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Criminal Prosecution in Four Jurisdictions: Departures from Routine Processing in the Career Criminal Program

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Criminal Prosecution in Four Jurisdictions: Departures from Routine Processing in the Career Criminal Program

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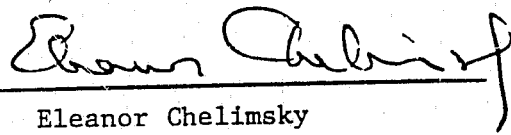
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Eleanor Chelimsky
Principal Investigator,
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ABSTRACT

The Career Criminal program is an LEAA-funded effort which provides resources to local prosecutors' offices to identify and rigorously prosecute serious, repeat offenders. The national evaluation of the program, conducted by the METREK Division of The METRE Corporation, includes in-depth case studies of four of the programs, those in: Orleans Parish, Louisiana; San Diego County, California; Franklin County, Ohio; and Kalamazoo County, Michigan. The four were selected from eleven candidate sites in the summer of 1976.

This volume, one of a series of five, provides (1) a summary of the other four volumes, which examined criminal prosecution in each of the four sites; and (2) a cross-jurisdictional comparison of those sites. This comparison focuses on:

- the routine criminal justice process from arrest to sentencing;
- the agencies involved in this process;
- the departures from routine instituted for Career Criminal cases; and
- The interrelationships among these three in each of the four sites of the national evaluation.

The purpose of the description is to provide the structural and procedural context within which the Career Criminal program was developed and upon which it is intended to impact.

PREFACE

On September 24, 1974 a new initiative against repeat offenders was announced by then President Gerald Ford and then Attorney General William B. Saxbe. This "Career Criminal" program, sponsored by the Law Enforcement Assistance Administration, has by 1977, provided over three million dollars to more than eighteen local prosecutors' offices across the nation to target the prosecution of defendants with established patterns of criminal behavior.

The national Career Criminal programs were based on the idea that the routine criminal justice process, in day-to-day operation, does not adequately achieve its purposes in the cases of many serious, repeat offenders. The perception is that, because of a host of systemic obstacles, these cases are not prosecuted as effectively or as fully as the nature of their offenses and criminal records would warrant. The Career Criminal programs were designed with the expectation that by increasing prosecutorial resources and focusing them on a targeted minority of the caseload, these cases would no longer suffer the consequences of insufficient attention.

The METREK Division of The MITRE Corporation is conducting for the Law Enforcement Assistance Administration (LEAA) the national evaluation of four of these Career Criminal prosecution programs. The first stage of this evaluation has been an analytical description of the routine criminal justice process in the four jurisdictions, and of how those differences in special prosecutorial treatment of "career criminals" which are initially discernible, relate to that routine process.

This volume, and its four companion volumes, are the result of this first stage of the national evaluation.* This first series of volumes is concerned with two things: (1) the criminal justice environments in each of the four jurisdictions; and (2) the Career Criminal prosecution programs in each of the four as they relate to those environments. The series is as much a description of routine criminal prosecution as it is an examination of departures from that routine in career criminal prosecution. The reason for this attention to routine processes is that departures from those processes cannot be adequately specified or documented without a detailed understanding of the routine. And this specification of activities or process

* The subsequent stages of the evaluation are described on pages 156-8, infra.

changes undertaken as a part of the Career Criminal program is indispensable to the future attribution of any changes observed to the program.

Accordingly, a good deal of this volume and its companion pieces is devoted to examining the basic workings of criminal prosecution and the administration of justice in four quite different jurisdictions. Similarities and differences among the four in the routine criminal justice process are explored, as are the differences among them in the prosecution of "career criminals".

The volume is divided into four parts. The first, Targeted Prosecution: The Practice and The Rationale, provides a conceptual and legal overview of the practice of targeted prosecution. In the second part, The Criminal Justice Environment: Four Jurisdictions the routine practices of criminal prosecution from arrest to sentencing in the four places are described and compared. The findings of this section are summarized in the third part, The Environments and Their Implications. In the final section, Targeted Prosecution: The Career Criminal, the Career Criminal programs in the four jurisdictions are examined to delineate how targeted prosecution practices differ from routine criminal prosecution in each place and how target prosecution of career criminals can vary across jurisdictions in intent and practice.

ACKNOWLEDGMENTS

Many people in the criminal justice communities of Orleans Parish, San Diego County, Kalamazoo County and Franklin County helped us in the research for this volume and its four companion volumes: police officials, prosecutors and deputy prosecutors, defense attorneys, judicial administrators, court and county clerks, and city and regional planners. They are simply too numerous to individually acknowledge here. Their contributions of valuable time and critical insights made our research experience not only an informed one, but also a professionally rewarding and a personally enjoyable one.

The MITRE Corporation is especially grateful to the elected prosecutors of the four jurisdictions: the Honorable Harry F. Connick, District Attorney of New Orleans; the Honorable Edwin L. Miller, District Attorney of San Diego County; the Honorable James J. Gregart, Prosecuting Attorney of Kalamazoo County; and the Honorable George C. Smith, Franklin County Prosecuting Attorney. They and their staffs lent us every grace, service and accommodation for our research from its inception.

Persons and agencies not directly associated with criminal justice administration in the four jurisdictions also lent us much valuable assistance. Mr. Roland F. Hartley and the staff of the Bureau of Criminal Statistics, California Department of Justice, provided most of our case volume and disposition information for San Diego County. Captain Tom Stark, Sacramento Police Department, and the late Honorable Michael N. Canlis, Sheriff-Coroner, San Joaquin County, gave us helpful counsel on some of the nuances of law enforcement in California in general.

Mr. Joel Garner of the National Institute gave us both guidance and a sympathetic ear through the first stage of the evaluation.

Our observations, interpretations of data, analyses and conclusions in this volume are, of course, wholly our own, and do not necessarily reflect the views or opinions of any person or agency that assisted us.

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EXECUTIVE SUMMARY

The Career Criminal program developed by the LEAA is intended to assist local prosecutors in targeting their resources on a particular minority of their caseloads: the serious, repeat offender. The program provides funds to local prosecutors to identify defendants who appear to have established a consistent, serious pattern of criminal behavior and who are assumed to be responsible for a sizable amount of criminal activity. Once identified, these "career criminal" defendants are given special prosecutorial attention. The increased attention is expected to result in more severe judicial penalties for repeat offenders than would be the case were they prosecuted in the routine fashion.

Targeted prosecution--that is, the assignment of experienced deputies, priority for trial and special attention to the prosecution and conviction of a minority of a prosecutor's caseload--is not a new development in American criminal jurisprudence. Defendants charged with certain crimes (homicide, kidnapping, forcible rape, and infamous offenses, for example), and persons with histories of criminal convictions have historically, in many jurisdictions, received prosecutorial attention of far greater intensity than that accorded to other felons. While the cases of other defendants may move slowly through the process of adjudication, it is not unusual for homicide cases, for example, to be assigned to the most experienced trial deputies, to be cradled and expedited by the prosecution through the court process, and to be pursued to conviction with a particular zeal and expenditure of resources.

In most jurisdictions, however, systematic targeting of prosecutorial resources and attention on the serious, repeat offender (the "career criminal") and systematic identification of this type of offender are relatively recent developments. This "newness" of career criminal prosecution seems to be due in large measure to a previous absence in many places of a capability and a policy to regularly identify these cases at an early stage in their prosecution as ones deserving of special attention.

The whole notion of targeted prosecution proceeds from a perception that, because of numerous systemic obstacles (not the least of which is the combination of enormous caseload size and limited personnel resources), certain "serious cases" (however defined) are not routinely attended to, expedited and pursued with the vigor and resources that their gravamen suggests. The expectation in targeting is that, by doing things "differently" and by increasing prosecutorial resources in terms of this minority of the caseload, these cases will no longer suffer the consequences of insufficient attention.

This different treatment of these cases is shaped in critical measure, however, by the routine criminal justice process from which it is intended to be different. To an extremely large degree, the routine defines the nature and the rationale of the difference. It is the routine obstacles--the case volume, the structure of the criminal process, its procedural hurdles, its personnel arrangements--which the targeting is intended to bypass. It is the routine that limits what can be done, and it is the routine against which "success" in targeted prosecutions must be measured.

To understand what is different about a jurisdiction's targeted prosecution--whether the target be the armed robber or the "career criminal"--and why it is different, it is essential to first understand, in some depth, the criminal justice environment in which the targeting originates and upon which it is intended to impact.

This paper was prepared as part of the first stage of the national evaluation of the Career Criminal program in an effort to describe with some specificity the routine prosecutorial practices and the departures from routine initiated under the local Career Criminal program in selected jurisdictions. In subsequent stages of the evaluation a quantitative assessment of the impact of the changes described here will be conducted to determine what effect the program has had on case process and on crime.

Four jurisdictions, with programs targeting "career criminals", are examined. The four--Orleans Parish, Louisiana; San Diego County, California; Franklin County, Ohio; and Kalamazoo County, Michigan--are similar in some respects, remarkably different in others. Their Career Criminal prosecution programs--their target populations and their operations--differ considerably.

The findings of a comparative analysis of the four criminal justice environments can be summarized as follows:

- First, the structure of the criminal justice process is organized notably differently from place to place, with some different and, in some ways, predictable consequences for the conduct of criminal prosecution. The single agency/single function organization of criminal justice in Orleans Parish contrasts conspicuously with the different degrees of fractured, bifurcated agency structures of the other three.

A reasonable approximation of continuous, individual attorney prosecution of individual cases is possible in most cases in the structural compactness of New Orleans; it is virtually inconceivable in the majority of cases in the geographically dispersed, jurisdictionally-bifurcated, multi-agency and multi-division court system of San Diego County.

- Second, basic procedural components of criminal adjudication--while similarly-named in different jurisdictions--are sometimes conducted quite differently with different consequences in different places. The preliminary hearing in Louisiana is quite distinct from the preliminary hearing in California and Michigan. In Louisiana, the hearing has no practical case-dispositive consequence. In San Diego, dismissals that result from it account for almost one-fourth of the final dispositions of felony prosecutions; in Kalamazoo County, for nearly one-sixth.
- Third, the ways in which the court process is administered influence the ways prosecution is managed. The courts' management of their caseloads impacts on the ability and means by which the prosecution prosecutes. In Orleans Parish, for example, where cases are early assigned for all purposes to one of a small number of courtrooms to which deputy prosecutors are also assigned for all purposes, some individual single-prosecutor/single-case continuity in routine prosecution is possible. In the other jurisdictions case scheduling and case-to-judge assignments make it more difficult for individual deputies to handle assigned cases through all stages of their adjudication.
- Fourth, the criminal justice process is as much an administrative matter as it is a judicial enterprise but the manners and points in the process in which cases are disposed of without full adjudication differ among the four places. A declination to charge by the prosecution avoids the court process entirely in San Diego and Kalamazoo Counties; in Orleans Parish it brings proceedings that are inconsequential in terms of disposition to a halt; in Franklin County, in the form of a grand jury no-bill, it terminates the adjudicative lives of cases that have already been examined in a forum in which they could earlier have been disposed (i.e., at the preliminary hearing).
- Fifth, the required timeliness of adjudicative events differs among the four places. In California, once an accusatory instrument is filed in the superior court, the defendant must be brought to trial (or his case must be otherwise disposed) within sixty days. In Louisiana, there is no time-specific requirement for when trial must be held. In Michigan, statutory requirements for speedy trial are weak, and, given the many exceptable causes of delay, are marginal in practical significance.

- Sixth, the prosecutors' offices in the four jurisdictions differ in range of duties, proportions of personnel dedicated to criminal prosecutions, age and experience levels of deputies, methods for case assignments, organization of functions, and controls on discretion.

These four jurisdictions have implemented a mix of activities directed toward improving the prosecution of the career criminal. A number of general strategies have been included in the four Career Criminal prosecution programs, each program targeting that sub-population of serious, repeat offenders of greatest priority to the local community. These initiatives can be best understood by considering: (1) the criteria used for selection of target cases; (2) the point(s) in the criminal process at which these cases are identified and accorded special prosecutorial attention; and (3) the form and extent of the special treatment.

Career Criminal Selection Criteria

Beyond specific differences, the selection criteria of the four programs have three noteworthy features. First, the San Diego and Orleans Parish programs sit at opposite ends of a range: San Diego's targeting is crime-specific (career criminals must be charged with robbery in the instant case); Orleans Parish targets offenders without regard to the current charge. Second, the considerations that are taken into account in the selection process differ among the four. In Orleans Parish and Franklin County, selection is based exclusively on the frequency of the defendant's prior contact with the criminal process; in Kalamazoo and San Diego Counties, characteristics of the current offense also play a role in career criminal selection. Third, in both Kalamazoo and San Diego Counties, it is possible for a case to be accepted for targeted prosecution on the basis of the current offense alone, with the defendant having no prior record of criminal activity. Although this reportedly occurs in a minority of cases, it does occur.

Career Criminal Case Identification

In each of the four programs, a special unit has been created to prosecute defendants who are identified as career criminals. When and how in the criminal process the target cases are identified for referral to the special units differs among the four.

In critical measure, the ways in which target cases are identified are determined by the dynamics and flow of the routine criminal process in each jurisdiction. In prosecutors' offices which systematically review cases as they are initially referred for prosecution,

it has been possible to build career criminal case identification into the routine process. Where systematic routine review does not occur, alternative procedures have been developed.

Case identification is perhaps the most critical step in targeted prosecution. The ability of the prosecution to identify targeted cases early dictates in large measure how much can be done differently with them.

Career criminal case identification varies among the four jurisdictions in a number of ways related to: first, the point(s) in the criminal justice process at which a target case may be identified; second, the agency or individual critical to case identification at various points; third, the relationship of career criminal case identification to the routine sequence of prosecutorial decisions; and fourth, the certainty that an eligible case will be referred to the program at any potential identification point.

Special Prosecutorial Treatment Of Target Cases

In each of the four jurisdictions a number of related actions have been undertaken by the felony prosecutor's office to provide special, improved attention to the prosecution of target cases. These include:

- changes in case handling (for instance, in San Diego the prosecution of a career criminal case is handled by one individual attorney or a small team of attorneys rather than by the five separate office units routinely involved in a felony prosecution);
- changes in resource allocation (including the assignment of more experienced attorneys to career criminal cases in all locations);
- changes in policies governing case disposition (in New Orleans, for example, the initial charges and the bottom-line charges are one and the same for career criminal cases);
- attempts to influence timing (for instance, in Franklin County, career criminal cases charged through a superseding indictment may bypass lower court proceedings); and
- attempts to influence incapacitation (this includes, the use of habitual or repeat offender statutes or, as in San Diego, the recommendation of sentences to run consecutively to increase imprisonment time).

In general, these actions attempt to side-step certain case handling procedures (such as dispersion of responsibility for the prosecution of a single case among numbers of different deputies) made necessary in routine prosecutions by mass case volume and limited personnel resources. The added resources of the LEAA-funded programs have been dedicated to approximating "vertical" prosecution of career criminal cases: one deputy handling one case for all purposes. Conscious efforts have also been made to assign these presumably serious cases to the most experienced deputy prosecutor personnel, and to keep their individual caseloads relatively small. In each jurisdiction, a special unit for career criminal prosecution--a Major Violator Unit or its equivalent--has been formed. Deputies assigned to the unit handle career criminal cases from the time of their identification through to case disposition, performing the full range of prosecution actions (bail/bond recommendations, plea negotiation, trial, etc.). Because career criminal cases (as variously defined) are assumed to be more serious than others, the four programs stress as a matter of policy the incapacitation of career criminal defendants: both pretrial, through high bail recommendations, and post-conviction, through the recommendation of maximum sentences or through the filing of habitual offender enhancement petitions.

While the four programs are similar in intent and have established many parallel mechanisms, there are some noteworthy differences among them in the ways in which they prosecute targeted cases. The actions taken in each office have been designed to improve the prosecution of career criminal cases over that of routine cases by doing things that are not feasible in the majority of prosecutions. Since there are substantial differences among the four jurisdictions both in their criminal justice environments and in their routine management of criminal prosecutions, these differences are reflected in the types, extent and significance of career criminal prosecutorial treatment in the four.

The effects of these different Career Criminal prosecution programs on the processing of selected target populations and on crime levels in each jurisdiction will be examined in subsequent stages of the national evaluation of the Career Criminal program.

TARGETED PROSECUTION: THE PRACTICE AND THE RATIONALE

The local public prosecutor has been described variously as "the key administrative officer in the processing of cases" and "except for the judge...the most influential court official";¹ as the "central figure in the administration of criminal justice" with "virtually uncontrolled discretion";² as the "chief law enforcement official of his jurisdiction" whose "powers...are formidable."³ The ability of the prosecution to shape the workings and the outcomes of the criminal justice process through the exercise of case-dispositive discretion is considerable. In many jurisdictions, if the prosecution declines to file charges against an arrested person the arrest is thereby conclusively disposed of, often without any appearance of the accused in a court of law. When charges are filed, the selection of which charges to lodge against the defendant (felony or misdemeanor, aggravated or simple offense) not only defines the range of imposable sentences, it may also dictate which court (inferior or superior) in the jurisdiction will hear the case. Plea bargaining--the entry of a guilty plea by the defendant in exchange for a reduction in charges or some other consideration by the prosecution--accounts for the majority of convictions in many jurisdictions.⁴

¹THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 11, 147 (1967) hereinafter cited as CHALLENGE OF CRIME.

²Bubany & Skillern, Taming the Dragon: An Administrative Law for Prosecutorial Decision Making, 13 AMER. CRIM. L. REV. 474 (Winter 1976).

³ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, Compilation, at 76, 83 (1974).

⁴See, e.g., text accompanying notes 95, 96 infra.

But while the local prosecutor's office may well be the most powerful of criminal justice agencies within a jurisdiction, subtle but significant elements can considerably influence the methods and results of the exercise of that power. External, environmental constraints (caseload volume, a fragmented structure of criminal justice administration, geographical and jurisdictional dispersion of functions and responsibilities, a complexity of criminal procedure), and internal characteristics of prosecution management (experience levels of prosecutorial personnel, organization and resource allocation) combine in many jurisdictions to make the prosecution of offenders a beleaguered and encumbered business.

While there are noteworthy exceptions to any general observation about criminal prosecution in the United States, there are nonetheless some critical features that appear with marked regularity among different jurisdictions.

First, criminal prosecution is a matter of mass production. Caseload sizes have long since outstripped the resources available for personalized, attentive prosecution of most cases in many places. True, notorious and some serious cases receive considerable individual attention, but that luxury is infrequently available for the majority of cases to be prosecuted. Professor Edward L. Barrett of the University of California at Davis Law School, has described it this way:

Whenever the visitor looks at the system, he finds great numbers of defendants being processed by harassed and overworked officials. Police have more cases than they can investigate. Prosecutors walk into courtrooms to try simple cases as they take their initial looks at the files. Defense lawyers appear having had no more than time for hasty conversations with their clients. Judges face long calendars with the certain knowledge

that their calendars tomorrow and the next day will be, if anything, longer, and so there is no choice but to dispose of the cases.⁵

Second, the structure of the criminal process itself is often an uneven, fragmented diffusion of agencies and functions, with overlapping jurisdictions, bifurcations and trifurcations of responsibilities, and procedurally fractured relationships. A single county prosecutor's office may handle the arrests of twenty or thirty municipal and village police agencies, first in one of a number of inferior courts and later in a county court, in both courts its case-load competing for space on the court docket with divorce hearings, small claims matters, and negligence actions.

Third, criminal procedure in many states is peppered with anachronistic requirements that often act "to delay the determination of guilt, not to improve its quality."⁶ While, for example, the requirement that felony prosecutions proceed only upon indictment by a grand jury was at one time in Anglo-American jurisprudence, a reform designed to protect the accused,⁷ little is accomplished in those states that rigidly require the grand jury proceeding when: (1) the proceeding is wholly ex parte (i.e., the defendant and his counsel may not even be present); (2) all manner of hearsay evidence is permissible, and (3) trial courts will not scrutinize the evidence upon which the indictment is based.

⁵ Barrett, Criminal Justice: The Problem of Mass Production in THE COURTS, THE PUBLIC AND THE LAW EXPLOSION 87 (H. Jones, ed. 1965).

⁶ L. Katz, L. Litwin & R. Bamberger, JUSTICE IS THE CRIME: PRETRIAL DELAY IN FELONY CASES 33 (1972) hereinafter cited as KATZ .

⁷ Id. at 11-17.

Testimonial requirements for "nonconsent" and "no authority" elements of prosecutions often wear out witnesses who are "key" to the prosecution, often with the result that the witnesses drop out and the cases are dismissed for want of prosecution. Michael Ash, former First Assistant District Attorney in Milwaukee County, Wisconsin, has reviewed two examples:

In burglary cases...the prosecution must establish that the burglar entered the building 'without the consent of the owner.' Similarly, in forgery cases the prosecution may be required to show that the forger endorsed another person's name on the check 'without authority to do so.' These requirements may necessitate testimony, respectively, by the 'owner' and by the purported endorser. Often, these 'nonconsent' or 'no-authority' witnesses know nothing about the crime apart from their non-consent or nonauthorization. Often, even their nonconsent or nonauthorization will be fairly obvious from the circumstances. Nevertheless, prevailing law and practice in many jurisdictions dictate that their testimony will be required at least once, at trial, and perhaps more often.⁸

Fourth, the public prosecutor's office often brings its own inherent weakness to the criminal process. In most (but not all) states, deputy prosecutors are recent admissions to the bar, are not formally trained as prosecutors, are not expecting or expected to make careers in local criminal prosecution, and are short-tenured as deputies. It is not unusual for the most experienced trial deputy in an office to have been a deputy for less than three years. (In some jurisdictions, it is also not unusual for criminal cases to linger in the court process for periods of time longer than the deputies assigned to try them have been prosecutors.)

⁸ Ash, On Witnesses: A Radical Critique of Criminal Court Procedures, 48 NOTRE DAME LAWYER 423-24 (1972).

Fifth, as a result partly of caseload volume, partly of insufficient attention and partly of other systemic obstacles, priorities are often not systematically set in terms of which cases deserve greater attention and resolve than others. Infamous cases on the one hand, and marginal cases on the other, may be routinely distinguished for purposes of resource allocation and vigor of pursuit, but within the extremes, distinctions among cases are often made, if at all, in an ad hoc fashion.

Finally, the important decisions in criminal prosecution are often precisely those that are rarely recognized or controlled as important. The decision to charge and the decision to negotiate for a guilty plea are widely recognized as critical exercises of prosecutorial discretion,⁹ but that may be largely because they are immediately and dramatically case-dispositive. The assignment of deputy A rather than deputy B to a given case; the scheduling of one trial in advance of another; the degree of reliance placed on secondary sources of information (e.g., police reports, office memoranda) compared with primary sources (e.g., direct interviews of witnesses) in making key tactical decisions; are as likely over the long run to influence case

⁹ Much has been written about both exercises of discretion. For recent examinations of prosecutorial discretion, see: W. TESLIK, PROSECUTORIAL DISCRETION: THE DECISION TO CHARGE: AN ANNOTATED BIBLIOGRAPHY (U.S. Dept. of Justice, Nat'l. Crime. Just. Ref. Service, Oct. 1975); Cox, Prosecutorial Discretion: An Overview, 13 AMER. CRIM. L. REV. 379 (Winter 1976); Thomas & Fitch, Prosecutorial Decision Making, 13 AMER. CRIM. L. REV. 507 (Winter 1976); Lagoy, Senna, & Siegel, An Empirical Study on Information Usage for Prosecutorial Decision Making in Plea Negotiations, 13 AMER. CRIM. L. REV. 435 (Winter 1976). See also, K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY (1969); P. GREENWOOD & S. WILDHORN, PROSECUTION OF ADULT FELONY DEFENDANTS IN LOS ANGELES COUNTY: A POLICY PERSPECTIVE (1973); Amsterdam, One-Sided Sword: Selective Prosecution in Federal Courts, 6 RUTGERS CAMDEN L. J. 1 (1974).

outcomes as are the more dramatic expressions of prosecutorial discretion. Yet, they are often ad hoc judgments, made by no one in particular and with no regularity or visible consistency of purpose.

Offsetting the Obstacles: The Practice

The term "targeted prosecution" is not common in the parlance of criminal justice administration, but the practices it encompasses have long been a part of American criminal jurisprudence. It proceeds on the assumption that all serious criminal cases in which the prosecution files charges will be prosecuted with requisite proficiency and determination, but that some--because of the gravamen of the offense and/or the criminal background of the accused--warrant more continuous and comprehensive attention and a greater per-case commitment of prosecutorial resources than do the rest. The forms that this special attention takes (a cradled, comprehensively prepared and expedited prosecution) are neither new nor unfamiliar to criminal prosecution. With large caseloads, disparate talents and experience levels of deputy prosecutors, and enormously complex criminal justice structures and proceedings, this particular attention has simply become less feasible in the majority of serious cases in many jurisdictions. Targeting is, in effect, more a matter of systematic priority-selection and resource allocation than one of special technique or technology.

Assigning experienced deputies, priority for trial and special attention to the prosecution and conviction of a minority of a prosecutor's caseload have long been common in many jurisdictions. Defendants charged with certain crimes (homicide, kidnapping, forcible rape, and infamous offenses, for example) and persons with histories of criminal convictions have historically in many jurisdictions received prosecutorial attention of far greater intensity than that accorded to other felons. While the cases of other defendants may

plod slowly through the process of adjudication, it is not unusual for homicide cases, for example, to be assigned to the most experienced trial deputies, to be nurtured and expedited by the prosecution through the court process, and to be pursued to conviction with a particular zeal and expenditure of resources.

In some jurisdictions, the targeting is reflected in the organization of the prosecutor's office. Since the 1930's, for example, the New York County District Attorney's Office has had a special bureau of senior assistants that exclusively and intensively prosecutes homicide cases from arrest through sentencing. In a number of jurisdictions, felonious sexual assaults are prosecuted by specially trained, specially staffed units.¹⁰

However it is organized, the targeting of resources and attention on a minority of the criminal caseload is invariably reactive: to a too-large caseload, to a fragmented and unevenly distributed criminal justice structure, to procedural hurdles in the criminal process, to professionally transient and relatively inexperienced personnel available for prosecution. It is a singling-out of a small number of cases to do with them what cannot be done with the same intensity in the majority of cases.

The Practice and the Law

While the practice of targeting on a minority of the caseload is not new, it has received relatively little critical attention in

¹⁰See, Battelle Law & Justice Study Center, *Forcible Rape: A National Survey of the Response by Prosecutors* 56 (Nov. 1975).

the literature of the law and of criminal justice.¹¹ The inattentiveness may well be due to: (1) the low-visibility of the practice; (2) its often ad hoc application; and (3) the fact that it is significant and understandable only in terms of the systemic and environmental obstacles that give rise to it, and which it is intended to skirt. Also, it is a practical accommodation to a host of serious problems in criminal justice administration, not a pretended cure of them, and as such, it presents relatively little intellectual drama for students of criminal justice issues and concerns.

Yet, there are legal implications in the selection of some cases for special, albeit rather traditional, prosecution. The first concerns the definition of the target population: that minority of the caseload to be specially handled. By its nature, targeting is discriminatory. The second concerns the degree of systematism in the targeting in practice: assuming that a defined class of cases (or defendants) has been selected for special attention, are all or only some members of that class routinely selected? The third concerns the special treatment itself. Is it legally proper and permissible?

The issue of selectivity of prosecution has most commonly arisen when one offender is prosecuted and a similarly situated offender is not;¹² less frequently so, as with targeting, when both are prosecuted but when one is treated differently from the other in terms of charge,

¹¹ But see, Amsterdam, note 9 *supra*; Comment, The Right to Nondiscriminatory Enforcement of State Penal Laws, 61 COLUM. L. REV. 1103 (1961); Note, United States v. Falk: Developments in the Defense of Discriminatory Prosecution, 72 MICH. L. REV. 1113 (1974)

¹² The first major case on the relationship of discriminatory prosecution and the equal protection clause was *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). There the appellants successfully claimed that a municipal ordinance was being enforced only against Chinese merchants.

plea bargaining and disposition. Courts have, however, long upheld the legitimacy of deliberate selectivity in prosecution for certain reasons, among them: the conservation of limited resources, grants of immunity in return for testimony, and the prosecution of serious offenders as a deterrent to others.¹³

The mere fact of discrimination in the prosecution of some cases and some defendants is not itself improper. For the selectivity to be constitutionally impermissible, it must fail on both of two standards. First, there must be a showing that others in the same or similar position, or bearing the same or similar characteristics, have not been prosecuted or have not been prosecuted in the same or similar manner.¹⁴ Second, the standard upon which the discrimination is based must itself be impermissible. Discriminations based on race or political affiliation, for example, have been ruled impermissible, but the examples in which the courts have found standards of unfair discrimination are few.¹⁵

Consequently, the definition of the target population need only be reasonable and be not arbitrary or capricious. To give greater attention to homicide prosecutions than to petit larcenies, or to repeat offenders than to first offenders, is both proper and permissible in prevailing case law. The application of the definition to

¹³ See cases cited in Cox, note 9 supra at 404-405.

¹⁴ Id.

¹⁵ Id. In Oyler v. Boles, 368 U.S. 448 (1962), the defendant, who claimed constitutionally impermissible discrimination because the prosecution sought to have him sentenced under an habitual offender act when others similarly situated had not been, was denied relief because the court could find no invidious basis for the discrimination "such as race, religion, or other arbitrary classification." Oyler v. Boles, 368 U.S. 456.

a given class of defendants need only be consistent. That is, the target population as defined, must be the target population in practice. The special handling accorded targeted cases must, of course, not be violative of due process.

