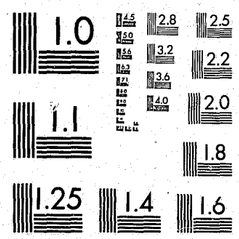

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BUREAU OF SOCIAL SCIENCE RESEARCH, INC.

WASHINGTON, D. C.

POLICY ANALYSIS FOR PROSECUTION

EXECUTIVE SUMMARY

Joan E. Jacoby
Leonard R. Mellon

A final report of Research on Prosecutorial Decisionmaking, supported by LEAA Grant 78 NI-AX-0006. The data presented and views expressed are solely the responsibility of the authors and do not reflect the official positions, policies or points of view of the National Institute of Law Enforcement and Criminal Justice, LEAA or the Department of Justice.

April, 1979

BUREAU OF SOCIAL SCIENCE RESEARCH
1990 M Street, N.W., Washington, D.C. 20036

PREFACE

This Executive Summary is one of three reports produced as a result of this research activity. The first report, Policy Analysis for Prosecution, develops and presents a conceptual model for analyzing the prosecutive decisionmaking function from a policy perspective and presents the results of its application in the study of ten prosecutor's offices. The second report is Research on Prosecutorial Decisionmaking. It summarizes the results of developing and testing quantitative techniques, through the use of a standard set of cases, for examining decisionmaking functions both internally within an office and on a comparative basis. The third report, the Executive Summary, summarizes the major points made in the Policy Analysis for Prosecution.

This project was supported by LEAA Grant 78 NI-AX-0006 awarded to the Bureau of Social Science Research, Washington, D.C. The data presented and views expressed are solely the responsibility of the authors and do not reflect the official positions, policies or points of view of the National Institute or the Department of Justice.

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POLICY ANALYSIS FOR PROSECUTION

EXECUTIVE SUMMARY

INTRODUCTION

This research project is one part of a long-range effort to examine and analyze the dimensions of uniformity and consistency in prosecutorial decisionmaking. The way in which the prosecutor makes decisions about charging crimes and handling criminal cases has a profound effect on the quality of justice rendered in American courts. Where the same objective standards are consistently applied to all defendants, the goals of equal protection under the law are advanced; where case decisions are made without reference to uniform standards, there is a danger that the criminal law will be applied arbitrarily and capriciously.

Reiss[1] distinguishes between "two related but different ideas. . . in the traditional definition of justice." The first considers the 'justness of applying certain sanctions,' such as capital punishment, imprisonment or fines. The second refers to the 'distributive property of justice.' It questions whether equals are treated equally regardless of reward or cost. It is based on the assumption that 'unequal treatment is inherently unjust or discriminatory.'"

Society may designate a number of "just" sanctions to form the legal base for its system of criminal justice. These designations then become a matter of public policy, within the purview of the citizens and their elected representatives. The inconsistencies that exist, even today, among different political subdivisions with respect to what the community feels is a "just" punishment for a crime, generally arise from the state and local dominance

of the criminal justice system and the locally-elected nature of its major participants--the prosecutor, the court, and the city or county supervisors. Disagreements in defining what constitutes just sanctions for various crimes and criminal activity are more the rule than the exception. Although they raise significant questions about how society evaluates the acceptability of these various forms of justice, they are beyond the scope of this research.

It is the "distributive" property of justice, the second element in Reiss' discussion, that this research addresses. This property is not so much a public policy issue as it is an issue of procedural fairness and good management practices. It is to this property that the issues of uniformity and consistency relate most significantly.

This is because the prosecutor, more than any other component in the criminal justice system, possesses enormous discretionary power which overwhelms the discretion in other criminal justice sectors. As a result, his discretion is either criticized or supported but rarely ignored. The Wickersham Committee[2] was shocked to see the extent of his power; and reports of abuse and corruption are many.[3] Some reformers moved for the establishment of totally new systems of prosecution[4]--an unrealistic task that belies the roots, heritage and evolution of the American prosecutor as a locally-elected official endowed with discretionary power. The National Advisory Committee,[5] on the other hand, condemns the discretion used in plea bargaining while urging the expansion of screening, diversion and other discretionary modes of operation.

At the core of this controversy is the fundamental, and as yet unanswered question, of the extent to which prosecutorial discretion creates or contributes to unequal treatment which is inherently unjust or discriminatory. Three factors emerge as needing attention. The first is the extent to which prosecution is able to control or influence the uniform and equal distribution of justice. It is inherently inconsistent to evaluate any agency

or function in terms of that which is beyond its control. The second is the policy of the prosecutor, or what he is attempting to do. Prosecutorial policy takes on significance because the nature and characteristics of the environments in which criminal justice systems operate create room for different approaches to crime and prosecution. The third factor is whether the policy selected by the prosecutor is being implemented in an even-handed and fair manner. If a choice is available from among a pool of prosecutorial policies, and this choice is supported by the local community, then one must determine next whether the stated policy is being implemented and whether justice is being distributed equally within this policy framework.

This study focused on this last question. Its purpose was to examine the prosecutive function in ten different jurisdictions from a policy perspective; to determine what aspects within its control are important to the selection and implementation of policy; to identify and describe the types of policies that were found; and to examine them for those factors that most significantly affect their uniform and equal implementation.

The effect of the external environment on prosecution was introduced by studying ten jurisdictions in large urban areas, geographically dispersed and as diverse as possible. The internal examination of these offices was performed by on-site observation and study. The primary purpose was to identify the policy of the prosecutor, isolate those procedures by which it was transmitted through the office and implemented, and note its requirements and effects.

The prosecutors volunteering to participate in this study represented jurisdictions ranging in population size from 165,000 to more than 2.5 million. Geographically dispersed, they offered 10 state constitutional and legislative environments for examination and as many different local criminal justice

system environments. The participating prosecutors, in order of jurisdictional size, were:

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   Prosecuting Attorney
   Wayne County
   Detroit, Michigan

2. Eugene Gold
   District Attorney
   Kings County
   Brooklyn, New York

3. Janet Reno
   State Attorney
   Eleventh Judicial Circuit
   Miami, Florida

4. Edwin L. Miller Jr.
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    20th District
    Boulder, Colorado

The identification of the prosecutorial policy in the office was based on a typology of charging policies developed in earlier LEAA studies.[6] These studies identified four distinct types of policy which affect the charging and subsequent processing decisions of the prosecutor. They were called: Legal Sufficiency, System Efficiency, Trial Sufficiency and Defendant Rehabilitation. The typology hypothesized that the existence of a specific policy type could be objectively determined by examining several key elements, including the criteria used for charging; the specific legal or operational strategies employed; the organizational structure, resource allocation patterns; and management procedures and controls. The conclusion was that the combination of these factors produced expected dispositional patterns that were so different among different policy approaches that the policy first had to be

identified before any tests for uniformity and consistency in an office could be made. The testing of this hypothesis became an integral part of the research activity. It structured the analytic approach used and the evaluation of the findings into conclusions that relate to policy and its implications for prosecution.

Two approaches were taken to examine the effect of policy on prosecutorial decisionmaking processes, and how uniform and consistent decisionmaking was established. Site visits to the prosecutors' offices relied on management and systems analysis techniques for the qualitative assessments. In addition, since quantitative analysis was also desirable, the project staff developed and tested statistical tools and techniques to measure differences in values and expectations--reported in "Research on Prosecutorial Decisionmaking." This Executive Summary condenses the "Policy Analysis for Prosecution" report and presents the findings and results of the policy analysis obtained from the site visits.

Site visits were conducted over a six-month period, March through August, 1978. Members of the project staff and consultants combining experience in management and systems analysis, prosecution, statistics and the social sciences were formed into teams of 3 to 5 persons depending on the size of the jurisdiction. Each team spent a week interviewing the decisionmakers in the prosecutor's office, other members of the local criminal justice system, and collecting and assembling descriptive and qualitative data about the operations and policy of the office.

Using the functional approach developed from the conceptual analysis of policy, each of the major process steps in the office were studied. This included intake, the accusatory process, trials and dispositions, postconvictions and special programs. Each process step was examined independently with respect to how the work came into the process, who made what decisions

within the step, and where it went after leaving the process. Particular attention was given to whether the decisionmaker in the preceding process step was aware of the results of his decision or held accountable for them. After the independent examinations were made, they were combined and analyzed for their consistency with one another and with the overall policy of the office. This was achieved by staff and consultant evaluations. To ensure consistency and standardization in using this technique among the ten sites, instruments were developed for the interview and the data collection activities. Field notes were developed in standardized format and the final results collated into the descriptive section (Part II) of this report and the findings and conclusions (Part III).

There are, of course, limitations to this type of research that should be noted. First, viewing the prosecutive function from the policy perspective developed in Part I of this report represents a relatively new analytical approach to this subject. While the techniques for analysis have been in use in other fields of public administration for at least the past three decades, the application of them to prosecution in a policy perspective and in ten sites was unprecedented. Because of this, we make no claim that this study exemplifies the rigorous application of management, organizational or systems analysis techniques to this field. Rather, it should indicate the validity of pursuing such an approach in a more explicit manner.

Second, the policy typology used as the conceptual basis for this study had been derived from observations in four sites and verified as existing in three. Thus, the construct of the study and the scope of the analysis was derived from very narrow and quite limited observations. Part of the task set before the project was not only to examine policy and its implications, but to test the validity of this typology and the analytical approaches it

suggests. No claim is made at all, even now, that this subject has been exhausted and what is presented are the final dimensions of this approach. Indeed, Part III points conclusively to a broadening of the conceptual approach and the need for further study in the area.

Finally, the conclusions drawn by the staff represent their own qualitative assessments of the observations made in the field. Although their cumulative experience over the past 10 years is extensive--having worked in, provided technical assistance to, studied or evaluated more offices than probably any other similarly constituted group in the United States--this is no guarantee that the insights gained from this research and reported herein are final or definitive. Other interpretations and analyses may have equal validity, or even refute some of these findings. The limitations of these assessments point to the critical weakness of this report; namely, the lack of quantitative data to bolster and support many of the statements made.

If for no other reason than this, the lack of quantifiable information should caution the reader not to reach for simple solutions or answers to some of these more complex issues. Much work remains to be done. Before a set of measures can be devised, broad categories of variables must be broken down into conceptually relevant statements. Then techniques need to be devised to reduce the costs and time associated with taking precise measurements on specifically defined variables. The available data collected in this study point not only to these needs but demonstrate that much of what is currently being collected has been produced to answer other questions than those crucial to this task. Among the ten offices visited during the course of this study, only one (Wayne County, Michigan) had disposition data available in a form directly useable by the project staff.

Despite these limitations, there are some general principles that seem solid enough to present with certainty. They are that: policy choices do

exist and that the prosecutor selects from them for a variety of reasons; the selection of a specific prosecutorial policy generates the need for organizations and procedures that are consistent with the policy; conversely, it is possible to be inconsistent in the implementation of a policy thereby creating an unstable environment--namely, one which cannot maintain itself over time; the effect of policy can be observed in the organization, management and dispositional characteristics of the office and, therefore, the conclusion can be drawn that there do indeed exist ways to determine whether justice is being distributed fairly and equally.

Part I of this report (Policy and the Prosecutive Function) presents a discussion of the concepts of policy and policy analysis and relates it to the prosecutive function. From this it derives a conceptual frame for analysis which was used as the model for the ten site studies.

Part II (The Application of Policy in the Office of the Prosecutor) records the characteristics and procedures employed in the ten sites studied. It examines the prosecutive function in each of the process steps through which it progresses (intake, accusatory, trials, postconviction and special programs) noting the factors that need explication to make reasonable interpretations.

Part III (Findings and Conclusions) reports the findings of the study and translates them into conclusions. It evaluates the utility of a policy analysis approach, discusses the various policies and prosecutorial styles, and translates the findings into principles and rules that appear to explain some of the relationships, operational and other, that exist within an office as well as among the other components of the criminal justice system.

The major points are noted in this Executive Summary. The reader is referred to the complete report, "Policy Analysis for Prosecution" for a more detailed discussion of these points.

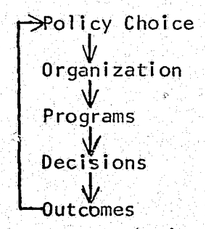
PART I: Policy and the Prosecution Function

Policy may be defined as "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; a settled course adopted and followed by government, institutional body or individual."[7] Two types of policymaking activities are identifiable: proactive policy which plans for future events, and reactive policy which results from the necessity of dealing with current problems. Both of these activities share a common element--decisionmaking.

According to political scientists Raymond Bauer and Kenneth J. Gergen, there are at least three distinct kinds of decisions: the routine, the tactical and those that rise to the level of policy.[8] It is the final type with which this report is primarily concerned, although the importance of tactical decisions will also be considered.

Policy is implemented through a variety of means, including organizations, programs, and as indicated above, decisions. Individual decisions are the way in which policy is made manifest. They produce outcomes which, in turn, may become the means by which the effectiveness of a policy may be evaluated. This concept is illustrated below:

FIGURE 1



The identification of a specific policy can be approached in two ways: One looks for articulated policy, that is, the expression of goals by organizational leaders. The second approach isolates actual policy through induction by analyzing the decisions, programs and structures of the operating system. A complete analysis approaches policy from both a deductive and an inductive viewpoint, rendering a picture of what a prosecutor's articulated policy is and what his actual, working policy is. Although ideally the two would be identical, there are often substantial discrepancies.

