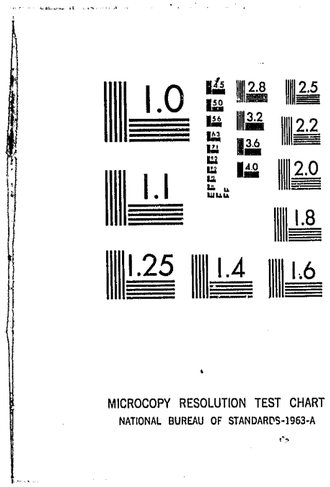

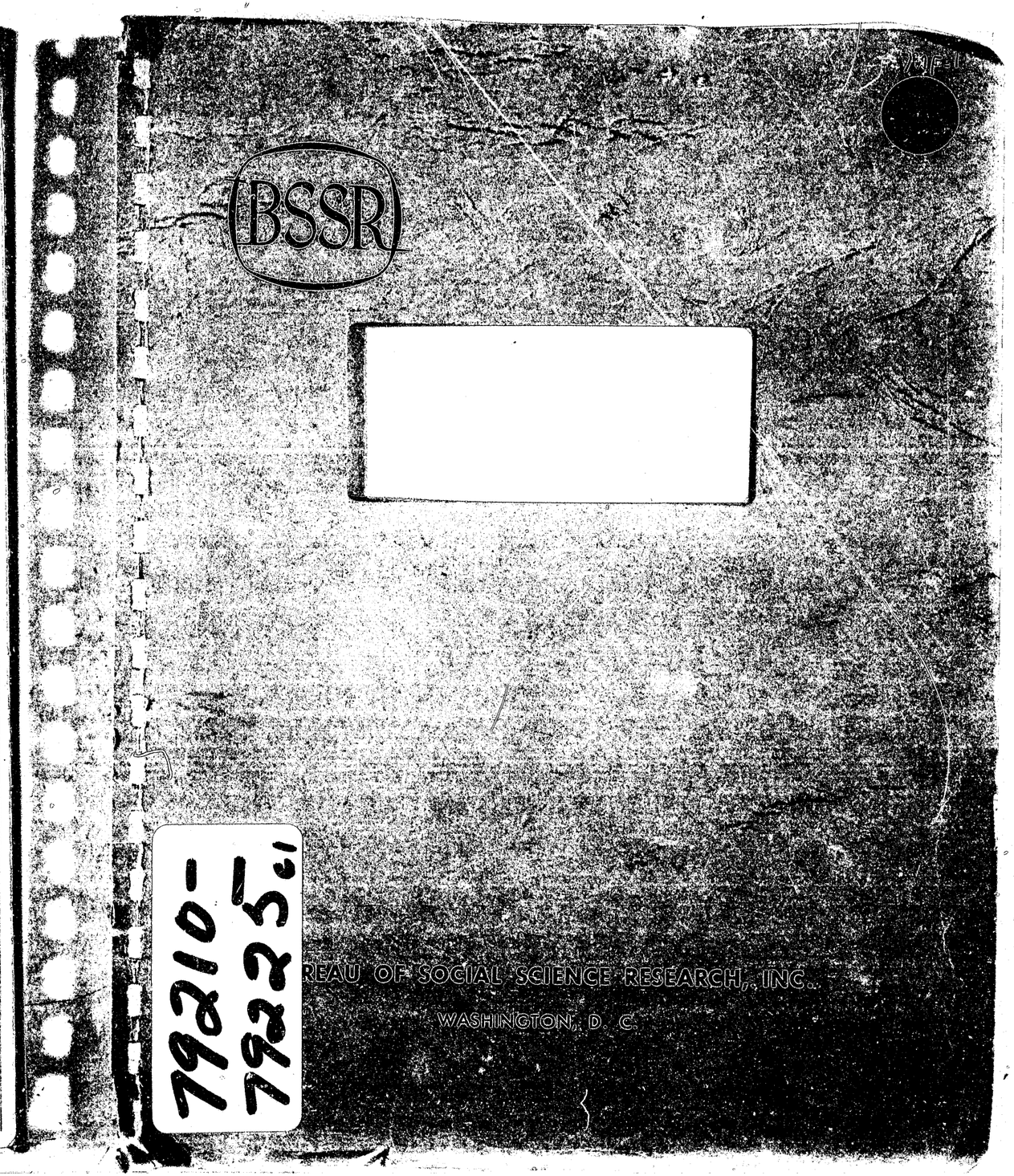

PROSECUTORIAL DECISIONMAKING:

SELECTED READINGS

Edited by

Joan E. Jacoby

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

October, 1980

Prosecutorial Decisionmaking: Selected Readings, a final report supported by LEAA Grants #78-NI-AX-0006 and #79-NI-AX-0034 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, the Law Enforcement Assistance Administration or the U.S. Department of Justice.

PREFACE

This report, Prosecutorial Decisionmaking: Selected Readings, is one of four published as a result of a three-year research project on prosecutorial decisionmaking in the United States. It is a collection of papers addressing one or more of the phases of the research project including methodology and analysis of findings. Many of these papers have been presented at academic and professional meetings and are collected here for the serious reader.

Prosecutorial Decisionmaking: A National Study presents the major findings of testing over 800 prosecutors throughout the United States. It examines prosecutorial discretion, its level of uniformity and consistency both within and between offices and the factors used by prosecutors in making discretionary decisions.

Policy and Prosecution presents a conceptual model for analyzing the prosecutive decisionmaking function from a policy perspective; summarizes the findings of a comparative examination of ten prosecutors offices; and supplements the results of the on-site studies with information gathered by a nationwide survey of eighty urban prosecutors.

The Standard Case Set: A Tool for Criminal Justice Decisionmakers explains how the set of standard cases can be used by an agency for management, training and operations.

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INTRODUCTION

The following volume contains selected readings from the Prosecutorial Decisionmaking Project. The selection is not comprehensive; it is intended to be a sampling for the reader who wishes further information concerning one or more phases of the project.

These readings were, for the most part, presented as papers to various learned societies as the research progressed. For this reason, duplicative material has been omitted.

The selection of readings included in this volume covers topics dealing with the methodology, analysis and use of the standard case set in prosecutor's offices. Case studies in five sites have been included to illustate the application of the standard case set.

If further information is desired, the reader is advised to contact the authors.

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Advisory Board Members

E. Pete Adams, President
National Association of
Prosecutor Coordinators
Baton Rouge, Louisiana

David L. Armstrong
Commonwealth Attorney
Louisville, Kentucky

Honorable Sylvia Bacon
Judge, Superior Court of
the District of Columbia
Washington, D.C.

Bernard Carey
States Attorney
Cook County
Chicago, Illinois

George F. Cole
Dept. of Political Science
University of Connecticut
Storrs, Connecticut

John J. Douglass, Dean
National College of
District Attorneys
Houston, Texas

Eugene Gold
District Attorney
Kings County
Brooklyn, New York

Milton Heumann
University of Michigan
Ann Arbor, Michigan

Lynn Mather
Department of Government
Dartmouth College
Hanover, New Hampshire

William McDonald
Georgetown Institute of
Criminal Law and Procedure
Washington, D.C.

William B. Randall
County Attorney
Ramsey County
St. Paul, Minnesota

Susan K. White
Dept. of Political Science
University of New Hampshire
Durham, New Hampshire

Consultants

Dominick Carnovale
Chief Asst. Prosecuting Attorney
Wayne County
Detroit, Michigan

Sheldon Greenberg
First Asst. District Attorney
Kings County
Brooklyn, New York

Dan L. Johnston
County Attorney
Polk County
Des Moines, Iowa

Edward C. Ratledge
College of Urban Affairs
University of Delaware
Newark, Delaware

Stanley H. Turner
Department of Sociology
Temple University
Philadelphia, Pennsylvania

William Wessel
Attorney
New Orleans, Louisiana

BSSR Project Staff

Joan E. Jacoby
Project Director
Research Associate

Leonard R. Mellon
Deputy Project Director
Research Associate

Bruce B. Dunning
Research Associate

Sharon Biederman
Research Analyst

Kevin Brosch
Research Analyst

Matthew McCauley
Research Assistant

Credella D. King
Administrative Assistant

National Institute of Justice Project Monitors

Cheryl Martorana
Chief, Courts Branch

Linda J. McKay
Courts Branch

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THE STANDARD CASE SET: A TECHNIQUE FOR MEASURING THE DIMENSIONS OF A PROSECUTOR'S OFFICE

A Paper Presented to the
American Society of Criminology's 1979 Annual Meeting
in Philadelphia, Pennsylvania,
November 7-9, 1979

by

Joan E. Jacoby
Research Associate

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BUREAU OF SOCIAL SCIENCE RESEARCH, INC.
1990 M Street, N.W.
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October, 1979

THE STANDARD CASE SET: A TECHNIQUE FOR MEASURING THE DIMENSIONS OF A PROSECUTOR'S OFFICE

INTRODUCTION

In 1977, the Bureau of Social Science Research was awarded a grant (LEAA Grant No. 79-NI-AX-0034) to conduct research on prosecutorial decisionmaking. This was a two-directional effort, employing both a qualitative and a quantitative assessment of the effect of prosecutorial policy on decisionmaking. Policy Analysis for Prosecution (Jacoby and Mellon, 1979), explored the qualitative aspects in great detail and examined the dynamics of the prosecutor's decisionmaking process as it moved from intake to accusation, and from trials to post-conviction activities. This assessment identified the importance of office stability and the assistant's experience in setting policy and developing standards (even if not articulated). It also highlighted the need for accountability and feedback as self-correcting mechanisms and the use of programs and procedures in each of the decision process steps in ways that are consistent with the goals of the office.

Policy Analysis for Prosecution, while reporting on the dynamics of decisionmaking and isolating some of the more important factors of that process, did not address the degree to which decisions were made uniformly among assistants nor the proportion in congruence with policy directives. The task had to be considered separately because the tools to quantitatively determine these levels had yet to be developed. Although

the traditional concepts of management, organizational and systems analysis were readily available to determine how policy is transmitted through a prosecutor's office, the statistical concepts and tools to measure the levels of transfer were not.

The second part of this research grant was to develop these statistical concepts and tools so that the prosecutor's decisionmaking function could be expressed in quantitative terms. The tools were to have the power to measure the relationship between charging policies and dispositional events and to differentiate among various prosecutorial styles.

OBJECTIVES

The specific objectives of this research were to:

1. Develop a statistical concept that would be capable of isolating some of the salient factors affected by policy and considered in the prosecutor's decisionmaking process.

2. Develop statistical tools that can be used to measure these factors and express the degree of agreement among assistants, leaders, other offices, and components of the criminal justice system.

3. Test these tools and concepts in four offices and analyze the findings for their explanatory power and sensitivity.

4. Determine the value and limitations of this approach with respect to its ability to measure uniformity and consistency in decisionmaking, to perform comparative analysis, and to be used for other applications.

It should be made clear, that this developmental effort did not include analyzing the decisionamking functions in any one office,

determining the significance of the factors that affect these functions, or producing a comparative analysis of the relative effects of prosecution in the four offices that participated in this research. Its primary purpose was to develop and test instruments as well as to report on their utility, power and limitations. Thus, the results presented in this paper respond solely to this purpose. For this reason, the analysis of the independent variables is not included here.

CONCEPTS AND APPROACH

This research project chose to pursue the development of test instruments as the most feasible and powerful means of gaining insights into the prosecutor's decisionmaking function. Our decision was based on a number of factors, most of which stem from the ability of test instruments to operate in a relatively environment-free form, unrestrained by the diversity of the local criminal justice systems within which prosecution can be found. The analytical power derived from this ability outweighed the limitations that are also attached to this quantitative approach.

The two test instruments developed for this project are: a standard case set; and a case evaluation form. The standard case set consists of 160 criminal cases of varying type and seriousness, presented in a "statement of fact" format. Each case contains enough information to satisfy an adversarial type of probable cause hearing, but not necessarily enough for proof beyond a reasonable doubt at trial. The set also includes criminal histories of 100 defendants, that appear in a form similar to police arrest records.

The case evaluation form collects information about each case's priority for prosecution, probable acceptance for prosecution, and expected disposition, with the dispositional information including type, location in the prosecution process, level, sentence if convicted, and length of sentence if locked-up. Samples of both instruments may be found in Appendix A.

The decision to pursue the development of test instruments in the form of a standard case set was made because it solved some and reduced other problems encountered in using actual files. Be developing our own set of cases, we could control the effects of different external factors on the types of cases presented for prosecution; standardize the quality, content and format of the information presented for evaluation; control the type of cases presented, thereby creating the ability to design and analyze experiments; record all the independent variables pertaining to the case set only once, thereby minimizing coding and computer costs while expanding the potential analytical base; and modify and refine the information presented until it attained its highest analytical power.

All these advantages were not obtained without cost. By adopting the test instrument approach we relinquished the ability to work from actual data and accepted instead analysis based on perceived data. Information collected from actual files reflects and measures actual processing times, actual dispositions, and actual measures of activities within process steps. The importance of this type of information is clear. The ability to measure improvements or changes over time, and the impact and effect of various programs or changing trends is essential and requires reliable, accurate and valid data. For our purposes, however, the test

instrument approach offered itself as the most practical and efficient way for meeting the needs of the research objectives.

ASSUMPTIONS

The standard case set and evaluation forms are based on a set of assumptions that need to be stated to clarify the scope of their measurement and analytical power, and to set boundaries. These assumptions are:

1. The choice of prosecutorial policy and how it is implemented is affected by exogenous variables that ultimately will have to be taken into account to determine their relative importance. However, this is not an essential task for this particular developmental effort and has not been attempted here.

2. Prosecutorial policy can be defined in terms of case priorities are observable in the decisionmaking processes of the office and have explanatory power with respect to their behavior.

3. The decisionmaking processes that need attention are those that are capable of producing dispositions or outcomes. They can be functionally classified into intake, accusation, trials and post conviction processes.

4. The dispositional activity that occurs in these process steps can be used to measure the amount of consistency and uniformity in the office since the definition of uniformity assumes equal dispositional results and consistency assumes agreement with the policy-setters.