The Significance of Context

Very little...observation of the administration of criminal justice in operation is required to reach the conclusion that it suffers from basic ills. More detailed knowledge is required, however, to appreciate the nature of the problems and the obstacles to their solution. One needs to know something of the agencies involved in administering criminal justice, of the principal steps in the processing of criminal cases, of the size of the workload borne by the system, of the methods by which large volumes of cases are handled.¹⁶

The whole notion of targeted prosecution proceeds from a perception that, because of a host of systemic obstacles (not the least of which is the combination of enormous caseload size and limited personnel resources), certain "serious cases" (however defined) are not routinely attended to, expedited and pursued with the vigor and resources that their gravamen suggests. One immediate expectation in targeting is that, by doing things differently and by increasing prosecutorial resources in terms of this minority of the caseload, these cases will no longer suffer the consequences of insufficient attention.

This "different" treatment of these cases is shaped in critical measure, however, by the routine criminal justice process from which it is intended to be different. To an extremely large degree, the routine defines the nature and the rationale of the difference. It is the routine obstacles--the case volume, the structure of the

¹⁶ Barrett, note 5 supra at 87.

criminal process, its procedural hurdles, its personnel arrangements--which the targeting is intended to by-pass. It is the routine that limits what can be done, and it is the routine against which "success" in targeted prosecutions must be measured.

To understand what is different about a jurisdiction's targeted prosecution--whether the target be the armed robber or the "career criminal"--and why it is different, it is essential to first understand, in some depth, the criminal justice environment in which the targeting originates and on which it is intended to impact.

Four jurisdictions with programs targeting "career criminals" are examined in the next three sections. The four--Orleans Parish, Louisiana; San Diego County, California; Franklin County, Ohio; and Kalamazoo County, Michigan--are strikingly similar in some respects, remarkably different in others. Their career criminal prosecution programs--their target populations and their operations--differ considerably.

In the next section the criminal justice environments in which the four programs have been developed are examined.¹⁷ The major structural components of the criminal process (law enforcement, courts, prosecution, detention, and incarceration); the principal steps and hurdles in case processing; the volume of criminal caseload and the ways it is disposed of; and the administration of criminal

¹⁷ Each of the four jurisdictions is assessed in considerably more detail than that presented here in a series of four companion volumes by the authors, entitled Targeted Prosecution: The Career Criminal: Orleans Parish (MTR-7551, May 1977); San Diego County (MTR-7552, May 1977); Franklin County (MTR-7553, May 1977); and Kalamazoo County (MTR-7554, May 1977).

prosecution are examined for each of the four jurisdictions. In the section thereafter, these criminal justice characteristics are summarized. In the final section, the targeted, Career Criminal programs in each are reviewed.

THE CRIMINAL JUSTICE ENVIRONMENT: FOUR JURISDICTIONS

...[T]he collective operations of police, public prosecutors, public defense counsels, courts and corrections establishments do not constitute a well-articulated system.¹⁸

There is little doubt that many of the difficulties in criminal justice administration result from ignorance about the workings of the overall system. The road to crime control is littered with discarded panaceas. Many of the proposals have failed simply because they were not in harmony with administrative reality, others because they were irrelevant to the nature and causes of criminal conduct.¹⁹

A General View

Stripped to its basics, criminal justice administration is a combination of structure, process and personnel, each shaping the others in subtle and occasionally critical ways. Law plays an important but not a consuming role. Criminal justice in practice responds to administrative convenience and necessity, historical and parochial conventions, and the influences of daily practices and working understandings at least as much as it does to legislative ukases and case law prescriptions.

In its bare essentials, the criminal justice process--its structural components, its procedures, its principal actors--differs little from jurisdiction to jurisdiction, from state to state.

¹⁸ ADV. COMM'N. ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 13 (1971).

¹⁹ F. REMINGTON, D. NEWMAN, E. KIMBALL, M. MELLI, & H. GOLDSTEIN, CRIMINAL JUSTICE ADMINISTRATION 11 (1969) [hereinafter cited as REMINGTON & NEWMAN].

The structure consists of one or more: police agencies, prosecuting agencies, courts with criminal jurisdiction, and local and state corrections agencies. Woven among them are: probation agencies, pretrial release services and various arrangements for the provision of defense counsel for indigents.

The processing of a felony that is tried and convicted as a felony consists generally of ten basic steps:

- (1) arrest, booking,²⁰ and referral of the case for prosecution;
- (2) the initial decision to formally charge (i.e., to invoke the criminal court process by the filing in court of criminal charges, usually in the form of an initial accusatory instrument);²¹
- (3) an initial appearance of the accused before a magistrate, at which, among other things, bail and other conditions of pretrial release are set;
- (4) a preliminary hearing, the purpose of which is to determine whether there is probable cause to hold the defendant for felony trial;
- (5) the filing of an accusatory instrument (an indictment or information) with the court having jurisdiction to hear and determine felony cases;
- (6) arraignment²² of the accused on the charges in the accusatory instrument;

²⁰ The booking is an administrative record of the arrest. It normally entails the photographing and fingerprinting of the suspect. In some jurisdictions, it is also the first point at which the suspect may be released on bail or personal recognizance.

²¹ The different accusatory instruments are described in notes 62, 65-68 infra and accompanying text.

²² The arraignment is derived from eighteenth-century English law. It was the occasion at which the defendant was called before the court to answer the charges placed against him. He could: confess guilt to the charges, stand mute, or interpose one of several pleas (e.g., not guilty, incompetence, benefit of clergy). See, KATZ, note 6 supra at 25.

- (7) filing and determination of pretrial motions;
- (8) trial;
- (9) a presentence investigation--prepared at the trial judge's discretion, or as required by statute or court rule--detailing the offender's background and the gravamen of the current offense; and
- (10) the imposition of sentence.²³

In many jurisdictions, the defendant is arraigned twice: on the initial accusatory instrument (step 2) at the initial court appearance (step 3) and on the second accusatory instrument (step 5). The contemporary arraignment is most often a perfunctory affair: the reading of rights and charges (often waived) and the entry of an initial plea (guilty or not guilty). It may also be the occasion for the setting of bail and other considerations of pretrial release.

²³In misdemeanor cases: (1) there is generally no right to a preliminary hearing (step 4); (2) there is rarely a possibility of indictment by grand jury (step 5); and (3) there is rarely the filing of more than one accusatory instrument, the one filed most often being that at the time of the defendant's initial appearance before a magistrate (step 3).

The difference between a felony and a misdemeanor is neither precise nor uniform among the states. A felony is generally any offense for which the defendant may be imprisoned in a state penitentiary, although even in states that have adopted this definition certain convicted felons may, by statute, be sentenced to local institutions. Another demarcation between the two degrees of offenses is length of impossible sentence: if more than one year, the offense is a felony; if less than one year, it is a misdemeanor. Again, there are exceptions. The most common are "high misdemeanors," or "superior court misdemeanors," which are punishable by terms exceeding one year.

Historically, misdemeanants have been the beneficiaries of fewer constitutionally protected rights than have been felons: denied trial by jury, benefit of assigned counsel, for example. In recent years the United States Supreme Court has struck down a number of distinctions based solely on offense classification, adopting instead a distinction based on vulnerability to imprisonment. See, e.g., *Baldwin v. New York*, 399 U.S. 66 (1970) (right to a jury trial attaches to any crime punishable by more than six months' imprisonment, regardless of whether it is labeled a felony or misdemeanor) and *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (right to counsel exists in any offense for which the defendant may be subjected to imprisonment).

Personnel arrangements in criminal justice administration are, in every jurisdiction, an assortment of elective, appointive, and civil service offices and a mix of educational, professional, and training requirements for carrying out specific functions. Felony prosecutors, judges, and sheriffs are most often elected; police chiefs, chief probation officers, and court administrators are most often appointed. Police officers in municipal agencies are most often selected, promoted, and secured by civil service; assistant prosecutors in most states serve wholly at the pleasure of the elected prosecutor. Police officers in municipal agencies are most often formally trained for their work; assistant prosecutors and defense attorneys generally need only be lawyers admitted to practice in the state; judges most often must only have been members of the bar of the state for a minimum number of years.

Beyond these bare essentials, however, similarities among different jurisdictions in the practice of criminal justice are often elusive. The differences in organization and administration--from one place to another--can be dizzying and perplexing. Many of the differences--in structure, procedure, personnel arrangements--are superficial and merely idiosyncratic, with marginal influence on the conduct of the criminal justice process. Some, however, have more than a casual relationship with the ways in which criminal justice is administered and with the ways a national effort such as the Career Criminal program may take different shapes in different locales.

The four jurisdictions--Orleans Parish, San Diego County, Franklin County, and Kalamazoo County--administer criminal justice in some ways essentially the same, in some respects strikingly differently. Key functions (law enforcement, prosecution, defense, adjudication) are organized differently in each place. The criminal justice process in practice behaves differently in some. The roles

and responsibilities of personnel and agencies are also, in a number of respects, different in each. These environmental characteristics of the four jurisdictions, singly and in relation to each other, are examined in the following sections.

Structural Components

...It is readily apparent that the structure of the criminal justice system cannot be quickly nor easily described, either as to the ranking and sources of authority or as to the selection of personnel. The fact that the structure is complex, multidimensional, and not uniform; the fact that many structural relationships...are controversial and largely unsettled; and the fact that the structure is dynamic, subject to changes and to shifts in focus, all compound the difficulty of analyzing the way the system works.²⁴

The structural components of the criminal justice environment are an admixture of agencies that deal wholly with criminal matters (e.g., probation, corrections), some that deal largely with offenders and offenses (e.g., police, prosecution), and some that have, in most places, only a part-time relationship with criminal cases (e.g., trial courts, appellate courts, the state attorney general's office). For most key functions in criminal justice administration (law enforcement, prosecution, adjudication, corrections), one or more agencies plays the dominant role. For some functions (e.g., defense of indigents, pretrial services) there may be no distinct agency responsible.

The four jurisdictions have some striking contrasts in the organization and dispersion of functions and agencies. At one end of the spectrum is Orleans Parish, where each principal function (other than

²⁴ REMINGTON & NEWMAN, note 19 supra at 17.

corrections) is performed by one agency with the same geographical jurisdiction as that of the others. At the other is Franklin County, with thirty-one police agencies, two prosecutors and two courts interacting in procedurally fractured relationships with each other. Sandwiched between them are San Diego and Kalamazoo Counties--markedly dissimilar in size but notably similar to each other in organizational features. Orleans Parish stands apart from the rest in that there is relatively little noncriminal business assigned to the Parish's key criminal justice agencies. In the other three jurisdictions, the agencies have varying levels of responsibility for civil and juvenile matters.

Law Enforcement

In Orleans Parish, the New Orleans Police Department is for all practical purposes the only local police agency that routinely makes arrests for state law offenses.²⁵ In San Diego County, there are ten municipal agencies, the county Sheriff's Office, the University of California Police and an area command of the California Highway Patrol. All are full-time. The municipal agencies range in numbers of sworn personnel from 21 (Imperial Beach) to 965 (San Diego). Seven of Kalamazoo County's ten police agencies operate around the clock; three have abbreviated hours of operation. The agencies range in size from one full-time officer (Galesburg) to 157 (Kalamazoo

²⁵ There are, in addition to the New Orleans Police Department, four local law enforcement agencies (Harbor Police, Criminal Sheriff's Department, Park Police and Orleans Levy Board Police) but the enforcement jurisdiction of each is strictly limited to special-purpose areas. While the parish has both a Criminal Sheriff's Department and a Civil Sheriff's Department, the former's law enforcement activities are confined wholly to offenses committed within courtrooms and the Parish Jail.

Police Department). Franklin County's thirty-one police agencies are a mix of full-time and part-time; the largest (Columbus Police Department) has 1,144 sworn personnel.

Regardless of the number of distinct agencies, however, in each of the four jurisdictions one or two agencies are decidedly dominant: in size, budget, technological capability or arrest volume (Table I). In Orleans Parish, the New Orleans Police Department makes over 98 percent of the arrests for state law offenses. In San Diego County, the combined personnel of two agencies--the San Diego Police Department and the San Diego County Sheriff's Office--account for 75 percent of the total sworn police officers in the county. Between them, the two agencies make 72 percent of all felony arrests in the county. The same is the case in Kalamazoo County. The Kalamazoo Police Department and the Kalamazoo County Sheriff's Department comprise 70 percent of the county's full-time sworn officers and make 74 percent of the county's arrests for serious felonies. In Franklin County, one agency--the Columbus Police Department--predominates; it has 74 percent of the county's enforcement personnel and consumes 77 percent of the total law enforcement expenditures made in the county.

The dominant agencies in all four jurisdictions share many of the same characteristics. All have a rank structure formed along quasi-military lines (sergeant, lieutenant, etc.). In all, the rank hierarchy resembles a pyramid, with the majority of sworn personnel occupying the lowest rank (police officer, patrol officer, deputy sheriff). In all, some sworn personnel are designated as "detectives" or "investigators" for follow-up investigations of crimes to which uniformed patrol personnel are most often the initial police respondents.

TABLE 1
SELECTED CHARACTERISTICS OF
PRINCIPAL LAW ENFORCEMENT AGENCIES IN FOUR JURISDICTIONS

	AGENCIES	JURISDICTION	DISTRIBUTION OF SWORN PERSONNEL	DISTRIBUTION OF ARRESTS	RATIO OF FIRST LINE SUPERVISORS TO PATROL OFFICERS	REMARKS
SAN DIEGO COUNTY, CALIFORNIA (1976)	SAN DIEGO POLICE DEPARTMENT	CITY OF SAN DIEGO	965 (45%)	9,582 (56%)*	1 TO 6	
	SAN DIEGO SHERIFF'S OFFICE	COUNTY OF SAN DIEGO	642 (30%)	2,668 (16%)*	1 TO 7.6	S 19,700,400
	MUNICIPAL AGENCIES (9)	SELECTED MUNICIPALITIES	526 (25%)	4,750 (26%)*	N/A	N/A
KALAMAZOO COUNTY, MICHIGAN (1976)	KALAMAZOO POLICE DEPARTMENT	CITY OF KALAMAZOO	157 (41%)	2,552 (74%)	1 TO 7.7	S 3,801,000
	KALAMAZOO SHERIFF'S DEPARTMENT	COUNTY OF KALAMAZOO	112 (30%)		1 TO 7.9	S 1,800,000
	OTHER AGENCIES (5)	SELECTED AREAS WITHIN COUNTY	110 (29%)	885 (26%)	N/A	S 2,611,100***
ORLEANS PARISH, LOUISIANA (1975)	NEW ORLEANS POLICE DEPARTMENT	PARISH OF NEW ORLEANS	1,445	980	N/A	S 34,507,500
	HARBOR POLICE	WHARF AREA	N/A	220	N/A	N/A
	CRIMINAL SHERIFF'S DEPARTMENT	COURTROOMS, PARISH PRISON				
FRANKLIN COUNTY (COLUMBUS), OHIO (1974)	COLUMBUS POLICE DEPARTMENT	CITY OF COLUMBUS	1144 (74%)	N/A	1 TO 7	S 22,700,400
	FRANKLIN COUNTY SHERIFF'S DEPARTMENT	FRANKLIN COUNTY	90 (6%)	N/A	1 TO 5	S 1,320,700
	OTHER AGENCIES (29)	SELECTED AREAS WITHIN COUNTY	312 (20%)	N/A	N/A	S 3,112,500 (28%)

* 1975 ARREST DATA FOR SAN DIEGO.

** FIGURE DOES NOT INCLUDE TWO OF THE SMALLER KALAMAZOO COUNTY DEPARTMENTS.

*** FIGURE DOES NOT INCLUDE THREE OF FRANKLIN COUNTY'S SMALLER DEPARTMENTS.

First, the court process in Orleans Parish stands apart from that of the other three jurisdictions with three distinguishing features: (1) for criminal matters (state law felonies and misdemeanors) it consists of only one court: the Criminal District Court; (2) the Criminal District Court is exclusively a criminal court, with no jurisdiction of or responsibility for noncriminal matters; and (3) the appellate process for criminal cases is wholly distinct from that for civil cases, with a totally different appellate forum. In the other three jurisdictions: (1) the court process is bifurcated for criminal matters in one or more inferior courts (i.e., courts of limited jurisdiction and power) and one superior court (i.e., a court of general jurisdiction); (2) both inferior and superior courts have civil as well as criminal case responsibilities; and (3) both criminal and civil cases are appealed to the same forums by essentially the same routes.

Second, while the venue (i.e., the geographical jurisdiction) of the superior court is the same in all four places (county-wide or Parish-wide), the venues of inferior courts differ in the three jurisdictions that have them. In Franklin County there is one inferior court (the Municipal Court, thirteen judges) with county-wide venue in

not one to a felony charge) or to sentence the defendant as a felon. The venue of a court is not strictly a matter of jurisdiction, although in daily practice it defines what might be considered the geographical jurisdiction of the court. Venue defines the court (or court subdivision) that is empowered to hear and determine cases (over which it has both subject matter jurisdiction and power) arising in a particular geographical area (e.g., city, judicial district, county). Thus, for example, the Municipal Court of the North County Judicial District in San Diego County has: (1) subject matter jurisdiction of felonies and misdemeanors; (2) power to hear and determine misdemeanors and to conduct preliminary examinations of felonies; and (3) venue confined in routine cases to offenses that originate within the geographical confines of the judicial district. It is distinguished from the Municipal Court of a neighboring district solely in terms of venue; the jurisdiction and powers of the two are otherwise the same.

TABLE II
PRINCIPAL CHARACTERISTICS OF
TRIAL COURTS WITH CRIMINAL JURISDICTION IN FOUR JURISDICTIONS

JURISDICTION	AGENCIES	CIVIL JURISDICTION	CRIMINAL JURISDICTION	LOCATIONS	JUDICIAL PERSONNEL	NON JUDICIAL PERSONNEL	VENUE	TOTAL CASELOAD	CRIMINAL CASELOAD	BUDGET
San Diego County, California	Municipal Court	<ul style="list-style-type: none">Cases involving \$5000 or lessSmall Claims (\$500 & under)	<ul style="list-style-type: none">Hear and determine misdemeanorsArraign and examine felonies	San Diego Judicial District	22 judges 1 commissioner	233	San Diego City	321,960 (70%)		\$13,218,686 (1976-77)
				North County Judicial District	6 judges	61	North County	86,839 (19%)		
				El Cajon Judicial District	5 judges	52	East County	51,364 (11%)		
				South Bay Judicial District	4 judges	42	South Bay Area	*		
			Total		37 judges 1 commissioner	388	County	460,163	54,612 (12%)	
	Superior Court	<ul style="list-style-type: none">Cases involving \$5000 or moreEquityDomestic relations, probate, support and neglect	<ul style="list-style-type: none">FeloniesJuvenile Delinquency	San Diego	32 judges	185	County	Case Filings 1974-75 44,499		\$10,390,905 (1976-77)
				North County	3 juvenile court referees				4,454 (10%)	
		Intermediate Court of Appeal for Civil and Criminal Matters			3 judges					
Kalamazoo County, Michigan	District Court	<ul style="list-style-type: none">Matters involving \$10,000 or less (other than equity)Small claims up to \$300	<ul style="list-style-type: none">Hear and determine misdemeanorsArraign and examine felonies	<u>Ninth District Court</u>						<u>1977</u>
				Division 9 - 1	4 judges	26	City of Kalamazoo	N/A	N/A	517,560
				Division 9 - 2	1 judge	11	City of Portage			
				<u>Eighth District Court</u>	2 judges	12	Remainder of County			205,026
	Circuit Court	<ul style="list-style-type: none">Domestic relations mattersEquityCivil claims exceeding \$10,000	<ul style="list-style-type: none">Hear and determine felonies	one	4 regular judges 1 special judge	N/A	Kalamazoo County	N/A	N/A	\$742,710
		Appellate jurisdiction over District Courts within its venue								
Orleans Parish (New Orleans), Louisiana	Criminal District Court	None	<ul style="list-style-type: none">MisdemeanorsFelonies	one	10 judges 1 magistrate 3 commissioners	N/A	Orleans Parish	≈ 12,000	(100%)	N/A
Franklin County (Columbus), Ohio	Municipal Court	<ul style="list-style-type: none">Matters involving \$10,000 or less	<ul style="list-style-type: none">Hear and determine misdemeanorsArraign and examine felonies	one	13 judges	98	Franklin County		Cases Filed Jun-Aug 1976 51,400 (6% felonies)	<u>1975</u> 1,289,707
	Court of Common Pleas	<ul style="list-style-type: none">Matters involving \$500 or moreJuvenile and Domestic RelationsProbate	<ul style="list-style-type: none">Arraign and examine felonies	one	13 judges	67	Franklin County	Average Monthly Pending Caseload 5530	826 (15%)	

* Not in Existence during period for which data are reported

TABLE II
PRINCIPAL CHARACTERISTICS OF
TRIAL COURTS WITH CRIMINAL JURISDICTION IN FOUR JURISDICTIONS

specific proceedings are scheduled. Thus, the judge who hears pre-trial motions may not be the judge who tries the case. The remaining three jurisdictions assign cases mainly on an "individual calendar" basis. Early in its adjudication, each case is assigned to a judge who handles it for all purposes while it is in the court (inferior or superior) in which he sits.

The court structure in Orleans Parish differs not only from that in the other three jurisdictions but also from that in the rest of Louisiana. The court of general jurisdiction in the remainder of the state is the District Court. The "court of general jurisdiction" in Orleans Parish is, in effect, two courts of restricted jurisdiction: the Civil District Court (general jurisdiction of civil law matters) and the Criminal District Court (general and exclusive jurisdiction of all state law criminal offenses arising within the parish). While the Criminal District Court has a separate Magistrate's Section--with power to set bond, conduct preliminary examinations of felonies, and try and dispose of misdemeanors--the section is an adjunct of, and not a separate judicial forum from, the Criminal District Court.²⁸

The Magistrate's Section is the court's intake point for most cases. Theoretically, it sits seven days a week, twenty-four hours

²⁸ The court's Magistrate's Section was created by an act of the Louisiana legislature in 1972 and began operations in mid-September of that year. In late 1974, the single magistrate was supplemented by three commissioners--with authority similar in most respects to that of the magistrate--in order to provide more coverage during weekdays and weekends for initial bond-setting hearings. The section is legally and administratively a part of the Criminal District Court and is not a separate inferior court. Unlike the judges of inferior courts in the other three jurisdictions, who are publicly elected to the bench, the magistrates and commissioners of the Criminal District Court are appointed by the judges of the court sitting en banc.

a day.²⁹ After bond setting in the section, misdemeanor cases are randomly allotted to the ten judges of the Criminal District Court and the four Magistrate/commissioners. After the Magistrate's Section has completed bond setting and preliminary examinations, felony cases in which the prosecution decides to proceed are allotted to the ten Criminal District Court judges on a stratified random basis.³⁰ (Felonies are not allotted to the Magistrate's Section).

Once the case is allotted to a judge it is his for all subsequent purposes. Each judge has a good deal to say over the management of his court section, its policies on determination of defendant indigency and bail, its movement of its docket, and its tolerance of delays and continuances. Calendaring and case scheduling functions are individual to each judge's court section.

After judgment, criminal cases are appealed through one of two routes, depending upon whether the conviction is of a felony or a

²⁹In practice, the section has two sessions daily: 8:00 a.m. to 4:00 p.m. and 7:30 p.m. to midnight.

³⁰State law offenses in Louisiana are divided into four classes, depending upon the severity of the imposable sentence:

- (a) misdemeanor: sentence of not more than one year in Parish prison;
- (b) third class felony: imprisonment with or without hard labor (Parish prison; effective maximum of five years);
- (c) second class felony: sentence to mandatory hard labor (state penitentiary); and
- (d) first class felony: sentence to death or life imprisonment in the state penitentiary.

Blind case allotments (using numbered balls in a moving cage) are made among the judges for each class of offense in strict rotation. Thus, all first class offenses are distributed in rotation; then all second class; and so on. Each month one district judge is taken out of the allotment in rotation to permit him to catch up on pending matters.

misdemeanor. Appeals from misdemeanor convictions in the Criminal District Court (in either the ten regular court sections or the four Magistrate's Sections) are first heard by the judges of the court's appellate division, comprised of the ten Criminal District Court judges. The appellate division sits in two panels of five judges each; the appeal is heard by the panel on which the trial judge does not sit. Appeals from felony convictions are heard exclusively by the Louisiana Supreme Court.³¹

The court process for criminal matters is bifurcated in San Diego County: (1) an inferior court (the Municipal Court) is empowered to hear and determine misdemeanors and to initially arraign and conduct preliminary examinations of felonies; and (2) a court of general trial jurisdiction (the Superior Court) is empowered to hear and determine felonies as felonies. Both courts have subject matter jurisdiction that extends beyond criminal matters (Table II supra).

For Municipal Court purposes, the county has four judicial districts, dividing the 4200-square mile county roughly into: north, east, south and the City of San Diego. The four districts have a total of 37 judges, one commissioner and 388 support personnel. The Superior Court sits in two locations: downtown San Diego and a satellite branch in the north county. It has 35 judges, three referees, and 185 support personnel.

Misdemeanors are filed in and determined by the Municipal Court judicial district having venue of the offense.³² Most felonies are

³¹The Supreme Court hears only criminal appeals. Appeals from civil judgments are heard by the state's Courts of Appeals.

³²See note 27 supra.

initially filed in one of the four district Municipal Courts for arraignment and examination. If they are to be disposed of as felonies, they are then refiled in the Superior Court for a second arraignment and trial.

As already mentioned, both the Municipal and the Superior Courts manage their caseloads on a master calendar basis. Cases are assigned to available judges for specific proceedings. Individual judges do not manage the movement or calendaring of the caseload.

Most appeals from judgments in the Municipal Courts are heard by an appellate department, consisting of three judges of the Superior Court. Most appeals from judgments made in the Superior Court are heard in one of the five Courts of Appeal. The California Supreme Court has discretionary appellate jurisdiction to hear cases pending in or decided by the Courts of Appeal, and hears direct appeals from the Superior Courts when the death penalty has been imposed.

Kalamazoo County's court structure is similar in jurisdiction and venue to that of San Diego County. The inferior court (the District Court) has power to hear and determine misdemeanors and to arraign and examine felonies. The superior court (the Circuit Court) has power to hear and determine felonies as felonies. Both courts have jurisdiction over noncriminal matters.

The county is divided into three districts for District Court purposes. The District Courts are administratively distinct with different venues; they are funded from different sources. Two are situated in the city of Kalamazoo; one is in a neighboring city. The combined judicial personnel of the three is seven. There is one Circuit Court (five judges) with county-wide jurisdiction.

As in San Diego County, misdemeanors are filed and determined in the District Court. Felonies are arraigned and examined in the District Court; they are tried as felonies in the Circuit Court.

Unlike San Diego's courts, both the District and the Circuit Courts manage their caseloads on an individual calendar basis. Early in the process cases are assigned to individual judges of the courts. The cases are retained by the assigned judge for all subsequent proceedings while the cases are within the purview of the court (inferior or superior) in which he sits. The individual judge is responsible for the management and movement of the cases assigned to him.

The Circuit Court has appellate jurisdiction over the District Courts within its venue. Circuit Court judgments are appealable as a matter of right to the Court of Appeals. The Michigan Supreme Court is the state's court of last resort.

While Franklin County's court process is bifurcated in an inferior court (the Municipal Court) and a superior court (the Court of Common Pleas), it differs from its California and Michigan counterparts in that the venue of both is the same: the county. In most other respects, the county's courts have jurisdiction and powers similar to those in San Diego and Kalamazoo counties. Judges of both of the county's courts are assigned on rotating bases to both criminal and noncriminal cases.

Appeals from both the Municipal Court and the Court of Common Pleas are heard in a state Court of Appeal. The Ohio Supreme Court has final appellate jurisdiction.

Prosecution

Criminal prosecution is distinguished among the four jurisdictions in a number of respects.

First, in both Orleans Parish and Kalamazoo County there is, in effect, only one agency responsible for the prosecution of state law felonies and misdemeanors. In Orleans Parish it is the New Orleans District Attorney's Office; in Kalamazoo it is the Prosecuting Attorney's Office.³³ Both offices also represent the state in all appeals: from both interlocutory and final judgments.³⁴

In San Diego County, on the other hand, prosecution is performed by one of three agencies, depending upon the seriousness and location of the offense and on the phase in the criminal case's litigation.

The San Diego City Attorney's Office prosecutes all straight, state law misdemeanors arising within that city's limits³⁵ and violations of that city's ordinances. It does not have jurisdiction of felonies.

³³ In all four jurisdictions, the state attorney general's office has power to initiate, intervene in and supersede local prosecutions in certain circumstances. The power is, in practice, almost never used.

³⁴ An interlocutory judgment is an interim or provisional determination that is decisive on some part of an adjudication (e.g., a decision on a motion to suppress evidence) but that is not determinative of the entire adjudication. A final judgment (e.g., conviction and sentence, acquittal) decides the whole matter in controversy.

³⁵ Offenses arising within the City of San Diego that may, by statute, be prosecuted as either felonies or misdemeanors, are handled by the county District Attorney.