These inconsistencies or discrepancies may be due to internal organizational or management problems, external constraints that restrict the implementation, or even personal bias. By identifying these inconsistencies, the policy analyst gains an indication of the gap between the ideal (articulated) and the real (actual) policy.

Policy analysis has been defined as "the systematic investigation of alternative policy options and the assembly and integration of the evidence for and against each option."[9] It first emerged in the United States after World War II and surged forward in the succeeding decades. In 1967, political scientist Yehezkel Dror authored a seminal article on policy analysis, calling for the acceptance of the policy analyst as a unique professional occupation, armed with its own discipline.[10]

Dror's approach to policy analysis is specially adapted to consider the subjective elements and complexity inherent in the political process, and it is well-suited to the evaluation of such public systems as the office of the prosecutor. Policy decisions are measured by a definable systemic output such as the disposition of cases in a prosecutor's office. Yet Dror also notes that policies cannot be evaluated simply in light of final outcomes but must be considered and analyzed in terms of the framework of the

system and the environment in which the system operates. The result of applying Dror's perception of policy analysis to evaluating policy in local governmental units or offices is to establish a dual approach that focuses on predetermined statistical indicators of achievement, and on the management and organizational analysis of the framework within which the indicator is generated. This report will incorporate part of the conceptual framework developed by policy analysis into an approach that can be used to study the different types of prosecutorial policies that have been observed in operation and analyze their effects.

Social Control, the Law and Prosecution

Prosecution is a proportionately small application of the law as a sanction within a wider environment of social control. It addresses criminal cases. . ."an undetermined and highly unrepresentative small set of situations, probably represent(ing) an extreme last resort in the process of control."[11] Within this narrow sphere of legal activity, the prosecutor is the chief practitioner of criminal and sometimes civil law and symbolizes the interest of the state and the public in maintaining a lawful and orderly society.

The key to understanding the nature of prosecutorial policy lies in understanding the nature of the prosecutor himself. He is shaped by three distinct and important functions--legal, political and bureaucratic. In his legal function he is the chief law enforcement official in his jurisdiction; as a politician, he generally holds his office as a result of popular election; and as a bureaucrat, he is responsible for managing the operations and resources of a public agency. The prosecutor's nature is also discretionary: within a general framework of state law and a local economic situation, he has the latitude to choose between alternative courses of action. To the

extent that exogenous variables--those influences outside the prosecutor's control such as the size of his jurisdiction and the amount of funding available to him--can be accounted for, his discretionary choices define the policy of the prosecutor and are the basis upon which his performance should be evaluated.

All policy choices that are made by a prosecutor are shaped by the environment in which he operates. Numerous outside forces exert a continuous influence on the prosecutor's decisionmaking process and play a significant role in determining the characteristics of his office. Research done in the early 1970's by the National Center for Prosecution Management[12] attempted to measure the relative importance of many of these environmental forces, and to identify those which seemed to have the greatest impact on the prosecutor's character. The variable which proved statistically to be the most important was the population of the prosecutor's jurisdiction. Other environmental factors which significantly affected prosecutorial operations generally focused on the characteristics of the criminal justice system in the prosecutor's jurisdiction.

A locally-elected prosecutor operates within a social environment that expects him to be responsive to the community's political process, value systems and priorities concerning the enforcement of the law. Therefore prosecutorial discretion must be tempered by the community's standards for law enforcement and justice. Obvious examples of policy decisions made within a political context are the decisions whether or not to prosecute such crimes as the distributing of pornography, possession of marijuana or soliciting for prostitution.

When one speaks of the policy of the prosecuting attorney, it is generally in reference to the charging process and the decisions made there

because it is at this process point that the prosecutor's discretionary decisions are most clearly visible.

There are three constant ingredients in the charging decision: the seriousness of the crime, the criminal record of the defendant and the evidentiary strength of the case. How the factors are weighted by the prosecutor, which ones are considered more important than the others and in what proportion, give vital clues to prosecutorial policy and preference.

Prosecutorial Policy--A Typology

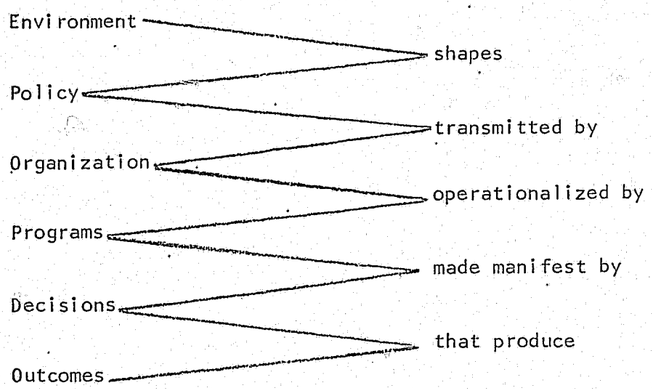
Whatever his environment, every prosecutor operates with a policy. The policy may have been inherited from a predecessor, it may be the position taken on an election platform, or it may simply be a reflection of the prosecutor's personal philosophy and assessment of his jurisdiction's needs. Nevertheless, all policies, regardless of origin, are implemented with the following factors in mind:

1. The jurisdictional environment;
2. The prosecutor's perception of his role in dealing with crime and providing prosecutive services;
3. The available resources for the implementation of policy, including finances, personnel, space and equipment;
4. The prosecutorial strategies that are available for his use such as discovery, plea bargaining and sentence recommendation;
5. The decisionmaking process in the office of the prosecutor.

The relationships between the process of policy choice and implementation may be depicted in the following manner:

FIGURE 2

A SCHEMA FOR EXAMINING THE DIMENSIONS OF POLICY



The diagram of this report's conceptual framework assumes that the prosecutor's policy is implemented through an organizational structure which allocates resources and establishes organizational and management controls. Implementation also occurs through the use of various prosecutorial strategies which while common to jurisdictions within a state may vary among states because statutory law or court decisions have precluded the use of a particular strategy.

In the last several years, LEAA-sponsored research at the Bureau of Social Science Research has identified a typology containing four separate policies that have been observed in use in prosecutors' offices. Although they do not represent a finite set, they are sufficient to show the effect of policy on dispositional patterns. The policies have been labelled: (1) Legal Sufficiency, (2) System Efficiency, (3) Defendant Rehabilitation, and (4) Trial Sufficiency. Each of them carries with it a philosophical underpinning, a set of programs, a particular resource allocation plan and

a specific network of strategies and decisions designed to achieve an expected outcome.

1. Legal Sufficiency has the lowest charging acceptance criteria of all the policies and requires few organizational controls for implementation. With this policy, if the legal elements of the crime are present, then the prosecutor's office will charge. The cursory screening given the case rarely notes constitutional or evidentiary issues that might subsequently affect its course. A policy of Legal Sufficiency occurs most often in the lower courts or those that handle a high volume workload. Because of the many large numbers of cases accepted into the system, dispositional routes involving plea bargaining, dismissals and others are used to reduce the work and not overload the courts.

2. System Efficiency has as its aim the achievement of speedy and early case dispositions. Common to large urban offices, System Efficiency strives to move the docket by the efficient use of all dispositional routes available to the prosecutor. In addition to favorable outcomes, the time to disposition and the place in the process where disposition occurs become important measures of success. System Efficiency places emphasis on pretrial screening, plea bargaining, diversion and the referral of cases to other courts or criminal justice agencies. The fullest utilization of the prosecutor's discretionary charging authority and coordination with the court's resources, as well as other components of the system, mark this policy's goal of moving the docket.

3. Defendant Rehabilitation is based upon a concept of prosecution only if rehabilitation or treatment is not suitable for the defendant. The prosecutor believes that with the exception of a few repeat offenders or rare, heinous crimes, other alternatives are preferable to incarceration

or even processing through the justice system. The goals of a Defendant Rehabilitation policy are early diversion of most defendants from the criminal justice system, coupled with vigorous prosecution of those whose cases are accepted. These bifurcated goals are harmonious since a serious and repeat offender has demonstrated that, for him at least, rehabilitative programs are not effective. Offices which adopt a Defendant Rehabilitation policy need to rely on noncriminal justice resources and community support to assist in moving eligible defendants out from the judicial and correctional systems.

4. Trial Sufficiency has the most rigorous implementation requirements of all the policies. Oriented toward the trial process stage, cases are accepted for prosecution only if they are capable of being sustained at trial and once charged, defendants must be tried on that charge. Implementation of the policy mandates management control systems, so that the initial charge is not modified or dismissed and so that plea bargaining is kept at a minimum. Intake and screening assume priority status in the office; rejection rates are high, dismissal rates low and plea bargaining occurs only under exceptional (and justifiable circumstances). Court capacity is essential.
A comparison of these four policies establishes a typology that sets a foundation on which analysis can be conducted. It demonstrates that there is a rationale for assuming that each policy generates different expected dispositional patterns. It also argues that without a knowledge of the prosecutorial policy in force, the interpretation of disposition patterns is meaningless. A comparison of the four policies is illustrated in Figure 3.

Decisionmaking

At the heart of the policy models is the decisionmaking process; for it is ultimately the decisions made and the outcomes produced that signal type

and effects of the policy in force. The decisionmaking process reflects individual choices between alternatives at each stage of prosecution. The decisions vary, as does the availability of the choices. The cumulative effect of all the decisions contributes toward attaining a pre-established goal.

Decisionmaking theory was first advanced as part of economic theory. It is only within this century that theoreticians have come to grips with decisionmaking in the context of politics and government. Political theoretician, Herbert Simon, challenged the application of classic economic tenets to political or governmental decisionmaking. He posited that decisionmaking in this context was much less rational than had been supposed and the term he applied to the process was "bounded rationality."[13] By this he meant that the amorphous nature of political activity did not always lend itself to absolute certainty about the number of choices available at a given time resulting in no clearly definable order of choices or preferences for decisionmakers. Bounded rationality required less than optimal choice, and Simon expounded that political decisionmaking was more a matter of "sacrificing" than optimizing. Simon's approach to the problem of political decisionmaking may be disturbing, but it is realistic. It also raises, for consideration, some of the problems that complicate the decisionmaking process in the political arena. These include recognizing the crisis component in decisionmaking, the insertion of the decisionmaker's personality into his choices, and the organizational limitations to rational decisionmaking.

In addition, there are several characteristics of decisionmaking as a process that need to be taken into consideration, among them the amount of information that is available when the decision is to be made and the

increasing ambiguity of decisionmaking when the number of actors involved in the decision increases.

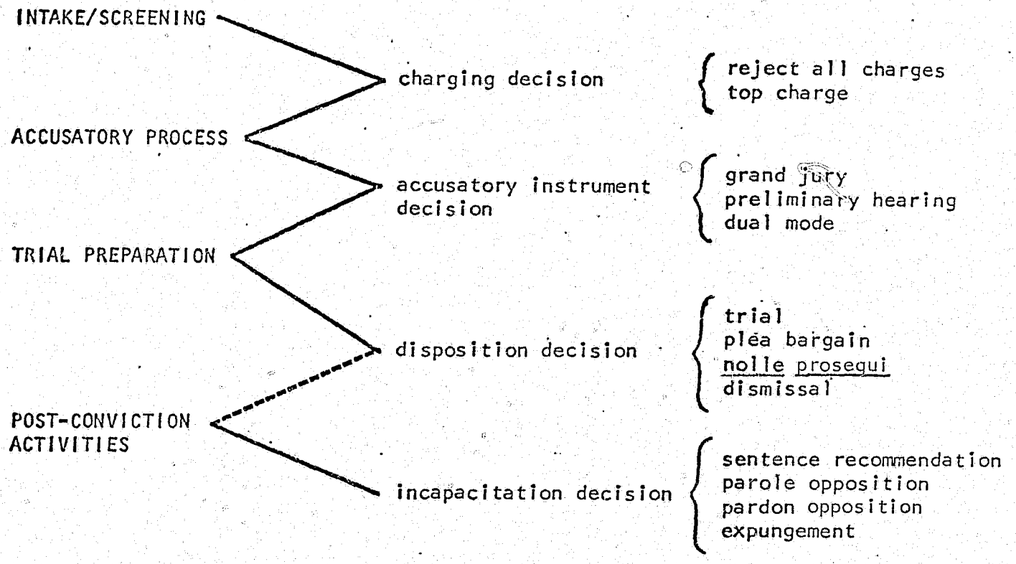
Prosecutorial decisionmaking conforms closely to the bounded rationality concept. The practical implications of criminal justice and the pressures of the modern criminal courts place very definite limits on the variables involved in the prosecutor's decisionmaking. A crisis atmosphere exists, decisions are based on less than complete information and the effects or probable consequences of a decision within a community cannot be specified.

The decisionmaking process starts with the charging decision and ends with the disposition of the case. All decisions along the caseflow process anticipate some end result that is evaluated with respect to what should be done with this particular defendant in the particular offense situation at this particular process point.

The basic caseflow through the prosecutor's office involves four process steps: case intake and initial screening; the formal accusatory process; trial preparation and trials; and postconviction activities. At each of these steps there are distinct types of decisions that have to be made by the prosecutor. To examine policy consistency, one must look not only at the aggregate dispositional patterns which provide measures of effectiveness, but also analyze the individual process steps and their activities. An analysis of the prosecutor's management and operating procedures at each stage will reveal whether they are consistent with the overall policy choices of the office. By examining the effects of policy as displayed through decision statistics, one can determine the prosecutor's policy from both the inductive and deductive approaches. This method forms a basis for analysis of the ten sites and the reporting of the results in Part II, and is illustrated in Figure 4.