5. As a result of the test instrument approach adopted, it is assumed that the assistants' assessment of his reality is accurate and

conversely in areas which he has no experience or knowledge, his assessments will agree with reality only by chance.

6. A significantly large portion of the prosecutors' priorities could be explained by the mix of three factors, the seriousness of the crime, the history of the defendant and the evidentiary strength of the case.

The standard case set provided the prosecutor with 30 cases that were statistically distributed over a three dimensional axis of seriousness of offense, seriousness of the defendant's criminal history and evidentiary strength. By asking assistants and prosecutors to evaluate the same set of cases, it was possible to point out any inherent differences in values and perceptions that could not otherwise be separated if representative data from each jurisdiction were collected. The standard case set is not representative of any known universe. It was deliberately constructed to distribute cases as uniformly as possible along the three dimensions mentioned. Thus, it does not show a high frequency of less serious crimes such as traffic offenses, driving under the influence or simple trespassing; nor does it have a low frequency of murder, rape and the more serious crimes.

The case evaluation form incorporated the basic elements of the conceptual framework used in Policy Analysis for Prosecution into its design. The policy of the prosecutor was indicated by the questions concerning priority for prosecution, the accept/reject decisions and the sentencing recommendations. Strategies and programs used to reach dispositions were indicated by the questions regarding the location of the dispositions, level and type. Some aspects of organizational structure and resource allocation through which policy was implemented were captured

by identifying the organizational unit to which the assistant was assigned, the months of prosecutorial experience each assistant had, and the identification of the policy maker or leader of the unit. The organizational information was of crucial importance in the Brooklyn District Attorney's office where its 12 clearly identifiable bureaus or divisions each headed by a bureau chief, and supported by small groups of assistants set the stage for in depth analysis of how the priorities of the assistants within each of the organizational units matched.

TESTS AND RESULTS

The standard case set was administered to 356 assistant prosecutors in 4 jurisdictions. Each assistant responded to a set of 30 cases, 24 of which were identical for all offices--the difference resulting from changes that were made to the original set of cases after they were tested in Brooklyn and Wilmington. These two jurisdictions responded to the original 30 cases; Salt Lake City and New Orlenas responded to the adjusted set. Of the 6 cases which changed, one was new to the set, the balance were modifications to clarify points. The participating jurisdictions are identified in Table 1.

The responses to the tests, presented in Tables 2-8, are discussed with respect to three primary issues:

1. The value of using a standard case set to obtain responses to the question and an evaluation of its power or limitations is explored.

2. The more interesting results obtained at each site are highlighted.

3. A critique of the question with respect to its ability to produce reliable measures of the concept being tested is provided.

Table 2 shows that the standard case set is able to differentiate between acceptance and rejection standards that are used in making charging decisions. There is a clear indication of two different types of intake processes among these offices. Even though the assistants are looking at the same set of cases, one type (Brooklyn and Wilmington) rejects proportionately few cases; (15% and 11% respectively) the other (New Orleans and Salt Lake) exhibits a rejection rate almost double that of the first (22% and 21%, respectively). This distribution is entirely consistent with the policies and procedures used in the offices which have been verified through independent on-site visits. The question itself is simple and no difficulties were experienced with the responses. Its value lies in the ability to quickly discern levels of acceptance within an office, and it appears to be a sensitive decision variable for measuring intake policy.

Table 3 demonstrates that the standard case set can be used to distinquish a plea oriented prosecution system from a trial oriented system. The plea is shown to be the preferred disposition for over 60% of the cases tested in both Brooklyn and Wilmington. In contrast, the trial oriented policy of New Orleans is delineated by the relatively small proportion of pleas (37%) as compared to the higher trial conviction rate (52%). With respect to the question itself, there are too many response categories. They should be collapsed into fewer groups which based on other analysis need only be plea, conviction by trial, and all other.

Table 4 indicates the use of the standard case set to identify caseload exits. The location in the process where dispositions occur provides a good indication of the entire system's dynamics. By categorizing the process steps into the broad functions of intake, accusatory, pre-trial and trial, we see that in New Orleans and Salt Lake City, over 40 percent of the cases move into the trial process, whereas in the other two sites, 70 percent to 80 percent of the cases are disposed of before the first day of trial.

If the question is to be used for comparative analysis, the need for a time dimension overlay on the process steps is obvious. Since the amount of system time involved in and between the process steps is not specified, it is difficult to compare the efficiency of one system with another. Without such a dimension, this variable is process-dependent and its value limited to internal use.

In Table 5, the standard case set identifies different patterns of acceptable dispositions which are presumably dictated by policy or system capacity. New Orleans, with its rigorous screening and a policy of minimal plea bargaining, clearly has transmitted its policy through the office since few cases are expected to be disposed of by a reduction (7%). On the other hand, Wilmington, accustomed to disposing of a high volume of cases that have received limited review at intake, uses plea negotiation extensively (62%). Further, it is interesting to note that in this table, Salt Lake City, with 24 percent, departs from the pattern of New Orleans for the first time. The data suggest that although both offices perform rigorous intake review, Salk Lake City, unlike New Orleans, uses plea negotiation as a dispositional route. Between the remaining

two offices, Wilmington imposes what appears to be higher standards than Brooklyn (24%). This may be attributed to their "no reduced plea" cut off rule.

Question 4 was constructed with some difficulty since it included the problem of interstate variations in definitions of felonies, misdemeanors and violations. However, since the reduction factor was considered the most valuable indicator in identifying the dynamics of the office's dispositional strategies, the legal definitions of the crime were allowed to remain "ambiguous".

Table 6 indicates the potential power of using the standard case set to compare differences in sentencing expectations among jurisdictions. It is interesting to note that there is substantial agreement among all sites, regardless of charging policy, dispositional strategies and levels of disposition with respect to those responses that advocate some jail or penetentiary term. While the responses were delineated into finer categories on the evaluation form, broad categories such as the ones presented in this table are recommended in future tests because not all of the more finely detailed responses are available to all jurisdictions. For example, the adjournment in contemplation of dismissal (ACD) is a conditional discharge route available in Brooklyn and is used extensively to dispose of minor cases. That disposition was not found in the other jurisdictions although similar dispositions by other names were. Thus, once the lock-up factor is explained, more variation would be expected in the other punishment categories.

The wide differences displayed between the jurisdictions with respect to the appropriate length of incarceration in Table 7 are

interesting. The contrast is most obvious in New Orleans with its rigorous charging standards and trial-oriented stance. In New Orleans, the median of sentence of 13-23 years contrasts sharply with the other jurisdictions. However, inferences about the relative severity of one jurisdiction to another cannot be drawn from this question. The question needs to be revised. As it exists now, it probably reflects the local sentencing practices as they are influenced by parole and probation decisions, good time credits and habitual offender acts among others. Thus, in the future, it is recommended that the questions be restated to ask for "actual time to be served".

A primary purpose in developing the standard case set was to create a technique for measuring prosecutorial priorities that were environmentally and policy-free. As we have seen from the previous discussion, the prosecutor's responses were linked either to the environment or to policy. The priority scale displayed in Table 8 is independent of these factors. Its value lies in its ability to ascertain prosecutorial priorities without regard to the environmental factors or the local criminal justice system characteristics. This is important because it can be used as a normative scale to measure the value of cases for prosecution and to specify priority early on in the process. The fact that the full range of the scale is covered and that the offices are quite similar in their rankings indicates that the test cases represented a good mix of seriousness of offenses, criminal histories of the defendants and evidentiary strengths.

CONCLUSION

The results of using the standard case set to quantify some of the dimensions of the prosecutor's decisionmaking functions are encouraging. First, the case set has the ability to measure the amount of internal agreement among decisionmakers in an office. This has a practical managerial benefit since the result can be used for staff training and policy transfer. The cases represent a wide spectrum of conditions, and the set has been deliberately constructed to vary along the three dimensions affecting decisionmaking. Consequently, not only can the responses of the assistants be measured for agreement, but, in addition, they can be measured for agreement among different types of cases--the trivial to the serious--by computing the amount of variability attached to each case. Those that produce clearly discordant response can be identified for discussion at staff conferences and ultimately may be used, to support training programs. Since the responses also can be classified by whether they are policy-dependant or process-oriented, the training sessions could be even more specific within these areas, specially noting where major policy decisions such as case acceptance are not being uniformly agreed upon. In larger offices, where the bureaucratic structure is more complex, the organizational units having the widest discord can be identified so that the training sessions can proceed on a priority basis involving smaller units.

Secondly, the standard case set has the power to support comparative studies. Until now, a major limitation to most comparative research has been the lack of comparability among the units being measured. This is especially true for agreement where not only the types but also the quality are difficult to control. The standard case set overcomes this limitation, and establishes a vehicle that can measure the effects of policy and can identify areas where differential prosecution exists. From a state or national perspective, this means that differences among jurisdictions can first be identified and secondly assessed for their importance. It may well be that the strategies used to bring cases to disposition (e.g., plea bargaining) are irrelevant if the sanctions imposed are equal. On the other hand, if some strategies are more costly or time-consuming, than others that are more efficient, it may be worth examining. The ability of the standard case set to expose different prosecutorial styles and stances in the aggregate and then to identify areas that may be of state or national interest is exciting because it permits an examination of discretion and policy differences within a controlled environment. In this way, the emotions attached to these issues and the biases that creep into these evaluations can be set to one side so that some of the claims about prosecution can be examined in a more objective fashion.

Finally the standard case set captures the factors assumed to be important in prosecutorial decisionmaking including those that specify the seriousness of the offense, the evidentiary strength of the case and the seriousness of the defendant's criminal history.

The results will identify those factors taken into consideration for each of the decisions tested--be it rejecting the case or taking it to trial. Thus each significant factor can be identified and weighted by the amount of influence it contributes to the decision. Never before has the internal decisionmaking processes of the prosecutor been so accessible. The use of this information for internal office management and training, in addition to assessing differences among jurisdictions due to changes in emphasis and priorities, is a welcome addition to our existing knowledge. Even though the discretionary power of the prosecutor may not diminish, our understanding of the bases for this discretion and our ability to measure its effects increases our capacity to develop standards and guidelines for policy-dependant environments.

Table 1

Prosecutors Participating in Testing the Standard Case Set
September - November, 1978

Jurisdiction	Number of Assistants	
	Office Total	Responding
District Attorney Eugene Gold Kings County (Brooklyn) NY	320	282
Attorney General Richard Weir Wilmington, DL	18	13
District Attorney Harry Connick Orleans Parish (New Orleans) LA	61	34
County Attorney Paul Van Dam Salt Lake County (Salt Lake City) UT	24	21

Table 2

Q.1. AFTER REVIEWING THIS CASE, WOULD YOU ACCEPT IT FOR PROSECUTION?

(1) YES_____ (2) NO_____

Percent Distribution of Accept/Reject Rates
by Jurisdiction

	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Accept	84.9	89.0	77.9	78.6
Reject	15.1	11.0	22.1	21.4

Table 3

Q.2. CONSIDERING THE CHARACTERISTICS OF THIS CASE AND YOUR COURT, WHAT DO YOU EXPECT THE MOST LIKELY DISPOSITION WILL BE? (CHECK ONE)

Percent Distribution of Expected Dispositions
by Jurisdiction

	Jurisdictions			
Disposition	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Plea	62.1	63.1	36.9	42.4
Dismissal	1.1	0.3	0.1	0.2
Nolle	0.0	0.0	0.6	0.0
Conviction	21.0	31.7	51.6	51.7
Acquittal	1.4	0.3	1.6	1.2
Decline to Pros.	0.1	0.3	0.9	1.9
No True Bill	0.4	0.0	0.0	0.0
ACD	5.0	0.0	0.0	0.0
Transfer	1.1	0.9	0.3	0.0
Defer Pros.	0.1	0.0	0.3	0.4
Non-Crim. Alts.	2.4	0.0	0.1	0.8
Diversion	1.0	0.0	2.8	0.0
FTA	0.6	0.3	0.0	0.2
Can't Predict	3.1	2.3	4.7	3.1
Other	0.6	0.9	0.0	0.0

Table 4

Q.3. ASSUMING THE DISPOSITION YOU HAVE GIVEN IN THE PREVIOUS QUESTION, WHERE IN THE COURT PROCESS DO YOU EXPECT THIS CASE TO BE DISPOSED OF (CHECK ONE).

Percent Distribution of Disposition Location
by Jurisdiction

	Jurisdictions			
Exit Point	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
First Appear. for Bond Set	16.0	0.3	2.5	0.8
Prelim. Hrg.	14.6	1.2	1.8	6.4
Grand Jury	1.2	0.0	0.0	0.0
Arraignment	12.0	0.6	10.2	4.6
After Arraign. before Tr.	29.5	51.5	29.4	33.3
1st Day of Tr.	2.9	12.5	1.0	1.9
End Bench Tr.	1.0	4.9	7.3	11.0
End Jury Tr.	22.8	29.1	47.7	42.0

Table 5

Q.4 AT WHAT LEVEL WILL THIS CASE BE DISPOSED OF?

Percent Distribution of Level of Disposition
by Jurisdiction

	Jurisdictions			
Level	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Felony as Charged	25.4	61.9	70.3	55.3
Felony Lesser Charged	30.3	12.5	4.6	15.7
Misd. as Charge	7.5	13.4	22.0	18.4
Misd. Lesser Charge	24.8	11.3	2.3	7.8
Violation	6.1	0.0	0.3	0.7
Other	5.9	0.9	0.5	2.1

Table 6

Q.5. IN YOUR OPINION AND IRRESPECTIVE OF THE COURT, WHAT SHOULD BE AN APPROPRIATE AND REASONABLE SENTENCE FOR THIS DEFENDANT? (CHECK ALL APPLICABLE).