The San Diego District Attorney's Office is responsible for prosecution--from initial appearance before a magistrate through judgment--of all persons charged with felonies that occur within the county. The District Attorney's Office also prosecutes persons charged with state law misdemeanors arising within the county but outside the city limits of San Diego.

While the District Attorney's Office represents the state in appeals from interlocutory judgments,³⁶ it does not handle appeals from final judgments. Appeals from final judgments in the county's Superior Court are handled exclusively by the California Department of Justice (the Office of the Attorney General).

Criminal prosecution is even more fragmented in Franklin County. The Columbus City Attorney's Office (formally the Columbus Department of Law) has exclusive responsibility for the prosecution of state law misdemeanors and city ordinance violations. The County Prosecuting Attorney's Office has criminal jurisdiction only of felonies. But, the county office does not prosecute most felonies from the beginning to the end of their adjudication. Instead, the City Attorney's Office prosecutes felonies in their preliminary stages in the county's inferior court (see preceding section). If the cases are bound-over to the superior court, they then become the responsibility of the County Prosecuting Attorney's Office. In effect, most felonies are prosecuted at different stages in their adjudication by two independent prosecutorial agencies. Unlike the case in California, however, the Franklin County Prosecuting Attorney's Office represents the state in appeals from both interlocutory and final judgments rendered in the superior court (Table III infra, page 34).

³⁶See note 34 supra.

Second, criminal prosecution is distinguished among the four jurisdictions in terms of the degree and types of noncriminal responsibilities of the prosecutor's office in each. The New Orleans District Attorney's Office is the least encumbered with noncriminal responsibilities of the four; the two prosecutors' offices in Franklin County have the most extensive civil law responsibilities of the four jurisdictions.

The New Orleans District Attorney's Office has two responsibilities in addition to the criminal prosecution of adults: prosecution of the crimes and misconduct of juveniles and the investigation and prosecution (civil and criminal) of cases involving the failure to provide court-ordered child support.³⁷ The noncriminal duties of the San Diego District Attorney's Office are also limited: the prosecution of juveniles and support of minors and the enforcement and monitoring of state, county and local fair election laws.³⁸

In Kalamazoo County, a broader range of noncriminal responsibilities is assigned to the prosecution. In addition to criminal prosecution, the Prosecuting Attorney's Office: (1) has statutorily mandated duties in domestic civil cases involving public assistance to dependent children;³⁹ (2) provides legal opinions, upon request, to all county

³⁷ All four states have adopted the Uniform Reciprocal Enforcement of Support Act (URESA), whereby each of their jurisdictions is committed to enforcing within its boundaries the support orders of courts in all other states that have adopted the act.

³⁸ The enforcement of fair election laws entails rendering advisory opinions, reviewing campaign statements, receiving complaints and civil and criminal prosecution.

³⁹ The office's child support responsibilities include: (1) nonsupport, paternity and URESA cases (note 37 supra); and (2) reviewing and entering appearances in divorce cases where minor children are involved.

agencies; and (3) represents petitioners in mental commitment proceedings at the Kalamazoo State Hospital.

In Franklin County, both the City Attorney's Office and the Prosecuting Attorney's Office have relatively extensive noncriminal business. The City Attorney's Office represents the city of Columbus in all civil proceedings, tax matters, and land acquisitions. The civil responsibilities of the county Prosecuting Attorney's Office are wide-ranging. The office: (1) represents all townships in the county and the county school board in suits brought against them; (2) provides, on request, legal opinions to most county departments and to the townships; (3) defends county officials in suits brought against them in their official capacities; (4) represents the county in taxpayers' suits; (5) sits as a member of the county budget commission; and (6) has a variety of duties in tax foreclosures.⁴⁰ (Table III infra).

Third, the prosecuting agencies in the four jurisdictions vary significantly in size and budget. The San Diego District Attorney's Office is the largest: with 119 attorney and 265 non-attorney personnel and an annual budget in excess of \$11 million. The Kalamazoo County Prosecuting Attorney's Office is the smallest: 16 attorneys and 17 support personnel and a budget of under one-half million dollars (Table III).

⁴⁰The office also has a list of other duties, many statutorily imposed, that are not directly related to budget or to civil and criminal litigation, among them: (1) approval of plans and specifications for equipment; (2) attendance at township trustee and clerks' meetings; and (3) attendance as legal advisor at meetings of some county agencies.

TABLE III
PRINCIPAL CHARACTERISTICS OF
MAJOR PROSECUTING AGENCIES IN FOUR JURISDICTIONS

	AGENCY	CIVIL JURISDICTION	CRIMINAL JURISDICTION	ATTORNEY PERSONNEL	NON-ATTORNEY PERSONNEL	VENUE	BUDGET	BRANCH OFFICES	CIVIL SERVICE
San Diego County, California	San Diego District Attorney's Office	<ul style="list-style-type: none"> • Support of minors • enforcement of state, county, and city fair election laws 	<ul style="list-style-type: none"> • Felonies arising in the county • Misdemeanors occurring in the county but outside the city • Represents the state in all appeals from interlocutory judgments • Juveniles • Violations of county ordinances 	119	265	County	(1976-77) \$11,752,566	3 branches 6 locations	Yes
Kalamazoo County, Michigan	Prosecuting Attorney's Office	<ul style="list-style-type: none"> • Provision of legal opinions upon request to county agencies • Representation of petitioners in mental commitment proceedings • child support cases 	<ul style="list-style-type: none"> • All misdemeanor and felony state law offenses • All appeals, from interlocutory and final judgments 	16	17	County	(1976) 431,932	none	No
Orleans Parish (New Orleans), Louisiana	New Orleans District Attorney's Office	None	<ul style="list-style-type: none"> • All Juveniles Offenses • State law (misdemeanors and felonies) • All appeals from judgments 	65	128	Parish	(1975) 1,458,683	none	No
Franklin County (Columbus,) Ohio	Columbus City Attorney	<ul style="list-style-type: none"> • All civil matters for the city • Land acquisition 	<ul style="list-style-type: none"> • All statutory misdemeanors • Preliminary processing of felonies • Traffic offenses occurring in the City of Columbus • Traffic offenses outside of Columbus on a contract basis with municipality • Cases which cannot be handled by mayor's court 	30	N/A	City and County	(1974) 1,139,420	none	No
	County Prosecuting Attorney's Office	<ul style="list-style-type: none"> • Represents townships and school Board in suits brought against them • Provides legal opinions to county agencies • Defends county officials • Represents county in taxpayers' suits • Sits as a member of the County Budget Commission • Variety of cities in tax foreclosures 	<ul style="list-style-type: none"> • felonies and appeals from felony judgments • juveniles 	45	52	County	(1975) 967,050	none	No

TABLE III
PRINCIPAL CHARACTERISTICS OF
MAJOR PROSECUTING AGENCIES IN FOUR JURISDICTIONS

Fourth, personnel arrangements in the prosecuting agencies differ in the four sites.⁴¹ In Orleans Parish and Franklin County, deputy prosecutors serve wholly at the pleasure of the elected prosecutor. In San Diego County, almost all deputies have civil service protection. In Kalamazoo County, deputy prosecutors are organized in a recognized collective bargaining unit: the Kalamazoo County Assistant Prosecuting Attorney's Association.

Fifth, the experience levels of deputies also differ among the jurisdictions. San Diego County deputy district attorneys are the most experienced, with an average of five and one-half years as prosecutors. Deputies in Orleans Parish are the least experienced, with an average office tenure of two years. Assistant district attorneys in Kalamazoo County have been on the job an average of just over three years; their counterparts in the Franklin County Prosecuting Attorney's Office have a mean of two and one-half years of office experience.

Sixth, in two of the jurisdictions--Orleans Parish and Franklin County--prosecution activities are centrally located. In both, the prosecutor's office and other key criminal justice agencies (police, courts, probation) are within relatively few city blocks from each other. In Kalamazoo County, one of the District Courts is located in a neighboring city (see preceding section), and deputy prosecutors must travel to it. In San Diego, the county's land mass (4200 square miles) and geographical dispersion of courts (see preceding section) have required the District Attorney's Office to create three branch offices in six locations, some of which are located more than sixty miles away from others.

⁴¹ Personnel arrangements are described in greater detail in the section, The Management of Prosecution, infra, page 94 et. seq.

Some features of criminal prosecution are the same in all four jurisdictions. In each the prosecutor is publicly elected. In each, deputy prosecutors must be admitted to the practice of law in the state, and in each, most deputies joining the office are recent bar admissions. In none is there extensive, formal training of deputies before they begin to prosecute cases. In all, deputies begin with misdemeanor cases, juvenile matters or child support and, as they gain experience, graduate eventually to felony trials. In all four jurisdictions, deputies are for the most part assigned to courtrooms or to stages in the criminal process rather than to individual cases. In all four, the organization and deployment of attorney personnel is shaped in large measure by the organization and geographical dispersion of the court process.⁴²

Defense of Indigents

In none of the four jurisdictions are there fixed, uniformly applied criteria concerning what constitutes indigency for purposes of publicly supported defense representation. In practice, the determination of eligibility for publicly provided counsel is made on a case-by-case basis and, within broad limits, it is wholly within the discretion of the judge deciding the question.

There are no data available on the proportions of the felony and misdemeanor caseloads in which criminal defense counsel is

⁴²The internal organization and administration of criminal prosecutions in the four jurisdictions are examined in the section, The Management of Prosecution, infra, page 94 et. seq.

provided at public expense.⁴³ Nor, with the exception of San Diego County, are the full costs of providing counsel easily determined.⁴⁴

Indigent defense representation is provided through a number of arrangements in the four jurisdictions. In all four, some defendants are represented by assigned counsel: individual private attorneys who volunteer for publicly paid assignment to represent indigents. In only one of the four--San Diego County--are assigned counsel matched to cases in terms of attorney experience and case complexity.⁴⁵ In the rest, assignments are made mostly through rotation on an assigned counsel list.

In addition to assigned counsel, defense of indigents is provided:

- (1) in approximately 25 percent of San Diego County's indigent caseload by a nonprofit corporation--Defenders Inc.--which

⁴³The National Legal Aid and Defender Association estimates that, nationwide, 65 percent of all felony defendants and 47 percent of all misdemeanor defendants are legally indigent for purposes of publicly supported defense representation. NLADA, *The Other Face of Justice* 71 (1973), reported in S. KRANTZ, C. SMITH, D. ROSSMAN, P. FROYD & J. HOFFMAN, *RIGHT TO COUNSEL IN CRIMINAL CASES: THE MANDATE OF ARGERSINGER V. HAMLIN* 309 (1976).

⁴⁴The criminal defense of indigents costs San Diego County \$4.4 million annually. Defense of indigents consumes 17 percent of the county's total Municipal Court budget and 21 percent of its Superior Court budget.

⁴⁵Attorneys wishing case assignments in San Diego County are rated on a score of "1" to "5" on the basis of experience, and cases are assigned on a rotating basis, matching case difficulty to scored experience level. The matching is in terms of seriousness of sentence consequence: a level 5 attorney may represent defendants charged with capital felonies; a level 4, serious, noncapital felonies; a level 3, less serious felonies; level 2, misdemeanors. Level 1 attorneys are recent admissions to the bar and may represent ordinance violators and less serious misdemeanants.

is compensated by the county on the same basis as individually assigned counsel and which uses these aggregated payments to maintain overhead and pay a salaried attorney staff.⁴⁶

- (2) in Orleans Parish, by a city-funded program--the New Orleans Indigent Offender Program--which, with 14 staff attorneys, is supervised by an indigent defender board, composed of local attorneys and appointed by the judges of the Criminal District Court.
- (3) in Franklin County, by the Public Defender's Office, a county-supported, county agency; and
- (4) in Kalamazoo County, by counsel from a small consortium of local attorneys who provide defense representation in all felony indigency cases under a fixed-fee contract with the county.

Corrections

As a general rule, in California, Michigan and Ohio: (1) incarcerated misdemeanants are sentenced to the county jail; (2) imprisoned felons are sentenced to state institutions.⁴⁷ In Orleans Parish, on the other hand, both misdemeanants and certain felons may serve their sentences in the local facility: the Parish Jail. Persons convicted of third-class felonies in which hard labor is not imposed are sentenced to the jail; felony convictions in which hard labor, the death penalty or life imprisonment is imposed are sentenced to the state penitentiary.

⁴⁶The nonprofit corporation is sponsored by the San Diego County Bar Association and the Ford Foundation.

⁴⁷In California and Michigan, misdemeanors are offenses for which the defendant may be sentenced to a county facility for a term of less than one year. In Ohio, misdemeanors are of four degrees, with maximum terms of six months, 90 days, 60 days, and 30 days.

County jails in California, Michigan and Ohio are administered, with county funds, by the county sheriff's office. In Orleans Parish, the Criminal Sheriff's Department manages the Parish Jail.⁴⁸

The Criminal Justice Process in Perspective⁴⁹

The criminal justice system is a process as well as a structure.

...

There are a number of critical steps in the process, each of which involves decisions of whether to proceed to the next step or to use alternative actions.⁵⁰

The ten basic processing steps in the felony adjudication process are a combination of sequential, in-court adjudicative events (arraignment, preliminary hearing, trial, etc.) and key out-of-court decisions and transactions (the police decision to invoke the court process, the prosecution's decision to charge, the presentence investigation) that provoke or preclude or are prerequisites to in-court events. At a number of the processing steps, the case may be moved forward to the next in the series or it may be disposed of or routed out of the felony adjudication process altogether. Dispositions may also be made between or in lieu of some of the basic steps in the process (e.g., a guilty plea entered before trial).

⁴⁸The inmate capacities, custodial responsibilities and management of the parish and county jails are discussed in greater detail in the materials cited in note 17 supra.

⁴⁹The criminal justice process described in this section includes the processing of felonies from arrest to sentencing unless otherwise noted. The principal procedural differences in the treatment of felonies and misdemeanors are summarized in note 23, supra.

⁵⁰REMINGTON & NEWMAN, note 19 supra at 18.

While the major case-processing events--arrest and booking; the prosecution's decision to charge; the defendant's initial appearance before a magistrate; preliminary hearing; the filing of an accusatory instrument; arraignment; motions; trial; presentence investigation; and sentencing--are similar in name among the four jurisdictions, they differ in some important respects in sequence and significance.

The prosecution's decision to charge, for example, considered to be one of the most critical decision-points in the criminal justice process,⁵¹ is made in different ways at different stages in the processes of the four jurisdictions, and with different results. In Kalamazoo and San Diego counties, the court process may not be invoked, and the arrested felon must be released, unless the prosecution decides to formally charge the accused with a crime. The prosecution's filing of charges itself invokes the criminal justice process. In contrast, in Orleans Parish the decision to charge is not made until after the felony case is in the court process, and has already been arraigned and examined by a magistrate. In Franklin County, it is difficult to pinpoint where precisely the charging decision is made; it is sometimes immediately before or at the grand jury presentation, after the case has been arraigned, examined and bound-over to the felony (superior) court.

Moreover, within a given jurisdiction, there is more than one charging decision. The initial decision to charge (i.e., to file a criminal complaint in an inferior court) may be followed by a second (i.e., to file an accusatory instrument in the superior court) and a third (to unconditionally dismiss, on the prosecution's motion, charges it had previously filed or which had previously been filed without direct involvement of the prosecution).

⁵¹See, materials cited in note 9 supra.

The practical significance of similarly-named proceedings also differs among the four. The preliminary hearing in Orleans Parish has little case-dispositive consequence. In Franklin County, because of the bifurcation of felony prosecution in two distinct agencies, a dismissal of charges at a preliminary hearing is tantamount in most routine felonies to a final disposition.

While the major processing events can be listed, relatively few felony arrests proceed through all of them. There is considerable weeding-out of the felony caseload along the way in all four jurisdictions, but the weeding-out is done in different ways, at different stages, and with different consequences in each of the four. For instance, in three of the jurisdictions--Orleans Parish, Franklin County and Kalamazoo County--the arresting police agencies dispose, on their own authority, of few of their warrantless felony arrests by discharging the accused. If the arrest is to be disposed of because of legal or other insufficiencies, the disposition will most likely be made by the prosecution or the courts later in the process, not by the police. In San Diego County, on the other hand, police agencies dispose of over ten percent of all felony arrests without referral to the prosecution or courts; most of the dispositions are discharges of the accused because of insufficient evidence.

In Orleans Parish, the prosecution formally declines to charge in almost half of all felony and misdemeanor arrests, and the declination is itself a final disposition. In Franklin County, with limited exceptions, neither of the two prosecuting agencies (city attorney or county prosecuting attorney) formally declines to charge, on its own authority, in any felony arrest.

The criminal justice process, viewed across the boundaries of different states and jurisdictions, is much more difficult to

describe and examine--in its daily workings and its practical consequences--than is suggested by many commentators.⁵² While the basic processing steps may appear to be simple and similar in different places, with the nuances, alternative procedures and the range of different dispositions at different stages in the process factored in, they are more unlike than similar, and more elusive than clear-cut.

Moreover, the process in daily operation works at different levels of visibility and formality at different stages. Trials and hearings may result in case dispositions, but so may less formal, less visible transactions (the charging decision, plea negotiations, for example). The type of disposition (e.g., conviction or discharge) may be essentially the same regardless of the manner in which it is produced, but the ways a case disposition may come about are equally important elements in understanding how the process works in one place, and how those workings differ from those of another place.

Accordingly, to make sense of the daily workings of the criminal justice process in four jurisdictions in four states, it is useful to characterize and examine the process in three ways:

- (1) as a sequence of formal adjudicative events (arraignment, preliminary examination, trial, etc.), each with a historical purpose, each a proceeding of record, each

⁵² There is a notable tendency in much of the literature to "flatten-out" and minimize differences in the workings of the criminal process from place to place. See, e.g., REMINGTON & NEWMAN, note 19 supra at 18: "The full criminal justice process flows through various stages, past more or less clear-cut decision points, in a manner somewhat analogous to that described by a production chart of an industry or flowchart of a large governmental agency." See also, CHALLENGE OF CRIME, note 1 supra at 7: "Every village, town, county, city and State has its own criminal justice system, and there is a Federal one as well. All of them operate somewhat alike. No two of them operate precisely alike."

hearing a jurisprudentially logical relationship to its predecessor and successor in the sequence (these are the procedural ingredients);

- (2) as a continuum of critical prosecutorial decisions (e.g., to charge, to drop charges, to negotiate a guilty plea) made before, in anticipation of or in response to, and in between formal courtroom proceedings; and
- (3) as a series of case-disposition opportunities, which may be realized in formal adjudicative proceedings (e.g., at trial), in away-from-courtroom events (e.g., a decision by the prosecution not to charge) and in-court but between or in lieu of formal courtroom proceedings (e.g., a guilty plea entered before trial).

The first of these--the procedural ingredients--is examined in the next section. The four jurisdictions differ in a few fundamental ways in terms of elementary procedural components. Before examining and comparing across jurisdictional lines the process in its more elaborate workings, these skeletal characteristics require notation.

The criminal justice process as a matter and series of prosecutorial judgments--interspersed among procedural events but arrived at away from the formal process in ways that profoundly influence its outcome--is examined in the section on felony prosecution.

Finally, the process--viewed as a flow of case-disposition opportunities--is assessed from the perspective of the criminal justice process in action.

Procedural Ingredients

In all four jurisdictions, the sequence of formal, adjudicative transactions is essentially the same: (1) initial appearance of the accused before a magistrate; (2) preliminary examination; (3) arraignment on a felony accusation; (4) determination of pretrial motions; (5) trial; and (6) sentencing (Figure 1).

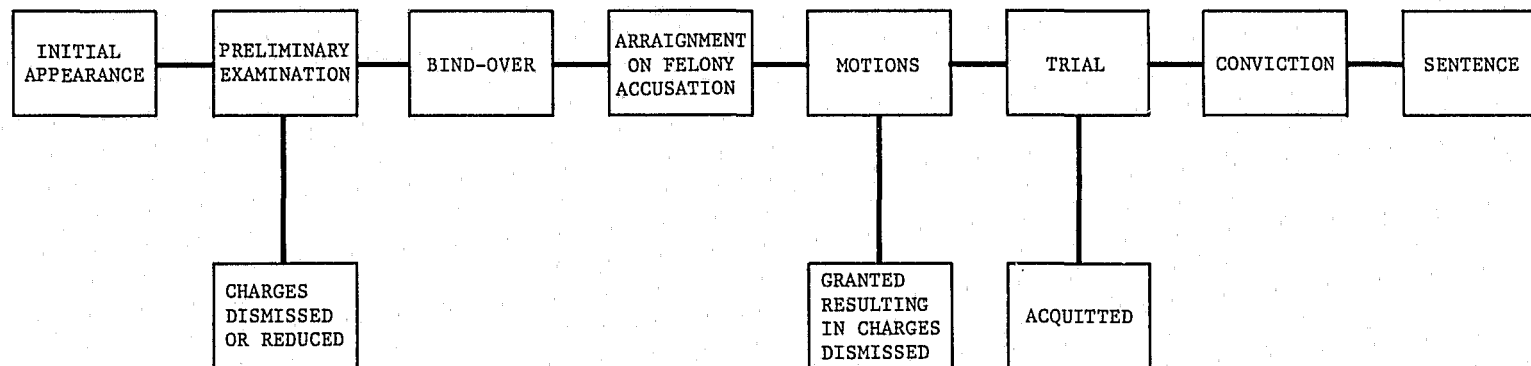


FIGURE 1
BASIC PROCEDURAL ELEMENTS AND
IMMEDIATE OUTCOMES: FELONY ADJUDICATION

The initial appearance of the defendant before a magistrate is the first in-court transaction after the felony arrest. In all four jurisdictions, the police are required by statute to take the arrested felony suspect promptly before a magistrate.⁵³ The purposes of the initial appearance are the same, in most respects, in all four jurisdictions: to advise the defendant of his rights and the charges against him, to establish bail and/or other conditions of pretrial release, to determine indigency for purposes of assigning counsel, to set the date for the next court transaction.⁵⁴

In all four jurisdictions, the preliminary examination (or preliminary hearing) is the first opportunity for a more-than-cursory judicial examination of the felony charges against the accused. The purpose of the examination is to have a magistrate determine:

(1) whether a crime has been committed; and (2) whether there is

⁵³ Depending upon the time of day and day of week of the arrest, and upon the session times of the court at which the appearance is made, the initial appearance is held between three hours (e.g., in Orleans Parish) and two court business days (e.g., in San Diego County) after the arrest.

⁵⁴ In San Diego, Kalamazoo and Franklin Counties, the initial appearance is made in the inferior court; in Orleans Parish, in the Magistrate's Section of the Superior Court. In the three counties, the appearance is also a formal arraignment (i.e., the defendant enters a plea to the charges against him or a plea of not guilty is entered for him by the court). In Orleans Parish, the defendant has not been formally charged at the time of the initial appearance (i.e., no complaint or other accusatory instrument has been filed with the court; the defendant is produced before the court solely on the basis of police charges in a police register), and a plea is not formally entered until later in the process. See Figure 2, p. 62 infra.

probable cause to believe the defendant(s) committed it. If either element is found to be wanting, the charges against the defendant are dismissed.⁵⁵ If both elements are found, at a felony level,⁵⁶ the case is held for or "bound-over" for formal felony accusation and superior court trial.⁵⁷

In all four jurisdictions, the examination is a proceeding of record. The defendant has the right to appear, to be represented by counsel, to present witnesses and to cross-examine witnesses against him. In all four the defendant has a statutory right to have the

⁵⁵ The dismissal is not, however, a bar to the prosecution's refiling of charges, and its results are thus not automatically conclusive of the case's subsequent adjudication.

In Franklin County, as a practical matter, a dismissal at the preliminary hearing may, in effect, bar further prosecution because of the bifurcation of responsibility for felony prosecution in two agencies. The City Attorney's Office prosecutes at the preliminary examination; the County Attorney's Office prosecutes, in most cases, only after the case has been bound-over as a result of the hearing, or waived-over in lieu of the hearing. When a felony case is dismissed at the hearing, neither the City Attorney's Office nor the inferior court clerk routinely advises the county Prosecuting Attorney's Office of the dismissal. As a consequence, the case may be revived for prosecution only if an outside party (e.g., the arresting officer) pursues it with the Prosecuting Attorney's Office.

⁵⁶ If the magistrate finds that a crime has been committed, but that it is a misdemeanor rather than a felony, the charges are reduced and the case is subsequently adjudicated as a misdemeanor.

⁵⁷ Like the initial appearance, the preliminary examination is conducted by the Magistrate's Section in Orleans Parish and by the inferior courts in the other three jurisdictions.

hearing held within a short period of time after the arrest.⁵⁸ In all four, the defendant may waive the hearing.⁵⁹

After the bind-over at the preliminary examination (or "waive-over" if the examination is not held), a felony accusation is filed by the prosecution in the superior court and the defendant is arraigned on the charges contained in it. The arraignment is routinely brief and perfunctory: a reading of rights and charges, a review of bail conditions, a setting of the dates of subsequent proceedings.

Except for incidental particulars, the determination of pre-trial motions and the conduct of the felony trial do not differ among the four jurisdictions.⁶⁰ While the circumstances of an individual case may prompt a host of different motions (e.g., discovery, change of venue, etc.), the principal motions are generally of two types: to set aside the indictment or information and to suppress evidence.

⁵⁸In Louisiana, the defendant has a right to the hearing within seven days after his arrest if he is in custody, and within two weeks of the arrest if he is released on bail or personal recognizance. In California, the hearing must be held within ten court days of the inferior court arraignment (i.e., the initial appearance) if the defendant is in custody. (The California statute is silent on when the hearing must be held when the defendant is not in custody.) In Michigan the hearing must be scheduled within ten court days after the inferior court arraignment. In Ohio, the defendant in custody has a right to the hearing within five court days after the arrest; the released defendant has a right to have the hearing held within fourteen days after the arrest.

⁵⁹See note 64 infra and accompanying text concerning the effect of a waiver.

⁶⁰Requirements involving when certain motions must be filed and determined and which motions may be made orally instead of upon the filing and answering of "moving papers" do differ among the four. The voir dire (or selection procedure) of juries also differs among the four.

Motions that challenge the accusatory instrument generally attack either the legal sufficiency of the instrument itself (e.g., all required elements of the crime are not alleged) or procedural defects in the preliminary hearing or the grand jury composition or proceedings that led to the filing of the instrument. Motions to suppress evidence challenge most often the lawfulness of the police conduct in obtaining the evidence.

While in all four jurisdictions, certain motions are required to be filed and determined before trial, in Franklin County, motions to quash the indictment and to suppress evidence are not heard until the morning of the trial date. In all four states, both the prosecution and the defense may, in certain circumstances, appeal an adverse ruling on a motion and may have the appeal determined before the trial is held.

In two of the jurisdictions--San Diego County and Kalamazoo County--presentence investigation reports are required in all felony convictions before sentence may be imposed. Sentencing is delayed--a minimum of twenty-one days in San Diego, a minimum of four weeks in Kalamazoo--while the investigation report is prepared by county probation officers. In Orleans Parish and Franklin County, presentence investigation reports are prepared solely in the discretion of the sentencing judge. In all four jurisdictions, the sentencing judge is most often the judge who presided at the defendant's trial or who accepted the defendant's guilty plea in lieu of trial.

In three of these adjudicative events (preliminary examination, felony accusation and sentencing), the four jurisdictions and their respective states have some noteworthy differences in conduct and consequence.

While the preliminary examination is essentially the same type of proceeding in San Diego, Kalamazoo and Franklin counties--with

similar rules of evidence, similar outcomes and similar consequences-- it differs in Orleans Parish in three respects that together substantially reduce its importance in the adjudicative process.

First, in San Diego, Kalamazoo and Franklin Counties, the preliminary examination is governed by the rules of evidence that prevail at trials generally. Hearsay and other evidence that is not admissible at trial is not admissible at the hearing. It is a complete, adversary proceeding.⁶¹ In Orleans Parish, on the other hand, all manner of hearsay evidence is admissible, and only the arresting or investigating officer generally need testify.

Second, whereas in the other three jurisdictions the hearing is an examination of felony charges that have been formally filed (that is, incorporated in a complaint--an accusatory instrument filed with the court),⁶² in Orleans Parish, the offender has not been formally charged at the time the hearing is conducted.⁶³ As a practical

⁶¹In the three jurisdictions, the record of the preliminary examination may be used in lieu of direct testimony at the later superior court trial if a witness at the hearing is legally unavailable for the trial.

⁶²The complaint is an accusatory instrument filed in the inferior court and accusing the defendant of a crime. In San Diego, Kalamazoo and Franklin Counties, it is the complaint upon which the defendant is arraigned at his initial appearance before a magistrate. Note 54 supra and accompanying text.

In the complaint, the deponent (or complainant) accuses the defendant of a specific offense and implicitly or explicitly offers to prove the defendant's commission of the offense. The complainant may be the victim of the offense, a police officer, or someone else with knowledge of the offense.

⁶³See figure 2 infra, p. 62 concerning the relationship of the charging decision to the sequence of courtroom proceedings in the four jurisdictions.

matter, a bind-over at the Orleans hearing "binds" nothing over; a dismissal at the hearing "dismisses" charges of no real adjudicative consequence.