FIGURE 4

AN ILLUSTRATION OF THE DECISIONMAKING FUNCTION WITHIN PROCESS STEPS



The Organizational Perspective

A prosecutor seldom acts unilaterally in taking specific steps toward achieving his goals. He activates his policy by mobilizing for action the group that is constituted by his assistants, his clerical staff, investigators and others that are under his direct control. A necessary concommitant of the prosecutor's interaction with these persons is the process of communication itself and the structure of the group with which he communicates.

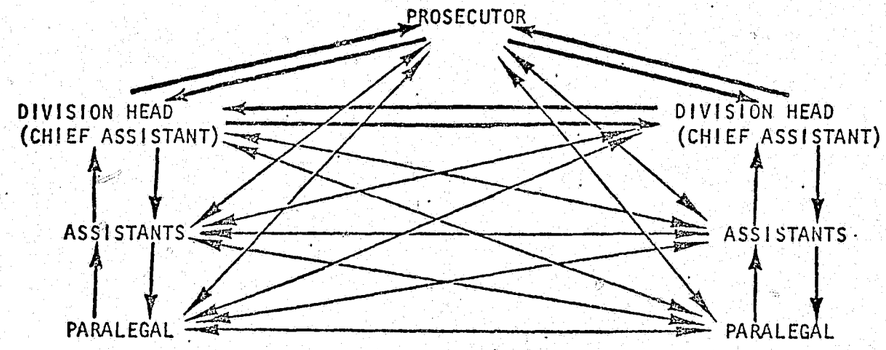
The emergence of organizations as one of the predominant factors affecting life in modern societies has been noted by many observers. Several theories and models have been advanced to explain organizational behavior, with recent research tending toward the view that organizations are highly complex and sophisticated entities with multiple goals and formal and informal channels of communication.

Prosecutor's offices share many of the problems and characteristics of other organizational structures, although some major distinctions are evident. The core of a prosecutor's staff consists of attorneys with a more or less common background or professional orientation. Consequently, prosecutor's offices more often resemble collegially structured professional organizations than strictly bureaucratic organizations in which autonomy and peer control are not as evident. The extent to which this relationship prevails will vary among offices.

It should be apparent that communications both through articulated and nonarticulated channels are a crucial element in the very concept of organization. Indeed, it is often difficult to separate communications from the distribution of power and authority. Figure 5 diagrams a simple organization with the communications channels that might be recognized as official

FIGURE 5

POTENTIAL COMMUNICATION CHANNELS



and prescribed shown in heavy black lines. But the potential exists for establishment of other channels as shown by the lighter black lines. Of importance here is that the inevitable existence of informal channels of communication be recognized. Of course, there are a variety of media and situational settings in which messages are incorporated as they pass through communication channels, some of which are suggested by Figure 6.

In the most general terms, research on organizations indicates that for institutions performing nonroutine tasks requiring the solution of complex problems and dominated by relatively autonomous experts, the free flow of communications tends to produce greater organizational effectiveness.

This would seem to suggest that a prosecutor's policy might be better implemented within an open communications system having high feedback by a structure that is not too hierarchical, and which deemphasizes programmed

FIGURE 6

SOME TYPES OF COMMUNICATIONS

	ARTICULATED SETTINGS AND MEDIA	NONARTICULATED SETTINGS AND MEDIA
WRITTEN	Policy documents Operating procedures, guidelines, instructions Administration procedures, guidelines, instructions Letters and memoranda Recurring reports Reports specified for exceptional situations	Letters and memoranda Unspecified exceptional reports
UNWRITTEN	Staff meetings/conferences Verbal reports in specified situations	Casual conferences: Rap sessions watercooler/coffee cup meetings Hallway meetings and drop-ins Lunches After-work cocktail hour Social occasions Car pool conversations

procedures. Yet, these conditions exist more in concept than reality. Large offices with big caseloads are more likely to generate a high volume of work that can and should be routinized. The complex problems inherent in some cases can be identified and isolated for special handling, e.g., economic crime cases. In such offices, a dual structure might be considered combining an open model for the attorneys and decisionmakers, with a more bureaucratic organization for those elements engaged in routine work. Whichever approach is adopted, it should be the result of a careful consideration of all the variables, starting with the prosecutor's policy.

As previously indicated, the organizational aspects of the prosecutor's office and the structure of other external agencies may have a limiting effect on the type of policy that can be implemented and the procedures available for use. This is most clearly observed in the type of case processing system employed by the court. Two basic models may be distinguished; each affects the prosecutor's organizational response. The first is based on an assembly-line, master calendar assignment system; the second, is the individual docketing system.

Prosecutor's offices generally respond to these court systems with one of two corresponding organizational structures. The assembly-line, process model organizes the prosecutor's office around the various steps in the justice system. Assistants are assigned to each processing point and supported by other staff as necessary. In contrast, the integrated trial team model flourishes in court systems that use individual docketing procedures. Here, prosecutors assign either an assistant or a team to the judge or courtroom. Unlike the assembly-line process, the same assistant will handle an individual case from assignment to disposition.

While these are the two basic structures around which most prosecutors' offices are formed, they have been adjusted and modified in many jurisdictions to meet different needs and goals. Since the prosecutor has limited choice in the selection of his basic model, a primary reason for adjustment is to transfer the advantages of the other model to the one in use. The most common modification is by establishing special programs to process certain types of cases. This includes those units which prosecute specialized crimes (e.g., narcotics, rackets, homicide, robbery, etc.) and those that prosecute different types of criminals (career criminals, first offenders, major offenders, or predicate felons). Utilization of such programs provide the prosecutor with an additional flexibility in the reallocation of his staff, which is essential to an organization with changing priorities or characteristics in its workload. Although the prosecutor's organizational structure is basically formed by the court systems, the use of resources and manpower within the office provide sensitive indicators to the policy preferences of the offices. It is in these areas that the prosecutor's discretion, authority and freedom determines and implements the priorities for prosecution.

As offices increase in size and complexity, the issue of uniformity and consistency in the decisionmaking process takes on crucial importance. Ideally, uniformity occurs when the prosecutor and his assistants all agree on the same method of handling a case to achieve the same desired outcome. This state is seldom attained even in the smallest offices, nor is it necessary. Uniformity, in the real world of prosecution, needs a definition that permits the prosecutor and assistants to agree on the range of desired outcomes while the strategy of how they are reached can vary by the characteristics of the case and personal preferences of the assistant. Extending this definition to

the organization level and to office policy, uniformity in implementing policies can be achieved when the dispositional pattern of cases is consistent with the goals of the office and the course of actions (strategies) selected by the prosecutor are such that they produce the desired dispositional patterns.

In summary, individual decisionmakers in prosecutors' offices must operate within an organizational environment that maximizes communication and feedback among all decisionmakers; even though it is influenced by the court's case processing system, the office itself must be structured to accomplish the prosecutor's goals; resources, both physical and personnel, need to be allocated in accordance with the goals of each of the prosecutorial phases; in addition to the overall policy, internal accountability and controls need establishment to ensure that the office is performing according to plan and to identify reasons for breakdowns if they occur.

From this discussion we can now identify those factors that need consideration in undertaking a policy analysis of the prosecution function. They include the environment within which the office operates, the criminal justice system with whom it interacts, the structure and organization of the office, the process steps and procedures used to bring cases to disposition, the resource allocation patterns that distribute the staff by experience and skills, the communication, feedback and management controls used, and, finally, the goals of the office. The test for whether an office is applying its efforts in a uniform and consistent manner relies on first identifying what it is attempting to do, then testing for whether the distributive properties of justice within this framework are being applied in an equal and fair fashion.

PART II: The Application of Policy in the Office of the Prosecutor

Part I, Policy and the Prosecution Function, presented the theory and concepts of policy analysis and related them to the prosecution function. It explored the dimensions of prosecution from a policy perspective and discussed the various components of the management procedures and organizational structures that influence uniformity and consistency in decisionmaking. From this, an analytical approach was developed that was based on the interrelationships of a number of assumptions.

Based on the conceptual approach elaborated on in Part I, analytical procedures were developed and employed in the study of ten prosecutor's offices throughout the United States. Part II reports the results and descriptions of these site visits.

The first purpose of the on-site studies was to determine the existence and identity of the policies employed in each office. Both inductive and deductive approaches were combined to perform this task. Specifically, this included interviews with the top policy-makers in the office to determine the articulated policy, followed by interviews with other decisionmakers throughout the organization to determine not only the policy but how it was being transmitted and implemented through management and organizational processes.

The second purpose of this study was to verify, if possible, the typology model developed in Part I and to determine whether other prosecutorial policies existed that could not be fitted into the present model. This was accomplished by analyzing the actual operations, programs and management procedures for consistency with either stated or unstated prosecutorial goals. The results of this activity are presented in Part III, Findings and Conclusions.

The third objective was to identify other factors and process steps that are policy-sensitive and should be included in future policy studies of prosecution. This was achieved through staff interviews, supplemented by interviews with others in the criminal justice system such as public defenders, judges, sheriffs and community corrections personnel.

Part II consists of seven chapters. Chapter I presents a summary comparison of the criminal justice environments within which the various offices are placed. It describes the criminal justice systems in each of the sites, comparing and contrasting the external variables that appear to have influence on prosecution and describing the relevant operations or constructs of the police, courts, and defense systems.

Chapter II describes the office of the prosecutor in each of the ten sites, noting its size, organization, personnel characteristics and other salient organizational features that lend insight to distinguishing one office from another. The diversity encountered in this description provides a backdrop against which the various process steps can be examined and compared.

The first two chapters are not synopsized here as the statistical and descriptive data on offices and criminal justice systems do not lend themselves to summary. However, Table 1 from Chapter I has been included to present some of the selected characteristics of the offices participating in the study. This summary presents a condensed version of Chapters III through VII, each of which describes individual prosecutive process points. This approach was adopted to demonstrate how the prosecution function changes from one process step to another and how the policy of the office tempers the work performed in each of these steps. Each process step is affected by factors beyond the

TABLE 1 - SITE COMPARISON BY SELECTED CHARACTERISTICS

	Population (1,000s)	Principal City	Population of Principal City (1,000s)	Felony Caseload	Number of Assistants	Number of Branch Offices	Number of Police Agencies	Accusatory Instrument	Indigent Defense	Court Structure	Juris. Other Than Criminal	Trial De Novo		
Wayne Co., MI	2,518.8	Detroit	1,335.1	18,000	126	1	44	Inf.	A.C.	Mix-ed [b]	yes	yes		
Kings Co., NY	2,411.0	Brooklyn	2,411.0	39,500	320	0	1	Ind.	P.D.	Two-Tier	no	yes		
San Diego Co., CA	1,594.0	San Diego	774.0	8,500	153	5	19	Inf.	A.C.	Two-Tier	yes	no		
Dade Co., FL	1,445.7	Miami	365.1	11,000	100	0	26	Inf.	P.D.	Two-Tier	yes	no		
King Co., WA	1,149.2	Seattle	487.1	6,300	52	0	36	Inf.	P.D.	Two-Tier	yes	yes		
Orleans Parish, LA	562.4	New Orleans	562.4	6,000	61	0	4	Inf.	P.D.	Uni-fied	yes	no		
Lake Co., IN	546.0	Gary	167.5	1,000	40 [a]	6	7	Inf.	P.D.	Mult-iple [c]	yes	no		
Salt Lake Co. UT	512.9	Salt Lake City	169.9	2,400	24	2	12	Inf.	P.D.	Two-Tier	yes	yes		
Norfolk City, VA	285.5	Norfolk	285.5	4,500	14	0	1	Ind.	A.C.	Two-Tier	yes	no		
Boulder Co., CO	165.5	Boulder	78.6	500	12	1	5	Inf.	P.D.	Two-Tier	yes	no		

Note: Felony caseload figures are estimated figures.

a -- all assistants in Lake Co. are part-time employees

b -- Wayne County has two separate systems. In Detroit, the Recorders Court is a unified court; in the outlying county areas, there is a two-tiered system.

c -- Lake County has two trial level courts of general jurisdiction, and two lower level courts of overlapping limited jurisdiction.

prosecutor's control. How they are adapted to in light of the priorities of the office shed valuable insight into the prosecutorial function.

Overview

The ten prosecutors' offices participating in the study may be characterized by the different ways they have approached their prosecutorial responsibilities and by the organizational structure they have established to do the work.

The result gives a distinctive stamp to the personality of an office ranging from a young, eager, dynamic office to one that is solid, experienced and bureaucratized. While these more intangible qualities are important in distinguishing one office from another, they are difficult to explicate through the more formal descriptive mechanisms such as office size, composition, procedures, and channels of communication. With this limitation in mind, the following chapters address the more formal aspects of the office as it performs its routine tasks within each major process step and establishes special programs for other, non-routine ones.

The Intake Process

Intake represents the first stage of prosecution and culminates with the most important manifestation of the prosecutor's discretionary power--the charging decision. Of all the areas of prosecutorial activity, the screening and charging functions generate the most interest because they are the initial point at which prosecutorial policy is implemented. The quality of the decisions made here often set the course for justice in a community.