Percent Distribution of Appropriate Sentence by Jurisdiction

	Jurisdictions			
Sentence	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
None or Fine	4.4	0.0	0.7	0.4
Conditional Discharge	12.8	3.0	3.4	2.7
Probation or Diversion	23.6	34.7	27.5	34.7
Lock-up	59.2	62.3	68.3	62.2

Table 7

Q.6. IF JAIL OR PENETENTIARY TIME, HOW LONG?_____

Percent Distribution of Years of Incarceration by Jurisdiction

Years Sentenced	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Less than 1	7.7	3.8	3.3	16.1
1 - 3	52.1	37.0	21.9	48.3
4 - 6	15.9	19.7	11.1	26.0
7 - 12	14.1	21.6	13.1	3.1
13 - 23	6.8	13.0	15.9	2.0
24 - Plus	3.7	4.8	34.9	4.5
Median	1-3	4-6	13-23	1-3

Table 8

Q.7. CIRCLE, THE NUMBER THAT BEST REPRESENTS THE PRIORITY YOU, YOURSELF FEEL THAT THIS CASE SHOULD HAVE FOR PROSECUTION.

1 2 3 4 5 6 7

Lowest Priority — Average or Normal — Top Priority

Percent Distribution of Priority Scores by Jurisdiction

	Jurisdictions			
Priority	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
1	13,9	6.9	10.1	11.9
2	13.6	9.0	9.7	11.4
3	14.8	17.7	9.2	9.9
4	24.9	27.8	29.3	28.3
5	14.9	18.3	15.9	15.1
6	11.7	15.2	13.5	15.1
7	6.1	5.1	12.4	8.3

APPENDIX A

CASE NUMBER 016

1. On November 20, 1977, at 9:45 P.M., the defendant, a male was arrested on a charge of Theft (Motor Vehicle) over $300.

2. On November 20, 1977, at 5:20 P.M. the owner of a 1970 4-door Plymouth sedan reported to the police that while accompanied by the defendant he had parked the vehicle to go into the convenience store to make a purchase. The defendant had requested that the keys be left in the ignition so that the defendant could hear the radio. Upon returning from the store the victim discovered that the car was gone and he reported the incident to the police. At 9:45 P.M. on the same date the arresting officer on patrol observed a vehicle like the one which had been reported stolen parked on a side street and occupied by the defendant. The defendant was placed under arrest and charged with Theft over $300. After the arrest, the defendant was transported to the hospital to receive treatment for the D.T's.

3. Witnesses -

   #1. Vehicle owner

   #2. Arresting officer

4. Evidence - Physical Property, Statements, Other

   a. Testimony as to theft

   b. Testimony as to the recovery of the vehicle and the presence in it of the defendant.

Defendant #6

Date of Birth: 8/23/54

Age at Arrest	Offense	Disposition
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed

RESEARCH ON PROSECUTORIAL DECISIONMAKING*

Case Evaluation Worksheet

1. Case number: _____ 2. Your initials: _____

3. Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution.

1 2 3 4 5 6 7

Lowest Priority — Average or Normal — Top Priority

4. After reviewing this case would you accept it for prosecution?

(1) Yes: _____ (2) No: _____ If no, stop here. Go to next case.

5. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one).

___1. Plea
___2. Conviction by trial
___3. Acquittal
___4. Dismissal and/or Nolle Prosequi
___5. No True bill
___6. Can't predict
___7. Other alternatives (specify)

6. Assuming the disposition you have given in Q. 5 occurs, where in the court process do you expect this case to be disposed of? (Check one).

___1. At first appearance for bond setting and defense
___2. At preliminary hearing
___3. At grand jury
___4. At arraignment
___5. After arraignment, before trial.
___6. First day of trial
___7. End of bench trial
___8. End of jury trial.

7. At what level will this case be disposed of?

___1. Felony (as charged)
___2. Felony (lesser charge)
___3. Misdemeanor (as charged)
___4. Misdemeanor (lesser charge)
___5. Violation or infraction
___6. Other (specify)

8. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one).

___1. None
___2. Fine and/or restitution
___3. Conditional release or discharge
___4. Probation
___5. Jail
___6. Penetentiary

9. If Jail or Penetentiary, what should be the minimum actual time served?

(1) Years: _____ (2) Months _____ (3) Days _____

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A CONCEPT FOR MEASURING THE LEGAL EVIDENTIARY STRENGTH OF CRIMINAL CASES

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by

Leonard R. Mellon
Research Associate

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BUREAU OF SOCIAL SCIENCE RESEARCH, INC.
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A CONCEPT FOR MEASURING THE LEGAL EVIDENTIARY STRENGTH OF CRIMINAL CASES

BACKGROUND: THE NEED FOR THE MEASUREMENT OF LEGAL EVIDENTIARY STRENGTH

The legal evidentiary strength of a criminal case is of primary concern to the prosecutor in the criminal justice system. Yet, its elements have not been subjected to a systematic, rigorous examination for their influence on any number of decisions made about a case including: whether it should be accepted or rejected; if accepted, what priority it should be given for prosecution; and if tried, how it should be prosecuted.

A prosecutor's evaluation of legal evidentiary strength is based on his/her subjective judgment and experience. Whether evaluations differ among prosecutors, and whether some factors are accorded more importance than others in general or with respect to the different process steps such as intake, accusatory and trial is not known. Until the legal evidentiary factors are placed in a conceptual frame and their influence reduced to quantifiable terms, the proliferation of fragmented studies in this area will continue. This paper sets out a concept that was developed as part of LEAA's Research on Prosecutorial Decisionmaking and presents some tentative and preliminary findings resulting from the use of this approach.

A number of studies have noted the existence of legal evi-dentiary issues and have indicated their important role in decisionmaking. Eisenstein and Jacob (1977)[1] looking at courts in Baltimore, Chicago and Detroit noted that it was impossible for researchers to judge evidence in a given case without firsthand knowledge on a case by case basis. To compensate for this, they looked at the following indicators of evidential quality: the physical evidence; the availability of witnesses; and the presence or absence of motions that raise questions concerning the legality of searches, arrests and other legal constitutional questions. The authors discuss one of the critical problems inherent in their choice of evidential measures (183):

> ..[T]hey are based entirely on information in court files. They indicate whether eyewitnesses to the crime existed, but they do not tell us whether those eyewitnesses are credible or what they saw. Similarly, it was impossible to judge the validity of searches or the relevance of corroborating physical evidence. Consequently, evidence may play a smaller role in our analysis than in the actual case."

The Vera Study of Felony Arrests in New York City (1977:xi) considered a variety of legal evidentiary matters in connection with the deterioration of felony cases including "the 'quality' of the arrest and the legal accuracy of the original charge; the sufficiency of evidence to support the original charge (at a later time when it must be presented to court); the willingness of complainants, victims and witnesses to pursue the case.."[2] Although there is a wealth of insight

into the role and strength of evidence as captured by the deep sample interview materials, no attempt to quantify it was made.

One early attempt at quantification occurred in 1973 when a Major Offense Bureau (MOB) was created by the Bronx District Attorney, Mario Merola.[3] One of the prime objectives of the Bureau was to identify major offenses (and the offenders committing them) at intake before they were lost in the large volume of other cases. Detailed information and data which prosecutors felt contributed to the seriousness of the case, including its evidential strength, were collected. From this, a quantitative case evaluation system was developed by the National Center For Prosecution Management (NCPM). Its significance was related in the NCPM Report on the Case Evaluation System: (1974:17):

> For the first time, it..[became]..possible to extract and measure the importance of some evidentiary information critically affecting the strength of the case. This [was] ..a major step away from relying on an Assistant District Attorney's subjective judgment of the probability of winning. It..[was]..encouraging that not only did some of the evidentiary facts occur as statistically significant, but that the basic assumption of..the research program..[had] been supported: that is, that the prosecutor can subjectively identify those factors which affect his case and that..[it is possible to] statistically verify his information and assign the proper weights to rank it in order of relative importance.[4]

The Bronx MOB Case Evaluation System explored several elements of legal evidentiary strength in a criminal case. The factors affecting legal evidentiary strength, however, were never subjected to a complete systematic conceptualization so that the elements could be more rigorously tested. This was to become one of the goals of BSSR's Research on Prosecutorial Decisionmaking.

THE ELEMENTS OF LEGAL EVIDENTIARY CONCEPT

The Research on Prosecutorial Decisionmaking supported two major activities: the first, identification of prosecutorial policy, its implementation and transmittal, based on the study of ten prosecutor's offices nationwide; the second, development of a standard case set of criminal cases that would provide quantitative measures of prosecutorial policy, priority and expected dispositional outcomes which could be used 1) to measure internal consistency in decisionmaking among assistants within an office, 2) to compare different prosecutorial styles between offices and 3) to shed light on the factors taken into consideration in the prosecutor's decisionmaking.

The standard set of cases was developed to cover the range of the three primary variables used by prosecutors--the seriousness of the offense, the seriousness of the defendant's criminal history and the evidentiary strength of the case. This last category led to the development of a conceptual framework for legal evidentiary matters which is presented here. For the research, evidentiary strength was separated into four components: (1) the inherent complexity of the offense; (2) constitutional questions; (3) the nature of the evidence--both physical and testimonial, and (4) the circumstances of the arrest.

Prosecutors, in reviewing cases, are called upon to make judgments about what is required to 'make' a case. Complexity looks to the statutory or common law elements of the crime being prosecuted and asks, how difficult will it be to prove the case?

With a robbery, for example (defined at common law and in Black's Law Dictionary as the "Felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear")[5], a case might be 'made' with a victim who testifies that he was in fear of his life when his wallet and watch were forcefully taken from him by a suspect armed with a pistol, a suspect as identified by the victim, and a weapon, or sufficient testimony about the use of a weapon. In this context, robbery is not inherently complex from a legal evidentiary standpoint. Indeed, on a scale of 1-5, it would probably not rate much more than a '1'.

At the other end of that complexity scale consider a white collar crime such as embezzlement which occurs over a period of time. "Embezzlement", (LaFave & Scott, 1972:644) "a statutory crime, is defined somewhat different in different jurisdictions; so that it is impossible to define it authoritatively in a single way. But in general, it may be defined as: (1) the fraudulent (2) conversion of (3) the property (4) of another (5) by one who is already in possession of it."[6] In this instance, a variety of testimony and any number of witnesses might be required depending on the sophistication of the method used in committing the crime. Thus, 'making' this case could well require expert witnesses as to forging of signatures and falsification of books and records, and convoluted testimony of accountants as to complicated business records

with the attendant strict evidential admissability requirements might rate a '4' or '5' on the complexity scale.

Constitutional questions are generally recurring ones and usually limited in number. Most commonly they involve questions about the legality of searches and seizures, Miranda warnings (Miranda v. Arizona, 384 U.S. 436 1966) and sometimes Wade-Gilbert (388 U.S. 218 1967, 388 U.S. 263 1967) identification questions. For instance, was the heroin legally seized by an officer who, at 2:00 a.m. on an unlighted street, claimed to see the drug in plain view on the floor of a parked automobile occupied by the subject? Similarly, did the arresting officer have probable cause to believe that the subject running down the street was the person who had robbed the convenience store? Was the description of the property in the search warrant sufficient to allow the seizure of the property which is now in evidence? Was the defendant read his rights after arrest before questioning began and was his participation in the crime established through the questioning? Is there a Miranda problem in connection with the defendant's unsolicited admission of guilt made while being transported to jail? What about the lineup used to identify the subject? Is there a Wade-Gilbert question as to voice identification or the presence of counsel? These are the garden variety of constitutional questions encountered by the American prosecutor that have profound effects on the legal admissability of evidence, and in many instances, on whether the case can be prosecuted.

The evidentiary strength of the case can be examined from two perspectives: the nature of the physical evidence and the characteristics of the testimonial evidence. Questions about physical evidence cover a

variety of subjects. Is the chain of custody intact? (This is of key importance in cases involving drugs and other contraband.) Is some, or all, of the physical evidence still available? What was the value of the property stolen? Can the victim show proof of ownership? Was a weapon used? If it is a gun, was it discharged? Was the victim injured? How seriously?

From the testimonial side, still other matters are material. How many witnesses are there and what did they see? Will the victim be available for trial? (This is often a serious problem in port cities like Norfolk and San Diego and tourist areas like Miami, Las Vegas and New Orleans.) Will the witnesses testify? Will their testimony be credible?

The answer to this last question is highly subjective but extremely important to the process of assessing evidential strength. It may be examined from four dimensions: the age of the witnesses and victim; the relationship between the victim and the defendant; the presence of physical or cultural handicaps the latter referring most commonly to language difficulties; and the prior record, if any, of the complaining witness. Each dimension raises questions that need assessment before the strength of the case can be predicted. For example, the Vera Study and other commentators have noted that prior relationships between the defendant and the victim most often lead to reduced pleas or even dismissals. Testimony from extremely young or very old victims or witnesses is also subject to attack, as is testimony from witnesses with prior criminal records. The rape victim, for example, who earns her living as a prostitute has, unfortunately, less credibility than the victim who is a married housewife and mother.

Finally, the circumstances surrounding the arrest have direct bearing on the evidentiary strength of the case. There are distinct differences that arise when the defendant is arrested at the scene of the crime as contrasted to his arrest ten days later on the basis of a warrant. The type of identification--whether on the scene eyewitness, picked from a lineup or based on a description--changes the strength of the case. The role of the defendant, whether active and aggressive, aider or abettor, planner or operative, all become important considerations in the assessment of the case and its priority for prosecution.

Table 1 presents the summary of the elements of legal evidentiary strength as they were conceptualized and developed for this research. Unlike the other two vectors tested by the standard case set--the seriousness of the crime and the defendant's record--little was known about their relative importance or order of priority. This was to be examined in pretest.

PRETESTING THE CONCEPT

The standard case set developed for this research was coded to capture the basic elements of this legal evidentiary concept. This resulted in identifying almost 80 variables for each of the 150 cases that comprise the standard case set. The coding task was divided into two parts. The objective factors that did not require a knowledge of the technical requirements of the law were coded by the project staff at large. The elements that required legal interpretation or prosecutorial experience were coded first, by the Deputy Project Director who had extensive prosecutorial experience and then validated through replication by others with prosecutorial experience including a former Chief Assistant District Attorney in New Orleans, and the First Assistant District Attorney in the Kings County (Brooklyn) District Attorneys Office. The continued validation of this portion of the concept is ongoing.