Third, the effect of a waiver of the hearing, like that of the hearing, is different. In San Diego, Kalamazoo and Franklin Counties, a waiver has the same effect as a bind-over resulting from the hearing: the defendant is held for formal felony accusation and felony trial. In Orleans Parish, since the prosecution has not formally charged the offender at the time the hearing is conducted, neither a waiver of the hearing nor a finding of probable cause as a result of the hearing affects whether the defendant will be charged or tried as a felon.⁶⁴

The four jurisdictions also differ in the manner and consequence of felony accusation. There are two different accusatory means for formally charging the defendant with a felony in the superior court: indictment and information. An indictment is an accusation of a crime on the oath of a grand jury; an information is an accusation of a crime on the oath of a competent public officer (the prosecutor).⁶⁵

The four jurisdictions use the two accusatory means in different ways (Table IV). In California, felony prosecutions may proceed, in the discretion of the prosecutor, by either grand jury indictment

⁶⁴In Orleans Parish, the defendant's failure to appear at the time of the hearing is itself alone deemed a waiver of the right to the hearing.

⁶⁵The grand jury may indict (hand-up or return a true bill) or may decline to indict (find a "no-bill" or declare "ignoramus"). The true bill, like the information, is a specific accusation of an offense or offenses alleged to be committed by the defendant(s).

TABLE IV
 REQUIREMENTS, USE AND EFFECTS OF FELONY
 ACCUSATIONS: FOUR STATES

	CALIFORNIA	LOUISIANA	MICHIGAN	OHIO
<u>INFORMATION: USE</u>				
CAN ALWAYS BE USED	X		X	
CAN BE USED EXCEPT FOR CERTAIN OFFENSE CLASS- ES AND TYPES		X		
CANNOT BE USED				X
<u>INFORMATION: EFFECT ON PRELIMINARY EXAMINATION</u>				
CANNOT SUPERSEDE	X		X	
CAN SUPERSEDE		X		
<u>INDICTMENT: USE</u>				
MANDATORY: ALL FELONIES				X
MANDATORY: SOME FELONIES		X		
OPTIONAL: ALL FELONIES	X		X	
<u>INDICTMENT: EFFECT ON PRELIMINARY EXAMINATION</u>				
CANNOT SUPERSEDE			X	
CAN SUPERSEDE	X	X		X

or prosecutor's information.⁶⁶ In Louisiana, grand jury indictment is required in capital and mandatory life imprisonment offenses; informations are permissible in all others. In Michigan, as in California, felony prosecutions may proceed by either means.⁶⁷ In Ohio, on the other hand, felony prosecutions may proceed in the superior court only upon indictment, unless the defendant specifically waives grand jury indictment and consents to prosecution by information.

The relationship of the felony accusation to the preliminary hearing differs among the four jurisdictions. Depending upon its timing and type, the accusation may or may not abrogate the defendant's right to the hearing entirely (Table IV).

In California, a prosecutor's information can be filed in the superior court only in cases bound-over after a preliminary hearing or waived-over in lieu of the hearing. The indictment, on the other hand, need not be preceded by a preliminary examination, and can be "handed-up" before the examination even takes place.⁶⁸

⁶⁶The information is the most frequently employed form of accusation. In San Diego County, indictments are generally used only in limited circumstances: (1) stranger-to-stranger homicides; (2) sexual assaults; (3) narcotics arrests made through undercover investigations; and (4) cases that would take a disproportionate amount of time to process through preliminary hearings. See note 68 infra and accompanying text.

⁶⁷But since, in Michigan, defendants have a right to a preliminary hearing whether prosecuted by information or indictment, indictments are almost never used.

⁶⁸The grand jury's indictment immediately confers the case to the jurisdiction of the superior court, and supersedes all pending proceedings in the inferior court. It can be handed-up before an arrest is made (a grand jury "original"), with the consequence that

In Michigan, both the information and the indictment must be preceded by a preliminary examination (unless waived by the defendant). Consequently, unlike California, an intervening grand jury indictment cannot supersede a pending preliminary examination. Both must be held unless waived.

In Louisiana, the filing of either an indictment or an information supersedes the pending preliminary examination. In Ohio, once the indictment is returned, all inferior court proceedings are superseded.

The type of examined evidence upon which the two accusatory instruments must be based also differs between them among the four states. In all four, trial rules of evidence are not applicable to grand jury proceedings, and hearsay evidence is admissible. The defendant may be compelled to appear, but without benefit of counsel. There is no cross-examination of testimony at grand jury proceedings. Consequently, the indictment that the grand jury returns may be based on highly relaxed evidentiary minimums.

The information, on the other hand, must be preceded by a preliminary examination in California and Michigan; in both states the preliminary examination is an adversary proceeding, with cross-examination of testimony and trial rules of evidence required; in both states the information may be filed only on charges bound-over

the accused appears immediately and directly in the superior court after arrest, and no inferior court proceedings are had. It can be handed-up while the case is pending preliminary hearing in the inferior court ("direct" or superseding indictment), with the result that the right to the hearing is abrogated and the case is immediately removed to the jurisdiction of the superior court. Or, it can be handed-up after the case has been bound-over (or dismissed) at the preliminary hearing.

from the preliminary examination. In Orleans Parish, on the other hand: (1) the information need not be preceded by a preliminary examination and can supersede the examination if it is filed before the examination takes place; and (2) in any event, trial rules of evidence are not applicable to the preliminary examination.

The final major difference in the four jurisdictions concerns sentencing. In three of the four, the sentencing decision is bifurcated: (1) a determination of whether to incarcerate the offender (what some observers refer to as the "in-out" decision);⁶⁹ and (2) a determination of the length of the sentence to be imposed.⁷⁰ In California, for reasons discussed below, the decision is singular: to incarcerate or not.

Judicial discretion is relatively unfettered concerning the "in-out" decision in all four jurisdictions, except when specific statutory provisions come into play. Thus, in most felony convictions, the sentencing judge in all four can choose a sentence of probation

⁶⁹L. Wilkins, J. Kress, D. Gottfredson, J. Calpin, and A. Gelman, Sentencing Guidelines: Structuring Judicial Discretion 3 (1976).

⁷⁰Id. at 2: "An often overlooked facet of variation in sentencing involves the two-step, or bifurcated, nature of the sentencing decision."

over a sentence of imprisonment.⁷¹ Fines can be imposed in conjunction with or independent of either selection.⁷²

Judicial discretion is more tightly (but variously) controlled in terms of length of incarceration to be imposed in three of the jurisdictions; it is non-existent at the present time in the fourth: California. In Michigan, with limited exceptions (homicide, armed robbery, and treason convictions), the sentencing judge sets the minimum term for the offense class of which the defendant has been convicted; the only limitation is that the minimum term cannot exceed two-thirds the maximum allowable sentence for that class. In Ohio, the sentencing judge selects the minimum term from four statutorily-listed alternatives for each offense class. In Louisiana, the sentencing judge sets a specific term (e.g., five years) within a minimum-maximum range set by statute for each offense class.

In California, until July 1977 when the State's indeterminate sentence law is repealed, the sentencing judge merely commits the

⁷¹The exceptions are of two types: (1) where a statute specifically prohibits probation in a conviction for a certain offense (e.g., in California, where probation is not available when a firearm has been used in the commission of the offense and in certain offenses specified by statute); and (2) where multiple offender statutes come into play (e.g., in Louisiana, where a judge cannot place on probation an offender who has previously been on probation).

⁷²In addition to probation, there are various other, non-custodial, sentencing alternatives available in the four jurisdictions, with some, but mostly marginal, differences among the four. In California, for example, a defendant adjudged to be narcotic-dependent may be remanded to the California Rehabilitation Center, a civil narcotic addiction program maintained by the state. In California and Louisiana, execution of sentence may be formally suspended (the misnomered "suspended sentence"); in the other two states there is no specific provision for suspending execution.

defendant to the custody of the California Adult Parole Authority. It is the Parole Authority, not the sentencing magistrate, which sets the actual or "primary" term to be served.

The four states differ in the sentencing treatment accorded convicted defendants who are filed against by the prosecution as "habitual" or "multiple" offenders. In California, there is no general provision for enhancing the sentence of a second, third, or fourth felony offender. The only means (prior to July 1, 1977) by which the absolute time an offender must serve may be increased is through the imposition of sentences to run consecutively. In Ohio, the fact that the defendant is a "repeat" offender does not control the court's discretion in sentencing, and is simply to be considered in the selection of the minimum term. A "repeat" offender is statutorily defined as one who has served time on a prior conviction and is convicted of a second offense of violence, a second sex offense or second theft offense, or is convicted of a third felony, or of a fourth offense of any degree other than a minor misdemeanor.

In Michigan, the filing against a defendant as a habitual offender (i.e., the current conviction is his second, third, or fourth felony conviction) increases but does not limit the judge's discretion in sentencing, although it does increase the minimum time the offender must actually serve. Habitual offender sentence enhancement increases by fixed amounts the maximum term the court may impose. Thus, in a felony with a maximum term of five years, enhancement increases the maximum imposable term: (1) to seven and one-half years for a second felony conviction; (2) to ten years for a third; and, (3) to life imprisonment for a fourth. Habitual offender enhancement affects the minimum term the defendant serves by requiring that he serve the complete minimum before eligibility for parole.

In Louisiana, multiple offender status increases the judge's sentencing discretion by expanding the imposable maximum; it curtails that discretion by fixing the minimum term. For a second offense, the minimum becomes one-third the maximum for a first offense; the maximum becomes twice the first offense maximum. For a third offense, the minimum becomes half the maximum of a first offense; the maximum becomes double the first offense maximum. For a fourth offense, the minimum becomes the maximum of a first offense (but in no case less than twenty years); the maximum is life imprisonment.

The significance of these variations in basic procedure becomes apparent as one tracks the ways in which felonies are prosecuted and later, particularly the ways in which cases that are targeted for special prosecution are handled.

Felony Prosecution

The felony adjudication process in all four jurisdictions operates in practice on the basis of a single critical assumption that most felony cases will be disposed of without invoking all or most of the foregoing adjudicative proceedings. Most cases pass through some formal adjudicative transactions. A few pass through all of them. Some proceed through none of them.

Some critical decisions take part wholly away or largely removed from the cognizance of both prosecution and court. Police personnel exercise broad--and, in most places, rarely visible--discretion about: (1) whom to arrest; (2) how much to investigate; and (3) whether to seek the prosecution of persons who are under investigation or who have already been arrested (that is, arrested in the sense that they are either in formal police custody or that their freedom of movement has been substantially curtailed). Except for a

few observations in passing, police dispositions of police arrests are substantially beyond the scope of this volume.⁷³

⁷³ Information on how often and in what circumstances police agencies release without subsequent prosecution persons whom they have arrested is difficult to obtain for a number of reasons: (1) there is no precise, uniform definition of what constitutes an arrest for purposes of determining whether a release has been made after an arrest has occurred; (2) "arrests" and releases may be made by individual police officers wholly apart from police record systems (e.g., before transport of the prisoner to a police facility; before booking); (3) in many states there is no specific statutory authorization for police to discharge without prosecution persons that have been arrested, and police agencies are understandably reluctant to release arrested persons or to record releases when they do take place; and (4) the case law is not clear about the civil law consequences (e.g., wrongful or false arrest actions) of a police release of an arrested person, another factor leading to reluctance to release and/or record the arrest and release.

Moreover, arrests are not always made in anticipation of prosecution, and may be made with no expectation of prosecution, a factor that further compounds examination of police dispositions of police arrests. Professor Herman Goldstein of the Law School at the University of Wisconsin-Madison points out:

In practice...the police decision to arrest serves two quite distinct functions. It serves the traditional purpose as the initial step in the criminal process. If individuals are to be prosecuted, they must, with some few exceptions, first be arrested by the police. But arrest is also used to achieve an immediate intervention. When used for this limited purpose there is usually no assurance and may be no intent--at the time the arrest is made--that prosecution will follow. This explains why the police so often make an arrest and only subsequently determine the legal basis for the arrest. The limited objective is to deal with an exigency, and to do so by taking temporary custody of the individual.

H. GOLDSTEIN, *POLICING IN A FREE SOCIETY*, 38-39 (1977).

Of the four states, California specifically authorizes by statute police discharge of the arrested person when the arresting police agency is satisfied that there are insufficient grounds for filing a complaint against the arrested person. In 1975, law enforcement

Police dispositions aside, those felony arrests that do come to the attention of the prosecution and/or the court are not all prosecuted, not all prosecuted as felonies, not all tried, and not all disposed as felonies. Two critical features of felony prosecution come into play: (1) the decision to charge; and (2) the decision to dispose of cases without formal adjudication of the cases' merits. In the four jurisdictions, the two decisions have varying degrees of independence from the formal court process, are based on different considerations and criteria, and occur at different points in the sequence of adjudicative transactions.

The Elusive Decision to Charge

The literature on the prosecution's decision to charge is extensive.⁷⁴ The charging decision in the four jurisdictions is examined here in terms of five questions that are not always addressed in existing analyses: (1) when is it made? (2) how is it made? (3) on what basis is it made? (4) how often is it made? and (5) with what case-dispositive frequencies is it made?

Charging and Invocation of the Court Process

While sometimes assumed to be the same transaction, invocation of the court process and the initial decision by the prosecution to

agencies in San Diego County released eleven percent of all arrested persons on the agencies' own authority; 81 percent of the releases were because of insufficient evidence. See, Dahmann & Lacy, San Diego County, note 17 supra at 50-53.

⁷⁴ See, materials cited in note 9 supra; see also, F. MILLER, PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME (1970); J. Jacoby, Summary of Pre-Trial Screening Evaluation: Phase I (Bureau of Social Science Research, October 1975); Nat'l. Dist. Attorneys Assoc., The Prosecutor's Screening Function: Case Evaluation and Control (October 1973).

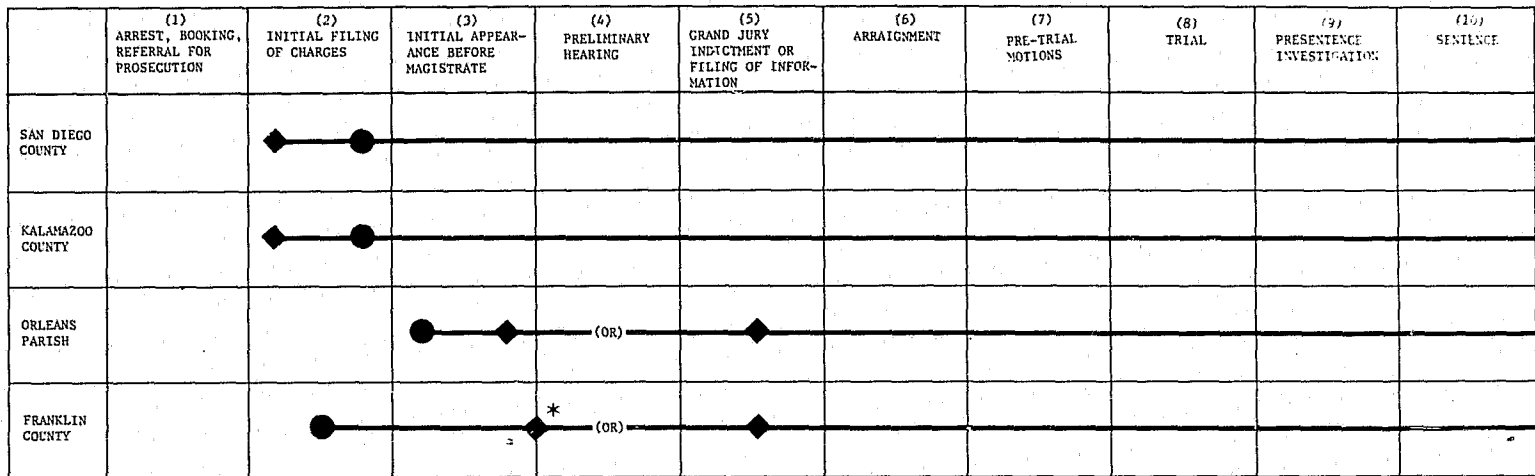
file charges are not coincidental in all four jurisdictions. The process of the court is invoked when an arrest becomes the business (or case) of the court, subject to its powers to compel appearance, issue process and make rulings (i.e., at or immediately before the initial appearance of the accused before a magistrate). The initial charging decision is that point in the process at which the prosecution first determines whether and what to charge the offender.

In San Diego and Kalamazoo counties, the court process may be invoked in warrantless felony arrests only with the acquiescence and concurrence of the prosecution. If the prosecution decides to charge by filing or authorizing the filing of a felony criminal complaint, the court process is invoked. If the prosecution declines to charge, the accused is discharged and the arrest proceeds no further (Figure 2).

In contrast, access to the court process by arresting police agencies is much more open in Orleans Parish and Franklin County. In both, the court process is invoked before the prosecution initially determines whether to charge (Figure 2).

In Orleans Parish, the accused is presented before a magistrate, bond and other conditions of pretrial release are set, counsel is assigned and a preliminary hearing is (often) conducted before the prosecution determines whether to file charges. The initial decision to charge is generally not made until between seven and ten days after the arrest. During that interim, the case is processed solely on police charges (Figure 2).

In Franklin County, it is most often the arresting police agency that secures from the court the issuance and filing of the felony complaint against the accused. Neither the city nor the county



- ◆ INITIAL CHARGING DECISION BY THE PROSECUTION
- COURT PROCESS INVOKED
- * SUPERSEDING INDICTMENT

FIGURE 2
THE INITIAL CHARGING DECISION IN THE SEQUENCE OF
CASE PROCESSING STEPS: FOUR JURISDICTIONS

prosecuting agency reviews the arrest before the complaint is issued and the defendant is arraigned and examined on it. Since, in most felony prosecutions, the county Prosecuting Attorney's Office does not take cognizance of the felony case until immediately before its presentation to the grand jury, the earliest point for initial charging by the prosecution in most felonies is after the case has been bound-over for grand jury deliberation⁷⁵ (Figure 2, page 65).

In some felony cases (estimated by the prosecutor to be fifteen percent of all felony prosecutions), the Prosecuting Attorney's Office supersedes the preliminary examination by securing an indictment before the hearing is held. The superseding indictment places the charging decision at an earlier point in the process than the indictment in bound-over cases (Figure 2, page 65).

The Initial Decision to Charge: Three Jurisdictions

The ways in which the prosecution initially prefers charges are examined here for three of the jurisdictions: Orleans Parish, San Diego County, and Kalamazoo County.

The initial charging decision in Franklin County is so distinct from that of the other three jurisdictions that it is treated separately in the next section.

The initial charging decision (that is, the first occasion on which the prosecution reviews the arrest as a chargeable matter:

⁷⁵ In most felony prosecutions in Franklin County, it is arguable whether there is any clear point in the process where the prosecution makes a complete charging decision. See note 89 infra and accompanying text.

Figure 2) has two elements: (1) whether to charge the suspect with a crime; and (2) if so, which crime(s) to charge. While both elements are influenced by many of the same criteria (e.g., can a conviction be won and at what charge level and on which charges?), the two are distinct in a few important respects.

Considerable discretion is exercised in the three jurisdictions in both decisions in the charging process. In San Diego and Kalamazoo counties, the prosecution files as felonies only about one-third of the felony charges sought by police. In San Diego County, in 16 percent of the warrantless felony arrests the prosecution declines to file any charge; in 49 percent, the prosecution files misdemeanor charges.⁷⁶ In Kalamazoo County, 32 percent of the felony warrant and complaint requests of the police are rejected; 13 percent are filed as misdemeanors; in 20 percent the suspect is "diverted" from formal prosecution to rehabilitative treatment. In Orleans Parish, the prosecution declines to file any charges in 49 percent of the felony and misdemeanor arrests.⁷⁷ (Table V).

In these three jurisdictions, the initial charging decision is made on the basis of different combinations of "paper" (e.g., police reports) and "people" (e.g., direct accounts of principals: witnesses, the arresting officer and the like).

In Orleans Parish, the deputy prosecutor who determines whether to charge routinely has before him at the time of the decision:

⁷⁶ Recall that San Diego police agencies dispose of 13 percent of their warrantless arrests (10 percent of all arrests) without presentation to the prosecution and courts. Note 73 supra.

⁷⁷ More detailed information on felony and misdemeanor charging decisions are not currently available for Orleans Parish.

TABLE V

PROPORTIONATE OUTCOMES OF THE INITIAL
CHARGING DECISION: THREE JURISDICTIONS

	SAN DIEGO	KALAMAZOO	ORLEANS
	<u>PERIOD:</u> 1975 <u>TYPE:</u> FELONY ARRESTS	<u>PERIOD:</u> NOVEMBER 1975- OCTOBER 1976 <u>TYPE:</u> FELONY COMPLAINT REQUESTS	<u>PERIOD:</u> JULY- DECEMBER 1975 <u>TYPE:</u> FELONY AND MISDEMEANOR ARRESTS
	N = 15,830	N = 2,781	N = 6,048
ARRESTS/COMPLAINT REQUESTS	100%*	100%	100%
POLICE COMPLAINT DENIED	16%	32%	49%
POLICE CHARGES REDUCED TO MISDEMEANOR	49%	13%	N/A
FORMALLY DIVERTED AT CHARGING	---	20%	---
FILED AS FELONY	35%	34%	N/A
TOTAL FILED: FELONY AND MISDEMEANOR COMBINED	N = 13,297 84%	N = 1,307 47%	N = 3,084 51%

*DURING THIS PERIOD SAN DIEGO POLICE AGENCIES DISPOSED OF 13 PERCENT OF THEIR WARRANTLESS ARRESTS (10 PERCENT OF ALL ARRESTS) WITHOUT PRESENTATION TO THE PROSECUTION AND THE COURTS.

(1) an arrest report prepared by the arresting officer; (2) a witness list prepared by the arresting officer or the investigating detective; (3) the defendant's prior criminal history (a local rap-sheet); (4) the police charges; (5) the bail conditions set at the defendant's initial court appearance;⁷⁸ and (6) the arresting officer (and sometimes the investigative detective) physically present for interviewing by the deputy. The Orleans Parish deputy may also have the opportunity to contact citizen witnesses by telephone, in making the decisions: (1) whether to charge; and (2) what to charge..

In San Diego County, the deputy responsible for initial charging has infrequent direct contact with the principals in the case at the time of charging. He routinely has before him: (1) a detective's follow-up investigation report (which includes an evidence list, witness list, synopsis of the case, and a narrative of the incident); and (2) a copy of the defendant's local criminal history. In serious offenses (e.g., robbery), the investigating detective generally appears in person, but it is rare that persons more directly cognizant of the offense and the circumstances of the arrest (e.g., arresting officer, witnesses) are present or contacted.

In Kalamazoo County, the charging deputy has even less before him at the time of the decision: (1) an arrest/investigation report; (2) a local rap sheet; and (3) a written warrant request. The investigating detective (but not the principals) may appear and be interviewed at the time, but this occurs only sporadically.

⁷⁸ Recall the placement of the charging decision in the sequence of adjudicative events in Orleans Parish. Figure 2, p. 62 *supra*. Unlike the case in Kalamazoo and San Diego counties, charging can be done at a more leisurely pace, mostly independent of the sequence of timing of courtroom proceedings.

The decisions of whether and what to charge are made on different types of criteria in the three prosecutors' offices.⁷⁹ In Orleans Parish, the criterion for determining both is "convictability" or "trial sufficiency":⁸⁰ is a conviction likely to be had if the case proceeds to trial? In Kalamazoo County, on the other hand, the criterion for determining whether and what to charge is the existence of a prima facie case (i.e., whether each and every element of a crime has been alleged, without regard, in most cases, to the strength of the testimony underlying the allegation or the police conduct of the arrest).⁸¹ In San Diego County, the initial charging decision is guided by standards adopted by the California District Attorneys' Association in 1974.⁸² The existence of a prima facie case or probable cause to charge is not in itself sufficient reason for preferring charges.⁸³ Sufficiency of admissible evidence,

⁷⁹ Some observers have developed "charging typologies" to characterize the different "policies" at work in the initial charging decision in different jurisdictions. See particularly, Jacoby, note 74 supra at 33-41. See also, MILLER, note 74 supra.

⁸⁰ Jacoby, note 74 supra at 38.

⁸¹ In Kalamazoo County, marginal felony offenders who meet specific criteria are also eligible for "diversion" from further formal prosecution. Joan Jacoby types this charging disposition as a manifestation of a "defendant rehabilitation policy": Jacoby, note 74 supra at 35.

⁸² CAL. DIST. ATTORNEYS ASSOC., UNIFORM CRIME CHARGING STANDARDS (1974) hereinafter cited as STANDARDS .

⁸³ "These standards reject the notion that simple probable cause justifies charging." STANDARDS, note 82 supra at 8.

the likelihood of a conviction on the basis of admissible evidence,⁸⁴ and the interests of justice⁸⁵ are required considerations in determining whether, and at what offense level, to charge.

The second of the two charging determinations (the selection of the specific charge and offense level) is distinctly important in the three jurisdictions for two reasons. First, while the

⁸⁴"The prosecutor, should charge only if the following four basic requirements are satisfied:

- a. The prosecutor, based on a complete investigation and a thorough consideration of all pertinent data...is satisfied that the evidence shows the accused is guilty of the crime to be charged.
- b. There is legally sufficient, admissible evidence of a corpus delicti..
- c. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged.
- d. The prosecutor has considered the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor." Id. at 13.

⁸⁵Reasons for declining to charge other than evidentiary insufficiency include: (1) charging would be contrary to the legislature's intent in enacting the particular statute; (2) the applicable statute is antiquated; (3) the violation is de minimus; (4) the victim requests no prosecution (where little injury or damage has occurred); (5) the offender is to be granted immunity; and (6) the offender is already confined for a lengthy period or has other serious charges already pending. Id. at 42-46.

discretion of the individual deputy to decline all charges (the first of the charging determinations) is curtailed in all three jurisdictions by a supervision and review process, the selection of which charges to file (felony or misdemeanor, aggravated or simple offense) is relatively unfettered, and remains largely within the individual discretion of the charging deputy. Second, the selection of the initial charge bears a subtle but crucial relationship to subsequent plea negotiations.⁸⁶

Initial Charging By the Grand Jury: Franklin County

It was suggested earlier that in Franklin County--since there is no clearly identifiable point at which the prosecution independently determines both whether to charge and what to charge--arguably there is no real initial charging decision.⁸⁷ The observation requires qualification and elaboration here.

The first prosecutor's office to take cognizance of the felony case in Franklin County--the Columbus City Attorney's Office--determines neither whether charges should be filed in the inferior court nor the specific charges that are filed. Cases that are bound-over to the county grand jury after inferior court preliminary examination (or waived-over in lieu of the examination) are systematically presented to the grand jury by the County Prosecuting Attorney's Office.⁸⁸ If the felony charges are to be initially rejected, the rejection is done by the grand jury.

⁸⁶ See text accompanying notes 114-115 infra.

⁸⁷ Note 75 supra.

⁸⁸ The Office interprets prevailing law as requiring that it present to the grand jury all bound-over cases.

CONTINUED

1 OF 3

presentations from presentations of bound-over cases. The Prosecuting Attorney's Office estimates that the former constitute 15 percent of the total presentations). It returned indictments in 82 percent (N=2860) and refused to indict in the rest.⁹² To the (undeterminable) extent that its decisions reflected the prosecution's wishes, an initial, independent prosecutorial charging decision was made.

Recharging and Charge-Dropping

The initial charging decision is followed by a formal recharging decision in two of the jurisdictions: San Diego and Kalamazoo Counties. After the offender has been arraigned and examined on the original charges in the inferior court, he is recharged in a felony accusation that is filed in the superior court. To the extent that there is a difference in outcome between this second and the initial charging decision, this difference lies most often in the selection of which charges to file, not in a fresh determination of whether to charge.

In Orleans Parish, the prosecution files charges with the Criminal District Court only once: before or after the preliminary examination in the court's Magistrate's Section. In Franklin County, the grand jury's indictment is the only filing of the prosecution's charges.

Charges that have been filed may, however, in all four jurisdictions, be subsequently dropped by the prosecution on its initiative: by a dismissal on the prosecution's motion or by the entry of a nolle prosequi.⁹³ Charge-dropping by the prosecution may be the result of

⁹²In addition, 166 bound-over cases were diverted, without grand jury presentation, to a treatment program for non-violent first offenders.

⁹³A nolle or nolle prosequi is a formal entry in the court's record by which the prosecutor declares that he "will no further prosecute" the case, either entirely or as to some charges or as to some defendants.

a number of factors: key witnesses are no longer interested or available; a successful defense motion to suppress evidence has damaged the prosecution's ability to convict; new information has arisen which was not available when the initial charging decision was made; some charges are dropped in return for the defendant's guilty plea or his testimony against others. It may also, however, reflect what is, in effect, a second charging decision, the outcome of which is a decision not to prosecute.

Data on the reasons for charge-dropping are not systematically available for all four jurisdictions. Orleans Parish does however, provide some indication of the extent to which the prosecutor's dismissal or nolle prosequi is effectively a reevaluation of the initial charging decision and, in effect, another charging determination. Of 544 cases nolle'd in the period July to December 1975, 19 percent (N=103) were dismissed by the prosecution because, upon case reevaluation, evidence sufficient for trial was found to be lacking.⁹⁴

The Negotiated Guilty Plea and The Nolle Prosequi

Of the felony cases that survive the initial charging decision as felonies, the most frequent final disposition is a guilty plea in all four jurisdictions.⁹⁵ Guilty pleas account for 65 percent of San Diego County's final dispositions of felony prosecutions and

⁹⁴In addition to the 544 nolle's, there were 426 prosecution dismissals of cases that had been initially charged at least fifteen months earlier by the preceding District Attorney. See, Dahmann, Lacy, Orleans Parish, note 17 supra at 38-39.