Intake begins when the prosecutor is notified that a crime has occurred (and, generally, that a subject has been arrested) and ends with the decision to charge or not. Cases presented for prosecution generally originate from one of four sources: the police, citizen complaints, grand jury investigations and investigations initiated by the prosecutor; however,

the largest proportion of prosecutorial work at intake is generated by police activity.

Recent criminal justice movements have pushed for increased prosecutorial activity in the review and screening of cases; the National Center for Prosecution Management and the National District Attorneys Association have attempted to implement standards developed by the crime commissions of the 1960s and 1970s through the development and dissemination of forms and procedures manuals.

Optimally, an efficient and effective intake process is one where all relevant information reaches the prosecutor as quickly as possible after an arrest or criminal event so that the facts of the case can be properly reviewed and analyzed prior to a charging decision. Realistically, within the interactive environment of competing system demands, the prosecutor responds to whatever information is available whenever it is received.

The intake process reflects the gate-keeping function of the prosecutor. What is accepted and rejected at this stage sets the character of the remainder of the prosecution process. Thus it is important that the structure and organization of this process be determined. The primary issue of course is the decision to charge, who makes it and when. Three prosecutorial styles can be established that point up the differences that exist in this part of the decisionmaking process. They are: (1) a transfer style that shifts many prosecutive decision functions to the law enforcement and/or judicial components of the system; (2) a unit style wherein the individual assistant is given autonomy in decisionmaking; and (3) an office style in which the chief prosecutor selects a course of action for the decisionmakers and structures the office and its procedures accordingly. Table 2 shows the distribution of sites by charging policy.

Table 2

DISTRIBUTION OF SITES BY CHARGING POLICIES, 1978

TYPE		SITE
TRANSFER		Dade County (Miami), Florida Norfolk, Virginia
UNIT		Salt Lake City, Utah Lake County (Gary), Indiana
OFFICE		
Legal Sufficiency	-	Wayne County (Detroit), Michigan *King County (Seattle), Washington San Diego County, California
System Efficiency	-	*Kings County (Brooklyn), New York
Defendant Rehabilitation	-	Boulder, Colorado
Trial Sufficiency	-	Orleans Parish (New Orleans), Louisiana

* Undergoing change

The importance of recognizing the differences in these styles lies in their ability to show how charging policies come into play. It is clear that if the charging decisions are transferred to either the law enforcement agencies (police filing charges, or police-prosecutors) or the court (the judge making determinations about the charge and its level), the existence of a prosecutorial charging policy is precluded.

Transfer

No separate intake unit exists in either Norfolk or Dade County; nor is the State Attorney in Dade County or the Commonwealth Attorney in Norfolk severely constrained by time in making charging decisions. In both jurisdictions, initial charges are filed by the police. The arresting officer and/or detective and the victim and other witnesses are available for questioning prior to the preliminary hearing. Police charges can be and quite often are amended by the prosecutor at preliminary hearing.

Where the review and screening activities are in effect transferred to other agencies, intake occurs at a later point in the process, usually at the accusatory step, and screening may or may not be utilized.

Unit

Two offices--Salt Lake City and Lake County--do not have separately organized intake units. Cases are reviewed by assistant prosecutors on an availability basis. Accordingly, less experienced assistants will often take on the case reviewing and intake responsibility and make charging decisions according to their own standards.

The prosecutor in Salt Lake City is not constrained by time in making his charging decision. That decision is made based on an examination of the report prepared by either the police officer or detective, and of the

individual officer himself.

In Lake County an undue burden has been placed on the prosecutor because of court-ordered, short filing requirements. The short time given the prosecutor for the charging decision creates a crisis environment that is not conducive to proper screening and charging. To meet a 24-hour deadline (48 if the arrest occurs after noon on Saturdays), the prosecutor has had to assign assistants on weekends. Additionally, there is little routine internal review of assistants' charging decisions, although assistant shopping is reduced by the use of a clerk who assigns cases to assistants from a master log.

Office

Prosecutors in Wayne County, Kings County, San Diego and Orleans Parish, King County and Boulder County all maintain separate organizational units to review cases at intake and make charging decisions.

A separate intake unit staffed by experienced prosecutors is maintained in Wayne County. The assistant in charge of intake screens and reviews charging decisions and monitors the intake process to preclude assistant shopping. Generally, cases are brought over by courier, although the complaining witness must be present to sign the complaint prior to the issuance of a warrant. In Michigan, by law, no warrants can be issued without prosecutorial approval. Thus, a favorable environment has been established to permit screening.

The District Attorney in Kings County (Brooklyn), New York, established a screening unit in the late winter-early spring of 1978 with the creation of the Early Case Assessment Bureau (ECAB). A number of the most experienced assistants in the office direct a staff of case screeners located at the 84th Precinct in Brooklyn, the jurisdiction's central booking facility.

Access to the arresting police officer and usually the complaining witness is available. A priority evaluation system for subsequent case treatment is also used.

In San Diego, a separate intake unit is staffed by well-experienced prosecutors. The arresting police officer is required to present his report before a charging decision is made. Supplemental investigations are generally a police responsibility; however, the District Attorney's own investigative staff is sometimes used for this purpose.

In Orleans Parish (New Orleans) the intake process is given meticulous, continuing attention by a separate intake unit. Nine senior assistants are assigned to this task. Individual assistants are assigned to review narcotics cases, armed robbery, and homicide cases. Two assistants review economic crimes cases, and four general screening. Only rejections require the approval of the Chief of Intake; but any subsequent dismissals must be approved by either the charging assistant or the Chief of Intake. Discovery is extensive at this point, and the prosecutor has up to 15 days to file charges.

The prosecutor in King County (Seattle) maintains a separate intake unit staffed by experienced prosecutors. Charging decisions are made based on interviews with the detective assigned the case and on the investigative report. Although there is a structured review of charging decisions in the office, assistant shopping is possible.

In Boulder, police reports are first reviewed and supplemented by the prosecutor's investigative staff then forwarded to the charging assistant with recommendations. However, the District Attorney, himself, makes the charging decision. He conducts a daily staffing and charging conference which is also attended by other assistants, defense counsel, the Sheriff, community corrections personnel and other interested parties. Selected intake characteristics of all the jurisdictions are depicted in Table 3.

TABLE 3

SELECTED CHARACTERISTICS OF THE INTAKE PROCESS
(Routine Felony Processing)

SITE	Method Transmitted	Witness Present	Speedy Trial/ Arrest	Separate Organizational Unit	Experience of Charging Assistants	Review/ Approval	Feedback Notification
Wayne County, MI	Courier	Yes	No	Yes	Senior	No	No
Kings County, NY	APO	Yes	Yes	Yes	Senior	No	No
San Diego County, CA	APO/Det	No	No	Yes	Senior*	Yes	Yes
Dade County, FL	Courier	No	Yes	No	Vary	No	Yes
King County, WA	APO/Det	No	Yes	Yes	Senior	Yes	Yes
Orleans Parish, LA	APO/Det	Yes	No	Yes	Senior	Yes	Yes
Lake County, IN	APO	No	No	No	Vary	No	No
Salt Lake County, UT	Det	No	No	No	Vary	No	No
Norfolk, VA	Courier	No	No	No	Vary	No	Yes
Boulder County, CO	Courier	No	Yes	Yes	Senior	Yes	Yes

* In satellite offices, junior assistants at intake, supervised by a senior assistant and a "circuit-riding" supervisor from the central office.

In summary, the intake process of prosecution is dominated by two issues: the prosecutor's ability to review and approve charges before they are filed in court and the extent of evidence and time available for this process. This latter issue paradoxically produces one of the few areas in the prosecutive process where delay has a positive effect. Finally, how the process is staffed and what types of review or approval controls are placed on this decision point are clear indicators of the prosecutor's perception of his role and the priorities he assigns to this task.

The Accusatory Process

The accusatory process affects not only the future status of an individual defendant, but also may influence the quality of the prosecutor's charging decisions. It begins after the decision to charge has been made and ends with the arraignment of the defendant on an accusatory instrument.

There are two major forms of criminal accusation in the United States: the grand jury indictment and the prosecutor's bill of information which generally, although not always, results from a finding of probable cause at a preliminary hearing. At present, all states have some type of grand jury system. Though the extent of its use in the accusatory process varies, grand jurors conduct their proceedings in secret and are charged with evaluating the state's evidence for probable cause that a crime has been committed and that the defendant was the perpetrator. Because the prosecutor most often controls the flow of information and witnesses to the grand jury, critics claim that the jurors act more as a "rubber stamp" for the prosecution than the determiners of probable cause. The grand jury may hand up an indictment or a true bill as the accusatory instrument. Should the prosecutor fail to meet the probable cause standard, the grand jurors may return a "no true bill."

The second form of accusation is by a bill of information generally resulting from a probable cause or preliminary hearing. Two issues are addressed in a preliminary hearing: first, the question of whether or not there is probable cause to restrict the liberty of the defendant; second, whether there is probable cause to bind the case over to trial. While the first determination is constitutionally protected by Gerstein v. Pugh, the second is not. In many jurisdictions the two issues have been separated, with the restraint of liberty, being resolved in a first appearance for bond setting and indigent defense counsel appointment; and the bindover to trial being held at a later date in a preliminary hearing. In some states, the preliminary hearing process is mandated by the state constitutions; in others it is created by statute, or rule of court.

There are four basic models for preliminary hearings--the Federal, the California, the American Law Institute and the Rhode Island. Each can be distinguished by the requirements it sets in the following areas: (1) the number of appearances; (2) the time limits imposed, if any; (3) the degree of participation by the defense and prosecution; (4) the necessity for questioning and cross-examining witnesses; and (5) the amount and type of evidence required. The first three types require a determination that there is probable cause to believe that the defendant committed the crime. The Rhode Island (ex parte) model is concerned with only the restraint of liberty issue.

Adding more variation to the accusatory process are the combinations of the two accusatory forms that have emerged throughout the states. Cases may flow from arrest to grand jury for indictment; arrest to preliminary hearing with a bindover to the grand jury for indictment; arrest to preliminary hearing for bindover for trial; and the optional use of either accusatory procedure, arrest to grand jury or arrest to preliminary hearing. Table 4 shows the distribution of sites by accusatory process.

Of the ten jurisdictions studied, none used the traditional form of accusation--arrest to grand jury indictment. Where grand jury indictments were the primary accusatory instruments, they were obtained through the redundant accusatory process of preliminary hearing with a bindover to the grand jury for indictment. Three sites--Brooklyn, Norfolk and San Diego--all used this route, although the selective use of waivers modified the basic process in varying degrees among the sites.

The other seven sites, Detroit, New Orleans, Miami, Boulder, Salt Lake City, Seattle and Lake County, all relied on the prosecutor's bill of information as the primary means of bringing a criminal accusation. Each conducted a preliminary hearing to determine probable cause but they ranged in complexity from the simple, ex parte hearing used in Seattle and Lake County to the more adversarial form observed in Salt Lake City, Miami, Boulder, New Orleans and Detroit. Of these, Salt Lake City had the most extensive preliminary hearing process. (Most hearings being of the nature of a mini-trial and consuming one to one and a half hours.) In contrast, the hearings in New Orleans consumed only about five minutes per case.

The right to either a preliminary hearing or a grand jury proceeding is constitutionally protected. However, it may be waived by the defendant (sometimes with the concurrence of the state). Waivers are made for a number of reasons. In some cases the secrecy of the grand jury proceeding is desired to protect the identity of informants or to save young children the trauma of testifying at open hearings. In other instances, preliminary hearings are desired to test the credibility of the witnesses. The State does not have the right to waive these proceedings. However, they can be by-passed if necessary. A preliminary hearing can be unnecessary if the prosecutor obtains a grand jury indictment. The need for a grand jury hearing can be obviated if the prosecutor files a bill of information. These strategies are employed often to correct

TABLE 4

DISTRIBUTION OF SITES BY TYPES OF ACCUSATORY PROCESS

TYPE	JURISDICTION
1. Arrest to Grand Jury	None observed
2. Arrest to Preliminary Hearing, Bindover to Grand Jury	Kings County (Brooklyn), New York
	Norfolk, Virginia
	*San Diego County, California
3. Arrest to Preliminary Hearing	
a. Adversarial hearings	
American Law Institute Model	Salt Lake City, Utah
Federal Model	Dade County (Miami), Florida
California Model	Boulder County, Colorado
	Orleans Parish (New Orleans), Louisiana
	Wayne County (Detroit), Michigan
b. Ex-Parte hearings	
Rhode Island Model	Lake County (Gary), Indiana
	King County (Seattle), Washington

*Undergoing change

troublesome court procedures or rules that impede prosecution or to gain more control over the decisionmaking process. In San Diego, recent California Supreme Court rulings have effectively created an untenable position for the prosecutor's use of the grand jury as an accusatory body. Thus, with the exception of capital crimes, the grand jury is by-passed by filing a bill of information with the Court. In Dade County, an opposite strategy was observed. When more control over the accusatory decision process was needed, the preliminary hearing was by-passed by filing a direct bill of information. It is clear that while the basic forms create certain routine prosecutorial responses and adaptations, when both accusatory routes exist together, a new dimension is added to the prosecutor's activity at this point.

Trials to Disposition Process

Once a case has been accepted and the accusatory phase completed, the focus of work shifts from evaluating the case for acceptance to preparing it for disposition. The trials to disposition process begins after the defendant has been arraigned and ends with a disposition. A number of activities are involved in this stage. Most important for the prosecution are (1) case assignment procedures; (2) trial preparation and strategy; and (3) court appearances.