In the fall of 1978, 30 cases from the standard case set were tested at four sites: the Attorney General's Office, Wilmington, Delaware; the County Attorney's Office, Salt Lake City, Utah; the District Attorney's Office, New Orleans, Louisiana; and the District Attorney's Office, Brooklyn, New York. The responses were analyzed to see if any of the legal evidentiary factors were statistically significant.

Based on this limited analysis, the following factors appeared as significant in one or more of the tests conducted:

1. The presence of constitutional problems.
2. Whether there were two or more police or civilian witnesses.
3. Whether there were complaining witness problems.

Table 2 summarizes the questions asked of the assistant prosecutors in areas where there was substantial agreement among all offices and the legal evidentiary factors that were statistically significant between offices.

On the issue of priority, prosecutors were asked to "Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution". There was substantial agreement among all offices on the rating of cases. Legal evidentiary factors emerged as important with the presence of a constitutional problem and complaining witness problems degrading the priority rating. The presence of two or more police and/or civilian witnesses, on the other hand, increased the priority rating.

When asked, "After reviewing this case, would you accept it for prosecution", the offices all agreed that acceptance was, in part, predicated on legal evidentiary matters--especially the existence of constitutional problems and the support of two or more police witnesses. Finally, when the matter of incarceration was considered, the legal evidentiary aspects also came into play in the decisionmaking process.

The degree of agreement between offices was such that this also is a matter appearing to be independent of office policy. Weight was given here by prosecutors to the absence of constitutional and complaining witness problems, and to the presence of two or more police or civilian witnesses. The absence of the former and the presence of the latter enhanced the probability of incarceration.

There were a number of areas where there were significant differences in responses between offices but the limited number of cases did not permit conclusions as to the origin of these differences. Whether this is attributable to the size of the sample, or to whether the legal evidentiary variables were not inclusive enough, cannot be determined until more cases are tested--one goal of the Phase II research. Many of these differences deal with matters which appear

to be dependent on office policy and procedures. This can best be illustrated by the responses in cases disposed of by plea, cases disposed of by reduced charge, and those disposed of by trial.

In New Orleans, few cases are disposed of by pleas. All cases filed are expected to go to trial. Under this trial sufficiency policy, with its careful screening at intake and a rejection rate that is between 45-50 percent of all cases presented by the police, many cases of questionable constitutionality, or those involving complaining witness problems, are screened out at intake. Such is not the case in legal sufficiency jurisdictions such as Brooklyn and Wilmington which are plea-oriented. In these two offices, constitutional issues in a case, and complaining witness problems are often the impetus toward securing a plea. Thus, the responses of prosecutors from dissimilar offices reflects a difference in policy.

This same result obtains concerning the percent of cases disposed of by reduced charge. In New Orleans, with its enunciated policy of "file and trial", cases are not normally disposed of by reduced charge. Careful charging at intake precludes this necessity. In legal sufficiency jurisdictions such as Brooklyn and Wilmington, this is a common dispositional practice.

As might be expected, New Orleans prosecutors approach trials entirely differently than do prosecutors in offices with a legal sufficiency policy. Thus, in New Orleans the case, once filed after intensive screening at intake (and removal from the system at that time of cases with witness and other legal evidentiary problems), will usually be tried. Only extraordinary legal evidentiary matters will cause a deviation from this policy. In the legal sufficiency jurisdictions, trial is the

exceptional disposition and a number of legal evidentiary matters will cause cases once filed, to be disposed of other than by trial.

CONCLUSION

At this preliminary point in this research, the whole concept of quantifying legal evidentiary strength as here set out appears to be a reasonable one. Of the four elements delineated conceptually, two have shown significant explanatory power--the constitutional issues and evidentiary matters; one could not be tested because its distribution was too skewed--the inherent complexity range; and one could not be tested because the number of cases was too few to permit its introduction as an analytical variable--the circumstances of the arrest. Based on these preliminary findings, however, we can conclude that the concept as presented is reasonable and capable of quantification. What is clearly needed is the expansion of the test to include more cases. This will be undertaken in the second phase of this research.

It is encouraging to note that prosecutors are concerned about constitutional issues and questions dealing with sufficiency and availability of evidence. Equally encouraging is the fact that the prosecutors' responses to these and other factors incorporated in the standard case set evinced these concerns.

The responses of prosecutors in all of the offices tested indicated that in decisions about the priority for prosecution, cases accepted, and defendants incarcerated, evidentiary strength is an important factor and appears to be independent of office policy or local criminal justice systems. Along with the seriousness of the offense and the criminal history of the defendant, it provides valuable insights into the functioning of prosecutive decisionmaking systems. The concept proposed here for measuring the legal evidentiary strength of the case is promising and if replicable, of great value.

NOTES

[1]EISENSTEIN, J. and H. JACOB (1977). Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little Brown.

[2]Vera Institute of Justice (1977). Felony Arrests: Their Prosecution and Disposition in New York City's Courts. New York: Vera Institute of Justice.

[3]MEROLA, MARIO (1977). "The Major Offense Bureau: A Blueprint For Effective Prosecution of Career Criminals". Pp. 725-739 in National District Attorneys Association (ed.), The Prosecutor's Deskbook. Chicago: 1977.

[4]National Center For Prosecution Management (1974). Report To The Bronx County District Attorney On the Case Evaluation System. Washington: National Center For Prosecution Management.

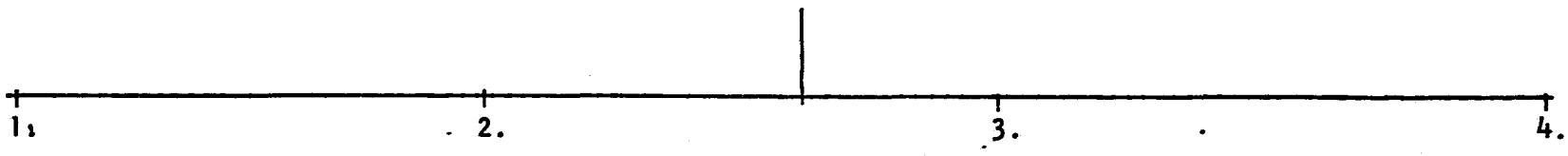
[5]BLACK, HENRY CAMPBELL (1951). Black's Law Dictionary. St. Paul: West Publishing.

[6]LAFAVE, WAYNE R. and AUSTIN W. SCOTT, JR. (1972). Criminal Law. St. Paul: West Publishing.

TABLE 1

The Elements of Legal Evidentiary Strength in Criminal Case Prosecutions

Elements of Legal Evidentiary Strength of a Case



Inherent Complexity of the Crime	Constitutional Questions	Evidence		Nature of Arrest
	Search & Seizure	Physical	Testimonial	Timing
	Miranda	Presence	Availability	Location
	Wade-Gilbert	Chain	Credibility	Admissions
	Others			or denials.

Table 2

Summary of the Statistically Significant* Legal Evidentiary Factors By Type of Response Applicable to All Offices

Response Type	Significant Legal Evidentiary Factors	
	Supportive	Limiting
1. Priority for Prosecution	Two or more police witnesses	Constitutional problems
	Two or more civilian witnesses	Complaining witness problems
2. Percent of Cases Accepted	Two or more police witnesses	Constitutional problems
	Two or more civilian witnesses	Complaining witness problems
3. Percent Defendants Incarcerated	Two or more police witnesses	Constitutional problems

*Significant at .05 level or less.

79213

RESEARCH METHODOLOGY REPORT #1
September, 1979

THE DESIGN FOR THE PHASE II TESTING OF THE STANDARD CASE SET IN TEN JURISDICTIONS

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

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September, 1979

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INTRODUCTION AND BACKGROUND

In Phase I of Research on Prosecutorial Decisionmaking,[1] the standard case set was tested in four jurisdictions. The purposes of this test were first, to determine the feasibility of using a test instrument approach, consisting of the cases and the evaluation form, as a means of measuring differences in decisionmaking processes. Second, to measure the amount of uniformity and consistency in the decisionmaking processes among the assistants in an office and the extent to which they agree with the policy leaders (either the chief prosecutor or his first assistant). Third, to examine and determine whether it was capable of supporting comparative studies and identifying the existence of policy differences between jurisdictions. The results of the Phase I research were encouraging. The preliminary analysis of the responses indicated that the standard case set is a potentially powerful tool for research on criminal justice discretion and performance both within and among offices.

There was one, deliberately forfeited, limitation to the Phase I testing. That was the inability to analyze the importance of the factors

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[1] Research on Prosecutorial Decisionmaking: Phase I Final Report, Bureau of Social Science Research, Washington, D.C., May, 1979.

that affect decisions. As a result, only a limited analysis of the large number of variables that were included in the file was possible and a less than complete range of values for these variables were eligible for testing. The Phase II activity is designed to overcome this difficulty as it extends the study of the power and sensitivity of the standard case set.

PHASE I DESIGN, RESULTS AND CONCLUSIONS

The Phase I decision to test the same 30 cases in each office was deliberate so that the standard case set's power to discern within and between offices could be tested. The basic research assumption in Phase I was that a test instrument could be developed that could measure levels of agreement among assistants in an office and distinguish among prosecutorial styles and decision functions. If such a test instrument was feasible, then a foundation for future measurement and evaluation research could be established.

The results substantiated the design decision. There is a discernible rationale to the decisionmaking process and there are indications that policy plays an important role in some of the dispositional responses of the prosecutor. Within the office, we found high levels of basic agreement between assistants with their policy leaders which even with the most rigorous definition of agreement, rarely dropped below 50% and generally ranged between 60 to 80%. In one jurisdiction, (Brooklyn, NY) 65 newly employed assistants were tested during their first week on board. Their relatively high levels of agreement point to the power of legal education in influencing their decisions even before on-the-job-training commenced.

When these "within office" tests were supplemented with comparative analyses it was possible to extend the earlier hypotheses upon which this research was based and develop a typology of prosecutorial responses with respect to certain decisions. Some responses are <u>normative</u> in character -- such as the priority for prosecution and whether the defendant should be incarcerated. These responses tend to behave similarly across all prosecutorial environments. Others are <u>policy</u> oriented. They show major differences among the prosecutorial styles in the jurisdictions tested -- such as plea or trial oriented offices, differences in intake criterion and whether charges will be reduced by the time of disposition. Still others are <u>process</u> oriented responses. They have meaning only within the context of the individual jurisdiction and its procedures -- such as the location of the disposition of the case in the court process.

The decision to test the standard case set on the comparative level, therefore yielded invaluable findings about the types of decision responses that exist in prosecutors offices and gave interesting insight into the effects of changing policy. This latter was indicated when the policy leaders in one office were matched to the responses offered by assistants in another office. It was clear that generally the highest levels of agreement occurred when similarly matched offices exchanged leaders.

The findings and results of the Phase I testing were important in their own right. Yet they contained a serious limitation -- namely, the inability to explain what factors or effects were important in these various areas. A limited analysis of the independent variables was performed as part of the Phase I testing; but a number of difficulties were encountered because the data base of only thirty cases was too small. With over 100 variables available for analysis, the administration of the

tests on only thirty cases reduced our analytical ability. The variables that received statistical consideration in Phase I were those which, based on our research findings and those of others, appeared to be most likely to explain the largest amounts of the variance. Yet even in this selection process some variables that had equally high priority were by necessity excluded from the analysis. As a result, not all variables were subjected to analysis, hence any statements about the factors affecting decisionmaking are still suspect.

The second difficulty emanating from the test of 30 cases is that even the variables selected for the analysis often did not span the full range of their possible values or responses. In some instances, the distributions were truncated; in others, gaps occurred. Appendix A presents the frequency distributions of some of the significant independent variables and Appendix B a gapping analysis of the priority values. The skewness of some of these distributions clearly diminishes our ability to analyze their effects. As a result, the analysis was softened to such an extent that it justified the need for expanding both the number of cases tested, and the range of variability introduced. A major conclusion of the Phase I test was that a full-scale, controlled experimental design of the standard case set should be undertaken in Phase II of Research on Prosecutorial Decisionmaking.

DESIGN OBJECTIVES AND CONSTRAINTS

The Phase II research on the standard case set was designed to meet the following objectives:

1. To measure the amount of uniformity and consistency among decisionmakers in an office with respect to criminal case processing.

2. To determine the effects of policy on expected dispositional outcomes and patterns.

3. To identify the factors taken into consideration in prosecutorial decisionmaking and isolate their relative orders of importance.

These objectives were to be accomplished within a set of time and funding constraints, the most important of which were that no more than 10 sites were to be tested, and no more than 30 cases could be tested by any one assistant. Additionally, since another task of the research called for the weighting of the expected dispositions to estimate actual dispositions, the availability of actual dispositional data in a usuable or compatible form was also of concern.

To meet all 3 of the above specified objectives, it was necessary to construct a design that would overcome the contradictions posed by objectives 2 and 3. Objective 3 is best met by the analysis of the independent variables in the case set. With close to 100 variables coded for testing in addition to a strong likelihood that some interactions would also need testing, it is clear that the analysis should proceed based on the largest number of cases possible. Under these circumstances, a satisfactory procedure would be to test different case sets in each of the 10 sites, thereby producing 300 cases for the analysis.

Objective 2, on the other hand, is best achieved by testing the same set of cases in all 10 sites since a comparative analysis for policy and environmental effects, at this time, needs to control for the cases being evaluated. Under these circumstances, only 30 cases would be available for analysis. As the Phase I pre tests clearly demonstrated, this is an acceptable <u>minimum</u> for comparative analysis, but totally insufficient for independent variable analysis.

In order to overcome the conflicting design requirements of these objectives without losing the credibility of the test results, the 10 sites were divided in half. Five sites would receive the same set of 30 cases,

thereby permitting the comparative analysis of the effects of policy and environment; the other five would each receive different sets of 30, producing 150 additional cases. This would yield about 210 cases that could be used for the independent variable analysis and sensitivity testing of the standard case set. (150 from 5 sites, plus 30 from the other 5, plus 30 from the original Phase I pre test).