⁹⁵A final disposition terminates the adjudication of the case in the pre-appellate process. It is distinguished from an interim disposition, which terminates the case for a limited purpose (e.g., a bind-over after preliminary hearing disposes of the felony for purposes of inferior court handling).

52 percent of Kalamazoo's County's. They account for at least 53 percent of the final dispositions of prosecuted felonies in Franklin County, and 52 percent of the dispositions of felonies and misdemeanors in Orleans Parish.⁹⁶ (Table IX and X, infra, pp. 89-90).

Entries of nolle prosequi--or dismissals on the prosecution's motion--also account for a fair proportion of final dispositions of felony prosecutions; but here, variations among the four jurisdictions are more extensive than with guilty pleas. In San Diego County, the nolle or prosecutor's dismissal disposes of 4 percent of all felony prosecutions; in Kalamazoo County it accounts for 20 percent; in Franklin County it accounts for 7 percent. In Orleans Parish, 20 percent of all felony and misdemeanor dispositions are nolle's (Tables IX and X infra, pp. 89-90).

The guilty plea may be: (1) a plea to all felony charges as filed; (2) a plea to one or more of the original charges in return for a dismissal of the rest; (3) a plea to one or more of the original charges and a plea to reduced charges to cover the rest; (4) a plea to a felony charge different from that originally charged but carrying the same sentence range; (5) a plea to a felony charge different from the original and carrying a sentence range that is less severe than that of the original; (6) a plea to one or more misdemeanor charges to cover one or more original felony charges; (7) any combination of the above with an understanding that the prosecution will recommend leniency at sentencing (generally, or in terms of a specific sentence), will not recommend but will not oppose leniency, or will not pursue enhanced penalties at sentencing; and (8) in those

⁹⁶ All analyses are based upon aggregate case activity data provided by the local prosecutors and/or courts. Available Orleans Parish data are aggregated in ways that preclude examining the dispositions of only felonies.

jurisdictions (e.g., San Diego County) in which a nolo contendere plea may be entered, not a guilty plea in the true sense at all.⁹⁷

As a result, a plea of guilty to a felony may in a given case entail less onerous consequences for the defendant (if, for example, the understanding in entering the plea is that he will not serve time) than a misdemeanor plea to cover a felony charge (if the defendant will be imprisoned for the misdemeanor).⁹⁸

The four prosecutor's offices differ in: (1) the ways in and extent to which individual deputy prosecutors have discretion to negotiate guilty pleas with defendants; (2) how closely related the decision to agree to a guilty plea on a reduced charge is to the initial decision of what to charge; (3) the professed reasons for which the office will negotiate pleas; and (4) the professed criteria that enter into the decision to agree to a guilty plea.

The first two of these are examined in the section on Management of Prosecution (infra, p. 98). The policies of the offices concerning the circumstances or considerations to be taken into account in plea discussions are reported here.

In three of the jurisdictions--San Diego, Kalamazoo and Orleans Parish--a "bottom-line" plea is designated early in the felony case's life by either the deputy prosecutor who does the initial charging

⁹⁷ A nolo contendere plea (literally, "I will not contest it") has the same effect in the instant case as a plea of guilty. It differs from a guilty plea in that it may not be used as an admission of guilt elsewhere.

⁹⁸ A plea of guilty to a felony does, however, make the defendant a convicted felon, a status that can bring more onerous consequences if he is later convicted of another felony.

(Orleans Parish, Kalamazoo) or a panel of senior deputies (San Diego). The "bottom-line" is the lowest charge or offense grade to which a deputy who handles the disposition of the case can agree to a plea. The "bottom-line" may be all of the original felony charges, some of them, a reduced felony charge, or a misdemeanor. Criteria for selection of the "bottom-line" are different from those used to determine the original charges. In all three places, "convictability" (i.e., at what offense level and with what charge is the prosecution likely to win a conviction) is the principal criterion in "bottom-line" determination.⁹⁹

In San Diego County, the same equity (e.g., mitigating circumstances in the commission of the offense) and public policy (e.g., antiquated statute) considerations that may factor into the initial charging decision may also influence the "bottom-line" decision.¹⁰⁰ In Kalamazoo County, on the other hand, equity and administrative considerations (crowded court dockets, for example) are, as a matter of office policy, expressly not to be considered. In Orleans Parish, there is no explicit policy governing which factors in addition to "convictability" should be taken into account in settling on the "bottom-line."

In Franklin County, the determination of which charge and offense level should be agreed to in return for a guilty plea rests, in most circumstances, wholly in the discretion of the deputy who is handling the case. It is his professional judgment--unrestricted

⁹⁹ Compare with the criteria employed in initial charging, notes 79-85 supra and accompanying text.

¹⁰⁰ See notes 84, 85 supra.

by professed office policy on "bottom-lines" and circumstances to be taken into account--that determines what the prosecutor's office will agree to in plea negotiation.

Data are not currently available in the four jurisdictions on the precise extent and dimensions of charge reductions in return for guilty pleas. Nor is it known how frequently the "bottom-line" plea is adhered to in plea negotiations. Table VI does, however, provide some gross characteristics of charge reductions in exchange for guilty pleas. Most guilty and nolo contendere pleas (i.e., between 62 and 73 percent) in felony prosecutions are to felony charges, although the charge pleaded to may not necessarily be the same or at the same felony offense level as the original charge.

Nolle prosequi's and dismissals on the prosecution's motion may be prompted by a number of factors.¹⁰¹ For purposes of examination here, they are divisible into two types: pro forma entries that are the direct result of a court determination that is adverse to the continuation of prosecution, and entries that are made solely on the initiative of the prosecution. Pro forma entries are most commonly made after a successful defense motion has fatally damaged the prosecution's case; the nolle prosequi is simply the device by which the judgment on the motion is translated into a disposition of the case. Nolle's that are entered on the prosecution's initiative, on the other hand, represent an independent judgment by the prosecution to proceed no further on the charge(s).

¹⁰¹ See note 93 supra and accompanying text.

TABLE VI
CHARGE REDUCTIONS IN RETURN FOR GUILTY PLEAS: FOUR JURISDICTIONS

	SAN DIEGO		KALAMAZOO		ORLEANS		FRANKLIN	
	<u>PERIOD:</u> 1975		<u>PERIOD:</u> NOV. 1975 - OCT. 1976		<u>PERIOD:</u> JULY - DEC. 1975		<u>PERIOD:</u> 1976	
	<u>TYPE:</u> FELONY CHARGES		<u>TYPE:</u> FELONY CHARGES		<u>TYPE:</u> FELONY & MISDEMEANOR CHARGES**		<u>TYPE:</u> FELONY CHARGES*	
TOTAL GUILTY PLEAS	4588	100%	373	100%	1380	100%	2100	100%
FELONY TO FELONY	2864	62%	273	73%	NA		1463	70%
FELONY TO MIS- DEMEANOR	1724	38%	100	27%	NA		637	30%
TO ORIGINAL CHARGE**					1214	88%		
TO REDUCED CHARGE**					166	12%		

* INCLUDES FELONY CHARGES AND GUILTY PLEAS ENTERED IN THE SUPERIOR COURT. DATA ARE NOT AVAILABLE ON GUILTY PLEAS ENTERED IN THE INFERIOR COURT.

** BECAUSE OF ORLEANS PARISH DATA BASE, IT IS NOT POSSIBLE TO DISTINGUISH FELONIES FROM MISDEMEANORS IN TERMS OF ORIGINAL CHARGES AND PLEAS ENTERED.

With the exception of San Diego County--where all identifiable prosecution dismissals result from adverse court rulings¹⁰²--pro forma nolle's account for between 10 percent and 19 percent of all entries (Table VII).

The Impact of Prosecutorial Discretion

Taken together, the three exercises of prosecutorial discretion--to decline to initially charge, to agree to a guilty or nolo contendere plea in lieu of further prosecution, to nolle or dismiss on the prosecution's initiative--account for substantial proportions of the final dispositions of felony cases and, in Orleans Parish, of felony and misdemeanor cases (Table VIII). Close to half of San Diego County's felonies that are referred by the police for prosecution are disposed of by either a declination to charge or a guilty plea in a case charged as a felony.¹⁰³ Two-thirds and more of police felony referrals are disposed of by one of the three means in Franklin and Kalamazoo Counties. Approximately eight of ten felonies and misdemeanors in Orleans Parish are finally disposed of by refusals to charge, pleas or prosecutor-initiated nolle's.

The criminal justice process as a full series of case disposition opportunities of all types is examined in the next section.

¹⁰² There are, in San Diego County, prosecution dismissals of some charges in return for a guilty plea to other charges, but the guilty plea is entered "to cover" the remaining charges, and the remaining charges are not "dropped," "dismissed" or "nolle'd" as a formal disposition.

¹⁰³ Felonies that are charged by the prosecution as misdemeanors, and disposed of as such, account for additional dispositions that flow from the exercise of prosecutorial discretion in charging.

TABLE VII

PRIMARY CHARACTERISTICS OF NOLLE PROSEQUI'S: FOUR JURISDICTIONS*

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
	<u>PERIOD:</u> 1975 <u>TYPE:</u> FELONY CHARGES	<u>PERIOD:</u> NOVEMBER 1975 - OCTOBER 1976 <u>TYPE:</u> FELONY CHARGES	<u>PERIOD:</u> JULY - DECEMBER 1975 <u>TYPE:</u> FELONY AND MISDEMEANOR CHARGES**	<u>PERIOD:</u> 1976 <u>TYPE:</u> FELONY CHARGES
TOTAL NOLLE'S	304 100%	140 100%	544 100%	314 100%
RESULT OF SUCCESSFUL DEFENSE MOTION	304	27 19%	65 12%	32 10%
PROSECUTION'S INITIATIVE	(See Note 102)	113 81%	479 88%	282 90%

* INCLUDES PROSECUTION MOTIONS TO DISMISS IN JURISDICTIONS THAT DO NOT HAVE FORMAL ENTRIES OF NOLLE PROSEQUI.

** DOES NOT INCLUDE NOLLE'S ENTERED IN THIS PERIOD IN CASES FILED BEFORE APRIL 1, 1974 BY THE PREDECESSOR DISTRICT ATTORNEY.

TABLE VIII

REFUSALS TO CHARGE, GUILTY PLEAS AND PROSECUTOR-INITIATED
DISMISSALS AS PROPORTIONS OF FINAL DISPOSITIONS: FOUR JURISDICTIONS

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
	PERIOD: 1975 TYPE: FELONY CHARGES	PERIOD: NOVEMBER 1975 - OCTOBER 1976 TYPE: FELONY CHARGES	PERIOD: JULY - DECEMBER 1975 TYPE: FELONY AND MISDEMEANOR CHARGES	PERIOD: 1976 TYPE: FELONY CHARGES
REFERRED BY POLICE	15,830 100%	2,781 100%	6,048 100%	4761 100%
DECLINATION TO PROSECUTE	2579 16%	898 32%	2934 49%	635 14%
FORMALLY DIVERTED AT CHARGING	--	561 20%	--	166 3%
GUILTY PLEA AGREED TO	4588 30%	373 13%	1300 23%	2100 44%
PROSECUTOR-INITIATED NOLLE	N/A	113 4%	479* 7%	282 5%
OTHER**	8663 54%	836 31%	1255 21%	1578 34%

* DOES NOT INCLUDE NOLLE'S ENTERED IN THIS PERIOD IN CASES FILED BEFORE APRIL 1, 1974 BY THE PREDECESSOR DISTRICT ATTORNEY.

** OTHER INCLUDES ALL OTHER DISPOSITIONS: REDUCTIONS TO MISDEMEANORS, DISMISSALS AT PRELIMINARY HEARINGS, DISMISSALS AFTER MOTIONS, TRIAL VERDICTS, ETC.

The Criminal Justice Process in Operation

Case dispositions¹⁰⁴ are of three types: (1) those which finally conclude the case's life as an adjudicative matter in the pre-appellate criminal process (e.g., dismissals, guilty pleas); (2) those that may be final or interim depending on events that cannot be foreseen at the time of the disposition (e.g., the defendant has absconded and may or may not be located and returned for further prosecution); and (3) those that are interim, or are dispositions for limited purposes (e.g., a felony is disposed of for purposes of felony prosecution when it is reduced to a misdemeanor, even though the disposition is not itself conclusive of the case's adjudicative life). In this section, the first and third of these disposition-types are examined; the second--the contingent disposition--is noted here only in passing.

The Funnel Effect

There is considerable weeding out of the caseload as it progresses from the time it is referred by the police for prosecution through the various procedural events and processing steps of the criminal process in all four jurisdictions. The felony trial is an infrequent event. In San Diego County, it occurs in two percent of the felony arrest referrals; in Kalamazoo County, in three percent. In Franklin County, it occurs in six percent. In Orleans Parish, trials are conducted in fourteen percent of the felony and misdemeanor arrests that are referred by the police for prosecution.

Cases are disposed of in different proportions at different stages in the criminal processes of the four jurisdictions. In

¹⁰⁴ Dispositions reported here are of felony arrests in three of the jurisdictions and of felony and misdemeanor arrests in Orleans Parish. Available Orleans Parish data are aggregated in ways that preclude examining the dispositions of felonies alone.

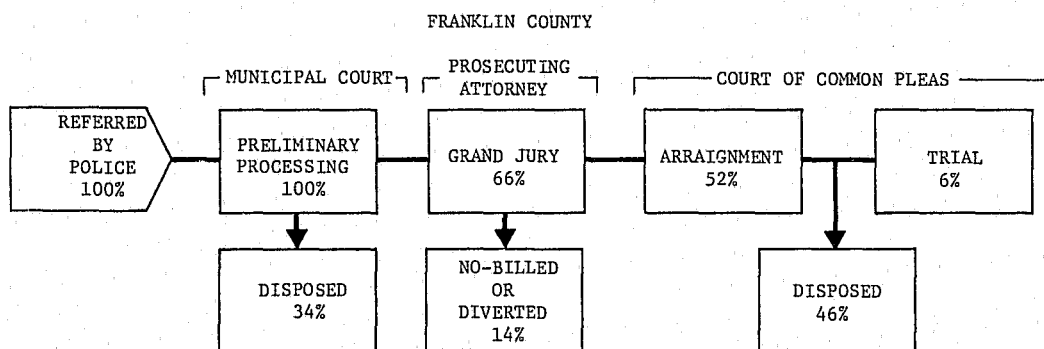
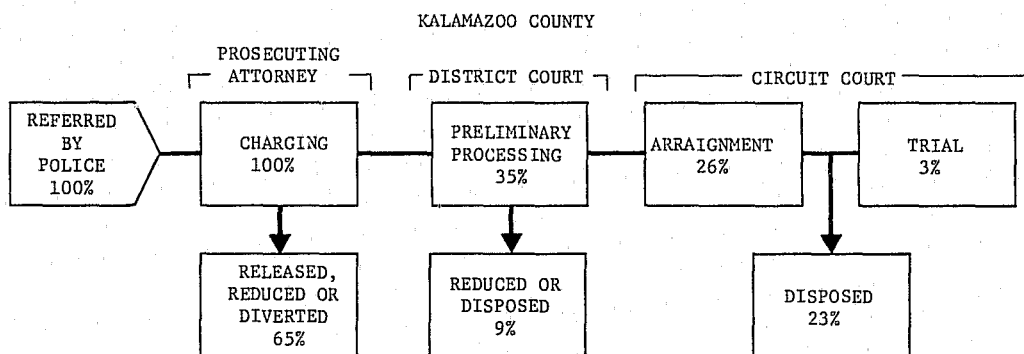
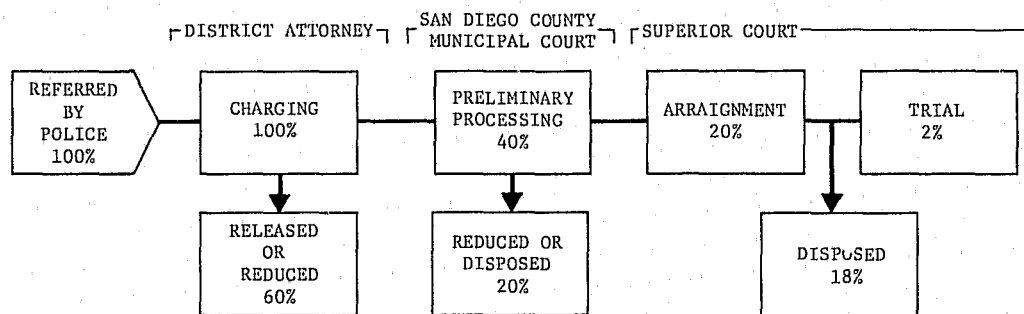


FIGURE 3
PROGRESS IN THE ADJUDICATION PROCESS OF ADULT FELONY
ARRESTS REFERRED FOR PROSECUTION: THREE JURISDICTIONS

San Diego and Kalamazoo counties, the felony referred for prosecution is disposed of for purposes of felony prosecution more frequently at the point of charging than at any other point in the criminal process (Figure 3, page 85).¹⁰⁵ Sixty percent of San Diego County's felony arrest referrals are finally disposed of or reduced to misdemeanors at the initial prosecutor's charging decision. Approximately two-thirds of Kalamazoo County's felony arrests (and felony warrant applications) are disposed or reduced at the time of initial charging. In contrast, relatively few felony dispositions are made by Franklin County's grand jury (Figure 3, page 85).

In San Diego and Kalamazoo Counties, most felony cases are disposed of without the attention of the superior court. Only 20 percent in San Diego and 26 percent in Kalamazoo reach the dockets of the felony trial court. Franklin County's absence of significant early rejection or reduction of felony arrest referrals by the city and county prosecuting agencies lets substantially more cases (52 percent of all felony referrals) reach the rolls of the superior court (Figure 3).

The sequence of dispositions in Orleans Parish cannot be compared here with that of the other three because available data include both felonies and misdemeanors. The most frequent determinant of a criminal case's disposition in New Orleans is the prosecution's decision to charge. Almost half of all felony and misdemeanor arrests are made at the point of charging (Figure 4).

¹⁰⁵ Figure 3 is based on estimates derived from data on dispositions made in each of the jurisdictions. The reader is referred to the volumes cited in note 17 supra for examinations of the data underlying the estimates.

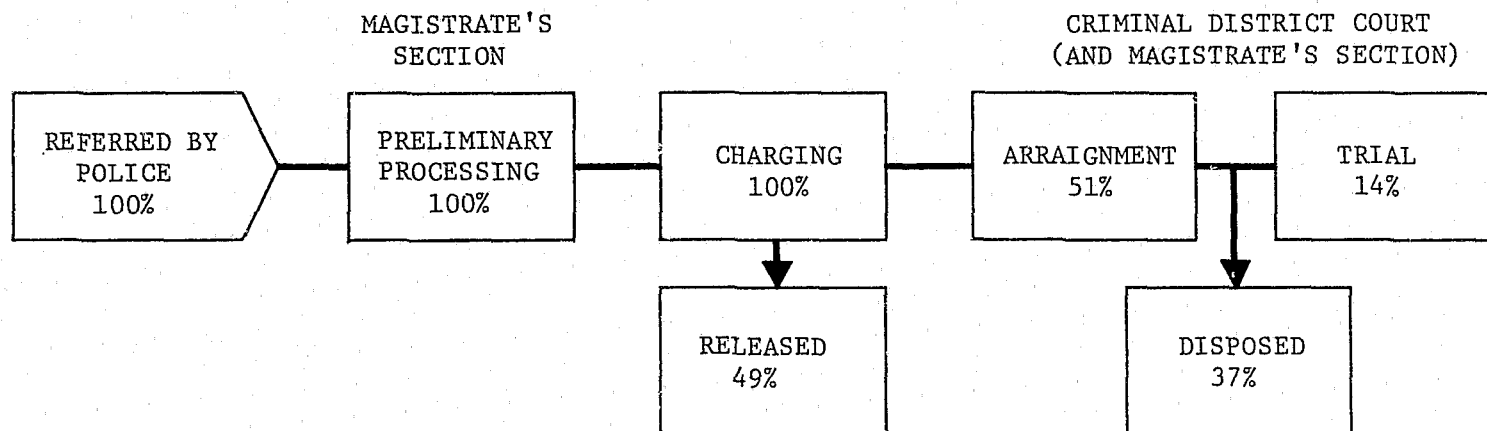


FIGURE 4
PROGRESS OF ADULT FELONY AND MISDEMEANOR ARRESTS REFERRED
FOR PROSECUTION IN THE ADJUDICATION PROCESS: ORLEANS PARISH

Courtrooms and Corridors: The Manner of Disposition

Some dispositions in all four jurisdictions are the direct result of formal adjudicative proceedings (hearings, trials, etc.). Most are not.

As already indicated, considerable proportions of felony arrests are disposed of: (1) finally, through avoidance of the criminal court process (declination to invoke, refusal to charge, diversion of the offender); and (2) for felony purposes, by reduction of charges to misdemeanors.

The felony that is charged and prosecuted as a felony in San Diego and Kalamazoo Counties is most likely to be disposed of without a court determination on the merits; it is least likely to be disposed of at trial. (Table IX). Trials and hearings account for 34 percent of San Diego's dispositions of prosecuted felonies; for 29 percent of Kalamazoo's. Considerably more prosecutions are "lost" at the preliminary hearing in San Diego than in Kalamazoo, but the prosecution in Kalamazoo County dismisses more cases on its own motion than does its California counterpart. In both places, relatively few felony prosecutions are "lost" as a direct result of defense motions.

Few (11 percent) of the felonies that are prosecuted in the superior court in Franklin County are disposed of as the direct result of formal adjudication. (Felonies are also disposed of in the county's inferior court, but these dispositions cannot be distinguished here by type.) Most superior court dispositions are guilty pleas. As in San Diego and Kalamazoo, few cases are "lost" as the direct result of a successful defense motion. (Table IX.)

TABLE IX
DISPOSITIONS OF FELONY PROSECUTIONS
BY TYPE: THREE JURISDICTIONS

	SAN DIEGO		KALAMAZOO		FRANKLIN*	
	1975		11/75-10/76		1976	
<u>COURT DETERMINED</u>						
- DISMISSAL AT PRELIMINARY EXAMINATION	1675	24%	113	16%	NA*	
- DISMISSAL OR <u>NOLLE</u> AFTER SUCCESSFUL DEFENSE MOTION	304	4%	27	4%	32	1%
- CONVICTION AT TRIAL	299	4%	47	7%	172	6%
- ACQUITTAL AT TRIAL	93	2%	18	2%	104	4%
TOTAL COURT DETERMINED		(34%)		(29%)		(11%)
<u>NON-COURT DETERMINED</u>						
- NOLLE OR PROSECUTOR'S DISMISSAL	NA		113	16%	282	10%
- GUILTY PLEA	4588	65%	373	52%	2100	74%
TOTAL NON-COURT DETERMINED		(65%)		(68%)		(84%)
OTHER**	70	(1%)	21	(3%)	143	(5%)
<u>TOTAL DISPOSITIONS OF FELONY PROSECUTIONS</u>	7029	100%	712	100%	2833	100%

* SUPERIOR COURT DISPOSITIONS ONLY. AN ADDITIONAL 1127 FELONIES WERE DISPOSED IN THE INFERIOR COURT BY ONE OF TWO MEANS: DISMISSAL AT PRELIMINARY HEARING OR ENTRY OF A MISDEMEANOR GUILTY PLEA TO A FELONY CHARGE. THE 1127 CANNOT BE DISTINGUISHED BY TYPE IN AVAILABLE DATA.

** INCLUDES MISTRIALS, HUNG JURIES.

TABLE X

DISPOSITIONS OF FELONY AND MISDEMEANOR PROSECUTIONS
BY TYPE: ORLEANS PARISH: (JULY-DECEMBER 1975)

<u>COURT DETERMINED</u>		
<u>NOLLE AFTER SUCCESSFUL</u>		
DEFENSE MOTION	65	(2%)
CONVICTION AT TRIAL	453	(17%)
ACQUITTAL AT TRIAL	233	(9%)
TOTAL COURT DETERMINED		(28%)
<u>NON-COURT DETERMINED</u>		
<u>NOLLE</u> (NO ADVERSE COURT JUDGMENT)	479	(18%)
GUILTY PLEA	1380	(52%)
TOTAL NON-COURT DETERMINED		(70%)
<u>OTHER</u> *	41	(2%)
TOTAL OTHER		(2%)
TOTAL DISPOSITIONS	2651	(100%)

* INCLUDES MISTRIALS, HUNG JURIES.

In Orleans Parish, seven of ten prosecuted felonies and misdemeanors are disposed of without a direct court determination. Trials account for 26 percent of the final dispositions. (Table X, page 90.) Successful defense motions result in few final dispositions. The preliminary hearing has no dispositional consequence.

Convictions and Discharges

In San Diego, Kalamazoo, and Franklin Counties, if the prosecution proceeds on felony charges,¹⁰⁶ there is a greater than even likelihood that the defendant will be convicted, if not of a felony, then of a misdemeanor. There is a less than even chance, however, that the defendant will be convicted of at least one felony charge. (Table XI).

Seven of ten of San Diego County's felony prosecutions are convictions; more than two-thirds are convictions by guilty plea or plea of nolo contendere; slightly more than one-fifth are convictions of felony-level charges. Approximately six of ten of Kalamazoo County's felony prosecutions result in convictions; more than half of the convictions are of one or more of the original (prosecutor's) felony charges. Franklin County's conviction rate, as reported in Table XI, is approximate. Dispositions in the inferior court cannot be distinguished in available data between misdemeanor guilty pleas to felony charges and preliminary hearing dismissals. Of the dispositions that are known, 57 percent are convictions, 37 percent are guilty pleas to one or more of the felony charges preferred by the grand jury (Table XI).

¹⁰⁶ Recall that substantial numbers of felony arrests are not prosecuted as felonies in San Diego and Kalamazoo Counties. Figure 3 supra.

TABLE XI
CONVICTIONS AND DISCHARGES IN FELONY PROSECUTION:
THREE JURISDICTIONS

	SAN DIEGO	KALAMAZOO	FRANKLIN
	(1975)	(11/75- 10/76)	(1976)
CONVICTIONS			
TRIAL VERDICT	299 4%	47 6%	172 4%
GUILTY PLEA: ORIGINAL FELONY	2641 38%	161 23%	1463 37%
GUILTY PLEA: REDUCED FELONY		212 30%	--
GUILTY PLEA: MISDEMEANOR	--		637 16%
NOLO CONTENDERE	333 5%	--	--
TOTAL CONVICTIONS	4887 70%	420 59%	2272 57%
DISCHARGES			
TRIAL ACQUITTAL	93 1%	18 3%	104 3%
DISMISSAL/NOLLE	1979 28%	253 35%	314 8%
TOTAL DISCHARGES	2072 29%	271 38%	418 11%
OTHER	70 1%	21 3%	143 4%
DATA UNAVAILABLE	--	--	1127* 28%
TOTAL DISPOSITIONS	7029 100%	712 100%	3960 100%

* INCLUDES DISMISSALS AND GUILTY PLEAS TO MISDEMEANORS IN THE INFERIOR COURT.

In all three jurisdictions, in those felony cases that are tried as felonies, the most likely outcome is a conviction of one or more felony charges (Table XI, page 92). San Diego County's felony trial conviction rate is 76 percent; Kalamazoo County's, 72 percent; Franklin County's, 62 percent.

In Orleans Parish, seven of ten felony and misdemeanor prosecutions end in convictions, most by guilty plea (Table X, supra). Two-thirds of the felony and misdemeanor cases that are tried result in guilty verdicts.

Judgments

San Diego County sends a smaller percentage of its convicted felons to state prison than does Kalamazoo County. The most frequently imposed felony sentence in San Diego is probation with a term in the county jail. The most frequently imposed felony sentence in Kalamazoo is imprisonment in a state facility (Table XII).

Judgments in Franklin County cannot be finely distinguished using available data. Seventy-five percent of the 1,942 sentences imposed in the superior court in 1976 were either fines or terms of confinement in the county or a state facility; the remainder were sentences of probation.

More than half (57 percent) of the sentences imposed in felony and misdemeanor convictions in Orleans Parish are fines or terms of probation. Twenty percent are sentences to the state penitentiary; 23 percent are sentences to the Parish Prison.

TABLE XII

SENTENCES IMPOSED: SAN DIEGO AND KALAMAZOO COUNTIES

	SAN DIEGO		KALAMAZOO	
	1975		11/75-10/76	
PROBATION AND/OR FINE	794	25%	94	32%
PROBATION AND JAIL	1401	44%	46	16%
COUNTY JAIL	105	4%	22	7%
STATE PRISON	574	18%	132	45%
OTHER	289	9%	-	-
TOTAL SENTENCES IMPOSED	3163	100%	294	100%

The Timeliness of Events

When adjudicative events must happen may be as important in many respects as how they happen.¹⁰⁷ Timeliness of trial and/or disposition is constitutionally-mandated, but in a notably imprecise fashion: "In all criminal prosecutions, the accused shall enjoy the right to a speedy...trial...."¹⁰⁸ The President's Commission on Law Enforcement and Criminal Justice set, in 1967, a model timetable of trial within 81 days of arrest if the defendant is not in pre-trial custody, and within 71 days if he is.¹⁰⁹

None of the four jurisdictions specifically requires trial in that short a time-frame. In Louisiana, there is no fixed-time, specific speedy trial requirement. In California, trial or disposition must be held within sixty days after the filing of an accusatory instrument in the superior court (there is no provision for the timing of trial in relationship to the time of arrest). In Ohio, felony trial or disposition must be held within 270 days after the arrest, with each day the defendant is in custody counted as three days, each day he is released counted as one day. In Michigan, trial is encouraged after a defendant has been incarcerated 180 days; upon application, he is to be released on his own recognizance if he has not been tried through no fault of his own. (Table XIII.)