It is in this process that the power and operations of the prosecutor are most significantly affected by the docketing and continuance procedures of the court. The interaction between these two components needs careful consideration so that the effects of each can be separated.

How the prosecutor structures his trial division and makes assignments depends in large part on whether the court uses a master calendar assignment procedure or individual docketing. Two basic responses linked to these calendaring procedures can be identified. They are the process-oriented organizational model and an integrated or trial team model. In the first

type, the process-oriented model cases flow through each of the process steps, such as arraignments, pretrial conferences, motions, and other hearings, and finally trials. Much like an assembly-line, assistants are assigned to the various process points and process the cases as they pass through. Case assignment for trial preparation and disposition therefore occurs very late in the system, with the assistant preparing cases that have been shaped and formed by others before him.

The second type of assignment procedure is the integrated or trial team approach. Here the assistant or a team of assistants are assigned to an individual judge or courtroom. The assistant prepares and tries the case from its entrance into the courtroom through its disposition. All the activities that are spread among the assistants in the process model are combined in this type of assignment model.

Case assignments varied among the offices visited. In Brooklyn and Detroit, trial assistants are assigned to the divisions of their respective courts. They prepare the cases that are docketed to the division for trial. In Seattle, the chief trial assistant evaluates each case and matches its complexity with the skills and caseload of the trial assistants before making individual assignments. In San Diego, the assistant in charge of the Superior Court Division makes trial assignments to teams on the basis of their current caseload and the type of expertise it is felt may be needed in a case. The Chief of the District Court Division in Boulder assigns cases to one of four Assistant District Attorneys. A similar assignment procedure is used in Lake County by the Chief Assistant in Charge of Trials. In each of these sites, most of the pretrial processing was accomplished by assistants other than the trial assistant.

Four of the offices visited--Miami, New Orleans, Norfolk and Salt Lake City--used a trial team approach. In Salt Lake City, trial assistants

received their cases at intake and were responsible for them from charging through disposition. In Miami, New Orleans and Norfolk, a similar procedure existed but assignment did not start until the preliminary hearing was to be conducted or a bindover completed.

Many jurisdictions have developed over the years modifications to the basic assignment procedures which allow for the simultaneous utilization of both trial assignment forms. The most common adaptation was to create special bureaus or divisions to process special crimes or classes of offenders. The value of these special programs or units is that it gives the prosecutor a choice in using the most advantageous assignment procedure.

Since the work undertaken in preparing for trial is done within a framework of expected dispositions, the selection and use of appropriate strategies to achieve these dispositions is based on their availability to the office and the discretion allowed the trial assistants. Two of the most notable strategies, and the ones examined here, are discovery and plea bargaining.

Depending on the extent to which discovery is mandated by court rule or state statute, it may be utilized as a prosecutorial strategy to induce early pleas or negotiated dispositions. In some instances, it may also create additional work for the prosecutor.

Among the ten sites, only Salt Lake City had no statuatory or court rule compelling discovery; there the use of discovery is at the discretion of the trial assistant.

Liberal to plenary discovery is available to defense counsel in San Diego, Detroit, Seattle, Boulder, Lake County and Miami.

In Miami, the liberal Florida discovery rule compels the prosecutor during case preparation to devote an inordinate amount of time to defense counsels' demands. It is the practice especially of the public defenders'

staff of assistants to depose all of the states witnesses in a given case. The prosecutor is required to be present during such questioning in order to protect the interest of the state.

Prosecutors in Lake County have their case files photocopied and provided to defense counsel as a result of the liberal Indiana discovery rule.

In Boulder, the District Attorney's open file discovery goes beyond that required by Colorado law. It is a policy based on his belief that full disclosure lays a solid ground for gathering all information about a case so that a fair and just disposition can be reached as soon as possible.

A defendant has a right to limited discovery in Norfolk. Prosecutors there often open their case files to defense counsel in strong cases as a strategy designed to induce an early plea. The same strategy is used by Salt Lake City prosecutors in strong cases.

By far the most important strategy used by the prosecutor to manage caseloads in eight of the sites is plea bargaining. In New Orleans and Boulder plea negotiating is minimized. The District Attorney's staff in New Orleans declines to file charges in 45-50 percent of the cases presented. Cases accepted are expected to go to trial. Less than 10 percent of all cases are disposed of by plea bargains there. Early in 1978 the District Attorney in Boulder instituted a plea bargaining reform. Prior to that time it had been the policy of the office to overcharge by filing multiple counts which were later negotiated. Under the "reform" policy, the District Attorney and his staff at a staffing and charging conference make a charging decision that is expected to hold under ordinary circumstances.

The other eight sites are distinguishable by the amount of discretion vested in the trial assistant to negotiate pleas and the extent to which that decision is customarily reviewable. In Norfolk, Miami and Salt Lake City,

plea negotiations are largely within the discretion of the trial assistant. His decisions are rarely subject to review.

In contrast, the Lake County, Seattle and Detroit prosecutors have vested the authority to negotiate pleas in a limited number of senior assistants, the Chief Trial Deputy in Lake County, an Assistant Chief Prosecutor in Seattle, and the Docketing Coordinators in Detroit. Two Pretrial Conference Parts in Brooklyn's Supreme Court have been established for the sole purpose of expediting the negotiation of pleas. The plea offered at the conference, which is determined by the trial assistant in consultation with his supervisor, is generally the one that will be offered up to the day of trial when all offers are cancelled.

Approximately 90 percent of all felony cases are disposed of in San Diego by guilty pleas, but their disposition is not negotiated in additional form of charge reductions. A panel of District Attorney staff supervisors meet weekly at a case evaluation conference (known colloquially as "the turkey shoot"), where a determination is made as to the type of plea which will be offered in a given case and whether the office will oppose the defendant's serving local time or not.

The extent to which these strategies were used varied by the policy of the office, the amount of discretion vested in the trial assistants, and their availability for use within the local criminal justice environment.

Finally, the last factor bearing on the nature and character of the trials process considered here is the continuance policy of the court and the responses made to counteract delays through the use of speedy trial rules. The continuance policy of the court is probably the single most important factor affecting the successful disposition of cases. Excessive continuances not only increase the work of the prosecutor, but seriously diminish his capacity to bring the case to a satisfactory disposition.

Of all the jurisdictions visited, continuances and delay appeared to be a problem in only two--Brooklyn and Miami. Whether or not this distribution represents a typical sampling of jurisdictions certainly cannot be determined from this particular study.

The system in Miami lends itself to court delays, although there is, as one would suspect, a degree of idiosyncratic variation among the 12 Circuit Court judges who hear criminal cases, continuances in large measure are the order of the day there. Speedy trial problems are obviated by requiring that a defendant waive his right to one as a condition of granting a continuance.

In Brooklyn, cases do not generally go to trial until more than five months after indictment because of the policy of the court in granting continuances, there called adjournments. As one Assistant District Attorney put it, "Most judges are very lenient in granting defendants' motions for adjournment. Speedy trial rules are no problem because waivers are obtained from defense counsel." This effect is minimized in both Norfolk and Seattle, where the prosecution must acquiese in a defendant's motion for a continuance.

Whether "speedy trial rules" reduced or controlled delay by acting as a lid on time in process is indeterminate from this study. Speedy trial rules are in effect in all of the sites visited. They require that defendants be brought to trial within time periods varying from six months (for those not incarcerated awaiting trial) or in a much shorter period of time for those in jail awaiting trial. Yet, in all but two jurisdictions, the time from arrest or bindover to final disposition is far less than that imposed by the speedy trial requirement. In Seattle, it is within a period of 30-60 days; within 45 days for incarcerated defendants in Salt Lake City (and nine weeks for those not in jail); Detroit's office policy requires trial within 90 days after bindover. At the time of the site visit in August, 1978, the average time was approximately

45 days. Norfolk, at the time of the site visit in April, 1978, took 59 days from indictment to final disposition. In New Orleans, it is usually 59-60 days from arrest to final disposition. A comparison of all the above mentioned factors in the trial process is represented by Table 5.

From the assignment of a case through its ultimate disposition on the trial level--whether that be by negotiated plea of guilty, verdict of guilty after bench or jury trial or acquittal by the same process--a trial assistant is confronted almost daily with a variety of situations which require decisions. The discretion permitted him varies by the level of his experience, the importance of the case and the policy of the office.

This discretion is most strictly circumscribed in New Orleans and Brooklyn at the trial level. It is also the case in Seattle as a result of the constraint imposed by the prosecutor's charging standards. The "no reduced plea" policy in effect in Detroit severely limits trial assistants' discretion. In Boulder the staffing and charging decision made at intake by the District Attorney himself cannot be deviated from except for exceptional circumstances in connection with plea bargaining.

Provision has been made in Miami for monitoring trial assistants' decisions in some regards. For example, trial assistants must submit in writing, for approval by supervisors, their dismissals and nolle prosequis. Save for central control of plea negotiations in Lake County, there is little formal review mechanism in place there. The prosecutor relies on his good relationship with the court to get feedback as to decisions by his trial assistants.

Trial assistants in Salt Lake City and Norfolk are vested with a great deal of discretion in every regard--from intake through ultimate disposition. There are few controls on their decisionmaking activities and no systematic reviews.

TABLE 5

SELECTED CHARACTERISTICS OF THE TRIAL PROCESS
(Felony Cases)

SITE	Organizational Model	Delay Problem	Use of Discovery	Plea Bargaining	Type of Trial Docketing
Wayne County, MI	process	no	extensive	NRP	individual
Kings County, NY	process	yes	moderate	yes	individual
San Diego County, CA	process	no	extensive	yes	master calendar
Dade County, FL	integrated	yes	plenary	yes	individual
King County, WA	process	no	extensive	limited	master calendar
Orleans Parish, LA	process	no	limited	minimal	individual
Lake County, IN	process	no	plenary	yes	master calendar
Salt Lake County, UT	integrated	no	none	yes	individual
Norfolk, VA	integrated	no	limited	yes	individual
Boulder County, CO	process	no	plenary	yes	individual

Thus, the trials to disposition stage has to be examined in terms of the experience of the assistants preparing and trying cases and the controls placed around their decisionmaking activities. The variety that exists among the sites gives further indication of the fact that there is more than one feasible way of bringing cases to final disposition and that this must take into consideration the structure and procedures of the court.

The Postconviction Process

Although traditionally most prosecutors have viewed their role in the criminal justice process as ending with the disposition of a case, in recent years some prosecutors have begun to take a longer view of their function, extending their presence and influence into the postconviction area. The postconviction process starts after the disposition of the case and ends only when the defendant can no longer be affected by the criminal justice system. The activities most commonly found in this process include sentence recommendation, presentence investigation, some diversion programs, appeals, expungement and opposition to parole and pardon applications.

The level and degree of participation by prosecutors in this process vary considerably due to both prosecutorial preference, the differing exigencies of state law and court structures. In many states there are statutory constraints on the local prosecutor's ability to involve himself in a case once a conviction has been obtained. Often the Attorney General's office is the only agency empowered to handle appeals. In other states mandatory sentencing laws reduce the prosecutor's potential impact on a case following the rendering of a verdict.

Despite the restrictions, the postconviction area appears to be one of expansion for many prosecutors. Yet patterns are difficult to find and trends almost impossible to predict because there has been virtually no long-term

research in this emerging field. However, it does seem reasonable to conclude that major developments with respect to the prosecutor's role in postconviction activity will have a significant effect on both the power of the prosecutor and the nature of his discretion.

Of the ten sites visited, no two demonstrated exactly the same degree of involvement in postconviction activity nor did any of the offices exhibit identical organizational structures for this purpose.

Presentence Investigations:

Some jurisdictions require presentence investigations (PSI) for convicted defendants before sentencing is imposed. This investigation examines the defendant's background, previous criminal record, community ties, employment history and sometimes the state of his physical and mental health. The PSI report may also include the views of police, social workers, probation officers, psychologists or psychiatrists, as well as relatives and friends of the defendant.

In three jurisdictions--Boulder, Norfolk and Seattle--the prosecutor also provided input into presentence investigations; however, only in Seattle did he have a major role in this process. There, the prosecuting attorney employed a presentence specialist who prepared a separate report for the court, directing its attention to the facts of the cases, prior record of the defendant, and other related cases.

Sentence Recommendation:

Prosecutors in all the sites had some type of involvement in sentence recommendation, but the nature and extent of their activity varied widely. Sentence recommendations may fall into several categories. They range from recommendations as to: length of time to be served in a penal institution;

the type and location of the corrections institution, e.g., "local time" or the state penitentiary; probation or deferred sentencing; and the defendant being placed in some type of special program.

Recommendations with respect to length of sentence were most common in the ten sites. They were made regularly in Brooklyn, Miami, Boulder and Seattle, as well as occasionally in Norfolk. The Detroit and San Diego prosecutors are both restricted by mandatory sentencing laws. However, in these jurisdictions and in New Orleans also, the use of enhancements at the charging level provides an effective alternative to prosecutorial participation in making sentence recommendations.

Diversion and Restitution Programs:

Many prosecutor's offices are active in sponsoring or utilizing diversion programs for first-time offenders or those convicted of nonviolent crimes. These programs may be available at various stages of the criminal process. Three sites had some kind of diversion or restitution program operating at the postconviction level. In Boulder, diversion plays a major dispositional role, the prosecutor working closely with the community correctional agency. In Seattle, a comprehensive victim restitution program is operational in the victim-witness unit of the office. In New Orleans, diversion is available for felony offenders who otherwise would be stigmatized by a nonexpungable record.