The Experimental Design

The design selected is a factorial design with each factor having 3 levels as follows:

Factor 1: The seriousness of the offense as indicated by the Sellin/Wolfgang set at levels equal to 0, 1-4, and 5 or more.

Factor 2: The seriousness of the defendant's record as indicated by the number of arrests for crimes against the person set at levels equal to 0, 1-2, 3 or more.

Factor 3: The legal/evidentiary strength of the case as indicated by frequency of the presence of constitutional problems, less than two civilian or police witnesses and problems with the complaining witness set at levels equal to strong, marginal and weak (values of 0, 1, 2 or more.

Figure 1 presents the configuration of the design:

Figure 1

Factorial Design for Testing Standard Case Set
Number of Cases

Seriousness of Defendant	Seriousness of Offense: 0			1-4			5 plus			Total
	Evid. Strength S	M	W	S	M	W	S	M	W	
0	1	1	1	1	1	1	1	1	1	9
1 - 2	1	1	1	1	1	1	1	1	1	9
3 plus	1	11		1	1	1	1	1	1	9
Totals	3	3	3	3	3	3	3	3	3	27

To increase the set size to 30, 3 cases will be randomly drawn and assigned to the cells.

Criteria for Site Selection

The criteria for sites selected for testing vary also with the objectives to be met. Thus, the split design used here generates two sets of selection criteria. Since the purpose of the comparative study is to analyze differences that may result from policy or other exogenous influences, the sites tested should reflect a diversity of prosecutorial styles and environments. In contrast, the reliability of the independent variable analysis, needed to identify the significant factors in the decisionmaking process and their relative weights, is enhanced by having as many replications as possible.

Under these circumstances, offices with a large number of assistants are a desirable criterion in addition to diversity. The site selection criteria differences between the two objectives can be summarized as follows:

Comparative Analysis	Independent Variable Analysis
1. Selected for representing different policies and procedures	1. The largest offices available
2. At least 15 assistants in the office	2. Diversity in policy and procedures where possible

APPENDIX A

DISTRIBUTION OF INDEPENDENT VARIABLES IN THE STANDARD SET OF THIRTY CASES.

	Table
Offense	
Sellin and Wolfgang Score	1
Prior Record	
Age of Offender	2
Seriousness of Last Offense	3
Number of Serious Drug Offenses	4
Number of Arrests for Index Crimes	5
Number of Convictions	6
Number of Arrests	7
Number of Crimes Against Persons	8
Evidence	
Inherent Complexity	9
Constitutional Problems	10
Police Witnesses	11
Civilian Witnesses	12
Expert Witnesses	13
Relation of Victim and Defendant	14
Complaining Witness Problems	15

OFFENSE

Table 1

Distribution of Sellin/Wolfgang Seriousness of Offense Score

Score	Frequency
0.	5 +XXXXX
1.0000	0 +
2.0000	2 +XX
3.0000	4 +XXXX
4.0000	2 +XX
5.0000	4 +XXXX
6.0000	2 +XX
7.0000	1 +X
8.0000	0 +
9.0000	4 +XXXX
10.000	0 +
11.000	0 +
12.000	2 +XX
13.000	1 +X
14.000	2 +XX
15.000	0 +
16.000	0 +
17.000	0 +
18.000	0 +
19.000	0 +
20.000	0 +
21.000	0 +
22.000	0 +
23.000	0 +
24.000	0 +
25.000	0 +
26.000	0 +
27.000	0 +
28.000	0 +
29.000	0 +
30.000	0 +
31.000	0 +
32.000	0 +
33.000	0 +
34.000	0 +
35.000	0 +
36.000	1 +X
TOTAL	30

PRIOR RECORD

Table 2

Distribution of Age of Offender

Age	Frequency
18.000	0 +
19.000	0 +
20.000	0 +
21.000	1 +X
22.000	0 +
23.000	1 +X
24.000	2 +XX
25.000	4 +XXXX
26.000	1 +X
27.000	7 +XXXXXXX
28.000	0 +
29.000	0 +
30.000	3 +XXX
31.000	0 +
32.000	2 +XX
33.000	3 +XXX
34.000	3 +XXX
35.000	0 +
36.000	0 +
37.000	2 +XX
38.000	0 +
39.000	0 +
40.000	0 +
41.000	0 +
42.000	0 +
43.000	0 +
44.000	0 +
45.000	0 +
46.000	0 +
47.000	0 +
48.000	0 +
49.000	0 +
50.000	0 +
51.000	0 +
52.000	0 +
53.000	0 +
54.000	0 +
55.000	0 +
56.000	0 +
57.000	0 +
58.000	0 +
59.000	0 +
60.000	0 +
61.000	0 +
62.000	0 +
63.000	0 +
64.000	1 +X
TOTAL	30

Table 3

Seriousness of Last Offense for which arrested (1, Trivial ...4, Very Serious)

Seriousness	Frequency	
0.	13	+XXXXXXXXXXXXX
1.0000	2	+XX
2.0000	5	+XXXXX
3.0000	10	+XXXXXXXXXX
TOTAL	30	

Table 4

Number of Serious Drug Offenses for which arrested

Number	Frequency	
0.	19	+XXXXXXXXXXXXXXXXXX
1.0000	3	+XXX
2.0000	0	+
3.0000	4	+XXXX
4.0000	2	+XX
5.0000	0	+
6.0000	0	+
7.0000	2	+XX
TOTAL	30	

Table 5

Number of Arrests for Index Offenses (Injury, Theft or Damage)

Number	Frequency	
0.	14	+XXXXXXXXXXXXXX
1.0000	0	+
2.0000	2	+XX
3.0000	3	+XXX
4.0000	3	+XXX
5.0000	0	+
6.0000	1	+X
7.0000	2	+XX
8.0000	0	+
9.0000	0	+
10.000	0	+
11.000	1	+X
12.000	1	+X
13.000	0	+
14.000	1	+X
15.000	0	+
16.000	0	+
17.000	0	+
18.000	0	+
19.000	2	+XX
TOTAL	30	

Table 6

Number of Convictions

Number	Frequency	
0.	10	+XXXXXXXXXX
1.0000	6	+XXXXXX
2.0000	2	+XX
3.0000	1	+X
4.0000	3	+XXX
5.0000	2	+XX
6.0000	0	+
7.0000	1	+X
8.0000	0	+
9.0000	0	+
10.000	1	+X
11.000	0	+
12.000	0	+
13.000	1	+X
14.000	0	+
15.000	0	+
16.000	0	+
17.000	1	+X
18.000	0	+
19.000	1	+X
20.000	1	+X
TOTAL	30	

Table 7

Total Number of Arrests

Number	Frequency	
0.	5	+XXXXX
1.0000	2	+XX
2.0000	3	+XXX
3.0000	2	+XX
4.0000	1	+X
5.0000	2	+XX
6.0000	2	+XX
7.0000	1	+X
8.0000	2	+XX
9.0000	3	+XXX
10.000	0	+
11.000	0	+
12.000	0	+
13.000	0	+
14.000	1	+X
15.000	0	+
16.000	0	+
17.000	0	+
18.000	0	+
19.000	0	+
20.000	0	+
21.000	2	+XX
22.000	0	+
23.000	1	+X
24.000	0	+
25.000	1	+X
26.000	1	+X
27.000	1	+X
TOTAL	30	

Table 8

Number of Arrests for Crimes Against the Person

Number	Frequency	
0.	16	+XXXXXXXXXXXXXXXX
1.0000	2	+XX
2.0000	2	+XX
3.0000	4	+XXXX
4.0000	5	+XXXXX
5.0000	0	+
6.0000	1	+X
TOTAL	30	

EVIDENCE

Table 9

Distribution of Inherent Complexity of the Case

Complexity	Frequency
High	5
Medium	23
Low	2

Table 10

Distribution of Cases with Constitutional Problems

Problems	Frequency
Present	27
Absent	3

Table 11

Distribution by Number of Police Witnesses

Witness No.	Frequency
None	2
One	13
Two or more	15

Table 12

Distribution by Number of Civilian Witnesses

Witness No.	Frequency
None	5
One	9
Two or more	16

Table 13

Number of Cases with Expert Witness

Witness	Frequency
Present	4
Absent	26

Table 14

Distribution of Cases by Defendant/Victim Relationship

Relation	Frequency
Intimate	2
Not Intimate	2
Not Related	26

Table 15

Number of Cases with Complaining Witness Problems

Problems	Frequency
Present	7
Absent	23

APPENDIX B

GAPPING ANALYSIS OF PRIORITY FOR PROSECUTION VARIABLE

Based on 24 of 30 standard cases with identical wording.

GAPPING ANALYSIS
FOUR OFFICE COMPARISON OF PRIORITY

NEW ORLEANS

N= 24

TAGS	DATA	GAPS	WEIGHTED GAPS	Z
021	6.849	0.613	3.755	1.072
019	6.235	0.147	2.544	0.726
015	6.088	0.664	6.468	1.847
020	5.424	0.0	0.0	0.0
004	5.424	0.189	4.236	1.209
009	5.235	0.270	5.398	1.541
017	4.965	0.260	5.558	1.587
016	4.706	0.618	8.892	2.539
GAP	GAP	GAP	GAP	GAP	GAP
003	4.088	0.058	2.796	0.798
018	4.030	0.030	2.060	0.588
006	4.000	0.0	0.0	0.0
023	4.000	0.182	5.117	1.461
024	3.818	0.083	3.443	0.983
010	3.735	0.588	9.075	2.591
GAP	GAP	GAP	GAP	GAP
013	3.147	0.206	5.272	1.505
008	2.941	0.088	3.362	0.960
011	2.853	0.059	2.645	0.755
022	2.794	0.029	1.782	0.509
005	2.765	0.098	3.051	0.871
002	2.667	0.079	2.506	0.715
012	2.588	0.059	1.925	0.550
007	2.529	0.206	3.010	0.859
001	2.323	0.627	3.796	1.084
014	1.697			

THE MIDMEAN OF THE WEIGHTED GAPS= 3.5026

THE NUMBER OF APPARENT GAPS IN THIS DATASET IS= 2

FOUR OFFICE COMPARISON OF PRIORITY

SALT LAKE CITY

N= 24

TAGS	DATA	GAPS	WEIGHTED GAPS	Z
021	6.476	0.476	3.309	0.886
019	6.000	0.263	3.403	0.911
015	5.737	0.499	5.605	1.500
020	5.238	0.338	5.201	1.392
009	4.900	0.100	3.082	0.825
004	4.800	0.100	3.286	0.879
017	4.700	0.068	2.853	0.763
016	4.632	0.251	5.664	1.515
018	4.381	0.095	3.587	0.960
006	4.286	0.0	0.0	0.0
023	4.286	0.143	4.519	1.209
024	4.143	0.543	8.842	2.366
GAP	GAP	GAP	GAP	GAP	GAP
010	3.600	0.219	5.596	1.497
022	3.381	0.095	3.653	0.977
003	3.286	0.524	8.409	2.250
GAP	GAP	GAP	GAP	GAP
011	2.762	0.012	1.234	0.330
005	2.750	0.083	3.148	0.842
001	2.667	0.117	3.550	0.950
007	2.550	0.121	3.396	0.909
013	2.429	0.048	1.951	0.522
012	2.381	0.0	0.0	0.0
002	2.381	0.762	5.790	1.549
014	1.619	0.143	1.812	0.485
008	1.476			

THE MIDMEAN OF THE WEIGHTED GAPS= 3.7372

THE NUMBER OF APPARENT GAPS IN THIS DATASET IS= 2

FOUR OFFICE COMPARISON OF PRIORITY

WILMINGTON

N= 24

TAGS	DATA	GAPS	WEIGHTED GAPS	Z
021	6.692	0.846	4.411	1.102
019	5.846	0.077	1.841	0.460
015	5.769	0.077	2.201	0.550
004	5.692	0.154	3.508	0.876
017	5.538	0.231	4.683	1.170
020	5.308	0.385	6.445	1.610
009	4.923	0.231	5.241	1.309
013	4.692	0.0	0:0	0.0
023	4.692	0.231	5.582	1.394
016	4.462	0.154	4.640	1.159
018	4.308	0.231	5.745	1.435
006	4.077	0.231	5.764	1.440
024	3.846	0.538	8.775	2.192
003	3.308	0.077	3.281	0.820
010	3.231	0.154	4.558	1.139
001	3.007	0.077	31137	0.784
005	3.000	0.077	3.025	0.756
011	2.923	0.154	4.077	1.018
012	2.769	0.0	0.0	0.0
022	2.769	0.154	3.508	0.876
007	2.615	0.154	3.114	0.778
008	2.462	0.128	2.375	0.593
002	2.333	1.026	4.857	1.213
014	1.308			