¹⁰⁷ "Essential to the effective operation of the entire criminal justice system is the concept that criminal cases should be dispatched within a reasonable time." KATZ, note 6 supra at 30.

¹⁰⁸ U.S. CONST. amendment VI.

¹⁰⁹ THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 86-87 (1967). A time frame of 60 days from arrest to the beginning of trial of a felony case is recommended in NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS: TASK FORCE ON COURTS 68 (1973).

TABLE XIII

LEGALLY MANDATED TIMING OF PRINCIPAL ADJUDICATIVE EVENTS: FOUR JURISDICTIONS

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
PRELIMINARY HEARING				
- DEFENDANT IN CUSTODY	10 COURT DAYS AFTER INITIAL APPEARANCE	NO PROVISION	7 COURT DAYS AFTER INITIAL APPEARANCE	5 DAYS AFTER ARREST
- DEFENDANT RELEASED	NO PROVISION	NO PROVISION	2 WEEKS AFTER INITIAL APPEARANCE	14 DAYS AFTER ARREST
INDICTMENT/INFORMATION FILED				
- DEFENDANT IN CUSTODY	14 COURT DAYS OF THE BIND- OVER	NO PROVISION	NO PROVISION	60 DAYS OF FILING OF BIND-OVER
- DEFENDANT RELEASED				
TRIAL OR DISPOSITION				
- DEFENDANT IN CUSTODY	60 DAYS AFTER FILING ACCU- SATORY INSTRU- MENT IN SUPERIOR COURT	AFTER 180 DAYS OF INCARCERA- TION	NO PROVISION	90 DAYS AFTER ARREST*
- DEFENDANT RELEASED	SAME	NO PROVISION	NO PROVISION	270 DAYS AFTER ARREST*
DEFENDANT CONSENT TO OR PARTICIPATION IN DELAY TOLLS	YES	YES	N/A	YES

* TRIAL WITHIN 270 DAYS AFTER ARREST IN ALL CASES. EACH DAY INCARCERATED COUNTS AS THREE DAYS;
EACH DAY RELEASED COUNTS AS ONE.

In the three jurisdictions with time-specific requirements for when trial or disposition must be held, delays caused by, participated in or consented to by the defendant toll the count.¹¹⁰

¹¹⁰In Michigan, the count is further tolled by the existence of a number of factors that are not within the defendant's ability to influence. Excluded from the computation of 180 days of incarceration are periods of delay:

(1)...resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period to (sic) which he is not competent to stand trial, hearings on pretrial motions, interlocutory appeals and trial of other charges;

(2)...resulting from a continuance granted at the request or with the consent of the defense counsel...;

(3)...resulting from a continuance granted at the request of the prosecuting attorney, if;

(a) the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date;

(b) the continuance is granted for good cause shown...to allow the prosecuting attorney additional time to prepare the state's case;

(4)...when the defendant is joined for trial with the codefendant as to whom the time for trial has not run and there is good cause for not granting a severance...;

(5)...other periods of delay for good cause within the discretion of the court; (sic) however, docket congestion is not good cause for delay.

MICHIGAN SUPERIOR COURT GENERAL COURT RULING 789.2.

Data are not currently available for all four jurisdictions concerning how closely these speedy trial requirements are complied with in practice.¹¹¹

The Management of Prosecution¹¹²

Some distinguishing features of the four prosecutor's offices have been noted earlier. Size is a conspicuous one. The San Diego County District Attorney's Office has over seven times the number of deputy prosecutors as does its counterpart in Kalamazoo County; the New Orleans District Attorney's Office has 50 percent more attorney personnel than the Franklin County Prosecuting Attorney's Office. (Table III, supra p. 37.)

Overall office size is misleading, however, because the different offices have different mixes of non-criminal business to attend to. Including immediate division of chiefs and deputies assigned to career criminal cases (and excluding the prosecutor, the chief deputy, and attorneys working on juvenile and economic crime matters, appeals and civil law cases), the offices allocate between 40 percent (Franklin County) and 71 percent (Orleans Parish) of their deputies to criminal prosecution of adult defendants. (Table XIV.)

¹¹¹For a detailed examination of trial delay in one of the four jurisdictions for which data are available, see Dahmann & Lacy, Kalamazoo County, note 17 supra at 59-61.

¹¹²Only the four major felony prosecuting agencies in the four jurisdictions are examined here: the San Diego District Attorney's Office, the New Orleans District Attorney's Office, the Kalamazoo County Prosecuting Attorney's Office, and the Franklin County Prosecuting Attorney's Office.

TABLE XIV

DEDICATION OF ATTORNEY PERSONNEL TO
CRIMINAL PROSECUTIONS OF ADULTS: FOUR PROSECUTORS' OFFICES

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
TOTAL ATTORNEYS	119	16	65	45
ATTORNEYS IN CRIMINAL * PROSECUTION	77 65%	10 63%	46 71%	18 40%

* INCLUDES CAREER CRIMINAL ATTORNEYS

Organization and Case Assignment

For criminal prosecution,¹¹³ the four offices are more or less alike in one respect: a distinct organizational unit is responsible for the initial screening of cases and the initial decision to charge. The offices differ in some important respects in their organization of prosecutive functions after the initial charging decision has been made.

In two of the offices, both the initial charging decision and the choice of the "bottom-line" plea for later plea negotiations are, for all felony cases, centered in a distinct office unit. (Both decisions are made at the same time.) In Kalamazoo County, it is a two-deputy unit: one of the deputies is a permanently assigned experienced prosecutor; the other is rotated into the assignment for a six-month term from the ranks of trial deputies. In Orleans Parish, the unit is composed of the more experienced deputies in

¹¹³ Only those parts of office organization that directly relate to prosecution of adult defendants are examined here. The reader is referred to the materials cited in note 17 supra for more detailed examinations of office organization.

the offices--on more or less permanent assignment to it--and is comprised of 15 deputies of an office total of 46 available for criminal prosecution. The Orleans unit is also responsible for making all grand jury presentations in death penalty cases.

In the Franklin County Prosecuting Attorney's Office, a three-deputy unit makes all presentations (other than of career criminal cases) to the grand jury, both in bound-over cases and in cases in which superseding indictments are sought. Because it presents all bound-over cases, its determination in these cases is largely restricted to a decision of what charges to seek. It determines whether to charge in those cases in which a police agency seeks the superseding indictment.

San Diego County's distinct charging unit operates in only one part of the county: the City of San Diego. A two-deputy unit (the unit assignment is rotated among superior court trial deputies on six-month terms), it determines whether and what to charge in felony arrests that are made within the city. Outside the city, the District Attorney's Office maintains three branch offices in six locations.¹¹⁴ In the branches, there is no distinct organizational unit responsible for the initial charging decision; the responsibility is rotated among individual branch office deputies.

Neither San Diego's nor Franklin County's charging unit concerns itself with conditions of later plea negotiation.

After the initial charging decision has been made, the four offices organize and assign to cases their deputy personnel in

¹¹⁴ The county is approximately 4200 square miles. Some branch offices are as much as 60 miles away from others.

three different ways. The organizational differences produce different levels of continuity of case prosecution.

Of the four, New Orleans has the least number of office units and individual deputies handling a criminal case after charges have been filed.¹¹⁵ After the charging decision has been made, the case is assigned to the office's trial division: organized in ten teams of two deputies each, each team assigned for all purposes to one of the court's ten courtrooms. When the charges are filed with the court, the court allots the case to one of the ten courtrooms, which retains the case for all subsequent purposes. Consequently, assignment of deputies to a courtroom is, in effect, tantamount to assigning each team to an individual caseload allotted to that courtroom--to do everything with that caseload except determine the initial charge and the "bottom-line" plea.

In Kalamazoo and Franklin Counties, cases are assigned to the office's trial division after charging. But, while the case remains with the one organizational division for all post-charging prosecution, it does not remain with an individual deputy or a specific team of deputies. Instead, as adjudicative proceedings are scheduled by the court, the case is assigned to an available deputy for purposes of that proceeding. If the proceeding is continued or postponed, the case may well be assigned to another deputy at its rescheduled date. Continuity of prosecution through adjudication by one or two deputies is thus not the routine.

¹¹⁵ Prior to the charging decision, an office deputy does represent the People at the defendant's initial appearance and preliminary hearing, but his tasks at the first are largely ministerial and at the second largely perfunctory, and neither proceeding has much case-dispositive consequence.

In San Diego County, continuity of individual deputy-individual case prosecution is impossible to accomplish in most felony cases. The size of the caseload, the geographical dispersion of courts and prosecution in the county, the organization of the courts and their internal processing of cases, combine to produce a particularly fractured case handling process by the prosecution.

The San Diego District Attorney's Office divisions that handle routine felony prosecutions are six:

- (1) the Complaint Unit (two deputies), initiates felony charges in the City of San Diego;
- (2) the Municipal Court Division (13 deputies), handles prosecution of felonies arising in the City of San Diego while they are processed in the inferior court;
- (3) the Branch Office division (30 deputies), initiates both felony and misdemeanor prosecutions outside the City of San Diego, prosecutes misdemeanors to disposition, prosecutes felonies while they are processed in the inferior court (in two branches) and to disposition (in one branch);
- (4) the Special Operations division (6 deputies), makes all presentations to the grand jury when superseding indictments are sought;
- (5) the Appellate division (8 deputies), represents the office in all pretrial motions as well as in appeals from adverse judgments on motions; and
- (6) the Superior Court division (26 deputies), handles all prosecution after the filing of an accusatory instrument in the Superior Court, except for pretrial motions.

Depending upon where in the county the felony case originates, on whether certain defense rights are asserted or waived, and on how the case is prosecuted (indictment or information), the number of different deputies dealing with the routine felony in San Diego County at different times can be as many as ten.

Personnel

Deputy prosecutors are distinguished in the four offices principally by two characteristics: (1) age, office tenure and experience; and (2) conditions of employment.

The average deputy prosecutor in San Diego County is older and by far more tenured as a prosecutor than are his counterparts in the other three offices. His mean experience level in the office is 79.2 months, more than twice that of deputies in the other three (Table XV). The "youngest" and least experienced of the offices is that of New Orleans; its deputies average less than two years in office.

A similar distinction of San Diego from the rest concerns unit and division chiefs. They are older and are experienced by more than twice as much as their equivalents in the other three offices (Table XV). Franklin County's division chiefs are the least tenured of the four, with an average time as prosecutors of under four years.

The four offices differ in one other respect. In Orleans Parish and Franklin County, deputies are selected, promoted, paid and retained solely in the discretion of the elected prosecutor. In San Diego County, all deputies other than the chief deputy are recruited, promoted and retained through a combination of merit and county civil service requirements, and are paid according to a county salary schedule. In Kalamazoo County, deputies are recruited and retained wholly in the discretion of the elected prosecutor, but they are organized in a recognized collective bargaining unit (with no affiliations with other labor associations) for purposes of salary and grievance procedures.

TABLE XV

SELECTED PERSONNEL CHARACTERISTICS:
DEPUTY PROSECUTORS: FOUR OFFICES*

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
<u>OVERALL OFFICE</u>				
NUMBER OF DEPUTIES	74**	14	62***	39
AGE: AVERAGE	35	31.1	29	31.7
(RANGE)	(27-56)	(26-38)	(25-61)	(25-58)
MONTHS IN OFFICE:				
AVERAGE	79.2	37.3	23.8	31.8
(RANGE)		(3-84)	(8-173)	(0-65)
YEARS SINCE BAR ADMISSION	7	3.9	2	NA
<u>UNITS & DIVISION CHIEFS</u>				
NUMBER OF DEPUTIES	12	6	6***	8
AGE: AVERAGE	41	32.8	35.6	34.4
(RANGE)	(87.6-165.6)	(30-72)	(21-173)	(16-65)
YEARS SINCE BAR ADMISSION	NA	6.5	4.6	NA

* PROSECUTOR AND CHIEF DEPUTY EXCLUDED.

** BASED ON 74 RESPONSES IN OFFICE SURVEY OF 116 DEPUTIES.

*** INFORMATION UNAVAILABLE FOR THREE DIVISION CHIEFS AND ONE DEPUTY.

San Diego County's attorney personnel retention and promotion procedures appear to have some relationship to the age and tenure of deputies. No relationship between tenure and the different personnel practices of the other three offices is apparent.

Controls on Discretion

The varying controls placed by each office on the discretion of individual deputies to charge or not charge, dispose without trial and at what level, have been examined in different contexts earlier.

In summary:

- (1) In Franklin County, individual deputies have almost completely unfettered discretion to negotiate guilty pleas and enter nolle prosequi's.
- (2) In Kalamazoo County and Orleans Parish, a separate office unit determines both the initial and the bottom-line charges. The same individual deputy makes both determinations at the same time.
- (3) In San Diego County, a special unit makes the initial charging decision in some cases; the charging responsibility is dispersed among different deputies in the branch offices. The bottom-line plea is not determined at the time of charging. Instead, a panel of senior deputies meets weekly to review all felonies bound-over to the superior court to, among other things, decide on the least serious offense to which the office will agree to a guilty plea.
- (4) The San Diego District Attorney's office also stations senior, supervisory deputies at points in the adjudicative process at which guilty pleas are most likely to be negotiated, and invests in those deputies greater discretion to dispose (i.e., without regard to the bottom-line) than in regular trial deputies.
- (5) In Orleans, Kalamazoo and San Diego, the decision of a deputy in the special unit to file initial charges is not routinely reviewed; a decision to reject all police charges is, however, subject to automatic review by superiors.

- (6) While, in Orleans, Kalamazoo and San Diego, the decision whether to charge is guided in part by office policy and is subject in part to review, the decision of what to charge is not routinely reviewed.

The nexus between the charging decision and the decision to reduce or change charges in return for a guilty plea is of three different types in the four offices.

In Orleans Parish and Kalamazoo County, the same individual deputy makes both decisions on charge (i.e., the initial charge and the bottom-line plea), and makes both at the same time. (In Kalamazoo County, the deputy who sets the bottom-line may also be the deputy who later negotiates the plea with defense counsel.)

In San Diego County, the initial decision to charge may be made by any one of a number of deputies. In those felonies that survive preliminary examination in the inferior court, the bottom-line plea is set by a panel of senior deputies (unit and division chiefs) which meets weekly to review bound-over cases.

In Franklin County, the initial decision to charge is formally made by the grand jury under encouragement of the deputy who presents the case. The decision to dispose (by plea or nolle) is wholly that of the trial deputy to whom the case is later assigned.

THE ENVIRONMENTS AND THEIR IMPLICATIONS

Comparative studies of the detailed administrative arrangements and procedures utilized in criminal justice systems in processing persons from arrests to trial are sadly lacking in this country. Surveys of some aspects of these procedures in individual jurisdictions exist, but they have no comparative dimensions. The American Bar Foundation Survey of the Administration of Justice in the United States was a useful beginning, but it has not been followed up by detailed comparisons of ongoing systems in major jurisdictions. Also that survey tended toward generalizations which obscured the fact that processing systems vary widely not only from state to state but also from community to community within a single state and from time to time within a single community.¹¹⁶

The foregoing sections suggest some summary observations about the administration of criminal justice in the four jurisdictions.

First, the structure of the criminal justice process is organized notably differently from place to place, with some different and, in some ways, predictable consequences for the conduct of criminal prosecution. The single agency/single function organization of criminal justice in Orleans Parish contrasts conspicuously with the different degrees of fractured, bifurcated agency structures of the other three.

A reasonable approximation of continuous, individual attorney prosecution of individual cases is possible in most cases in the structural compactness of New Orleans; it is virtually inconceivable in the majority of cases in the geographically dispersed, jurisdictionally-bifurcated, multi-agency and multi-division court system of San Diego County.

¹¹⁶ E. Barrett, Foreward to F. Feeney & J. Wood, A Comparative Description of New York and California Criminal Justice--Arrest to Arraignment (Univ. of Calif., Davis, 1973).

With a single agency prosecuting all felonies at all stages in their pre-appellate adjudication (as in three of the jurisdictions), it is possible for that agency to at the least account for what happens to all felony cases, if not to influence their outcomes. In Franklin County, where felony prosecution is sequentially shared by two independent prosecuting agencies, the process is not only more difficult to examine, it is also far more difficult for a prosecutor's office to influence in its totality. For the Franklin County prosecutor to target, for example, "career criminal" cases is to target a universe of felony cases that is approximately 28 percent less (because of inferior court prosecution beyond his ken) than the universe of felonies referred by police for felony prosecution.

Second, basic procedural components of criminal adjudication--while similarly-named in different jurisdictions--are sometimes conducted quite differently with different consequences in different places. The preliminary hearing in Louisiana is quite distinct from the preliminary hearing in California and Michigan. In Louisiana, the hearing has no practical case-dispositive consequence. In San Diego, dismissals that result from it account for almost one-fourth of the final dispositions of felony prosecutions; in Kalamazoo County, for 16 percent.

The difference between an indictment and an information is much more than academic. In three of the four places the indictment can supersede all preliminary processing; it abrogates the defendant's otherwise right to the preliminary examination; it may accelerate the case's prosecution or (as in Franklin County) bring the case within the institutional cognizance of the felony prosecuting agency earlier than otherwise.

What judges can do at sentencing--and inferentially, what prosecutors can recommend that they do in sentencing certain offenders--is curtailed in different ways with different outcomes from place to place. In Louisiana, the prosecutor's use of statutory sentence enhancement provisions for repeat offenders greatly influences sentence determinations. In California (until July 1, 1977), the best the prosecution can do to influence sentence time is to recommend the imposition of sentences to run consecutively.

Third, the ways the process is administered influence the ways prosecution is managed. The courts' management of their caseloads has an impact on the ability and means by which the prosecution prosecutes. In Orleans Parish, where cases are early assigned for all purposes to one of a small number of courtrooms to which deputy prosecutors are also assigned for all purposes, some individual single-prosecutor/single-case continuity in prosecution is possible. (The offsetting disadvantage of having each judge's courtroom in charge of cases assigned to it may be, of course, disparities in policy and practice among courtrooms and no central management to keep the court functioning as a whole.) San Diego County's master calendaring (i.e., assigning cases to available judges on the days of scheduled proceedings for purposes of those proceedings rather than in advance for all adjudicative purposes) may increase the court's case management efficiency, but--with its attendant logistical demands--it compounds the prosecution's ability to have individual deputies stay with individual cases. To have criminal cases scheduled in fixed time blocks in rotation with noncriminal cases in the same courtroom (as in Kalamazoo and Franklin Counties) may diminish everyone's responsibility for the movement of the criminal docket and may hamper the ability of the prosecution to expedite the prosecution of some cases over others.

Where in the court process the initial charging decision by the prosecution is located can affect both the visibility and the conduct of the decision and the practical utility of various court proceedings. In San Diego and Kalamazoo Counties, the preliminary examination is an examination of charges the prosecution has reviewed and has formally filed. In Orleans Parish it is an examination of police charges only, with no practical consequences in terms of whether or not the defendant will be filed against by the prosecution and will be held to answer. In Franklin County the preliminary hearing can be easily superseded by an intervening indictment (an accelerated charging) or it can be terminative of the prosecution (i.e., by dismissal), simply because it ends the responsibility of one prosecuting agency without invoking the cognizance of the second agency in the prosecuting sequence.

Fourth, "much of the criminal process is administrative rather than judicial,"¹¹⁷ but the manners and points in the process in which cases are disposed of without full adjudication differ among the four places. A declination to charge by the prosecution avoids the court process entirely in San Diego and Kalamazoo Counties; in Orleans Parish it brings proceedings that are inconsequential in terms of disposition to a halt; in Franklin County, in the form of a grand jury no-bill, it terminates the adjudicative lives of cases that have already been examined in a forum in which they could earlier have been disposed (i.e., at the preliminary hearing).

The professed criteria at work in determining whether to charge differ among the four. The factors to be considered in agreeing to a guilty plea to a reduced charge differ. The management controls placed on both determinations differ.

¹¹⁷ Challenge of Crime, note 1 supra at 130.

At work at different points in prosecutorial decision-making in the different jurisdictions are distinguishable philosophies of criminal prosecution. In Kalamazoo County, for example, charges are to be filed if a prima facie case exists and can be testified to; the guiding question is: can the case be brought to trial (distinguished from the question: can it be won at trial)? In San Diego County, on the other hand, a prima facie case is, of itself, not enough to prompt the filing of charges. Considerations of equity and office policy are also to be factored in; the guiding question is: should the case be brought to trial?

Fifth, the required timeliness of adjudicative events differs among the four places. In California, once an accusatory instrument is filed in the superior court, the defendant must be brought to trial (or his case must be otherwise disposed) within sixty days. In Louisiana, there is no time-specific requirement for when trial must be had. In Michigan, statutory requirements for speedy trial are weak, and given the many acceptable causes of delay, are marginal in practical significance.

Sixth, the prosecutor's offices in the four jurisdictions differ in range of duties, proportions of personnel dedicated to criminal prosecutions, age and experience levels of deputies, methods for case assignments, organization of functions, and controls on discretion.

In all four jurisdictions, it is apparent that there are some considerable obstacles to effective and intensive prosecution of most criminal cases.

Relatively few cases can be assigned to individual deputy prosecutors to handle from their initial charging through to their disposition. This individual-deputy/individual-case-continuity is

closer to being achieved in some jurisdictions than in others, but it is not a completely realized objective in any of the four.

Caseload sizes are considerably in disproportion to the prosecutorial resources available to deal with them. Comparisons of cases with available deputy resources across the four jurisdictions are not possible because in some (e.g., Franklin County) the deputies handle only felonies; in some (e.g., the other three) some or all of the same deputies who handle felonies also prosecute misdemeanors. As rough, imprecise and noncomparable measures, however:

- (1) each of San Diego County's 77 deputies who are allocated to criminal prosecutions (both felony and misdemeanor) disposes of an average of 91 felonies each year;
- (2) each of Kalamazoo County's 10 deputies who are assigned to criminal matters (both felony and misdemeanor) disposes of an annual average of 71 felonies;
- (3) each of the Franklin County Prosecuting Attorney's Office deputies dedicated to criminal prosecution (of felonies only) disposes of 157 felony cases each year; and
- (4) each of New Orleans' 46 deputies assigned to felony and misdemeanor prosecutions brings an average of 115 per year to disposition.

Experience levels of deputy prosecutors (measured by tenure in office) are, with the exception of San Diego County, not substantial: averaging less than two years in Orleans, less than three years in Franklin County, slightly more than three years in Kalamazoo.

While the criminal process can be reduced to ten basic processing steps for initial analysis, in practice it is maze-like, with myriad

case processing routes and disposition types and disposition opportunities, a "system" only in the loosest sense of the term,¹¹⁸ which more than one observer has characterized as literally having become perhaps "too complex for its practitioners."¹¹⁹

¹¹⁸ Norval Morris and Gordan Hawkins have translated much of the technical jargon about what is meant by calling it a "criminal justice system" as meaning nothing more than "...if you press something here, something else is likely to pop out quite unexpectedly over there." N. MORRIS & G. HAWKINS, THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL 90 (1969).

¹¹⁹ Ash, note 8 Supra at 419.

TARGETED PROSECUTION: THE CAREER CRIMINAL

In 1974, the Law Enforcement Assistance Administration (LEAA) announced the creation of a funding program to assist local prosecutors in identifying and targeting their resources and attention on a subset of their criminal caseloads. The target population was to be habitual or "career" criminals. Within some general parameters established by the LEAA, each participating jurisdiction was to develop its own definition of "career criminals" for purposes of targeted prosecution. LEAA would provide funds to support the personnel and facilities dedicated in participating prosecutor's offices to the prosecution of the career criminal target population.

Prosecuting agencies in eleven jurisdictions were awarded "Career Criminal program" grants in 1975.¹²⁰ Initial grant awards ranged from \$74,548 (Kalamazoo County, Michigan) to \$576,000 (Wayne County, Michigan).

The four jurisdictions examined here are among the original eleven. The four were selected for intensive evaluation in the national evaluation of the LEAA Career Criminal program because they appeared to offer the best opportunities among the eleven for close examination of the effectiveness of special prosecutorial attention on career criminal cases in terms of the performance of the

¹²⁰ The original eleven are: Suffolk County (Boston), Massachusetts; Franklin County (Columbus), Ohio; Dallas County, Texas; Wayne County (Detroit), Michigan; Harris County (Houston), Texas; Marion County (Indianapolis), Indiana; Kalamazoo County, Michigan; Orleans Parish (New Orleans), Louisiana; New York County (Manhattan), New York; Salt Lake County, Utah; and San Diego County, California. Since the initial grant awards, a considerable number of additional jurisdictions have established programs both with LEAA funding and independently.

local criminal justice process and the levels of crime in each jurisdiction possibly attributable to the local target population.¹²¹

The Career Criminal programs in the four jurisdictions were begun at different times in 1975 (Table XVI). The LEAA funding support for each of the four is different, as are the numbers of deputy prosecutors dedicated to career criminal prosecution and the numbers of career criminal cases actually prosecuted (Table XVI).

Kalamazoo County has the smallest of the four programs with an initial LEAA grant of less than \$75,000 supporting two attorneys who handle approximately one hundred cases a year. The Franklin County and San Diego County programs are substantially larger, each initially funded at about one-quarter of a million dollars. These two programs, staffed by five and six attorneys, respectively, handle yearly target caseloads ranging approximately from 200 to 250 cases. The New Orleans program is the largest of the four; the program attorney staff of 13 handles over 500 cases a year with over \$400,000 in initial federal support. The New Orleans program is also the largest of the four in terms of the percentage of total office attorney personnel and percent of total caseload handled in the program. The Orleans program staff makes up twenty percent of the total office attorney staff and handles

¹²¹The four were selected in the summer of 1976. For a complete description of the site selection process including the specific criteria for selection, see J. Dahmann, E. Albright, L. Hardacre, & L. Russell, Site-Selection for the National-Level Evaluation of the Career Criminal Program (MITRE Corp., MTR-7346, Sept. 1976).

This volume, and its four companion volumes, note 17 supra, present the results of the first phase of the evaluation of the Career Criminal programs in the four sites. For a full description of the evaluation, see E. Chelimsky, J. Dahmann, and J. Sasfy, the National-Level Evaluation of the Career Criminal Program (MITRE Corp., MTR-7355, May 1976).

TABLE XVI

CAREER CRIMINAL
PROGRAM CHARACTERISTICS IN FOUR JURISDICTIONS

JURISDICTION	1ST YEAR LEAA FUNDING AMOUNT	DATE OF PROGRAM INITIATION	ATTORNEY PERSONNEL NUMBER, PERCENT OF OFFICE PERSONNEL	PROGRAM CASELOAD TOTAL, PERCENT OF OFFICE CASELOAD
<u>SAN DIEGO COUNTY,</u> CALIFORNIA MAJOR VIOLATOR UNIT	\$247,118	JULY 1975	6 (5%)	<ul style="list-style-type: none"> • 153 CASES ACCEPTED IN FIRST NINE MONTHS • 206/YEAR (ESTIMATED) • <u>3% OF OFFICE FELONY CASELOAD</u>
<u>ORLEANS PARISH,</u> LOUISIANA CAREER CRIMINAL BUREAU	\$421,484	MAY 1975	13 (20%)	<ul style="list-style-type: none"> • 284 CASES ACCEPTED IN FIRST 6 MONTHS • 586/YEAR (ESTIMATED) • <u>11% OF OFFICE CASELOAD (MISDEMEANOR AND FELONY)</u>
<u>KALAMAZOO COUNTY,</u> MICHIGAN MAJOR VIOLATORS BUREAU	\$ 74,548	OCTOBER 1975	2 (13%)	<ul style="list-style-type: none"> • 86 CASES ACCEPTED IN FIRST TEN MONTHS • 103/YEAR (ESTIMATED) • <u>11% OF OFFICE FELONY CASELOAD (ESTIMATED)</u> • 4% OF OFFICE MISDEMEANOR AND FELONY CASELOAD
<u>FRANKLIN COUNTY,</u> OHIO CAREER CRIMINAL UNIT	\$239,416	JULY 1975	5 (11%)	<ul style="list-style-type: none"> • 377 CASES ACCEPTED IN FIRST 18 MONTHS • 251/YEAR (ESTIMATED) • <u>7% OF OFFICE FELONY CASELOAD (ESTIMATED)</u>

eleven percent of the office caseload (misdemeanor and felony combined). Kalamazoo's two career criminal attorneys constitute thirteen percent of that office's total attorney personnel and handle eleven percent of the total felony caseload (four percent of the total combined felony and misdemeanor caseload). The Franklin County program handles seven percent of the office's caseload with eleven percent of its attorneys. The San Diego program is the smallest of the four as a proportion of overall office staffing and caseload; it prosecutes three percent of the total office caseload with five percent of the office attorney staff.

Target Populations

Many criminals, whether due to their own characters, the pressures of society in general, or as some have recently suggested, the prison system itself, will choose to continue to commit criminal offenses after repeated contacts with criminal justice agencies. Normally, the term "habitual" is applied to such criminals. However, there is fundamental confusion over the term "habitual offenders," and, as Wilkins notes, "most definitions of what constitutes an habitual criminal are extremely vague." Upon careful examination of the concept as used in criminological, sociological, legal, and psychiatric literature, we agree wholeheartedly with Wilkins.

