

The latest available data also demonstrates that the convicted career criminal defendant continues to reflect a prior criminal record of 10.5 arrests per defendant and 5.5 convictions per defendant.

As yet another "success indicator", NLDC recently ran a computerized analysis in one major midwestern city, comparing Career Criminal Project dispositions with "whole office" dispositional data (from PROMIS which included Project data) during the same time period. The Career Criminal Project obtained guilty verdicts at a rate 517% higher than the whole office, reduced the dismissal rate to a level 59% lower than the whole office, and reduced a defendant's chances of acquittal at trial from 1 to 3 in the whole office to 1 in 16.

A trend is also developing which may imply that the above present statistics are perhaps having an impact upon crime rates. The study recently conducted by the National Legal Data Center, analyzed the robbery, burglary and total index crime rates in seventeen DF career criminal jurisdictions.

The crimes of robbery and burglary were selected because they constituted the main charges against 65% of the convicted defendants in the seventeen jurisdictions. When the robbery rates for the first three months of 1977 were contrasted for the first three months of 1976, and then compared with the national average for cities of over 25,000 population, jurisdictions with Career Criminal Projects as a group achieved a reduction in their robbery rate which was 54% higher (i.e., 12.35%) than the national average reduction (which was 8%). In burglary the reduction was 30% higher (i.e. 9.1%) than the national average reduction (which was 7%). For all index crimes the reduction was 37% higher (i.e., 12.35%) than the national average reduction (which was 9%).

Based upon data such as the above and after on-site visits to several career criminal jurisdictions, the Wall Street Journal of August 19, 1976, stated that the program "is holding out some hope that crime can be reduced." After in-depth observation of the New Orleans Career Criminal Unit, the National Observer of May 22, 1976, concluded that the Career Criminal Unit was "the most effective and innovative program" responsible for the drastic drop in serious crime achieved in New Orleans. New York Magazine on September 27, 1976, in an article written by an author who was the victim of a burglary which was handled by the N.Y. Career Criminal Unit, stated that his experience with the Unit reassured him that the New York City Criminal Justice System could work and work swiftly at times.



U.S. News and World Report of November 22, 1976,  
stated that the program "is starting to show important results."

The Reader's Digest lead article for June, 1977, referred to the career criminal program as "a simple but revolutionary shift" which is producing "spectacular" crime reductions "on the street."

## VI. FUTURE DIRECTIONS

Evaluations of existing Career Criminal Projects indicate that they have been quite successful in providing swift and sure justice for apprehended "Career Criminals". The evaluations generally conclude that the projects should continue their intensified efforts while attempting to make justice even swifter and surer for the "Career Criminal".

The research supported and encouraged by L.E.A.A. is beginning to produce conclusions which are already shaping the future directions of existing Career Criminal Projects and have lead to the development of new L.E.A.A. Programs and new interfacing and/or levels of cooperation between Programs. Probably the most significant of these studies to prosecutors is the Rand study entitled, "Criminal Careers of Habitual Felons" quoted earlier in this overview. This study contains another finding which is described in the conclusions section (at page 118) as follows:

"Despite the diversity in this sample, two broad types - the intensive and the intermittent - emerged from the data. The intensive type, consisting of about one-third of the sample, was more continuously engaged in crime, more committed to a criminal lifestyle, and more careful about avoiding arrest than the intermittent type, consisting of two-thirds of the sample. Most striking, the average intensive offender committed about ten times as many crimes as the intermittent offender, yet was five times less likely

to be arrested for any one crime. Once arrested, the intensive offender was also less likely to be convicted and incarcerated.

Other differences that cross-tabulation revealed were that the intensives were more self directed early in their careers, obtained significantly more money per crime, and were more likely to have spent the money on drugs and alcohol than were intermittents. Respondents involved with alcohol alone were far more likely to be intermittents than intensives."

The final portion of the Rand study under "Conclusions, Policy Implications" is set forth in total below as it summarizes the conclusions and suggests specific directions:

"The continuing criminal activity of this sample in the face of frequent arrests, convictions, and incarcerations is an indication of the inability of previous rehabilitation, deterrence and prevention efforts to curtail their criminal behavior. The primary alternative for counteracting such offenders is a greater reliance on incapacitation. Incapacitation policies are intended to assure the conviction and prolonged incarceration of serious habitual offenders, once arrested. The rationale is obvious: Offenders cannot commit crimes against the community while in prison, and they are not likely to be able to make up for lost time after release if the probability of reincarceration is high. But an incapacitation policy is both unfair and highly costly if an undue number of inappropriate offenders are given long prison terms. Thus, the effectiveness of this approach rests

largely on the ability of the criminal justice system to distinguish among offenders and identify those most deserving of lengthy imprisonment.

Although the length and seriousness of a defendant's prior record give an indication of his propensity toward future serious crime, the predictive value of this information by itself is weak. That is partly because of the poor correlation between offenders' actual behavior and their arrest records. A meager arrest record may disguise a dangerous criminal, even though a long arrest record usually signifies extensive criminal activity. Our data emphasize that arrest records do not suffice in distinguishing among the more serious and the less serious habitual offenders. When we compared the rap sheets of the intensives as a whole with those of the intermittents as a whole, no significant differences emerged between the types - not only in arrests but also in convictions and incarcerations. Yet, by their interview responses, we know that the intensives, less than one-third of the sample, had committed a disproportionately large number of the offenses reported. It is thus crucial to identify the intensive offenders by some means in addition to their criminal records. And if an objective of sentencing is to prevent future crime by incapacitating high-risk offenders, our data suggest that it is counterproductive to concentrate on older habitual offenders. The greatest effect in crimes prevented would come from imprisoning the younger, more active offenders,

since individual offense rates appear to decline substantially with age.