THE MIDMEAN OF THE WEIGHTED GAPS= 4.0030

THE NUMBER OF APPARENT GAPS IN THIS DATASET IS= 0

BROOKLYN

N= 24

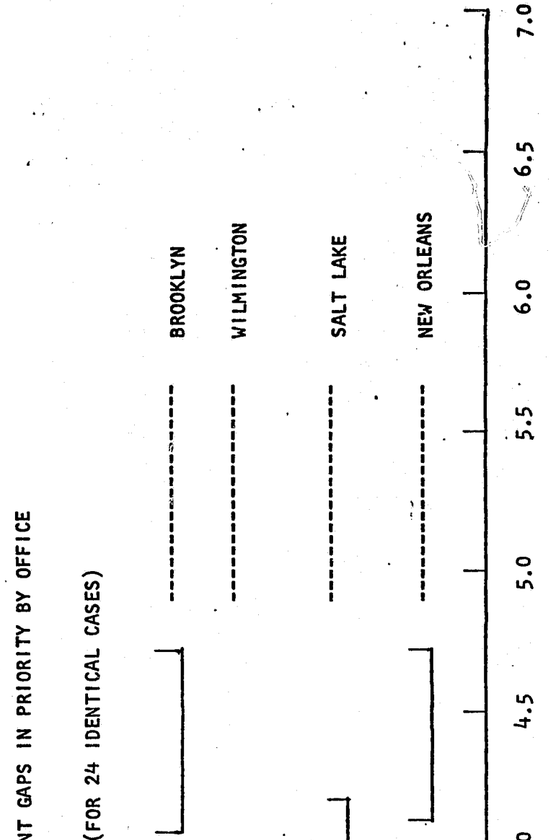
TAGS	DATA	GAPS	WEIGHTED GAPS	Z
021	6.559	0.661	3.900	1.009
019	4.898	0.187	2.865	0.741
015	5.711	0.537	5.818	1.505
020	5.174	0.109	2.952	0.764
004	5.065	0.147	3.742	0.968
017	4.918	0.129	3.734	0.966
016	4.788	0.087	3.212	0.831
009	4.702	0.655	9.153	2.368
GAP----------GAP----------GAP----------GAP----------GAP				
018	4.047	0.062	2.888	0.747
023	3.986	0.072	3.170	0.820
003	3.914	0.331	6.880	1.780
013	0. 3.583	0.217	5.595	1.447
006	3.365	0.005	0.871	0.225
024	3.360	0.375	7.243	1.874
010	2.985	0.330	6.674	1.726
005	2.655	0.128	4.056	1.049
001	2.527	0.029	1.848	0.478
022	2.498	0.318	5.858	1.515
002	2.181	0.177	4.099	1.061
007	2.004	0.059	2.167	0.561
011	1.945	0.268	4.111	1.064
012	1.677	0.201	2.972	0.769
008	1.476	0.238	2.343	0.606
014	1.237			

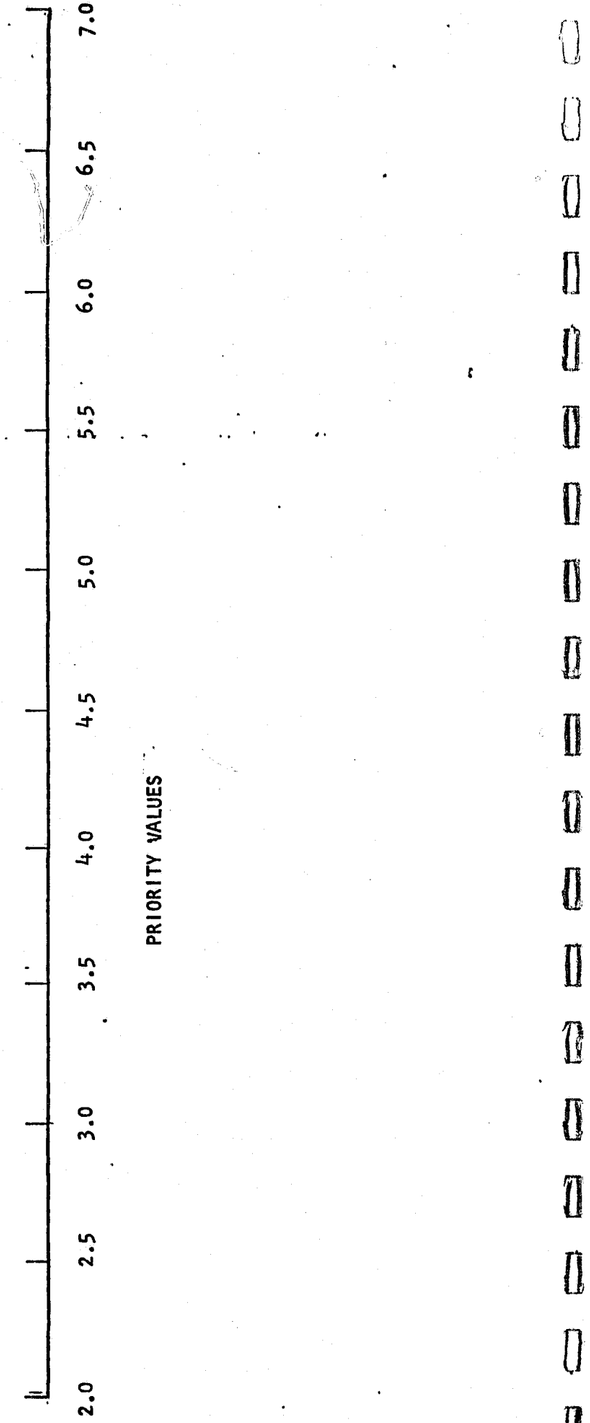
THE MIDMEAN OF THE WEIGHTED GAPS= 3.8654

THE NUMBER OF APPARENT GAPS IN THIS DATASET IS= 1

APPARENT GAPS IN PRIORITY BY OFFICE

(FOR 24 IDENTICAL CASES)





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A QUANTITATIVE ANALYSIS OF THE FACTORS AFFECTING PROSECUTORIAL DECISIONMAKING

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

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October, 1979

A QUANTITATIVE ANALYSIS OF THE FACTORS AFFECTING PROSECUTORIAL DECISIONMAKING

Joan E. Jacoby
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Edward C. Ratledge
Stanley H. Turner

Introduction

During the last several years, LEAA has supported a comprehensive research program focusing on the discretion of the prosecutor. The foundation for this work has been qualitative in nature; it identified the various steps in the prosecutor's decisionmaking process and described the general factors that appeared to influence those decisions. This research was directed by Joan Jacoby, first at the National Center for Prosecution Management[1] and currently at the Bureau of Social Science Research.

The work reported in this paper is a natural extension of that past research. It should be clearly understood, however, that the results presented here are based on research in progress and thus must be interpreted with care. The sample sizes are still quite small and some of the methods and measures are experimental. Despite these limitations the contents of this report will serve to describe a framework for more refined research in the future.

The objectives of this research are several. They are: (1) To determine the variables which have impact on the decisions made within

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[1]This research has been supported by a number of LEAA grants. The first results were reported in the First Annual Report of the National Center for Prosecution Management, Washington, D.C., 1973

the prosecutor's office; (2) To measure the relative weight that each variable has on any given decision; (3) To analyze the factors and and weights for variation among a set of four offices; (4) To evaluate whether the coefficients and the general shape of the equations fit with our on-site observations about the types of policies operating in those offices.

The Data Set

In the first phase of "Research on Prosecutorial Decisionmaking",[2] a standard set of cases was developed. The development of such a set was essential to this task, since it would permit the test variables to be under the control of the researchers. The alternative was to select random samples of closed cases in each office, a task that is not only time consuming but also inevitably would produce differing samples among the four offices tested. With the standard case set approach, case variations could be designed and measurement could proceed with confidence.

Presently, the standard case set consists of 154 distinct cases. They are not synthetic since the original cases were drawn from a set of approximately 300 closed cases in Wilmington, Delaware. Those meeting the selection criteria of utility and range were edited and placed in a standard format to facilitate the testing and to provide the prosecutors with a familiar document. Editing was necessary since criminal justice systems vary around the country. In addition, to the extent possible, any uncertainty about the variables under consideration was removed.

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[2] See Joan E. Jacoby, Edward Ratledge and Stanley Turner, Phase I: Final Report, Research on Prosecutorial Decisionmaking for a detailed description of the methodology and its limitations.

Although uncertainty is an important element in the criminal justice decisionmaking system, our initial design required testing more carefully specified models before uncertainty could be introduced as a factor for analysis.

A set of thirty cases was formed and combined with criminal history records for the defendants. These records were also drawn from actual files. An attempt was made to distribute the cases uniformly with respect to seriousness of the offense and the urgency for prosecution. No attempt was made to replicate the Uniform Crime Report distribution for the jurisdiction. To do so would have required a much larger set of cases and a large number of similar cases from which little additional information could be gained.

Twenty-nine of the 30 cases administered in four sites were identical with minor variations in syntax. One case was replaced by another in two of the sites. The test sites were:

(1) Orleans Parish District Attorneys Office, New Orleans, LA.

(2) Salt Lake County Attorneys Office, Salt Lake City, UT.

(3) Kings County District Attorneys Office, Brooklyn, NY.

(4) Attorney's General Office, Wilmington, DE.

Within each office, the majority of attorneys evaluated the cases with respect to major case dispositional decision points. Those points include:

(1) to accept or reject the case;

(2) to dispose of the case by a plea;

(3) to dispose of the case by trial;

(4) to dispose of the case by a reduced charge; and

(5) to incarcerate the defendant.

Only the first decision point is expressly under the prosecutor's control. The others however, may be influenced by him, if he so chooses.

In addition to these decision points, a normative measure that we refer to as case priority was evaluated. Each case was rated by the attorneys on a scale of one to seven with respect to its overall PRIORITY for prosecution. It is expected that this measure will be independent of prosecutorial policy in contrast to the other measures that should reflect the chief prosecutor's policy or the case processing system.[3]

Once the data was collected, edited and reduced to machine readable form, a summary measure was constructed for each of the six decision points (or dependent variables). These transformations were used for several reasons but most importantly to remove the interrater variation which at this time is not of interest. In the analysis presented here, we are concerned with how the office as a whole reacted to the case not how each attorney scored each case. The summary measures are of two types--averages and percents. If 200 attorneys rated the PRIORITY of the case on the one to seven scale, a simple average was constructed for each case across the 200 attorneys. All of the other dependent variables required a yes or no response. For these, the summary measure becomes the percent of the attorneys who responded positively to the decision. In both instances, the unit of analysis is the case (n=30) and not the number of attorneys.

Each of the cases in the standard set was coded with a variety of evidentiary characteristics. These characteristics include such

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[3] See Stanley H. Turner, "The Determinants and Consequences of the 'Priority' of a Case For Prosecution". A paper presented to the American Society of Criminology, 1979 Annual Conference for a discussion of the power of this concept.

variables as (1) the inherent complexity of the case, (2) the presence of constitutional problems, (3) characteristics of physical and testimonial evidence, and (4) circumstances of the arrest.[4]

In addition to the evidentiary elements, the Sellin/Wolfgang[5] scale of the seriousness of the offense and the scale's individual components were coded to the data set. Finally, six measures of the seriousness of the criminal history of the defendant associated with the case were also computed and appended. Although the Gottfredson Base Expectancy[6] scale was computed to indicate the seriousness of the defendant's criminal history, it was not used in this analysis. Instead, the research team decided to test an entirely new measure that seemed more promising for use in future studies. This work is not yet complete; in lieu of a still to be developed composite scale the individual components were tested.

The reader must bear in mind that the sample size for this analysis is 30 cases for each office. The data set currently includes more than 140 variables. Thus, we were forced to be quite selective in allowing variables in the analysis. The first criterion used was that the variable must have some theoretical reason for being in the model. The second criterion was that the variable being tested, if binary, must have at least a distribution of 27 to 3. The criterion of 3 was used to avoid the probability of correlating these variables with some unmeasured variable which happened to be associated with that case.

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[4] See Leonard Mellon, "A Concept for Measuring the Legal/Evidentiary Strength of Criminal Cases". A paper presented to the American Society of Criminology, 1979 Annual Conference.

[5] Measurement of Delinquency, Thorsten Sellin and Marvin Wolfgang (John Wiley and Sons, New York, 1964.)

[6] D.M. Gottfredson and K. Ballard, Jr., "Differences in Parole Decisions Associated with Decision Makers", Journal of Research in Crime and Delinquency, July, 1966.

Since only 30 cases were used many of the variables were essentially constants (30:0 or 29:1).

In Table 1, the means and standard deviations for the variables included in this analysis are reported. The upper portion of the table presents the dependent variables for each office and for all offices combined. The lower portion of the table defines and reports the parameters of the independent variables which are common to all sites.

These data are somewhat revealing in and of themselves. The mean of the policy independent variable PRIORITY shows a great deal of consistency across offices. The range is only 0.5 units which for purposes of this research is not significant. The standard deviations are also quite similar. As we move down the table through each of the policy-sensitive variables, some inter-office differentials become apparent. New Orleans and Salt Lake City accept proportionately fewer cases than the two northeastern offices. This is consistent with the policy found during the on-site visits.[7] The variance is greater in those offices that reject more cases probably because it is difficult to make these decisions as the cases become more serious. Substantial differences also surface in the Plea variable. Once again New Orleans and Salt Lake dispose of fewer of the cases by pleas since they select cases with the expectation of trial. (Note the consistent results with the Trial variable). Although a pairing has occurred between New Orleans and Salt Lake City, and Wilmington and Brooklyn, in displaying similar dispositional characteristics to this point, the Reduce variable is decidedly different. Salt Lake departs from the New Orleans pattern by expecting more reductions in the charges at disposition and Brooklyn emerges as a

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[7] See J. Jacoby, L. Mellon, E. Ratledge and S. Turner, Policy Analysis For Prosecution, (LEAA, Washington, D.C., April, 1979).

TABLE 1

MEANS AND STANDARD DEVIATION FOR DEPENDENT AND INDEPENDENT VARIABLES IN ANALYSIS

Dependent Variables

Variables	New Orleans		Salt Lake		Brooklyn		Wilmington		All	
	M	SD	M	SD	M	SD	M	SD	M	SD
Priority	4.296	1.410	4.221	1.535	3.755	1.457	4.087	1.310	[illegible]	1.427
Accept	0.779	0.285	0.788	0.297	0.855	0.242	0.890	0.243	0.828	0.268
Plea	0.389	0.282	0.420	0.221	0.623	0.200	0.631	0.285	0.518	0.271
Trial	0.514	0.312	0.525	0.208	0.214	0.205	0.323	0.268	0.392	0.283
Reduce	0.076	0.074	0.217	0.126	0.528	0.182	0.243	0.189	0.265	0.226
Lockup	0.585	0.400	0.573	0.380	0.517	0.318	0.554	0.411	0.557	0.394

Independent Variables

Variables	All Sites		Definition
	M	SD	
Caps	1.467	1.800	No. of arrests for crimes against the person
Last	1.400	1.337	Seriousness of last offense
SWscore	6.667	6.940	Sellin Wolfgang score for seriousness of instant offense
Constprb	0.100	0.301	Constitutional problems
Polwit2u	0.500	0.502	Two or more police witnesses
Civwit2u	0.533	0.501	Two or more civilian witnesses
Cwitprb	0.233	0.425	Complaining witness problems

user of this dispositional strategy with more than 50% of the cases being disposed by a reduced charge. This is in stark contrast to New Orleans where a no plea bargaining policy is clearly in place--the mean of .08 and the standard deviation of .07 support this fact.