The basic confusion exists because there is no agreement as to what elements are appropriate for identifying this offender group. It is generally agreed that the appropriate elements in the definition should have demonstrated value for predicting the likelihood of future involvement in criminal activities. Knowledgeable persons have presented convincing arguments that future criminal involvement can best be predicted by using knowledge concerning the number of contacts

with the criminal justice system; some criterion of "dangerousness versus non-dangerousness;" background characteristics, such as employability, self perception, peer group associations; or possibly some clinical diagnosis of mental stability.¹²²

The lack of consensus in defining characteristics of "career" or "habitual" offenders, combined with the stance taken by the LEAA in permitting each jurisdiction participating in the Career Criminal program to develop its own target population definition, have resulted in a range of different "career criminal" target populations in all jurisdictions participating in the program, as well as in the four examined here.

In all of the participating jurisdictions, career criminal definitions and career criminal case selection are generally based upon the criminal history of the defendant, the nature of the current offense, or some combination of the two. Selection in some jurisdictions is fairly routine and is based on objective information regularly examined by the prosecutor's office (e.g., the defendant's prior criminal record, the current charges). In other sites, the selection process, while still objective, is more complex, requiring a more comprehensive case evaluation before a case is selected for career criminal treatment. In other programs, selection is made on a case-by-case basis and remains largely in the discretion of an experienced assistant prosecutor. In all of the programs, the persons identified and selected as career criminals have already been arrested or are already otherwise subject to criminal prosecution at the time of selection.

¹²²

J. Petersilia & M. Samulon, Habitual Offender Characteristics and Criminal Career Patterns in A Review of the Literature Dealing With the Dangerous Habitual Offender 8 (The Rand Corp., Working Note, Feb. 1976).

In the four jurisdictions examined here, the different definitions of the career criminal accord different levels of significance to the defendant's current charge(s), to his status at the time the current offense is committed (e.g., on parole), and to his past criminal history. The type of current charge is critical to the definition of the career criminal in San Diego, for example; in New Orleans, it is irrelevant to the definition.

. The current charge defines both the pool of defendants from which career criminals are selected and (in two of the jurisdictions) may in and of itself qualify the defendant as a career criminal (Table XVII). A career criminal is first--before other criteria are applied--a person currently charged:

- (1) in Orleans Parish, with any felony or misdemeanor;
- (2) in Franklin County, with any felony;¹²³
- (3) in Kalamazoo County, with any felony or--if the only other criterion he meets is a record of five previous arrests--with a Part I felony offense;¹²⁴ and
- (4) in San Diego County, with robbery or robbery-related homicide.

Persons so charged must meet at least one additional criterion before being selected as career criminals (Table XVII), with the following exceptions:

¹²³This was true only for the first year of program operations. Since that time restrictions relating to the current charge have been imposed. The description here concerns the first year of program activity.

¹²⁴That is, he is charged in Michigan law with: larceny (punishable by five years or more); breaking and entering; assault (as a felony); delivery of a Schedule One controlled substance (e.g., heroin); robbery; first degree criminal sexual assault; or homicide.

TABLE XVII
SELECTION CRITERIA FOR CAREER CRIMINALS IN
FOUR JURISDICTIONS

	SAN DIEGO	KALAMAZOO	ORLEANS	FRANKLIN
POOL FROM WHICH DRAWN: CURRENT CHARGES	ROBBERY AND ROBBERY-RELATED HOMICIDE ONLY	ANY FELONY, IF DEFENDANT MEETS ADDITIONAL CRITERIA; PART I OFFENSE, ONLY IF ONLY OTHER FACTOR IS FIVE PREVIOUS ARRESTS	ANY FELONY OR MISDEMEANOR	ANY FELONY
CURRENT CHARGE ALONE MAY QUALIFY	IF CHARGED WITH THREE OR MORE DISTINCT ROBBERIES	IF CHARGED WITH ROBBERY WITH FIREARM; FIRST DEGREE SEXUAL ASSAULT; DISTRIBUTION OF HEROIN OR COCAINE	NO	NO
STATUS AT TIME OF ARREST ALONE QUALIFIES	NO	IN ANY CURRENT FELONY IF ON PAROLE, BAIL, BOND, OR A FUGITIVE	NO	NO
PRIOR ARRESTS ALONE QUALIFY	NO	IF CHARGED WITH PART I OFFENSE AND FIVE PRIOR FELONY ARRESTS	FIVE PRIOR FELONY ARRESTS	NO
PRIOR CONVICTIONS THAT QUALIFY	ONE OR MORE ROBBERY OR ROBBERY-RELATED HOMICIDE(S); ONE OR MORE GRAND THEFT(S) FROM PERSON IF ANY OTHER RECORD OF CONVICTION	TWO, ANY FELONY	TWO, ANY FELONY	TWO, ANY FELONY; OR ONE FROM LIST OF SPECIFIC FELONY OFFENSES
OTHER QUALIFYING CRITERIA	*OPTIONAL SCORE OF 12 POINTS WILL QUALIFY IF OTHER CRITERIA NOT MET	*REQUIRED SCORE OF 110 POINTS AFTER OTHER QUALIFYING CRITERIA ARE MET	NONE	NONE

*SAN DIEGO AND KALAMAZOO UTILIZE SCORING PROCEDURES WHICH GIVE SELECTED CHARACTERISTICS OF THE CRIME EVENT AND OFFENDER WEIGHTED VALUES TO BE TOTALED IN SELECTING TARGET CASES.

- (1) in San Diego, if the defendant's current charges allege three or more distinct robberies committed at different times, these alone qualify him as a "career criminal;"
- (2) in Kalamazoo County, if the current charge is actual delivery of a Class One controlled substance (e.g., heroin) or first degree sexual assault, the current charge alone makes the defendant a "career criminal;" and
- (3) in Kalamazoo County, if the defendant is currently charged with robbery, and if a firearm was used in the commission of the robbery, the defendant is a "career criminal" on the basis of this criterion alone.

The defendant's status at the time of the commission of the offense can itself qualify the defendant as a career criminal in Kalamazoo County; in Orleans Parish and Franklin County it is not a factor; in San Diego it may, in combination with other criteria, lead to career criminal designation, but not in and of itself (Table XVII). In Kalamazoo County, a defendant charged with any felony is designated a "career criminal" if any one of the following "status" criteria are met; at the time the offense was committed the defendant was:

- (1) on parole;
- (2) on Superior Court probation;
- (3) a fugitive escaped from prison;
- (4) on post-conviction bond; or
- (5) on bail in another pending case.

Defendants who are eligible for career criminal designation because of current charge (excluding those who are designated career criminals solely on the basis of current charge or status at the time of the offense), must meet at least one additional criterion concerning criminal history before selection for targeting as career criminals.

In two of the programs, prior arrests alone may satisfy the additional criterion; in the other two, prior convictions are required (Table XVII, page 120). In Orleans Parish, a defendant is a career criminal if he has a prior record of either: (1) five felony arrests; or (2) two felony convictions. In Kalamazoo County, if the defendant is charged in the instant case with a Part I felony offense, he may be targeted as a career criminal if he has five felony arrests.

Prior convictions satisfy the additional criterion if they involve certain offenses (Table XVII, page 120). In New Orleans and Kalamazoo County, there need be only two previous felony convictions, regardless of felony charge. In Franklin County, there need be only two felony convictions of any type or at least one conviction for one of fifteen listed offenses:

- (1) aggravated murder;
- (2) murder;
- (3) voluntary manslaughter;
- (4) involuntary manslaughter;
- (5) rape;
- (6) kidnapping;
- (7) abduction;
- (8) aggravated robbery;
- (9) robbery;
- (10) aggravated burglary;
- (11) aggravated arson;
- (12) arson;
- (13) felonious assault;
- (14) engaging in organized crime; or
- (15) possession or distribution of narcotics or cocaine.

In San Diego County, the prior conviction(s) must be similar in nature to the current charge. One or more convictions of the following offenses satisfies the additional criterion for career criminal selection:

- (1) robbery;
- (2) robbery-related homicide; and
- (3) grand theft from a person if the defendant has any other prior conviction of any offense.

The combination of (1) current charge and (2) prior criminal history alone and exclusively qualifies the defendant as a career criminal in Orleans Parish and Franklin County. In Kalamazoo County, defendants who qualify as career criminals because of current charge alone, status at the time of the offense alone, or current charge in combination with prior record, must additionally score 110 points or more on a case-seriousness ranking scheme (Figure 5) for eligibility for targeted prosecution.

In San Diego County, persons charged with robbery who do not have a qualifying record of convictions may nonetheless be designated as career criminals if enough of the following factors (each with a numerical weight) are presented in their backgrounds and/or in the current offense to give their cases an aggregate numerical weight of twelve. The factors are a mix of subjective assessments and officially recorded law enforcement information on past activity:

- (1) The current offense has a violent nature (e.g., weapons used, injury to victim), (Score of 2);
- (2) The defendant's past record reveals a progression to more violent and serious offenses, such as grand theft from a person and robbery (Score of 2);
- (3) His previous record reveals the past commission of robberies but through plea bargaining the charges were reduced to lesser crimes (Score of 2);

KALAMAZOO COUNTY PROSECUTOR'S OFFICE

INTAKE SCORING SHEET

DEFENDANT'S NAME _____ POLICE DEPT. _____

DATE _____ POLICE FILE NO. _____

REVIEWING APA _____ POLICE OFFICER _____

CRIME INFORMATION (To be filled out by Officer)

A. VICTIM

Weight ☐ 0 None
☐ 3 Institution
☐ 6 Other Person
☐ 9 Law Officer
☐ 12 Under 13 - Over 60
☐ 15 Physically or Mentally Disabled

B. VICTIM INJURY

☐ 0 None
☐ 7 Minor (No Treatment)
☐ 14 Treatment Required
☐ 21 One Hospitalized
☐ 28 More Than One Hospitalized
☐ 35 Loss Of Life

C. WEAPON AT CRIME

☐ 0 None
☐ 10 Other Dangerous Weapon
☐ 15 Gun Carried
☐ 20 Gun-Fired Shot
☐ 25 Explosives

D. WEAPON AT ARREST (If Arrested 12 or more hours after crime)

☐ 0 None
☐ 10 Other Dangerous Weapon
☐ 15 Gun Carried
☐ 20 Gun-Fired Shot
☐ 25 Explosives

E. ECONOMIC VALUE

☐ 0 None
☐ 1 \$1-\$100
☐ 2 \$101-\$499
☐ 3 \$500 - \$1,499
☐ 4 \$1,500 - \$4,999
☐ 5 \$5,000 - Over

F. MULTIPLE OFFENSES

☐ 0 None
☐ 12 Confessed 1-9 Can't Charge
☐ 18 Confessed 9-Over, Can't Charge
☐ 24 Can Charge 2 Others or Less
☐ 30 Can Charge 3 or More

G. CHARGE (As Issued This Case)

☐ 0 Other
☐ 4 Larceny (5 Yr. or Greater)
☐ 8 Breaking & Entering
☐ 12 Assaults (Felony)
☐ 16 Delivery of Schedule 1 Narcotic
☐ 20 Robbery
☐ 24 Forcible Sex
☐ 28 Homicide

_____ TOTAL CRIME SCORE

DEFENDANT'S INFORMATION

Weight **H. DRUG INVOLVEMENT**

☐ 0 None
☐ 14 Defendant is known user
☐ 18 Delivery - Other
☐ 23 Delivery - Narcotics

(To be filled out by Prosecutor)

A. FELONY CONVICTIONS

☐ 0 None
☐ 18 One
☐ 27 Two
☐ 36 Three-Four
☐ 45 Five or More

B. MISDEMEANOR CONVICTIONS

☐ 0 None
☐ 9 One
☐ 14 Two-Four
☐ 18 Five-Seven
☐ 23 Eight or More

C. FELONY ARRESTS

☐ 0 None
☐ 12 One
☐ 18 Two-Four
☐ 24 Five-Nine
☐ 30 Ten or More

D. STATUS

☐ 0 Not Applicable
☐ 15 Bail
☐ 23 Probation
☐ 30 Parole
☐ 38 Escape

E. PENDING CASES

☐ 0 None
☐ 12 Misdemeanor - Other Locale
☐ 18 Misdemeanor - Kalamazoo
☐ 24 Felony - Other Locale
☐ 30 Felony - Kalamazoo

TYPE OF INFORMATION _____

THRESHOLD MET _____

ACCEPTED ☐
 REJECTED ☐
 Reason _____

_____ TOTAL DEFENDANT SCORE

_____ TOTAL SCORE BY

**FIGURE 5
FACTORS AND WEIGHTS IN RANKING
CASES FOR CAREER CRIMINAL DESIGNATION:
KALAMAZOO COUNTY**

- (4) His prior record reveals the commission of a felony or felonies in addition to robbery, all of which were charged in the criminal complaint that was filed at the time, but a conviction of a felony other than robbery resulted (e.g., he was charged with robbery and rape and convicted of rape) (Score of 2);
- (5) Reliable law enforcement sources substantiate that the defendant has in the past committed a robbery or robberies for which he was neither arrested nor prosecuted because of evidentiary problems (e.g., search and seizure or Miranda problems, an informant's identity cannot be revealed, the victim refuses to prosecute for fear of reprisal) (Score of 2);
- (6) Reliable law enforcement sources substantiate that the defendant has repeatedly committed robberies in the past but has evaded apprehension (Score of 2);
- (7) The defendant has previously been arrested, charged or convicted of a crime or crimes involving the fruits of a robbery (Score of 2);
- (8) "Informational resources" and the circumstances of the instant case indicate that the robbery currently charged is the result of an earlier strategy with an accomplice (Score of 2);
- (9) Kidnapping of the victim occurred in the robbery that is currently charged (Score of 2);
- (10) The reviewing deputy's subjective judgment is that the offense and/or offender warrants special prosecutorial attention (Score of 2);
- (11) The defendant's past record reveals one or more arrests for robbery and/or grand theft from a person (Score of 2 if one arrest; score of 3 if two or more arrests);
- (12) At the time of the current arrest, the defendant:
 - (a) Was on parole or felony probation (Score of 3);
 - (b) Was wanted (Score of 2); or
 - (c) Was on bail in a pending felony case (Score of 2).

The career criminal, then, may be variously a person who is:

- (1) charged in the instant case with a felony or misdemeanor who has five previous arrests (Orleans Parish);
- (2) charged in the instant case with first degree sexual assault (Kalamazoo County), or three separate robberies (San Diego County) with no previous record of arrests or convictions;
- (3) charged in the instant case with a felony committed while he was on bail, bond, probation, parole or a fugitive (Kalamazoo County).

Depending on the program, he may not have a "career" in the sense of a prior record of convictions; he may not (as in Kalamazoo and San Diego) necessarily have a prior record of arrests.

In summary, the target populations are selected in each of the four jurisdictions by the following criteria (Table XVIII).

In San Diego County, the defendant must be charged in the instant case with a robbery or robbery-related homicide. He is a career criminal if: (1) he has at least one previous conviction for robbery or robbery-related homicide; (2) he has at least one conviction for grand theft from a person and has one other conviction; (3) in the instant case he is charged with the commission of three or more distinct robberies; or (4) on a weighted rating scheme based on official and unofficial information on criminal activity he otherwise qualifies.

In Orleans Parish, the defendant charged with a felony or a misdemeanor is a career criminal if he has two previous felony convictions or five prior felony arrests.

TABLE XVIII

CAREER CRIMINAL PROGRAM ELIGIBILITY CRITERIA: FOUR JURISDICTIONS

FRANKLIN COUNTY (COLUMBUS)	CURRENT FELONY CHARGE, <u>AND</u> TWO PRIOR FELONY CONVICTIONS OR ONE PRIOR CONVICTION FOR ONE OF FIFTEEN SELECTED SERIOUS FELONY OFFENSES
KALAMAZOO COUNTY	<p><u>FOR CONSIDERATION:</u> CURRENT FELONY CHARGE <u>AND</u> EITHER PRIOR CRIMINAL ACTIVITY (TWO CONVICTIONS, FIVE ARRESTS); BAIL STATUS; <u>OR</u> USE OF A FIREARM IN COMMISSION OF AN ARMED ROBBERY <u>OR</u> COMMISSION OF FIRST DEGREE SEXUAL ASSAULT OR DELIVERY OF NARCOTIC</p> <p><u>FOR SELECTION:</u> WEIGHTED RATING SCHEME WHICH CONSIDERS TYPE OF VICTIM, VICTIM INJURY, WEAPON AT CRIME, WEAPON AT ARREST, ECONOMIC VALUE, MULTIPLE OFFENSES, CURRENT CHARGE, FELONY CONVICTIONS, MISDEMEANOR CONVICTIONS, FELONY ARRESTS, STATUS, PENDING CASES</p>
ORLEANS PARISH	CURRENT CRIMINAL CHARGE (MISDEMEANOR OR FELONY) <u>AND</u> EITHER TWO PRIOR FELONY CONVICTIONS <u>OR</u> FIVE PRIOR FELONY ARRESTS
SAN DIEGO COUNTY	<p>CURRENT ROBBERY OR ROBBERY-RELATED HOMICIDE CHARGE <u>AND</u> EITHER PRIOR CONVICTION FOR ROBBERY, ROBBERY-RELATED HOMICIDE <u>OR</u> GRAND THEFT FROM A PERSON (WITH ONE OTHER CONVICTION) <u>OR</u> CURRENT CHARGES INCLUDE THREE OR MORE SEPARATE AND DISTINCT ROBBERIES; OR</p> <p>CURRENT ROBBERY OR ROBBERY-RELATED HOMICIDE CHARGE AND WEIGHTED RATING SCHEME WHICH CONSIDERS A MIX OF SUB- JECTIVE ASSESSMENTS AND OFFICIAL AND UNOFFICIAL INFORMA- TION ON PAST CRIMINAL ACTIVITY</p>

In Franklin County, the career criminal is a defendant who is charged with a felony and who has two previous convictions of any felony or one prior conviction of one of a list of specific felonies (see page 119 above).

In Kalamazoo County, a person is a career criminal if he is charged in the instant case with a felony and: (1) has two previous felony convictions; (2) was on probation, parole, bond or was a fugitive at the time of the offense; (3) is charged with one of three specific offenses in the instant case, and scores 110 on a numerically-weighted scheme that factors the gravamen of the current offense and the seriousness of the defendant's criminal background. He is also a career criminal if he is charged in the current case with a Part I offense and has five previous arrests and scores 110 on the case ranking scheme.

Beyond specific differences, the selection criteria of the four programs have three noteworthy features. First, the San Diego and Orleans Parish programs sit at opposite ends of a range: San Diego's targeting is crime-specific (career criminals must be charged with robbery in the instant case); Orleans Parish targets offenders without regard to current charge. Second, the considerations taken into account in the selection process differ among the four. In Orleans Parish and Franklin County, selection is based exclusively on frequency of prior contact with the criminal process; in Kalamazoo and San Diego counties, characteristics of the current offense also play a role in career criminal selection. Third, in both Kalamazoo and San Diego counties it is possible for a case to be accepted for targeted prosecution on the basis of the current offense alone, with the defendant having no prior record of criminal activity. While this reportedly occurs in a minority of cases, it does occur.¹²⁵

¹²⁵Seven percent of the defendants accepted during the first ten months of the Kalamazoo program had no prior criminal record. No comparable information is available for the San Diego program.

Career Criminal Case Identification

In each of the four programs, a special unit has been created to prosecute defendants who are identified as career criminals. When and how, in the criminal process, the target cases are identified for referral to the special units differ among the four.

In critical measure, the ways in which target cases are identified are determined by the dynamics and flow of the routine criminal process in each jurisdiction. In offices which systematically review cases as they are initially referred for prosecution, it has been possible to build career criminal case identification into the routine process. Where systematic routine review does not occur, alternative procedures have been developed.

Case identification is perhaps the most critical step in targeted prosecution. The ability of the prosecution to identify target cases early dictates in large measure how much can be done differently with them.

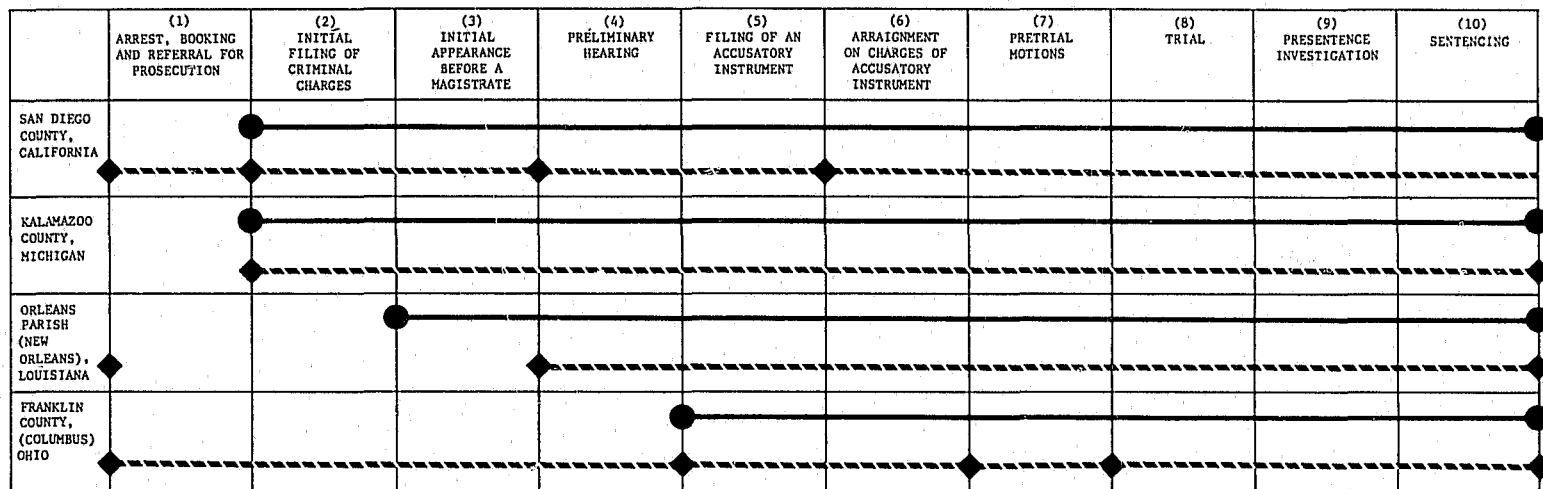
There is substantial variation in the points at which a case may be identified as a career criminal case and special prosecutorial attention may be initiated (see Table XIX and Figure 6).

In Orleans Parish, there are two potential career criminal case identification points. The first, early in the process, is the identification of an eligible case at the time that the suspect is booked by the New Orleans Police Department. In New Orleans, the police department's on-line booking system is programmed to indicate when a suspect has the requisite criminal record to qualify for the program. This signals the police to notify the program deputy (on 24-hour call) that a potential career criminal case has been identified.

TABLE XIX

MANNER OF CAREER CRIMINAL CASE IDENTIFICATION: FOUR PROGRAMS

FRANKLIN COUNTY	<ul style="list-style-type: none">• ARRESTING LAW ENFORCEMENT AGENCY IDENTIFIES• CAREER CRIMINAL PROGRAM DIRECTORS REVIEW OF FBI RAPSHEET (TWO TO TEN WEEKS FOLLOWING ARREST)• OTHER TRIAL ATTORNEY IN PROSECUTING ATTORNEY'S OFFICE
KALAMAZOO COUNTY	<ul style="list-style-type: none">• INITIAL CHARGING
ORLEANS PARISH	<ul style="list-style-type: none">• INITIAL CHARGING
SAN DIEGO COUNTY	<ul style="list-style-type: none">• ARRESTING LAW ENFORCEMENT AGENCY IDENTIFIES• COMPLAINT ISSUANCE• DEPUTIES AT PRELIMINARY EXAMINATION• SUPERIOR COURT DIVISION DEPUTIES



● POINT AT WHICH THE FELONY PROSECUTOR ROUTINELY TAKES COGNIZANCE OF A FELONY CASE.

◆ POINT(S) AT WHICH CAREER CRIMINAL PROGRAM IDENTIFIES TARGET CASES.

FIGURE 6
INITIAL IDENTIFICATION OF CAREER CRIMINAL CASES IN
THE FELONY ADJUDICATION PROCESS:
FOUR JURISDICTIONS

The case is immediately assigned to the special prosecution unit, and bypasses entirely the routine initial charging process. (During the first six months of the Orleans program, approximately thirteen percent of the cases handled by the program were identified in this way.)

The remaining 87 percent of the program's target caseload is identified at the time that the initial charging decision is routinely made. Deputies assigned to routine charging identify a case as a potential target and refer it to the special unit. The Career Criminal Unit does the initial charging (using general office criteria) and all subsequent prosecution.

In Kalamazoo, case identification and selection are also conducted at the time of the initial charging decision. Cases are referred immediately after charging to the deputies assigned to career criminal prosecutions.

In San Diego County, there are a number of potential career criminal case identification points. As in Kalamazoo, the intake (case issuance) attorneys in both the San Diego central and the branch offices identify and refer to the Career Criminal Unit cases which appear to qualify for prosecution by the unit.

In San Diego, police agencies have also been requested to identify target cases during the post-arrest investigation, and to refer them to the special prosecution unit rather than through the routine charging process. Unlike New Orleans (where a single law enforcement agency makes almost all arrests), however, there are thirteen law enforcement agencies in San Diego County. In some police agencies (notably the San Diego Police Department), identification of target cases by robbery detectives has been reasonably

consistent. In others it has not. Cases which are not identified by the police prior to initial charging are to be "flagged" by the deputies doing initial charging, by the deputies handling preliminary hearings, and finally, if a case has eluded previous identification, by Superior Court Division deputies.

In Franklin County, career criminal cases are identified in one of three ways. First, as in San Diego and New Orleans, reliance has been placed on the arresting police agency to make the identification. All (31) police agencies have been informed of the program and of its case eligibility criteria. They have been asked to check local criminal histories in all felony arrests and to bring career criminal cases to the attention of the County Prosecuting Attorney's Office immediately after arrest. The significance of early police identification is particularly acute. It is the only practicable means by which the county office can take prompt jurisdiction of the career criminal case (through superseding indictment) and bypass the uncertainties of inferior court prosecution, of which it is not a part. The superseding indictment is the single means by which the office's special prosecution unit can gain early handling of the target case. The office estimates that about half of its targeted cases are identified and handled in this manner.

Second, in all felony arrests, the Franklin County Prosecuting Attorney's Office receives a copy of the defendant's criminal history from the FBI. Turnaround time from transmission by the arresting police agency to return from the FBI ranges from two to ten weeks. FBI returns are reviewed daily by the director of the office's Career Criminal Unit. If the defendant, on the basis of his FBI record, meets program criteria, his case is sought out for assignment to the unit. Depending upon the time of this identification, the case may be still in the inferior court or may already be indicted, arraigned and awaiting trial, or may already have been tried.

The third identification means is fortuitous. Someone (officer in arresting agency, criminal trial division attorney) at some point in the case's processing discovers that the case meets program criteria and communicates this to the unit.

Career criminal case identification thus varies among the four jurisdictions in a number of ways related to (1) the point(s) in the criminal justice process at which a target case may be identified; (2) the agency or individual critical to case identification at various points; (3) the relationship of career criminal case identification to the routine sequence of prosecutorial decisions; and (4) the certainty that an eligible case will be referred to the program at any potential identification point.

There are no comparable figures for the four sites upon which to base estimates of the probabilities that a career criminal case will be identified at any one of the potential points of case identification. Kalamazoo is the only jurisdiction which relies on a single point in case processing for target identification (initial charging). If potential targets are "missed" at initial charging, they may be later "captured" for referral to the Career Criminal prosecution unit by informal means, but there is no other formal screening and identification in the process.

In the other three offices, there is no single point at which career criminal cases are identified or "lost." In all three, the arresting police agency is relied upon with varying degrees of confidence to "flag" career criminals among the arrested population.

Deputies assigned to initial charging are alerted to identify candidate cases that have been missed by the police. Deputies who handle cases at later stages in their prosecution have been alerted to identify cases that have slipped through earlier nets.

Special Prosecutorial Treatment of Career Criminal Cases

In each of the four jurisdictions a number of related actions have been undertaken by the felony prosecutor's office to provide special, improved attention to the prosecution of target cases. In general, these actions attempt to side-step certain case handling obstacles (such as dispersion of responsibility for the prosecution of a single case among numbers of different deputies) made necessary in routine prosecutions by mass case volume and limited personnel resources. The added resources of the LEAA-funded programs have been dedicated to approximating "vertical" prosecution of career criminal cases: one deputy handling one case for all purposes. Conscious efforts have also been made to assign these presumably serious cases to the most experienced deputy prosecutor personnel, and to keep their individual caseloads relatively small. In each jurisdiction, a special unit for career criminal prosecution--a Major Violators Unit or its equivalent--has been formed. Deputies assigned to the unit handle career criminal cases from the time of their identification through to case disposition, performing the full range of prosecution actions (bail/bond recommendations, plea negotiation, trial, etc.). Because career criminal cases (as variously defined) are assumed to be more serious than others, the four programs stress as a matter of policy the incapacitation of career criminal defendants: both pretrial, through high bail recommendations, and post-conviction, through the recommendation of maximum sentences, or through the filing of habitual offender enhancement petitions.