What might the additional means of identification be? One would be to make better use of the crime-clearance information police obtain in following up an arrest. With a suspect in custody, police investigators are often able to "clear", or solve, previous crimes by linking them to the suspect through confession, similarity of MO, fingerprint matches, and the like. A majority of the intensives in our sample reported that their arrests led to the clearance of some of their other crimes. In one extreme case, twenty robberies were cleared by the arrest of one offender.

In current practice, much of this information is ignored except to close police files. When the police transfer charges to the prosecutor's office for the filing of a formal complaint, they include only the counts on which there is enough evidence to establish legal guilt. And after finding such evidence on one or two counts, the police tend to discontinue investigating the other cleared crimes. That is because they expect any charges beyond the strongest one or two to be dropped in return for a guilty plea. Even if they are not dropped, multiple convictions often do not increase the sentence. A more systematic attempt to investigate and legally prove additional counts would undoubtedly help distinguish the intensives among habitual offenders.

Another source of information to help identify the most serious offenders is the suspect's record of juvenile arrests and institutional commitments. Juvenile records are considered sensitive information, and their use is highly restricted by law. However, given their potential value in identifying the more serious habitual offenders, it appears that they should be made more accessible to prosecutors and used in sentencing decisions.

The preliminary evidence from this study suggests that incapacitation, by imprisonment, may be the most direct alternative for reducing the societal toll at the hands of habitual offenders, provided that the most serious of them can be identified before their criminality has declined. If crime is to be reduced through incapacitation policies, the following procedural changes should be considered:

- \* Police and presentence investigators should provide prosecutors and judges with more thorough information - including multiple crime-clearance and juvenile offense data - to help identify the intensive offenders for whom incapacitation may be justified.
- \* Extended prison sentences should be imposed on offenders whose prior record and current charges reflect serious and sustained criminal activity. These sentences should be imposed at the earliest time such offenders have been identified with reasonable confidence."

While some projects have considered the possibility of identifying the intensive type of offenders they have experienced

the problems suggested by Rand. These projects are attempting to develop procedures to assure that the information the police have does get to the prosecutor before sentencing and that the information can be and is used by the Court when sentencing.

L.E.A.A. has developed experimental programs which interface special policy projects with Career Criminal Projects in the same jurisdiction. One of the goals of the police project is better quality police work and therefore better quality cases (increased probability of charging and conviction on the top charge without plea bargaining by necessity). A second goal is the earlier identification and the apprehension of offenders, etc. through the concept of "Crime Analysis". This concept also lends itself to the early identification of "Career Criminals" and the development of information about the defendant and the defendant's criminal activities. The interfacing is intended to develop those areas of information which can directly enhance the effectiveness of the Career Criminal Project and get that information to the project in a timely manner.

Another experimental activity is the formation of special juvenile components within Career Criminal Projects. This type of approach recognizes that statistics indicate juvenile offenders commit over 60% of all Part I Crimes committed and, unless drastic measures are taken by the criminal justice system, these juvenile offenders are rapidly on their way to becoming "Career Criminals". These special juvenile components operate similarly to the non-juvenile components by selecting for priority prosecution those juveniles who qualify under a specially developed selection criteria (e.g., Seattle).

Thus, because of the inherent flexibility of the Career Criminal Program concept it does not remain static but continues to be refined and can be applied to new areas while continuing to increase the rational prioritization of the resources of the criminal justice system.

As projects approach their second anniversary of operation Prosecutors must reassess the need for and utilization of resources by their Career Criminal Projects. Some smaller jurisdictions have found that the number of defendants qualifying as "Career Criminals" has declined as the project operated because defendants handled by the projects have received lengthy periods of incarceration and are no longer coming back through the "revolving door". The prosecutor must then determine whether to modify the selection criteria, reduce the resources utilized by the project, or eliminate the project entirely and transfer its functions to the main office.

The Rand study itself contains a cautionary statement regarding the study's conclusions as "proposals for changes in current criminal justice policy" because of its preliminary nature. This caution is well stated as studies in progress are reaching some slightly different conclusions, however, there are also a number of consistent conclusions. Some specific consistent conclusions are that a small group of defendants commit an inordinate amount of serious crimes, that this group of criminals is virtually undeterred by the present system, and that the only presently viable option to protect our society from these defendants appears to be incapacitation through incarceration. Also consistent are the conclusions that a lengthy criminal record "usually signifies extensive criminal activity" and that a meager



record "may disguise a dangerous criminal" and that the criminal activity of "career criminals" will usually continue if they are not incapacitated.

As more is learned about "Career Criminality" some adjustments may be required to increase the overall effectiveness of the Program along with some apparently significant changes in the criminal justice system. The prosecutor, as the chief law enforcement officer of a jurisdiction, must set the example and lead the way to a more effective utilization of the limited resources of the entire criminal justice system.

## VII. CONCLUSIONS

The Career Criminal Program was conceived and developed as a pragmatic and a rational means to reduce the occurrence of serious crimes by focusing the resources of the criminal justice system on those persons who are responsible for an inordinate amount of serious crimes - the "career criminal". The concept is simply to prioritize the limited resources of the system to maximize (or at least drastically increase) the systems effectiveness in controlling serious crime.

The emphasis is on the public prosecutor, the chief law enforcement officer of a jurisdiction, because the exercise of prosecutorial discretion establishes or least substantially impacts the priorities of each component of the system and because the prosecutor is the only official in the criminal justice system that is involved at each stage of a defendants experience with the system.

A prosecutorial Career Criminal Project selects "Career Criminals" for priority prosecution by uniformly applying an established selection criteria then acts to assure that these defendants received swift and sure justice, and then, through continued post-conviction involvement, acts to assure appropriate periods of confinement.





**END**