The Lockup variable (the percent of defendants who should be incarcerated after conviction) evokes almost identical responses for all four offices. Evidently, prosecutors universally are able to agree on who should be locked up and who should be on the street. The uniformity displayed here suggests that this is a policy independent variable (like PRIORITY) and should be tested for inter-office differences.

Each of the independent variables used in this analysis is defined briefly in the lower part of table one. CAPS and LAST are constructed from the criminal history of the defendant. While six measures were originally developed only these two appear to have significant explanatory power at this time. CAPS is the number of arrests for Crimes Against the Person. LAST is a broad indicator, on a four point scale, of the seriousness of the last offense. (We are currently working on a procedure of assigning the Sellin/Wolfgang scale to NCIC codes to replace this variable.) SWSCORE is an offense variable. It is the Sellin and Wolfgang Score assigned to the case which ranges from 0 to 30. The evidentiary variables that were tested are four. CONSTPRB measures the fact that there could be a constitutional problem involved with the case. The most common are no rights read to the defendant at arrest or an illegal search and seizure. POLWIT2U reflects the fact that two or more police witnesses are available to testify in the case. Similarly, CIVWIT2U indicates that there are two or more civilian witnesses available in the case. Preliminary analysis showed that one witnesses (singly or cumulatively) was not significant as a variable. The significance of two or more witnesses apparently reflects the prosecutor's desire for corroboration.

The fact that one police witness and one civilian witness also will not suffice is probably because the arresting police officer and the complaining witness are not disinterested parties. The last variable, CWITPRB, indicates that there could be a problem with the testimony of the complaining witness due to either his unavailability, credibility or relationship to the defendant.

Three additional variables were introduced in the analysis to permit the measurement of differences between sites. These are dummy variables. They assume only two values: One, if the variable has the required attribute; and zero, otherwise. The first dummy variable takes on a value of one if the observation was generated in New Orleans and zero otherwise. The second and third dummies take on values if they are associated with Salt Lake City and Wilmington, respectively. These three coefficients measure the differences between the offices represented by the variable and the omitted office, Brooklyn. Their incorporation into the analysis measures differences attributable to the office which are not measured by the independent variables. These take on added importance in the analysis of covariance that attempts to measure the existence of policy differences.

Analysis

Since one objective of this research is to test for differences between offices with respect to the factors used in the decision processes and the weights associated with each of them, analysis of covariance is utilized. Assume, for the moment, that there are only two offices and there is a single dependent variable Y and a single independent variable X. There are three distinct possibilities that could arise when estimating this model:

(1) Y = a+bX where a and b are the same for each office and a single equation will suffice;

(2) Y = a+bX and Y = c+bX where the constant term (intercept) is different but the coefficient b is the same;

(3) Y = a+bX and Y = c+dX where both the constant term and coefficients are different between offices.

Under condition 1, all offices are essentially homogeneous. Under condition 2, the rate of change or behavior of the offices may be similar but the starting levels will differ among offices. For example, some offices may rate crime priorities in the same way but at a higher level than others. In condition 3, the offices are totally different in their reactions and base their decisions on entirely different factors. In this respect, they are not comparable. The models estimated here require, at least initially four equations for each dependent variable--one for each site. Model 3 is estimated first. Once derived, tests are made to determine whether the equations can be collapsed into forms (2) or (1) or whether the offices must be treated separately. F tests are used for homogeneity among coefficients and constant terms. If the F_3 ratio is not significant, the offices are homogeneous. If F_3 is significant the the F_1 and F_2 ratios can become important. F_1 represents significance for the intercept (level). F_2 represents significance for the slope or rate of change.

In Tables 2 through 7 which follow, equations are presented for each dependent variable. Each table has five columns, one for each of the four sites and a fifth that pools all of the observations. Only in the pooled equation are the dummy variables added for each one of the three sites, with Brooklyn omitted explicitly although it is imbedded in the constant term.

TABLE 2

ANALYSIS OF VARIABLES AFFECTING

PRIORITY FOR PROSECUTION

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	0.228	0.220	0.123	0.098	0.167*
Last	.069	0.125	0.266	0.121	0.144
SWscore	0.096**	0.098**	0.109**	0.111**	0.104**
Constprb	-1.440**	-1.554*	-1.023*	-0.583	-1.150**
Polwit2u	0.704*	0.899*	0.770**	0.674**	0.762**
Civwit2u	0.581*	0.336	0.432	0.383	0.433**
Cwitprb	-0.631	-0.318	-0.527	-0.786*	-0.565**
New Orleans	-	-	-	-	0.541**
Salt Lake City	-	-	-	-	0.466**
Wilmington	-	-	-	-	0.332
R^2	0.770	0.658	0.838	0.837	0.756
F	10.524**	6.035**	16.287**	16.084**	33.760**
Constant	2.859	2.672	2.084	2.733	2.252
N	30	30	30	30	120

Intercepts: $F_1(3,109)=3.16$**

Coefficients: $F_2(21,88)=0.339$

Whole Model: $F_3(24,88)=0.642$

*Significant at the .05 level

**Significant at the .01 level

Priority For Prosecution

The results for PRIORITY are contained in Table 2. As stated earlier, PRIORITY is expected to be policy free. Thus, a great deal of similarity should exist in the general structure of the equations. The coefficients should be positive unless they measure variables that indicate problems.

On reviewing the table, some general conclusions can be drawn. First, the explained variance is relatively high with a range of 66% to 84% and an overall rate of 76%. Every sign in the matrix is in the proper direction and of similar magnitude. The F statistics reported at the bottom of the table indicate that the models can be combined into a single equation. The F(24,88) is not significant which implies overall homogeneity. However, the F test on the intercepts $F_1(3,109)$ is significant leading us to believe that while the rank orders on priority are essentially the same, there is also a difference in start points. For example, New Orleans tends to rate on a scale 7/10ths of a point higher than Brooklyn, and Wilmington, 6/10ths of a point above Brooklyn. These differences can be seen in the constants for each site.

The seriousness of the offense as indicated by Sellin/Wolfgang score is clearly the strongest predictor of PRIORITY. Because the range of the variable covers 20 points, and the coefficient is equal to approximately .1, the score is powerful enough to shift the PRIORITY scale more than two points. No other variable has that power. The seriousness of the defendant's record must also be accounted for in assessing priority for prosecution particularly as it indicates a history of crimes of personal violence. On the evidentiary side, constitutional problems (CONSTPRB) have a strong, negative impact on the assessment of priority as do problems with the complaining witness (CWITPRB). It is consistent that CONSTPRB carries more weight (has a larger coefficient) in the two sites that screen more intensively (New Orleans and Salt Lake City).

TABLE 3

ANALYSIS OF VARIABLES AFFECTING

PERCENT OF CASES ACCEPTED

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	0.032	0.037	0.020	0.010	0.025
Last	0.015	0.021	0.078	0.082	0.049*
SWscore	0.007	0.008	0.006	0.001	0.006
Constprb	-0.708**	-0.610**	-0.220	0.019	-0.380**
Polwit2u	0.102	0.134	0.136	0.152	0.131**
Civwit2u	-0.035	-0.020	0.082	-0.005	0.023
Cwitprb	-0.016	0.061	0.236*	0.115	0.099
New Orleans	-	-	-	-	-0.075
Salt Lake City	-	-	-	-	-0.067
Wilmington	-	-	-	-	0.035
R^2	.752	.584	0.510	.324	.461
F	9.547**	4.419**	3.272**	1.505	8.943**
Constant	.669	.641	.527	.651	.649
N	30	30	30	30	120

Intercepts	Coefficients	Whole Model
$F_1(3,109)=1.97$	$F_2(21,88)=1.24$	$F_3(24,88)=1.34$

*Significant at the .05 level

**Significant at the .01 level

The evidentiary variables reflecting the number of police and civilian witnesses (POLWIT2U and CIVWIT2U) provide interesting insights to the decision process. Although their influence is consistently positive among offices, the testimony of two or more police witnesses is given more weight than civilian witnesses. This may suggest that police officers, being experienced, are better able to testify about the facts surrounding the events. This may be one reason why when we tested the variable that represented some of police and civilian witnesses, it was not significant. Adding witnesses appears to yield little cumulative impact.

Accept

The results of the analysis for the second dependent variable, Accept, are presented in Table 3. Before discussing the results, it should be noted that, as Table 1 shows, this variable is not normally distributed. Its mean is 82.8% and standard deviation is 26.8%. This skewed distribution should be corrected in future research with an increased sample size. The explained variance is less than half of that for PRIORITY. It ranges from an R^2 of .32 for Wilmington to .75 for New Orleans. The analysis shows no significant differences between sites and suggests homogeneity in this decision process.

There are, however, some noteworthy findings. First, the factors given weight in the decision to accept a case for prosecution depend first on its evidentiary aspects then on the activity of the defendant.

Second, the indepth screening sites, New Orleans and Salt Lake City, give similar strong emphasis to the importance of constitutional issues being present in the case. The weights on CONSTPRB are much higher in these two sites, consistent with their rigorous screening policy. Like Priority, the availability of police witnesses is more

TABLE 4

ANALYSIS OF VARIABLES AFFECTING

PERCENT DISPOSED BY PLEA

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	-0.083**	-0.039	-0.026	0.015	-0.033*
Last	-0.014	-0.032	0.028	-0.028	-0.019
SWscore	-0.020**	-0.006	-0.019**	-0.012	-0.014**
Constprb	-0.185	-0.035	-0.069	0.208	0.018
Polwit2u	-0.079	-0.036	-0.013	0.010	-0.029
Civwit2u	-0.119	-0.056	-0.060	0.031	-0.050
New Orleans	-	-	-	-	-0.235**
Salt Lake City	-	-	-	-	-0.198**
Wilmington	-	-	-	-	0.008
R^2	.581	.283	.408	.282	.392
F	4.360**	1.121	2.167	1.234	6.897**
N	30	28	30	30	118

Intercepts	Coefficients	Whole Model
$F_1(3,107)=9.85$**	$F_2(21,86)=0.914$	$F_3(24,86)=2.02$**

*Significant at the .05 level

**Significant at the .01 level

important in making the accept/reject decision in contrast to civilian witnesses. In Brooklyn, the emphasis is placed on the likelihood of encountering complaining witness problems. Most important, however, is that in the pooled equation, none of the site variables is significant. This means that even though there are often large differences in the accept/reject rates among jurisdictions, the influencing factors are captured by a single equation. One could argue that this should not occur: that widely different screening policies should be statistically noticeable. This may be valid especially since the R^2's are generally low (with the exception of New Orleans) and the significant factors are few or non-existent. Both circumstances suggest the existence of other important variables that were not included in this analysis. The fact that none of Wilmington's variables is significant gives justification to increasing sample size thereby permitting the introduction of additional variables.

Plea

The equations estimated for the dependent variable, Plea, are found in Table 4. The ability to predict pleas has the smallest explained variance of those discussed thus far in the analysis. This is most likely because so many other dispositions exist, producing equally satisfactory results and that the universe of choices is larger. This coupled with the ever-present likelihood that other significant variables have been omitted from the analysis makes this an inherently more difficult variable to predict. The results, nevertheless, are consistent with the observed policies of the offices; and the significance of F_3 forces us to examine each office separately since the site differences are also significant. New Orleans and Salt Lake City have significantly different plea rates than Brooklyn and Wilmington.

The predominately negative coefficients are consistent with the expected decision choices. In New Orleans, for example, the probability of the case being disposed of by a plea decreases as the criminal history of the defendant lengthens and as the seriousness of the offense increases. In Brooklyn also, the more serious the crime, the less likely a plea. New Orleans has the best equation which clearly reflects the expressed policy of that office not to plea. The other offices that operate without stringent plea policies are predictably less systematic.

Of interest in this analysis is the fact that the evidentiary variables do not appear to play a part in the plea decision. Emphasis, instead, is placed on the seriousness of the current crime and whether the defendant has a history of violent crimes. This can suggest one of two conclusions: Evidence is not relevant if the case is not to be tried on its merits; or there are other omitted variables that would shed better light on the probability of a plea. The latter is clearly valid in Salt Lake City and Wilmington where no variables assumed significance.

Trials

The results for the equations predicting case disposition by Trial are reported in Table 5. In sharp contrast to the Plea variable, the explained variance in these equations is substantially higher with R^2's ranging from .40 to .73. With the exception of Wilmington, all of the equations have significant F statistics. Further, the analysis rejects the hypothesis of overall homogeneity due to the significant differences among the sites. New Orleans and Salt Lake City cases have a 30% higher chance of being disposed of by trial than Brooklyn. Policy differences are clearly accounted for here.

TABLE 5

ANALYSIS OF VARIABLES AFFECTING

PERCENT DISPOSED BY TRIAL

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	0.082**	0.042	0.026	-0.019	0.034*
Last	0.061	0.034	0.016	0.073	0.045
SWscore	0.017**	0.008	0.017**	0.011	0.013**
Constprb	0.181	0.106	-0.061	-0.234	-0.009
Polwit2u	0.105	0.063	0.082	0.054	0.048
Civwit2u	0.086	0.075	0.076	-0.017	0.053
Ciwitprb	0.073	0.025	-0.072	-0.095	-0.018
New Orleans	-	-	-	-	0.301**
Salt Lake City	-	-	-	-	0.308**
Wilmington	-	-	-	-	0.109*
R^2	.675	.458	.733	.403	.569
F	6.519**	2.412*	8.616**	2.122	14.106**
Constant	.061	.274	-.022	.259	-.035
N	30	28	30	30	118

Intercepts $F_1(3,107)=17.84$**

Coefficients $F_2(21,86)=1.19$

Whole Model $F_3(24,86)=3.35$**

*Significant at the .05 level

**Significant at the .01 level

It is of great interest to note that the same factors are taken into consideration for trials as for pleas but with the signs reversed (from negative to positive). Once again, the key variables are seriousness of the crime and the seriousness of the defendant's criminal history. Not only is the SW score significant in both New Orleans and Brooklyn, but the coefficients are also the same despite the obvious differences between the offices. The probability of going to trial increases by nearly 2% for each point on the Sellin/Wolfgang scale. The fact that evidentiary variables are again not significant in predicting trials is to be noted for further research and explanation. Further, attempts should be made to identify the missing important factors in Salt Lake and Wilmington.