Appeals:

Most aspects of the appeals process are outside the local prosecutor's domain. In Norfolk, Seattle, Salt Lake City, Boulder and Lake County, felony appeals are generally not handled by the local prosecutor. In Detroit and New Orleans, appeals are handled in conjunction with the Attorney General and

from the traditional stance. Brooklyn, San Diego and Miami had the largest, most active appellate divisions. In an expanded role, the attorneys also functioned as in-house counsel for the entire office for case-related matters, reviewers of briefs prepared for lower courts, and sometimes even as educators and legislative analysts.

Parole, Pardon and Expungement:

Prosecutorial involvement in opposing applications for parole or pardon and initiating expungement proceedings represent two opposite ends of a postconviction activity spectrum. One seeks incapacitation, the other rewards rehabilitation. Both reflect the policy commitment of prosecutors. The District Attorney in New Orleans established a Postconviction Tracking Unit in 1974. This unit, upon notification of an application for parole or pardon, reviews cases and decides whether the District Attorney should oppose the application. If so, the assistant conveys the opposition of the District Attorney to the Parole and Pardon Boards, stating the reasons for this stance.

In contrast, the District Attorney's office in Boulder, Colorado, actively aids defendants in initiating expungement motions. In 1976, they processed 200 of these matters justified by the prosecutor's interpretation of case law. In 1978, this activity had been codified by state legislation easing the procedures for the expungement process. There is clearly a relatively wide range of possible postconviction activities for the prosecutor. As indicated in Table 6, the variations observed among the offices in the choice of activities and procedures present sensitive indicators of the prosecutor's policy preference and philosophy.

Special Programs

Every prosecutor's office operates with an established set of procedures that are routinely applied to incoming cases from the point of intake,

TABLE 6

POSTCONVICTION ACTIVITY IN WHICH THE PROSECUTOR ROUTINELY PARTICIPATES

	Presentence Investigation	Sentence Recommendation	Diversion or Restitution	Appeals	Parole or Pardon Opposition	Expungment
Wayne County, MI	No	No	No	Yes	No	No
Kings County, NY	No	Yes	No	Yes	No	No
Dade County, FL	No	No	No	Yes[c]	No	No
San Diego County, CA	No	No[a]	No	Yes	No	No
King County, WA	Yes	Yes	Yes	No	No	No
Orleans Parish, LA	No	Yes	No	Yes	Yes	No
Lake County, IN	No	No	No	No	No	No
Salt Lake County, UT	No	No[a]	No	No	No[b]	No
Norfolk, VA	Yes	Yes	No	No	No	No
Boulder County, CO	Yes	Yes	Yes	Yes	No	Yes

a Exception -- local or state incarceration
b Attempting to institute
c Appeals duties shared with Attorney General

through the accusatory, trial and final disposition levels. Generally these same procedures will be followed regardless of the type of case involved. However, some prosecutors have recognized the existence of particular categories of offenders and offenses that merit special prosecutorial attention outside the regular channels of office activity. Accordingly, these prosecutors have developed special programs that seek to identify certain cases as deserving of special handling.

Two basic types of programs designed to alter normal caseflow were observed. One is offense-oriented, generated by the prevalence of an offense or its complexity for prosecution. As a result, many offices have established economic crime projects involving offenses which are generally nonviolent but complicated in proof patterns. The other programs are offender-oriented. Diversion is the most notable example of these special programs. Focusing on the first offender or individuals who have committed minor crimes, diversion takes many forms; however, all such programs require an agreement between the prosecutor and the defendant that stipulates some form of rehabilitative activity in lieu of formal prosecution.

At the other extreme are programs that target a criminal because of the seriousness of his or her record or the nature of the offense. The instant offense need not be limited to the most serious crimes if the history of the defendant is serious. The most common program of this type is directed toward the habitual offender or career criminal, individuals with substantial prior records whom the prosecutor views as a threat to society.

Economic Crimes:

A major activity for special programs is to focus on the broad category of economic crimes, which may include white collar crimes, consumer protection, fraud, or rackets. Like most special programs, economic crime programs are

often federally funded and represent a response to public outrage at a certain class of offender. They require an investment of substantial manpower and resources and aim to incarcerate convicted felons.

Some type of economic crime program was observed in Norfolk, Miami, Brooklyn, New Orleans, Seattle, San Diego and Detroit. However, several of these programs were small-scale and did not involve significant modifications of ordinary office procedures. In Norfolk, for example, only one assistant was assigned to economic crimes, even though the Commonwealth attorney gave priority attention to this area. He personally involved himself in the development of large and complicated economic crime cases and their prosecution.

The prosecutors in both Seattle and San Diego gave high priority to economic crimes. This was substantiated by the fact that assignment to the fraud unit was prestigious and the staff operated with substantial autonomy from the other office procedures.

Brooklyn divides its economic crime cases into two categories, rackets and consumer fraud. The former is handled by a prestigious bureau, employing experienced trial assistants and prosecuting very complex cases. Rackets cases generally result in more trials than do most of the other cases that come through Brooklyn's Supreme Court. In contrast, few trials result from the Consumer Fraud Bureau's activities. Most of the cases originate from walk-in complaints and, through mediation, are disposed of outside the criminal justice system.

The Economic Crime Unit in New Orleans handles its own screening and operates relatively independent of the rest of the office. Much of the unit's business is walk-in and relatively few police-investigated cases are handled.

Salt Lake County's Major Fraud Unit is staffed by two assistants and two investigators. Presently federally funded, the program concentrates on staff and/or police-initiated complaints.

The Organized and Economic Crime-Fraud Unit in Dade County receives high priority attention in the office being headed by the Executive Assistant State Attorney. A collateral and independent Consumer Fraud program also exists, its Chief reporting to the Executive Assistant.

Diversion

Diversion generally treats first-time nonviolent felony offenders or those with mitigating circumstances. As previously noted, the purpose of diversion is to spare the defendant the ordeal of a full trial and a criminal record by releasing him to some form of special treatment on the condition that any future offenses will result in a resumption of the legal proceedings. In Lake County, Indiana, the prosecutor (in addition to policy considerations) was proscribed by case law from implementing a diversion program.

Some type of diversion program was available in all of the other nine sites; however, only in Brooklyn, Boulder, Miami and New Orleans were the programs under direct prosecutorial control.

Career Criminal

Only two offices (Boulder, Colorado, and Lake County, Indiana) did not utilize special programs to prosecute defendants with prior records that are lengthy or serious. These persons have been termed "career criminals" by the Law Enforcement Assistance Administration and have been targeted for special prosecution at both the federal and local levels. Eight jurisdictions had career criminal programs that were initiated with federal funding.

All of the career criminal programs that the team observed had certain features in common. The units were composed of relatively experienced assistants with previous trial work and headed by an attorney who was given considerable autonomy.

Processing career criminal cases may occur in many fashions. However, a basic form is discernible throughout the various sites. Usually career criminal assistants are assigned their cases early in the process--generally at intake. Assistants remain responsible for a case throughout trial and disposition. Generally, career criminal cases were not plea bargained. Three examples of differing approaches to a career criminal program can be presented by describing those in New Orleans, Detroit and Seattle.

The Career Criminal Bureau in New Orleans was probably the most finely honed and complex operation among all the sites visited. In New Orleans, identification of an offender as a career criminal may be made either by the police or by the screening division in its daily check of all arrests. In either case, the Career Criminal Bureau is notified immediately and, upon verification of the career status of the offender, the Bureau assumes responsibility for the case. Assistants in the Career Criminal Bureau serve 24-hour, on-call duty tours so that response to police notification of career criminal status is immediate. The Bureau takes precedence over all other divisions within the District Attorney's office and will handle any cases that might otherwise be the responsibility of another unit. In contrast to the rest of the office, case assignment to the Career Criminal Bureau starts at intake with the assistant taking it through all the stages of prosecution and even into postconviction activity, as necessary.

The Career Criminal Program in Wayne County, Michigan, is called PROB (Prosecutor's Repeat Offender Bureau). It was initiated in August of 1975. The initial goal of PROB was to handle 350 to 550 defendants, but in actual practice the caseload ranges from about 600 to 650, roughly 50 cases a year for each of the program's attorneys. PROB is defined in terms of

target offenses--murder, rape, robbery, burglarly and major assault crimes. Intake generally follows the regular office procedures. Sometimes the PROB assistant goes to the warrant desk and interviews the officer and the complaining witness; more often a recommendation for a warrant has been made. The day after the warrant has been issued, the PROB assistant fills out the arraignment sheets containing information about the crime. From that time on the unit has exclusive charge of the case and one assistant handles it from preliminary exam through sentencing.

In Seattle, to reduce the effects of elitism that generally result when career criminal assistants are formed into an organizational unit, cases meeting career criminal criteria are distributed among all the trial assistants according to their experience and skills.

The examination of career criminal programs reveals certain common themes which seem to account for successful prosecutions. Cases are more thoroughly investigated and carefully prepared than others in the office. Cases are individually assigned to assistants from intake through trial disposition and even into sentencing. Finally, it appears that the most competent and highly experienced trial assistants are assigned to career criminal programs, thereby supporting producing a better quality of case at all levels. Table 7 shows the operation of special programs in the sites visited.

Special programs offer flexibility to the prosecutor's ordinary case processing flow. They permit the special designation of classes of crimes or criminals, special resource allocations, and special management and operating procedures. In sum, they permit modification and change within a larger, more unmovable environment.

TABLE 7

SPECIAL PROSECUTOR PROGRAMS

	Pretrial Diversion	Economic Crime	Career Criminal
Wayne County, Mich.	No	No	Yes
Kings County, N.Y.	Yes	Yes	Yes
Dade County, Fla.	Yes	Yes	Yes
San Diego, Cal.	No	Yes	Yes
King County, Wash.	No	Yes	Yes
Orleans Parish, La. . . .	Yes[a]	Yes	Yes
Lake County, Ind.	No	No	No
Salt Lake County, Utah . .	No	Yes	Yes
Norfolk, Va.	No	No[b]	Yes
Boulder County, Col. . . .	Yes	No	No

[a]Orleans Parish operates a felony diversion program, but the D.A. requires a plea of guilty prior to a defendant's participation in it.

[b]Norfolk has one attorney employed full-time for white-collar crime. However procedures in this area do not vary from the normal case processing ones.

PART III: Findings and Conclusions

The general purpose of this study was to examine prosecution as it operates under diverse conditions in large urban areas throughout the United States. Its objective was to determine what aspects of the prosecutor's environment and within his control are important to the uniform and consistent distribution of justice. The study assumed that prosecution must be viewed from a policy perspective if the issues of uniformity and consistency are to be addressed since policy guides the decisionmaking processes within an office. Outcomes resulting from these decisions form dispositional patterns that manifest the effects of the policy.

The study relied on the functional approach suggested by the charging policy typology which divided the prosecutive activities into separate process steps for examination and analysis and then integrated the separate examinations into an overall analysis of the office's policy and procedures. The specific purposes of this approach were to (1) identify the policy within an office; (2) examine each of the decision process points for consistency with the policy; (3) identify the factors that were important in the implementation of the policy; and (4) determine the ingredients essential for the uniform and consistent application of the policy.

Since more than one prosecutor's office was studied, an opportunity for comparative analysis was also provided. The objectives sought in a comparative study differ from those used in studying an individual office. The examination of an individual office may indicate how well a particular policy is being implemented and what its effect is on both the criminal justice system and the local community. On the

other hand, the comparison of a number of offices may indicate the relative effectiveness of different prosecution systems but only if the examination takes into consideration the external environment (including the structure of the criminal justice system) and the policy of the office.

The findings and conclusions summarized here reflect this basic dual approach. The first section findings are developed from an internal examination of the prosecutive process and how it works to implement policy; while the second discusses findings based on a comparative examination of the offices. The conclusion presents a matrix that classifies the findings into a decisionmaking perspective suggesting new analytical approaches and areas for further research.

Policy and the Application of Policy Within a Prosecutor's Office

One major task was to verify the charging policy typology by looking at policy in operation in the field and noting the existence of any new policies not included in the original typology. Since a typology is only a symbolic representation of the real world, serving at best to set the scope and dimensions of analysis, it was not expected that the one used here was exhaustive or operationally definitive. Consequently, other charging policies were expected to be found in addition to those that led to the development of the typology. Additionally, it was expected that other variations in the implementation procedures would be observed under real conditions.

The results of this study show both conditions to be true. First, although no new charging policies were observed in the field, two observations were made that call for an expansion of the typology and a re-

finement of the relationships between the policies of the original typology.

That the scope of the original typology was too narrow became obvious from the field studies. The original was developed from an assumption that charging policies existed in all prosecutors' offices. As a result, it did not include offices where the intake and charging functions were not under prosecutorial control, but performed by others. The typology also assumed that if a charging policy existed, it would be an office policy applicable to all assistants who make charging decisions.

In two sites, Norfolk, Virginia and Dade County, Florida, the charging decision was not made by the prosecutor, but rather the case was reviewed after the complaint had been filed by the police with the court. In both jurisdictions, although the case was reviewed by the office at a later process step (the accusatory), and the charges sometimes amended, the initial charging decision was in effect transferred to the law enforcement agencies and the magistrate. The prosecutor's response was reactive--modifying, amending and, if necessary, even rejecting. Under these circumstances, the charging typology is clearly not applicable since the charging decisions are made elsewhere.