While the four programs are similar in intent and have established many parallel mechanisms, there are some noteworthy differences among them in the ways they prosecute targeted cases. The actions taken in each office have been designed to improve the prosecution of career criminal cases over that of routine cases by doing things that are not feasible in the majority of prosecutions. Since there are substantial differences among the four jurisdictions both in their criminal justice environments and in their routine management of criminal prosecutions, these differences are reflected in the types, extent, and significance of career criminal prosecutorial treatment in the four.

The special treatment accorded career criminal cases in these four jurisdictions can be categorized in the following ways:

- changes in case handling;
- changes in resource allocation;
- changes in policies governing case disposition;
- attempts to influence timing;
- attempts to influence incapacitation.

The rationale behind each of these initiatives and the specific changes in each area which have been undertaken by the four jurisdictions are described and compared below.

Career Criminal Case Handling

In all four jurisdictions, a special unit has been established to prosecute career criminal cases. These units vary in size and caseload (Table XVI, supra) from thirteen attorneys handling more than an estimated 500 cases a year in Orleans Parish to two attorneys and 103 cases in Kalamazoo. In all four places, career criminal cases which would have routinely been handled by the regular office

trial attorneys are, under the program, assigned to this special unit at the time they are identified as eligible for the program. From the point of referral on, the special unit assumes full responsibility for career criminal case prosecution. The responsibilities and activities of the units vary with the point of identification of target cases.

In Orleans Parish, attorneys assigned to the Career Criminal Bureau are responsible for all stages in career criminal prosecution, including initial charging. In cases identified by the New Orleans Police Department, a career criminal attorney represents the case in Magistrate's Section proceedings; in the others, identified at the point of the routine decision to charge, the unit takes cognizance of the case from the charging decision onward. In Kalamazoo County, screening responsibility for career criminal cases rests with the unit which regularly screens arrests and initially charges. Once the decision to charge is reached, the case is referred to the Major Violators Bureau for all further prosecutorial action. Likewise, in some cases in San Diego, the regular screening (case issuance) attorneys make the initial charging decision and, if the case appears to meet program criteria, forward the case to the Major Violator Unit. Other cases, those which are identified by the police, are referred directly to the program, in which case program personnel make the initial charging decision. Once a case becomes the responsibility of the Major Violator Unit, the unit handles all subsequent prosecution with the exception of pretrial motions (handled by the Office's Appellate Division).

In Franklin County, the range of Career Criminal Unit responsibilities is broader than in the other jurisdictions, reflecting the range in possible points of case identification. On the one hand,

in cases referred to the program by the police, the unit is responsible for seeking immediate, superseding indictments and for all subsequent prosecution. On the other hand, cases identified later in their processing (e.g., after bind-over to the superior court, after indictment, after superior court arraignment) necessarily receive lesser intensities of attention.

In all four jurisdictions, once a case is referred to the special career criminal unit, it is assigned to an attorney (or small team of attorneys) who retains responsibility for the case from the point of assignment through to case disposition. This continuous case representation, both by unit and by attorney, is presumed to be an improvement over routine prosecution for two reasons. First, it is assumed that the attorney handling the case will become more informed about the case and its nuances if he handles it in various proceedings over a period of time than would be possible if he were responsible for only a single function, activity, or stage in its prosecution. Second, it is assumed that the accountability implicit in continuous individual-attorney-case representation is an incentive for more intensive and complete case preparation than is the likely situation when responsibility is diffused and different deputies handle bits and pieces of case adjudication at different stages in their prosecution. These expected improvements in processing are ultimately expected to lead to increased convictions and incarceration of targeted defendants.

These assumed benefits, however, may be offset by certain possible negative side effects. Deputies who specialize in one phase of case prosecution (pretrial motions, for instance) may be more current in the prevailing case law governing that phase than the deputy who must handle all stages of the prosecution. Cases which change hands at certain phases of their prosecution may benefit from the different perspectives of the several deputies handling the case in turn, and

may avoid a narrow or limited view of the case that may accompany single attorney case representation. Finally, the improved morale of deputies who are assigned target cases may be offset by morale problems among their counterparts, who, because of the heavy caseload and limited resources of the office generally, must continue to operate on an assembly-line basis.

In all four jurisdictions, the single-attorney continuous-case handling initiated in the Career Criminal prosecution program is a departure from routine procedures; in some jurisdictions, however, it is a more significant change than in others.

In San Diego the change is a substantial one. The office handles its caseload in an assembly-line fashion: the routine case, during the life of its adjudication, is processed by six office units and at least five different deputies. In the Career Criminal program, depending upon when in its processing it is identified as a target, a target case may be handled by one unit, the Major Violator Unit, and by one attorney, assigned to that unit, throughout its adjudication.

In Kalamazoo and Franklin Counties, routine felony case handling by the felony prosecutor is less fragmented than is the case in San Diego. In both places, the two office units which routinely handle felony cases (the case screening and trial units in Kalamazoo, the grand jury and criminal trial units in Franklin County) continue to handle certain case prosecution activities in the majority of career criminal cases. In both jurisdictions, however, disjuncture in routine case handling occurs once a case is assigned to the trial unit with the assignment and reassignment of cases to attorneys for various stages and events in the case prosecution. Under the Career Criminal program in both places, target cases are assigned to a program attorney for the full prosecution of the case through to disposition.

In Franklin County, single attorney continuous case representation has an added significance for those cases identified by the police and directly indicted in the Superior Court. These cases could have been subject to the greatest degree of fragmented processing found among the four jurisdictions: arrested by a small township police force, booked and detained by the Columbus Police Department, prosecuted by the City Attorney's Office, (by one attorney at the initial appearance and another at the preliminary hearing), and then bound-over to the Superior Court and prosecuted by the County Prosecuting Attorney's Office (by one attorney in the grand jury unit and by numerous criminal trial attorneys). Under the program, the prosecution of a similar case would be handled from arrest to disposition by one attorney in the career criminal unit of the felony prosecutor's office.

In the New Orleans District Attorney's Office case prosecution is neither as fragmented at the organizational level as in San Diego nor as disjointed at the attorney assignment level as in Kalamazoo or Franklin County. In routine case prosecution, for all intents and purposes, continuous case representation is the rule rather than the exception. As such, the most significant feature of single attorney case representation in New Orleans is the merging of the functions of the decision-to-charge and the responsibility for subsequent case prosecution in the same attorney. In routine cases, the screening assistant reviews the case and decides whether and what to charge the defendant, and the trial attorney prepares, negotiates, and tries the case. In career criminal cases, the career criminal attorney who will try the case is also responsible for making the charging decision.

Changes in Resource Allocation

Each of the four jurisdictions, using the LEAA grants, places proportionately more resources on the prosecution of career criminal cases than on the routine caseload. In each jurisdiction, new deputies were hired and some of the office's more experienced attorneys were assigned to the special Career Criminal prosecution unit cases. The special unit has also been given a greater amount of support (interns, investigations) for the prosecution of a smaller per attorney caseload than is the routine.

In three places, Franklin, Kalamazoo, and San Diego Counties, the attorneys selected to handle the targeted cases are on the average older than their counterparts (Table XX). With the exception of Kalamazoo, career criminal attorneys have been working with the prosecutor's office for a longer period of time. However, there are substantial variations in how different the program attorneys are from the norm in each place as well as substantial differences among the offices themselves.

Orleans Parish on the one hand, has the youngest and shortest tenured attorney staff of the four, closely followed by Franklin County and Kalamazoo County. In all three, on the average, their attorneys are about thirty years old and have been working with the office for between two and three years. San Diego attorneys are older (35 years of age) on the average and much more experienced, having been with the office an average of six and a half years, reflecting the career orientation of the civil service assistant prosecutor in California.

The differences between the office averages and career criminal attorney staff are also the smallest in Orleans Parish, with no difference in average age and less than six months' difference in tenure between program and regular trial division staff. In Kalamazoo,

TABLE XX

ATTORNEY CHARACTERISTICS:
CAREER CRIMINAL ATTORNEYS AND TOTAL DEPUTY PROSECUTORS*

	TOTAL DEPUTY PROSECUTORS			CAREER CRIMINAL		
	NUMBER	AGE (YEARS)	TENURE (MONTHS)	NUMBER	AGE (YEARS)	TENURE (MONTHS)
FRANKLIN COUNTY (COLUMBUS)	39	31.7	31.8	5	42.2	54.6
KALAMAZOO	14	31.1	37.3	2	36.0	33.0
ORLEANS PARISH	62**	29	23.8	13	29	26.6
SAN DIEGO	74***	35	79.2	6	42	104.4

*PROSECUTOR AND CHIEF DEPUTY EXCLUDED.

**INFORMATION UNAVAILABLE FOR THREE DIVISION CHIEFS AND ONE DEPUTY.

DATA IS BASED ON 74 RESPONSES TO A PERSONNEL SURVEY OF THE OFFICE ATTORNEY STAFF OF 116.

career criminal attorneys are an average of five years older than the other assistant prosecutors; however, they have an average of six months less experience with the office. In Franklin County, career criminal attorneys are substantially older (10.5 years) than the regular attorney staff and they have an almost two year advantage in office experience over the average assistant prosecutor in the office. In San Diego, the office with the most experience among its regular attorney staff, career criminal attorneys are on the average seven years older and two and a half years more experienced than their non-career criminal counterparts. The average age of a San Diego career criminal attorney is 42, with an average tenure of over eight and a half years. This is approximately the same age as a Franklin County attorney but with almost double the office experience.

Caseload differences within and among offices are equally varied (Table XXI). Two offices, Orleans Parish and Kalamazoo, handle both misdemeanors and felonies. Of the two, Kalamazoo has the higher felony/misdemeanor caseload-to-attorney ratio with a monthly overall office filing rate of over 44 cases per attorney and a monthly disposition rate of 33 cases per attorney. In Orleans Parish, 23 misdemeanor and felony cases per attorney are accepted each month and 21 are disposed.

While Kalamazoo total caseload (felony/misdemeanor combined) figures are the highest of the four, the Franklin County Prosecuting Attorney's Office, which handles only felonies, has a higher per attorney felony caseload than does Kalamazoo. In Franklin County, approximately 21 felony cases per trial attorney are accepted and disposed each month compared to 15.9 felony acceptances and 9.6 felony dispositions per Kalamazoo trial attorney.

TABLE XXI

CAREER CRIMINAL AND NON-CAREER CRIMINAL
ATTORNEY CASELOADS

	BASE PERIOD	REGULAR TRIAL ATTORNEYS*	CAREER CRIMINAL ATTORNEYS
		CASES/ATTORNEY/MONTH	CASES/ATTORNEY/MONTH
FRANKLIN COUNTY (COLUMBUS) 12-CRIMINAL TRIAL ATTORNEYS 5-CC ATTORNEYS	REGULAR: CY 1976 JULY 1975- DEC. 1976 CAREER CRIMINAL	20-FELONY CASES ACCEPTED 20.5-FELONY CASES DISPOSED	4.2-ACCEPTED 3.6-DISPOSED
KALAMAZOO COUNTY 5-REGULAR TRIAL ATTORNEYS 2-CC ATTORNEYS	ACCEPTANCES: JANUARY-OCTOBER 1976--FELONIES CY 1976 - FELONIES AND MISDEMEANORS	15.9-FELONY CASES ACCEPTED 44.4-FELONY AND MISDEMEANOR CASES ACCEPTED	4.3-ACCEPTED
	DISPOSITIONS: JANUARY-SEPTEMBER 1976--FELONIES CY 1976 - FELONIES AND MISDEMEANORS	9.6-FELONY CASES DISPOSED 33.0-FELONY AND MISDEMEANOR CASES DISPOSED	3.0-DISPOSED
ORLEANS PARISH	ACCEPTANCES: JULY-DECEMBER 1976	23-FELONY AND MISDEMEANOR CASES ACCEPTED	6-ACCEPTED
23-REGULAR TRIAL ATTORNEYS 9-CC ATTORNEYS	DISPOSITIONS: AUGUST-DECEMBER 1976	21.1-FELONY AND MISDEMEANOR CASES DISPOSED	6.4-DISPOSED
SAN DIEGO 26-SUPERIOR COURT ATTORNEYS 6-CC ATTORNEYS	REGULAR: ACCEPTANCES: FY 75/76 DISPOSI- TIONS CY 1975 SEPTEMBER 1975- JUNE 1976 CAREER CRIMINAL	13.6** -FELONY CASES ACCEPTED 11.6** -FELONY CASES DISPOSED	2.8-ACCEPTED 2.3-DISPOSED

* INCLUDED HERE IS ONLY THAT PORTION OF THE ATTORNEY PERSONNEL DIRECTLY INVOLVED IN THE HANDLING OF THE CRIMINAL CASELOAD.

** SUPERIOR COURT FILINGS AND DISPOSITIONS.

The largest differences in attorney caseload between routine and career criminal attorneys are found in Franklin County and San Diego where program attorneys carry a caseload which is about one-fifth that of their regular trial counterparts. While more than 20 cases per regular trial attorney are disposed each month in Franklin County, less than four career criminal cases per program attorney are disposed monthly. Monthly attorney disposition rates in San Diego are 11.6 for the Superior Court and 2.3 for the Career Criminal program, the lowest career criminal attorney disposition caseload of the four programs.

Caseload differences are somewhat smaller (with career criminal attorney caseloads around 30 percent of the regular trial attorney caseloads) but are still substantial in the other two jurisdictions. In Orleans Parish just over 21 cases per trial attorney are disposed each month compared to 6.4 monthly career criminal case dispositions per attorney. Finally, in Kalamazoo, the three target cases disposed per career criminal attorney each month are approximately one-third of the 9.6 per attorney monthly case disposition rate for the regular trial attorney staff.

Changes in Policies Governing Case Disposition

Three of the four jurisdictions have explicitly established policies concerning the disposition of career criminal cases.

In Kalamazoo, while disposition by guilty plea is intended to be controlled, in routine felony adjudications, by bottom-line plea-setting in the complaint unit at the time that the initial decision to charge is made, this is intended to be even more tightly controlled in career criminal prosecutions. The Major Violators Bureau is not expected to agree to a guilty plea to less than the original charges in a case that it accepts.

In Orleans Parish, for career criminal cases, the original charge and the bottom-line plea are considered one and the same and the attorney responsible for disposing the case also establishes the initial charges. Here, as in other jurisdictions, emphasis is placed on disposition by trial.

In San Diego, the Major Violator Unit's policy in plea negotiations is more restrictive than that in routine felony prosecutions. Only pleas to top-count felony charges are to be agreed to, except in unusual cases. In multiple-count cases, only pleas to more than one count which include to top count are acceptable.

In Franklin County, while no formal control over career criminal case disposition has been established, a policy emphasizing a "tougher" prosecution stance on dispositions in lieu of trial has been a part of the program.

Information is available on the ways in which cases, including both career criminal and non-career criminal cases, have been disposed in each of their four jurisdictions (Table XXII). These disposition figures serve to illustrate how career criminal treatment differs from the routine in each place. Whether differences in the distribution of dispositions between career criminal cases and non-career criminal cases are due to the activities of the program or are attributable to other factors such as characteristics of the target population or cases is not known at this time. What is known, is that in each place career criminal case dispositions differ from dispositions of non-career criminal cases in outcome.

The only similarity in the relationships between career criminal and routine case dispositions across the four jurisdictions is that

TABLE XXII
FELONY DISPOSITIONS

	ORLEANS PARISH		FRANKLIN COUNTY		SAN DIEGO COUNTY		KALAMAZOO COUNTY	
	CAREER CRIMINAL	NON- CAREER CRIMINAL	CAREER CRIMINAL	TOTAL COURT OF COMMON PLEAS DIS- POSITIONS	CAREER CRIMINAL	TOTAL SUPERIOR COURT DISPOSI- TIONS	CAREER CRIMINAL	NON- CAREER CRIMINAL
	AUGUST - DECEMBER 1975		JULY 1975- DEC. 1976 CY 1976		SEPT. 1975- JUNE 1976 CY 1975		JANUARY 1, 1976 SEPTEMBER 30, 1976	
GUILTY PLEA	52% (125)	52% (1004)	66% (216)	78% (2100)	64% (78)	73% (2641)	54% (30)	52% (225)
NOLLE PROSEQUI	14% (33)	21% (410)	9% (31)	10% (282)	-- --	6% (223)	27% (15)	16% (69)
TRIAL	32% (73)	27% (494)	24% (78)	11% (276)	30% (36)	11% (392)	15% (8)	8% (34)
CONVICTION	[90% (66)]	[63% (309)]	[88% (69)]	[62% (170)]	[94% (34)]	[76% (299)]	[* (5)]	[76% (26)]
ACQUITTAL	[10% (7)]	[37% (185)]	[12% (9)]	[38% (106)]	[6% (2)]	[24% (93)]	[37% (3)]	[24% (8)]
OTHER	2% (5)	2% (31)	1% (3)	1% (32)	6% (8)	10% (367)	4% (2)	24% (107)
TOTAL	100% (236)	100% (1939)	100% (328)	100% (2690)	100% (122)	100% (3623)	100% (55)	100% (435)

* NUMBER OF CASES IS TOO SMALL FOR A VALID ASSESSMENT.

in all four, career criminal cases are more likely to be disposed through trial than are routine cases. In Orleans Parish, from August-December 1975, 32 percent of the career criminal case dispositions were the result of trials as opposed to 27 percent of the routine (non-career criminal) case dispositions during this period. The differences for the other four jurisdictions are larger. In Kalamazoo County 15 percent of the career criminal case dispositions from January-September 1976 were by trial, compared with 8 percent of the non-career dispositions during this period. In Franklin County almost a quarter (24 percent) of the career criminal case dispositions from July 1975-December 1976 were through trial; this is more than double the 11 percent of the total office caseload disposed by trial during 1976. Finally, in San Diego, during the first nine months of the Career Criminal program (September 1975-June 1976) 30 percent of the target case dispositions were the result of a trial, compared with eleven percent of the total superior court dispositons during 1976.

In three jurisdictions, San Diego, Franklin County, and New Orleans Parish, career criminal trials result in a conviction more often than routine or non-career criminal trials. In Kalamazoo the number of cases is too small to make a valid comparison. In San Diego the trial conviction rate for career criminal cases (for September 1975-June 1976) is 94 percent compared with 76 percent for superior court trials generally (for 1975). In Franklin County these figures are 88 percent for career criminal cases (for July 1975-December 1975) and 62 percent for total court of common pleas trials (for 1976). Finally in Orleans Parish during the period August-December 1975, career criminal case trials resulted in convictions 90 percent of the time, compared to 63 percent for non-career criminal cases.

Finally, the percentage of felony dispositions resulting from guilty pleas is lower for career criminal cases than cases generally

in two jurisdictions, San Diego and Franklin County. While approximately three quarters of the total felony dispositions in each of these two jurisdictions are disposed by plea, only about two-thirds of the career criminal case dispositions were made in this way. In the other two jurisdictions, Orleans Parish and Kalamazoo County, only just over half of the career criminal and the non-career criminal case dispositions were by guilty plea.

Attempts to Influence Timing

All four of the jurisdictions intend to dispose of their target cases in as expeditious a manner as possible. Certain of the program devices are expected to improve the processing time of career criminal cases. Activities of this sort include early case identification, early and more comprehensive complete case preparation, and single attorney continuous case representation. In two places actions have been taken which explicitly attempt improvements in case processing time.

Neither San Diego nor Franklin County have program components specifically addressing the timing of case processing. One feature of the Franklin County program, however, may have an effect on the timing of disposition. This is a direct indictment of career criminal defendants identified by the police prior to lower court proceedings. In these cases not only is the possibility of a lower court dismissal of the case or a reduction and disposition of the charges at the misdemeanor level greatly reduced, but timing of case adjudication may also be impacted.

In Orleans Parish, career criminal cases are given priority in docketing in the District Court. This has been possible because of the continuity of attorney representation in each courtroom and because the New Orleans District Attorney is in effect an "insider" in the management of court activities responsible for setting the docket of the courts.

In Kalamazoo, as part of the Career Criminal program, in mid-September 1976, an additional "Fifth Circuit" Court was established as a "priority criminal court." It is funded almost wholly by the second-year LEAA career criminal prosecution grant awarded to the county. The grant pays for one judge, one court reporter, one bailiff-law clerk and one deputy clerk, plus contractual costs for the defense of indigents who are prosecuted in the court. The work of this court is limited entirely to criminal trials. In effect, it takes overflow cases from the other four Circuit Courts after pretrial motions and before the trial stage. It is selective about the caseload that it acquires, with priority given to career criminal prosecutions followed by cases in which the defendant is in custody, serious offenses (e.g., armed robbery), and "old" cases (i.e., cases that are still not disposed of after unduly long periods of time).

Attempts to Influence Incarceration

One objective of the Career Criminal program is to increase the likelihood of conviction and incarceration for career criminal defendants. The range of activities discussed above is expected to contribute to this end. Three of the jurisdictions, however, have initiated a number of activities which are explicitly directed toward influencing the incarceration of the defendant both pre-trial and post-conviction.

In the three jurisdictions (Kalamazoo, New Orleans, San Diego) for those cases which have been identified as involving a career criminal by the time of the initial appearance in the inferior court, the prosecution appears and argues for the imposition of restrictive bail conditions. This occurs most regularly for Kalamazoo career criminal

cases since most target cases are identified prior to this point. It is least regular in New Orleans where, in most cases, program intervention does not occur until the filing of the information.

In San Diego, career criminal attorneys are also encouraged to seek longer firm imprisonment time for convicted career criminal defendants through recommendations for consecutive sentences. They communicate views on the offender and his case to both the probation officer conducting the presentence investigation and the Adult Parole Authority. In New Orleans, the District Attorney's office has designated an attorney to represent the office at parole board hearings involving career criminal defendants¹²⁶ to provide the board with information on the serious nature of the criminal history of the defendant and the priority accorded his case by the office.

For three of the four jurisdictions,¹²⁷ Orleans Parish, Franklin County, and San Diego, comparative information is available on the sentencing of career and non-career criminals (Tables XXIII, XXIV and XXV). These figures demonstrate that in all three jurisdictions career criminals are more likely to be sentenced to confinement than are convicted defendants generally. This fact may be due, however, in part to the serious nature of the crimes targeted in certain jurisdictions as well as to the characteristics of the defendants selected for attention by the program.

¹²⁶ This practice currently includes all defendants prosecuted by the office.

¹²⁷ Again the number of cases was too small to validly include Kalamazoo in comparisons.

TABLE XXIII

SENTENCES, ORLEANS PARISH
AUGUST - DECEMBER 1975

	OFFICE TOTAL	CAREER CRIMINAL CASES	NON-CAREER CRIMINAL CASES
TOTAL CASES	1632	135	1497
TIME-STATE	340 (21%)	74 (55%)	266 (13%)
TIME-PARISH	364 (22%)	38 (28%)	326 (22%)
SUSPENDED SENTENCE	626 (38%)	20 (15%)	606 (40%)
FINE	302 (19%)	3 (2%)	299 (20%)

TABLE XXIV

FELONY SENTENCES IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY

	TOTAL CASELOAD 1976	CAREER CRIMINAL CASES JULY 1975 - DECEMBER 1976
SENTENCED TO CONFINEMENT OR FINE	1448 (75%)	246 (88%)
SUSPENDED SENTENCE AND PROBATION	475 (24%)	30 (11%)
PROBATION	19 (1%)	3 (1%)
TOTAL	1942	279

TABLE XXV

SENTENCING IN THE SUPERIOR COURT,
SAN DIEGO COUNTY

	OFFICE TOTAL 1975	CAREER CRIMINAL SEPTEMBER 1975 - JUNE 1976
PRISON	18% (574)	83% (89)
STRAIGHT PROBATION	25% (786)	2% (2)
PROBATION AND JAIL	44% (1,401)	4% (4)
JAIL	3% (105)	- (0)
SPECIAL SENTENCES*	6% (184)	11% (12)
CALIFORNIA YOUTH AUTHORITY	3% (105)	- (0)
FINE	** (8)	- (0)
TOTAL	(3,163)	(107)

* INCLUDES PSYCHIATRIC, MEDICAL AND DRUG REHABILITATION WITH
PRESCRIBED SENTENCE IMPOSED WHEN TREATMENT IS COMPLETED.

** LESS THAN ONE PERCENT.

In Orleans Parish, sentences imposed in career criminal cases are substantially more severe than those in non-career criminal cases. In over half of the career criminal cases the defendant is sentenced to the state penitentiary (Table XXIII), and over three-quarters of the cases result in incarceration of the defendant in either a state or the Parish facility. In contrast to this, in over half of the sentenced non-career criminal cases the defendant is given either a suspended sentence or is fined; only 40 percent of sentenced non-career criminal defendants in career criminal and non-career criminal cases have been convicted.

In 39 (29 percent) of the cases in which the defendant was convicted and sentenced during the last five months of 1975, the defendants were sentenced under multiple offender bills.

In Franklin County (Table XXIV) career criminal convictions are also more likely to result in a confinement than are cases generally. While 88 percent of the sentences rendered in career criminal cases from July 1975 to December 1976 involved either confinement or the payment of a fine, only 75 percent of the total office sentences in 1976 fall into this category. Further, of the 246 career criminal cases sentenced in this way, only a single sentence involved a fine only, the remainder were to some form of incarceration.

Finally, in San Diego for 107 sentences imposed during the first nine-months of the program (for which information was available), eighty-seven percent involved time in confinement and eighty-three percent were prison sentences. This is substantially higher than was the case for felony sentences imposed generally in 1975, in which

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sixty-five percent involved time in confinement, with only eighteen percent sentenced to prison. This undoubtedly reflects the severity of the type of case selected for special handling under the program, apart from any program effects. Further, in the 22 cases in which the courts could choose between consecutive and concurrent sentences, 12 sentences included consecutive terms, which increased the minimum term in these twelve cases an average of 7.3 years.

The Question of Effectiveness

The four jurisdictions described here have implemented a mix of activities directed toward improving the prosecution of the career criminal. A number of general strategies which are commonly assumed to lead to improved prosecution have been included in the four Career Criminal prosecution programs which each target that subpopulation of serious, repeat offenders of greatest priority to the local prosecutor's office.

While there are great similarities among the four programs in overall program goals, in general approaches and in underlying assumptions, there are also substantial differences among the four programs. These differences derive from the differences in the criminal justice environments which form the context for program development and operation. The target populations of the four programs differ substantially in nature and size as do the program attorney staffs. There are similarities in program strategies, such as the assignment of career criminal cases to experienced attorneys. These similar strategies, however, can be quite different (i.e., the average experience level of a San Diego deputy is significantly higher than that of the most experienced deputy in New Orleans). These differences among the programs and the degree to which prosecution by the program can be distinguished from routine prosecution demonstrate

the range in type and extent of special prosecutorial attention which has been accorded career criminal cases under the program.

The descriptions provided here show that certain tangible changes have been initiated in the handling of target cases by the four prosecutors, however varied those changes may be. What remains to be addressed is whether making such changes has resulted in the improvements in the prosecution of these types of cases. The comparative case handling and disposition figures provided in the above sections merely provide a quantified description of how career criminal cases have been disposed by the program as compared to the disposition of other (non-career) criminal cases by the office. The critical comparison--between the outcomes of the cases prosecuted by the program and the outcomes which would have occurred had no program been initiated--has not yet been examined. The limited data currently at hand are not sufficient to address the question of program impact.

This volume and its companion volumes describing the four sites are the products of the first stage in a critical evaluation of these programs. These volumes provide an extensive examination of both routine criminal justice case processing (from arrest to sentencing) and the specialized handling of career criminal cases in each of the four places, individually and across the four. This stage of the research is designed to facilitate the identification of the specific changes in case processing which have been implemented by the Career Criminal programs. It is also intended to permit the specification of those criminal justice performance measures

likely to be affected by program activities.¹²⁸ In that regard, this first stage is critical if performance changes assessed in the second stage are to be properly attributed to the Career Criminal program.

The second stage of the evaluation entails the analysis of the specific measures of criminal justice performance and the investigation of the hypothesized linkages between Career Criminal program activities and differences in specific measures. While there are three general kinds of measures of direct concern--conviction rates, incarceration rates and lengths of sentences--there are also a number of specific measures which fall both within and outside these general categories (e.g., "plea to charge" and negotiated plea rates, time from arrest to sentencing, pretrial detention rates).¹²⁹

In addition to providing the primary basis for the evaluation of the effects of the Career Criminal program, the analysis of performance measures provides the data necessary for the examination of potential programmatic effects on crime levels, the last stage of the evaluation. In this stage, crime levels in each of the four

¹²⁸ For example, where the description of program activities indicates that more experienced prosecutors are now assigned to career criminal cases going to trial, it is reasonable to examine trial conviction rates in relation to this difference in personnel deployment.

¹²⁹ While the program is designed to affect these performance measures for only one group of defendants, the career criminals, data will be collected in this second stage on the same measures for four groups: (1) designated career criminals during the program treatment year; (2) non-career criminals during the treatment year; (3) defendants from a baseline year who theoretically would have been designated career criminals; and (4) criminals from a baseline year who would not have been designated career criminals. Thus, it will be possible to assess whether performance has changed with respect to the prosecution and disposition of the career criminal. The analysis of performance measures with respect to the two groups of non-career criminals will permit an assessment of possible indirect effects of the Career Criminal program on the prosecution of the non-career criminal group.

jurisdictions will be examined to determine whether any changes in crime levels attributable to the local target population have been observed.

END