One should note that the transfer of these charging decisions to other components of the criminal justice system, either the law enforcement agencies or the court itself, may be voluntary on the part of the prosecutor or may be the result of structural barriers which preclude activity in this part of the prosecution process. Clearly where police file charges directly with the court and even prosecute the cases in the lower court, or where dual prosecution systems exist within the same court's jurisdiction, the ability of the prosecutor to

review the case and come to a charging decision is constrained.

Even if the prosecutor has control over the intake process, one cannot assume that charging decisions are made within a context of office policy. In two of the sites, Salt Lake City, Utah and Lake County, Indiana, the charging authority was delegated to individual assistants and left routinely within their discretionary judgment. In effect, the individual assistant became a policymaking unit since each could make decisions based on his own policy stance. Under this type of intake process, any number of policy stances may be observed. One assistant may seek efficiency, another incapacitation and a third, defendant rehabilitation. Since none is constrained by the controls imposed by an office policy, the variations resulting from an individual decisionmaker's choices may wash out any discernable effect of policy on the dispositional pattern of the office. The familiar practice of "assistant shopping" thus becomes one indicator of the existence of this delegation model.

On the other hand, one cannot discount the effects of socialization, collegiality or peer group pressure. Some or all may combine to create and sustain an unarticulated charging policy that will produce distinguishable and uniform effects within an office. The effects of these variations are many. For example, if an office is equally divided in its perceptions of justice, then the effects of one policy may be offset by the effects of the other. Of all the types of charging situations, the unit type is most problematical since its consequences are difficult to predict in any logical or consistent fashion.

The charging policies that operate within an office--controlled and supervised by organizational and management procedures--and posited by the typology were all observed in the field. However, more careful

examination has led to a refinement of some aspects of the typology. One has to distinguish between those policies that are process-oriented and those that are defendant-oriented. The process-oriented policies of Legal Sufficiency, System Efficiency and Trial Sufficiency tend to fall into a natural progression ranging from those with minimal acceptance criteria to those with rigorous proof and trial standards. Some of the offices were in the midst of change, moving from the open acceptance standards of the Legal Sufficiency policy to that of System Efficiency. The process of alteration was observed most notably in Kings County (Brooklyn) where the policy of the prosecutor combined fortuitously with changes in police booking procedures to produce a more efficient intake procedure. With effort and ingenuity, it appears possible for a prosecutor to move from a Legal Sufficiency policy to one of System Efficiency by establishing more control over the intake function and the charging decision.

On the other hand, movement from System Efficiency to Trial Sufficiency is not a natural progression even though both are process-oriented policies. This is because a major requirement of the Trial Sufficiency model is court capacity. Since the policy calls for accurate charging for trial sufficient cases with minimal modification by plea negotiations or dismissals, convictions at trial are expected. Lacking court capacity, the eventual buildup of backlog should produce a powerful argument for policy change. It is also possible to reverse the progression. In Seattle, for example, the previous charging policy was close to a trial sufficiency stance. Cases were accepted only if they were strong enough to sustain a conviction. During the term of the prosecutor, acceptance criteria were changed to allow in more of the

marginal cases with the measure of acceptability being whether they would survive a probable cause determination. With these expanded requirements, the office had moved in the direction of setting Legal Sufficiency standards.

The Defendant Rehabilitation policy needs special consideration. Falling more into a treatment mode than a process one, it was observed only in Boulder, Colorado. However, at the time of the visit, the office was undergoing change, tightening its charging standards although still giving priority to the nature and character of the defendant. The District Attorney made charging decisions with respect to the defendant's circumstances--accepting for prosecution only those that clearly needed prosecution. He attempted to follow the Trial Sufficiency rules of no plea bargaining but with limited court capacity (normally a single judge) the increased demands for trial were difficult to meet. This approach to prosecution clearly needs to be studied further in the field and observed in other offices. For the present, it appears that it is particularly compatible in those offices where diversion and treatment programs play a major role, such as in Boulder, leaving the balance of the prosecution activities subject to other policies.

The fact that a Defendant Rehabilitation policy exists and that special programs can assume different prosecutorial stances appears to answer a question raised initially: whether more than one policy could operate simultaneously within an office. It appears from this study that indeed this can occur, in at least two circumstances: first, where there is a unit style of decisionmaking, with each assistant making charging decisions at his own discretion and second, where there are special programs in offices--most notably diversion and career criminal programs--

which permit the overlay of one or more policies on the regular operations of the office that may be subject to another policy stance.

The functional approach taken for this study divided the prosecution function into process steps each ending with measurable decision points--the charging decision ended the intake process; arraignment, the accusatory process; disposition, the trials process and the outcomes of sentence recommendations, appeals, expungements and opposition to parole and pardons ended the postconviction process. By adopting this approach the research had to consider two questions. First, how was policy implemented within the different decision process steps and second, how were these process steps integrated to reflect the overall goals of the office? If answers could be obtained to these questions, the factors affecting policy and its implementation could be isolated and controlled for in future research.

The internal examination of decisionmaking in the separate process points produced the following findings. First, and of major importance, was the transitory nature of all these process steps except one. The decisionmaking aspects of intake accusation and postconviction activities are not automatically integral to prosecution or given equal emphasis in its application. Prosecutorial decisionmaking functions in the different process steps may be abandoned (most notably at the ends of the process--intake and postconviction), they may defer to the decisions of other components (the accusatory process can be used as an example) or they may be given the highest priority in the office. What emphasis that are given depends on either the structure of the criminal justice environment or on the policy and priorities of the prosecutor.

There is only one process step where decisionmaking activities remain relatively constant and cannot be abandoned or transferred--that is the trials to disposition process. Here the prosecutor must represent the interest of the state and present the state's case in a court of law. This responsibility cannot be shifted elsewhere either deliberately or by default by the prosecutor's office, nor can structural barriers be established to prevent its occurrence.

In contrast, it is possible to transfer the intake function which includes the review and evaluation of cases and the decision to charge, to other components of the criminal justice system. We observed this in Dade, Norfolk and in the old Brooklyn procedure where cases were not reviewed by the prosecutor's office until after they had been filed in the court. The charging decision - whether to charge or not and at what level - was not under the control of the prosecutor. As a result, with no control over this most critical decision, the prosecutor was placed almost instantly in a reactive stance, correcting or modifying these other decisions as needed. This is in direct contrast to the proactive operating position an office can assume if it controls the intake decision.

The importance of the accusatory process as part of the prosecutor's decision function depends first, on whether the prosecutor controls the intake decisions; second, on the structure of the accusatory process itself; and third on the extent to which judicial control activities are in conflict with those of the prosecutor.

If the prosecutor is an active decisionmaker in the intake process, then one would expect the accusatory process to serve as a

pro forma means of accusation, a ritualized procedure that formalizes the charging decision. If, on the other hand, the intake function has been transferred to other components of the system, or the quality of the information presented for the charging decision is inadequate, then the role of the accusatory process changes representing the first decision process step that permits the correction, modification or even rejection of previous arrest or charging decisions.

The environment within which accusation is performed produces prosecutorial responses that differ according to the structure available. The simple and traditional arrest to grand jury route, is the easiest to place under prosecutorial control. If intake decisions are made by the prosecutor, the grand jury can serve as the much criticized "rubber stamp"; if they are not, it offers itself as a correcting mechanism.

The ability of the prosecutor to impose his policy priorities on the justice system is most clearly observable in the more complex accusatory procedures. As when the accusatory process is redundant and a probable cause hearing produces a bindover to a grand jury and a subsequent indictment. Or when both accusatory routes are available, the prosecutor is provided extra room in which to achieve his goals.

The type of probable cause hearing conducted has an important influence on the decision processes in this step and the resources needed to support it. Preliminary hearings range from the pro forma probable cause hearing (the Rhode Island model) that determines only whether there is probable cause to restrict the liberty of the defendant to a "full-blown," adversarial, mini-trial. At the

Rhode Island model end of the spectrum, the prosecutor's charging decision needs only to meet legal sufficiency standards; reviewed with respect to more proof or testimony as to whether there is probable cause that the defendant commited the crime; and at the far end, the decision must stand against a standard of proof that shows that the defendant is probably guilty.

The extent to which the charging decisions are changed after judicial scrutiny and the extent to which the prosecution is in accord with these changes (be they dismissals or alterations of charges) can be observed by the frequency of his use of his discretionary authority to overturn or modify unacceptable judicial determinations. Conflict situations can be observed best through the use of two powers that are inherently his: the first is the power to dismiss a case; the second is his ability to file an information directly with the court or to obtain an indictment directly from the grand jury. How these powers are used to correct decisions are sensitive indicators of the extent of control that the prosecutor has, and may exercise, over this process step.

The postconviction process, like intake, is another process step that is not necessarily integral to the prosecutive system. Yet, it provides a revealing picture of the prosecutor's perception of his role and function. Those prosecutor's who normaliy define their function as lawyers attending to the trial stage, rarely perceive the need for, or the means of, extending their function into this process. With the exception of appeals, there is little tradition or expectation that other activities in this area are an integral part of the prosecutive process. Yet, the impact of these activities,

where they were observed (most notably in New Orleans and Boulder) was so strong and so wide ranging that it is clear this process step needs further, more careful study of its scope and the potential dimensions of its impact on the wider community. The increased demand for post-conviction remedies, the call for determinate sentencing and mandatory sentencing, the legislation of habitual offenders' acts and sentence enhancements, all have the ability to profoundly affect the prosecutor's decisionmaking functions. They generally have expanded the power of the charging decisions, strengthened the accusatory process and increased the number of strategies available for bringing cases to satisfactory disposition in the trial process. These new events are not, however, entirely beneficial to prosecution. A notable difficulty stems from the mandatory nature of some of the laws which has produced new demands for prosecutorial (and judicial) inventiveness to devise means to mitigate the inflexibility inherent in these mandated punishments.

The trials process is the one decision area that cannot be transferred to other components of the criminal justice system for decision-making. It is in this process that the state presents its case for judicial determination. It is also in this process that the power of the prosecutor is most circumscribed. Within the constraints imposed by the docketing procedures of the court, its continuance policy, and court rules, the prosecutor structures and performs his trial duties to maximize the probabilities of obtaining satisfactory dispositions on a priority ordering of cases. The key factors in achieving these goals may be observed in the strategies that are employed, such as

diversion, plea bargaining, discovery, etc., and the amount of discretion permitted to the assistants. In all the offices observed, the trial processes in each were most attuned to the policy of the office. This should not be unexpected since the final disposition is the ultimate measure of prosecutorial performance. Whether discretion in plea bargaining or dismissals was permitted or controlled, depended on whether the office was seeking swift dispositions or incapacitation. Whether marginally strong cases were dismissed or reduced for a plea, depended on whether the office based its trial responsibility on the legally admissable facts or the evidence of guilt even if not legally admissable.

There are interactive effects among the process steps that also must be taken into consideration. If one or more process steps are abandoned either by choice, tradition or otherwise, the effect is to place prosecution in a reactive position correcting or changing another's decisions. This has the effect of limiting the prosecutor's ability to proactively develop and implement strong office policy. The net effect is to diffuse the power of the prosecutor on the criminal justice process by transferring it to other components--police, defense or the court.

This finding, of course, reaffirms the primary importance of prosecutorial control over the intake function and the charging decision. Not only does it permit the setting of standards and policy for the entire office, but also the development and maintenance of a balance of power between the various court actors. If the intake function is carefully structured and controlled, the office is placed in its most powerful position. In jurisdictions where the intake and charging

decisions are performed by individual assistants at their discretion, then the concept of an "office" is weakened and the ability of the prosecutor to control these decisionmaking activities within a policy framework is weakened as well.

A problematical effect stemming from the sequential nature of prosecutorial decisionmaking processes is the tendency for each process step to be treated autonomously and independent of office policy. This is because the decisions at the ends of the process steps lend themselves to evaluation independent of the total office policy. Since each major decision point represents the end of an easily identified process task, they can stand alone. Only by establishing communications, feedback and accountability procedures can the tendency to measure success and failure in terms of these tasks be diminished. The assistant who defines his success at preliminary hearing as getting a case bound over for trial and is not held accountable for a subsequent dismissal at the trial level presents as much an indicator of this effect as is the phenomenon of assistant shopping at intake. The need for the concept of an "office" to control, monitor and assign accountability among the parts is clearly obvious when viewed from this perspective.

It is within the conceptual frame of an office that the full range of the prosecutor's decisionmaking activities can be seen and the ingredients for successful policy implementation identified. Starting with a prosecutor who assumes the role of administrator, planner, policymaker, and with all due respect, office head, priorities are established and decisionmaking authority is delegated down through clearly established chains of command. Within this office structure, the selection and use of programs and strategies are made, assignment

of personnel effected and the limits of discretion set and controlled. By a daily monitoring of case dispositions and with circular communications and feedback patterns, the implementation of prosecutorial policy is practically assured. As each of these ingredients are abandoned or weakened, the problems of control arise and with them a lack of consistency in the application of policy.

The Relative Effectiveness of Policy Among Offices

The field studies were able to distinguish among different types of prosecutors' offices and to classify them by their charging policies. Having done this, the question of their relative effectiveness must be addressed. But before this is discussed, distinction should be made between the factors that are significant for comparative analyses and those that apply to internal examinations of offices.

The following table is used to illustrate this point. Table 8 presents some workload statistics for three of the offices participating in this study. Brooklyn with 300 assistants and annual felony arrests measuring close to 25,000 has moved from a Legal Sufficiency stance which had minimal control over the intake process to System Efficiency. The 1977 data presented here can be interpreted as resulting from this former Legal Sufficiency policy. New Orleans data reflect the dispositional pattern of a Trial Sufficiency office--where cases are accepted with the expectation that they will be sustained at trial. Intake and screening, as a result is the most critical process in the office since charges are nor expected to be changed nor plea bargaining supported. The data for New Orleans is based on cases processed during the 1976 calendar year. Salt Lake City, with a single

judge normally available to try criminal cases, is sorely put upon to reduce trials as a dispositional route as noted by these 1977 figures.

The ratios displayed here indicate the diversity that can exist as an office seeks to dispose of its workload. They further indicate the importance of knowing both the structure of the criminal justice system, and the priorities of the prosecutor before effectiveness can be judged. This illustrative comparison sets forth a few principles applicable to any comparative analysis of the prosecutive function that uses dispositional data as a measure:

1. If a comparison of prosecutors' offices is to be made with respect to the dispositional patterns produced by the office, the first step is to determine whether the offices are operating in similar criminal justice system environments. Until this determination is made, one cannot separate out the effects on dispositions that are beyond the prosecutor's control from those that are within his control. For example, if one jurisdiction is required by law to review and approve all applications for a warrant (as in Detroit) and another receives the case only after the charges have been filed in the court (as in Miami), then the percent of cases accepted or rejected for prosecution will vary according to the opportunity afforded the prosecutor to make such a decision. Without noting the contraints of the environment first, the explanatory basis for any comparative anaylsis is significantly weakened.

2. Once the external environment has been identified so that its effects can be accounted for (either partially or totally), the

next step is to identify those differences which are due to the policy of the prosecutor with respect to charging and the performance of his duties. We have seen clearly, that these patterns will vary by policy. Thus, comparisons should not be made without determining first the policy and goals of the offices and taking into account their effects on dispositional patterns. For example, the high jury trial rate in New Orleans is an expected consequence of the charging standards and the contraints placed on plea bargaining. To compare these dispositions with those of Brooklyn, which must reply on plea bargaining to dispose of the volume and minimize trials to keep the backlog under control is clearly meaningless. Each office is attempting to do something different.

3. This leads, of course, to the final conclusion that the comparision of prosecutors' offices using dispositional data that reflect the priorities of the decisionmaking process in the office and ultimately the policy of the office, should ideally be performed among offices that inhabit the same criminal justice environment and operate with the same policy. It is under these ideal conditions that a true measure of the relative effectiveness of prosecutors' activities can be made.

To support these principles, imagine the consequences of presenting the data in Table 8 without commentary or without the knowledge obtained from these site visits; they would be impossible to interpret because any interpretation offered would have equal validity, since all would be based on conjecture.

Conclusions

The study verified the existence of charging policies as described in the typology. The ten sites presented a full range of differences in types of intake procedures, accusatory processes, court systems and other aspects of the criminal justice system. Although other charging policies may still exist, they were not found in this investigation. What was found was the need to extend the intake classification system to include jurisdictions where the prosecutor did not make charging decisions and those where the decisions were made autonomously by assistants based on their own policy and values.

From this finding, it is possible to postulate the existence of three basic prosecutorial styles of decisionmaking: a transfer style that shifts many traditional prosecutive decision functions to the law enforcement and/or judicial components of the system; a unit style wherein the individual assistant is given autonomy in decisionmaking; and an office style in which the chief prosecutor selects a course of action for the decisionmakers, structures the office and delegates decisionmaking authority accordingly.

The study further found that the control the prosecution exercises over his role and ultimately that of criminal justice is a function of (1) the definition of the scope of prosecution and the role of the prosecutor as the chief policymaker; (2) the styles of decisionmaking established for all process steps; (3) the ability of the office to implement a charging policy and control the intake process.

When charging policies exist in an office, they have a controlling effect on the organization, administration and operating procedures of any office. They also produce dispositional patterns that, in combination with some exogeneous factors, appear to be capable of providing an objective way to determine the operant policy.

Inherent in these findings is, of course, the generation of still more research questions. There are four primary substantive areas that clearly need determination before one can proceed reliably to make substantive recommendations about the efficacies of different systems and styles of prosecution.

1. The Prevalence of Prosecutorial Styles in the United States--If our ultimate goal is to be able to make statements about the distributive properties of justice in our society, we must first be capable of moving from the parochial examination of an individual office to examining it in relation to others within the total prosecutorial universe. To examine one office in relation to others presupposes that descriptions of the universe are available. They are not and a determination of the prevalence of prosecutorial styles in the United States needs to be made so that a baseline can be established upon which future evaluations can rest. We need to know which styles of prosecution are most prevalent, which ones are aberrations and which ones should receive more attention than others.

Some of the types of assumptions or questions that need to be addressed are as follows: what types of prosecutorial policies and styles are most prevalent in the United States? Is there a distinction between

them that depends on the size of the jurisdiction, the level of crime, or other demographic factors that would be available from Census materials and other secondary sources? Is the type of prosecution dependent on the type of courts system or docketing procedures used in a jurisdiction? Do the number of police agencies and the complexity that they introduce into an intake process affect the type of charging policy employed? Similarly, is there an importance that can be attached to the type of defense system available? Of primary importance, is the determination of the extent to which policies are environmentally determined or freely chosen. This question assumes major importance if programs and procedures are to be transferred from one jurisdiction to another, or from one policy type to another. It is not immediately apparent even now that transfers can be freely undertaken, but the lack of information certainly should not be a barrier to seeking answers in this area.

2. Factors and Forces Affecting Prosecutorial Decisionmaking--Although the various types of decisionmaking in prosecutors' offices have been identified, there is still little known about the environments within which they operate and the forces that affect the decisionmaking process. In some offices, part of this process is transferred to other components of the criminal justice system; while in other offices, the individual assistant is given complete autonomy in performing his functions, and in still other offices, the elected official assumes the role of head of an organization, controlling and monitoring the implementation of his policy. Some of the reasons for the maintenance of these styles may be found in the personal history of the prosecutor, the traditions of the office or his election platform. These factors can be determined. What cannot be determined in any statistical sense is the extent to which the options for other styles or policies have been precluded by forces beyond the prosecutor's control.

There is a need to statistically examine the extent to which external factors affect the prosecutor's office and policy and order these factors by their relative importance. Some of the factors and issues that appear to be ready for analysis are related to the size of the jurisdic-

tion and its effect on the availability of a policy or prosecution style. A Defendant Rehabilitation policy conceptually seems difficult, if not impossible, to install in a large urban office because of its requirement for an extensive review of the defendant's character and history. Of all the policies, this one appears to be the most environmentally-dependent, requiring a small caseload, adequate resources, a low frequency of violent crimes and a criminal population that is generally nonviolent and treatable. Conversely, it appears that the other policies are not affected by the size of the population but by other factors that come into play.

The structure of the criminal justice system as an entity of its own and the type of court systems have a significant impact on some of the movement that can be made from one prosecutorial style to another and from one policy to another. In some of the offices observed, the Legal Sufficiency policy which accepts cases after only the briefest review, appeared to be the only one which could be pursued because the criminal justice system was simply not penetrated early enough by the prosecution to permit anything else but a most cursory review. For example, where police file charges and even prosecute cases in the lower courts (as in Massachusetts), the ability of the prosecutor to influence the intake of cases into the system is, of course, practically nonexistent. Another condition at intake where this can be seen occurs in jurisdictions where the intake unit is staffed by paralegals or by third-year law students. In other jurisdictions, where prosecution charges must be filed within 24 hours after arrest, the capacity of the prosecutor to affect the caseload is severely constrained. Yet in some of these environments, prosecutors have adapted in other ways that tend

to mitigate these influences. For example, in Detroit, the complaining witness is required to sign the complaint and warrant before the prosecutor files, thereby increasing the scope of a relatively superficial screening activity.

The importance of the court structure has been amply demonstrated. Both the type of court structure and the type of docketing system employed affect the prosecution. A two-tiered court, in which the lower court is not a court of record not only adds another crack for cases to slip through or a means for poorly reviewed cases to be passed on, but also adds the burden of trials de novo. A policy of Trial Sufficiency which enforces prosecution on the original charge is difficult to maintain throughout an entire office if the lower court's intake functions are separated or not controlled by the prosecutor. In addition the type of docketing system has an important limiting effect on the organization of the office. It is difficult to use trial team tactics (except for selected cases or sets of cases, such as career criminal) when the court uses a master calendar assignment procedure for cases and assigns judges to various process steps rather than using individual docketing procedures. Dispositional forms of prosecution rather than adversarial as distinguished by Packer[14] and described by Eisenstein and Jacob[15] flourish better in the latter circumstances and are supportive of a system efficiency approach to prosecution.

Thus there is a need to examine the following factors for their effect on decisionmaking; the type of intake procedures, the type of court system and docketing procedures, the characteristics of the defense systems, the characteristics of the community--its size, crime rate and other socio-economic factors, the nature and composition of the police agencies and

other related criminal justice factors, external to the prosecutor's control.

3. Quantitative Expressions of Dispositions--The original typology expressed the results of prosecutorial decisionmaking within a policy perspective as disposition rates that are "high" or "low," "maximized" or "minimized." While these are useful statements for conceptual explorations, they suffer from a lack of measurement. Clearly, it is important that numbers, ranges and quantitative expressions be assigned to these values. However, there are two major tasks that need to be performed before methodologies can be proposed to provide quantification. First, numbers need to be placed on the expected disposition rates within each individual policy type. Second, these numbers need comparison across the different policies to identify differences that distinguish one dispositional pattern from another and to identify similarities of areas which can be defined as not sensitive to policy variation. For example, rejection rates at intake may vary widely among policies and hence be a sensitive measure, whereas no true bills returned by grand juries, or dismissals at preliminary hearings may not be sensitive at all. Since the typology derived measures from the universes extant at any given process point (e.g., rejects as a percent of all referrals, acquittals as a percent of all trials, etc.) the differences among policies should be analyzed within the process steps as well as for the offices as a whole.

4. Tolerance Limits for Uniformity and Consistency in Decisionmaking--One final aspect of the distributive properties of justice as it applies to uniformity and consistency in prosecution has yet to be determined: that is, what constitutes uniformity and consistency; or, conversely, how much variation can be tolerated before a system or a

decisionmaking process is declared inconsistent or discriminatory? If society's goal is to ensure that prosecution is administered fairly and equally, regardless of policy chosen, it is necessary to determine the limits within which discretion is permitted and concomitantly, the stages in the prosecution process where this is important and where it is not. How a case is brought to disposition by a trial assistant, for example, is relatively unimportant as long as the disposition is the expected one or an agreed upon alternative. The tolerance levels for these expected dispositions and acceptable alternatives need some determination.

Uniformity measures the agreement among the assistants (or decisionmakers) with respect to the treatment and disposition of cases. Consistency measures the agreement between the priorities and decisions of the chief prosecutor and his assistants. If consistency exists, so does uniformity; this is not necessarily conversely true. In order to measure uniformity and consistency ranges need to be established within which decisions are allowed to vary. One should not look for equality in this task since not all cases will be subjected to equal treatment. It is already known that prosecutorial treatment varies by the seriousness of the offense, the criminal history of the defendant and the evidentiary strength of the case. These are the admissable variables that should be considered in testing for uniformity and consistency and that ideally should explain most of the differences found in dispositions and treatment.

There are in addition to these variables, others that raise the issues of discrimination, injustice and unequal treatment. There are the variables that may effect dispositions in a selective fashion. For

example, the income of the defendant, his education and employment status all may come into play because they can result in his being able to retain more qualified or experienced counsel or not. Other variables that may also influence the disposition of the case and treatment of the defendant are those based on sex, race, and age (conditions over which the defendant has no control).

The first test for uniformity and consistency in decisionmaking then should be to determine to what extent the decisions and dispositions can be explained by admissable variables. If most of the dispositions and treatments can be explained by these variables, then one can define uniformity and/or consistency as existing with respect to the prosecution of cases.

In summary, individual decisionmakers in prosecutors' offices should operate within an organizational environment that maximizes communication and feedback among all decisionmakers. Even though it is influenced by the court's case processing system, the office itself should be structured to accomplish the prosecutor's goals; resources, both physical and personnel, should be allocated in accordance with the goals of each of the prosecutorial phases. In addition to the overall policy, internal accountability and controls should be established to ensure that the office is performing according to plan and to identify reasons for breakdowns if they occur.

The test for whether an office is applying its efforts in a uniform and consistent manner relies on first identifying what it is attempting to do, then testing for whether the distributive properties of justice within this framework are being applied in an equal and fair fashion.

FOOTNOTES

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[11]Malcolm Feeley, "The Concept of Laws in Social Science," Law & Society (Summer, 1976), p. 515.

[12]Work in this area was done by the National Center for Prosecution Management as part of a cooperative effort with the National District Attorneys Association under an LEAA grant to develop performance standards for prosecuting attorneys. The results of this research are published in the NDAA's National Prosecution Standards (Chicago: NDAA, 1977), at pp. 1-6.

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[15]James Eisenstein and Herbert Jacobs, Felony Justice (Little Brown & Co., 1977).

END