Reduce

The fifth dependent variable, Reduce, is analyzed in Table 6. Much like the Plea Variable, the probability of the case being disposed of at a reduced level is difficult to predict--none of the variables is significant. Still several conclusions can be drawn. The equations cannot be pooled and the reason is solely due to site differences. Brooklyn expects 62% more its cases to be disposed of at a reduced charge than New Orleans. Salt Lake has a 23% higher rate than New Orleans.

One might assume absent significant variables, that the site differences, at least in part, are due to explicit office policies such as those operating in New Orleans and Wilmington since these are known to exist; or that there is an interaction between the state and defense counsel that cannot be measured and is not correlated with variables in the model. The site differences indicate a policy-related variable is in operation; however, it is impossible to test that explicitly without repeated measurement. If we were able to identify and test

CONTINUED

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TABLE 6

ANALYSIS OF VARIABLES AFFECTING

PERCENT DISPOSED BY REDUCED CHARGE

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	0.007	0.004	-0.026	0.006	-0.002
Last	-0.013	-0.012	0.015	-0.010	-0.004
SWscore	0.003	-0.003	-0.010	-0.003	-0.003
Constprb	0.054	0.066	-0.058	0.137	0.053
Polwit2u	-0.044	-0.080	0.039	-0.019	-0.025
Civwit2u	0.017	0.007	0.017	0.079	0.030
Cwitprb	0.026	-0.076	0.191	0.176	-0.015
New Orleans	-	-	-	-	-0.457**
Salt Lake City	-	-	-	-	-0.307**
Wilmington	-	-	-	-	-0.284**
R^2	.229	.182	.255	.232	.571
F	0.932	0.637	1.074	0.950	14.248**
Constant	0.057	0.296	0.632	0.180	0.551
N	30	28	30	30	118

Intercepts: $F_1(3,107)=45.88$*

Coefficients: $F_2(21,86)=0.969$

Whole Model: $F_3(24,86)=6.40$**

*Significant at the .05 level

**Significant at the .01 level

TABLE 7

ANALYSIS OF VARIABLES AFFECTING

PERCENT DEFENDANT INCARCERATED

Variables	New Orleans	Salt Lake	Brooklyn	Wilmington	All
Caps	0.078	0.040	0.026	0.018	0.041**
Last	0.087	0.092	0.136**	0.098	0.105**
SWscore	0.008	0.010	0.015**	0.015**	0.012**
Constprb	-0.206	-0.286	-0.095**	-0.209	-0.185**
Polwit2u	0.110	0.047	0.129	0.028	0.081**
Civwit2u	0.125	0.128	0.176*	0.182*	0.156**
Cwitprb	-0.157	-0.268*	-0.212*	-0.401**	-0.256**
New Orleans	-	-		-	0.069
Salt Lake City	-	-		-	0.053
Wilmington	-	-		-	0.038
R^2	.666	.787	.832	.783	.742
F	6.273**	10.551**	15.539**	11.324**	30.773**
Constant	.229	.299	.089	.294	.183
N	30	28	30	30	118

Intercepts: $F_1(3,107)=0.587$

Coefficients: $F_2(21,86)=0.44$

Whole Model: $F_3(24,86)=0.45$

*Significant at the .05 level

**Significant at the .01 level

a series of offices with similar plea policies (or any other policy, for that matter) the dummy variables should correlate very highly when compared to sets of offices with the same policies. The extension of this analysis to 10 new sites should lead to additional tests of this hypothesis.

Incarceration

The last dependent variable, Incarceration, is analyzed in Table 7. The explained variance is second only to Priority for prosecution, ranging from .67 to .83. Like Priority, the analysis of covariance accepts the hypothesis of complete homogeneity. It appears that all prosecutors can distinguish between those defendants who should be incarcerated and those who should not. It also appears that all aspects of the case are taken into consideration for this decision. In the other analyses of decisions subsequent to the accept/reject one, the evidence variables have not emerged. In this matrix, all of those variables are significant. One potential explanation for this pheomenon is that the likelihood of being incarcerated increases as the evidence goes "beyond reasonable doubt"; or conversely, that non-incarceration is substituted as the evidence becomes less strong. Incarceration reflects both the probability of being convicted which is a function of the evidence, the history of the defendant and seriousness of the crime. These equations do show substantial similarlity and like PRIORITY show that prosecutors in diverse locations and under diverse policies tend to evaluate cases in the same way with respect to incarceration. One could tentatively conclude that this may also assume the characteristics of a universal, policy-free variable.

Conclusions

At the beginning of this paper we stated several objectives. We wanted to determine which variables affect decisionmaking in the prosecutor's office. The analysis shows that they can be grouped into 3 areas: the seriousness of the offense; the criminal history of the defendant and the legal/evidentiary strength of the case. For the most part, evidence has its greatest impact in the early decisions with the exception of the probability of incarceration. The variables included in the analysis have little impact on decisions which require input from the dependent variables, i.e. Plea% and Reduce%. These decisions also tend to vary the most between offices and the city dummies are quite important. Where these dummy variables come into play there is at least some indication that the constant terms from the pooled equations are policy induced. All in all, however, we must conclude that there is a similarity in the weights assigned to the independent variables in diverse offices. Perhaps that is not surprising since the legal education and the general sets of experience may lead to a great deal of natural homogeneity. The work which is now in progress will show whether these results can stand the test of replication.

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THE DETERMINANTS AND CONSEQUENCES OF THE 'PRIORITY' OF A CASE FOR PROSECUTION

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by

Stanley H. Turner
Associate Professor
Temple University
Philadelphia, Penn.

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THE DETERMINANTS AND CONSEQUENCES OF THE 'PRIORITY' OF A CASE FOR PROSECUTION

Stanley H. Turner
Associate Professor
Temple University

It is just a little over ten years ago since Joan Jacoby and I (she being then, Director of the Office of Crime Analysis in Washington, D.C.) first tried to measure the priority of a case for prosecution. The misdemeanor side of the Court of General Sessions (as it was called then) was in deep trouble: too many cases coming in, too little court capacity. This was by no means a novel complaint; most big-city prosecutors suffer from it - or thought they did and the solution was to be, what else?, automation. As part of our overall effort to automate that office we decided to try to define numerically the priority of a case for prosecution.

We early noted that an experienced prosecutor could read through a case, examine the prior record, ruminate for a bit and then decide what he was likely to do with this case in its entire passage through the system. This was, it seemed to us, important. It meant that a prosecutor, or at least an experienced one, could combine in his head the significant elements of a case, weigh them on his subjective scale and announce what the fate of the case would be. And he could do it early - at first review. Even then we knew that things could change, evidence might grow cold, the defendant might decide to plead or not, etc., yet it remained true that a prosecutor felt he could announce his priority for prosecution and feel confident in his decision.

Starting with this assumption, namely that an experienced prosecutor could subjectively form preferences for prosecution at the initial review of the case, we decided to explicitly assay the task of translating these subjective preferences into numbers on a scale.

We viewed priority as being made up of at least three parts: 1) the seriousness of the present offense for which the offender had been arrested; 2) the "badness" of his prior record, and 3) a more diffuse part comprising what we have come to call 'evidence'.

If this is true, we needed measures of these three quantities. The choice of the measure of the seriousness of the offense was easy. There already existed a scale which was perfectly suited to our needs. It had been developed by two criminologists--Thorsten Sellin and Marvin Wolfgang. This work culminated in their widely-employed scale of the seriousness of criminal offenses. This scale generates a number which is thought to be proportional to the judged seriousness of <u>any</u> criminal offense. Though not free from critical appraisal, this scale has been fruitfully employed in a wide variety of contexts and has been subjected to repeated replications in diverse cultures. Indeed I had myself worked on the development of this scale with Sellin and Wolfgang and was as well aware as anyone of its strengths and its weaknesses.

As to the second variable, the 'badness of the defendant's prior record', no such solution was at hand. We chose, as a stopgap measure, a scale created by another criminologist, Don Gottfredson and his associates and known in the fields as BE (Base Expectancy). The scale itself was a splendid piece of work but, unfortunately, was designed to measure the likelihood of return to prison of an inmate. And though it does predict that quantity rather well, it was not the quantity we

wanted--the seriousness of the prior record of the defendant. I would like to emphsize that this was only a temporary expedient. It is sad to note that when these measures became used in what was to become known as PROMIS (Prosecutors Management Information System) these stopgap measures were employed as a permanent feature. Certainly, their originators did not intend such a fate.

For the third variable (evidence) the situation was even worse. We did not know then whether evidence was really one, two, or more sub-variables. We were floundering. A really unsatisfactory solution was all we could provide. We proposed that a prosecutor give us a subjective estimate of winning the case. This is inadequate on at least two counts: 1) it only deals with whether you win or not; it ignores the difficulty of getting to a win. Thus, two cases might both have an 80% chance of being won but one would take much more effort and consume many more resources than the other; and 2) it requires an experienced prosecutor to read through the case <u>anyway</u> and this is what we were supposed to be dispensing with. Again, the only defense for such a solution was that we fully intended to replace this 'subjective evidentiary variable' with an 'objective evidentiary variable'. Unfortunately, again the subsequent developers of this approach converted this temporary expedient into a permanent 'solution.'

Thus, we were in a position to measure, however inadequately, the three main independent variables that we presumed as the principal constituents of 'priority.' But what about 'priority' itself. We <u>had</u> to have a measure of that before we could proceed. There was no such measure but we were not without resource. We drew on the fields of psychophysics and contemporary (contemporary in 1969) criminology. Psychophysics is a branch

of psychology which deals with such problems as "How does the outside get inside?" and "What is the relationship between objective magnitudes and subjective responses to these magnitudes?" It has a long history which we shall ignore and instead only mention in passing that we closely studied the tested methodology of this field. Why not, we thought, take the overall subjective judgments of prosecutors as the dependent variable and try to reproduce them using such scaling techniques.

Use them we did and with some success. About 70% of the variance in judgments about the priority of cases could be accounted for by the three variables that we proposed. Clearly, we were on to something. But clearly we had a long way to go. Here were some of the problems we faced after our initial success had been achieved.

1. The Sellin-Wolfgang Scale. This scale, though perhaps the best scale of any elusive quantity in criminology, has defects. Replications of the scale have not faced these defects. The manual score proposed by the authors is clearly not the correct set of weights. More importantly, however, the scale was deliberately set up to measure palpable harm that is actually inflicted. It did not scale attempts. Most attempts would be assigned a score of zero. Finally, the weights given by the scale in the manual in its original form assigned a weight of zero to all drug offenses. This was an unacceptable feature to persons who employed the scale in a criminal justice system. We are continuing to adapt the scale by adding elements and altering weights in a manner suggested by Sellin and Wolfgang in their basic work. This yields 'corrected' weights for drug offenses and attempts, etc.

2. The Prior Record Scale. The BE scale was never intended to measure the badness of a prior record. We used it as a proxy. But using it

committed us to collect what were really extraneous data elements of no use except to form the scale. Clearly, what was needed was a more straightforward approach which would create a scale for this very purpose. What we did and what we are doing is to generate prior records in a computer using parameters derived from a study of actual records. These records when so generated resemble real prior records but their distributive characteristics are under our control. We now plan to give about 2000 of these to prosecutors and another 2000 to other subjects and determine through regression analysis the significant variables and their weights. We have done a large number of pre-tests on prosecutors and students and the results of these pre-tests are very encouraging. One likely hypothesis is this:

When a prosecutor scans a prior record he essentially converts each offense into a number proportional to its seriousness, multiplies that number by a weight depending on whether the offender was convicted, acquitted or dismissed and divides that product by how long ago the offense was committed. He repeats this for all offenses and adds up the total. This final total is the overall 'badness' of the prior record.

There may be other factors at work as well. For instance, patterning of offense may have an effect. In any case, this way of measuring the 'badness' of a prior record seems, on theroetical grounds alone, far superior to the first method proposed.

3. Evidentiary Variable. This is discussed in Leonard Mellon's paper A Concept For Measuring The Legal Evidentiary Strength Of Criminal Cases. All I will say is that we are well on the road to developing a numerical scale of this variable, or variables. Again, this way of measuring evidence is clearly superior to the technique originally proposed. But a great deal more work must be done. It is hard to conclude,

at this stage, what the final variables will look like. All we can say is that the way the variables were originally proposed to be formatted is wrong. Thus, everyone, we included, thought that the relationship between victim and offender, offender and witness, and so on was a key variable. But it seems to us that these are only proxies and that the real variables might be witness availability and credibility and that relationships merely correlate with these more fundamental quantities.

Let us pause and ask ourselves, "What are the requirements for a good measure used in the context of a criminal justice system?" Of course, there are many criteria that apply to all variables whenever employed.

First, among these is the standard of 'validity.' This is usually defined as the requirement that a variable should really measure what it is supposed to measure and not something else. Thus, a measure of height should really measure height, not weight. The difficulty with this criterion is that it is of no help when measuring novel events. If, on the other hand, a prior measure exists and is generally regarded as valid, any new measure must correlate with it.

Similarly, all good measures are supposed to be 'reliable', that is to say they must yield the same result when applied to the same event. Thus, a reliable measure of your height should yield the same number of inches if taken at two times unless you have grown during the interval.

Further, following a principle loosely referred to as Occam's Razor, a measure should not be any more complicated than it has to be: it should not include interaction terms if zero-order terms suffice.

But these criteria and the difficulties involved with them are well-known. Therefore, this paper will deal only with those critieria that have special relevance for the criminal justice system.

I take these to be:

1. Security

The variable must be tamper proof. As a bare minimum, this means that the defendant should not be able to falsify the measure even if he determines the purpose. One probation scale uses expressed attitudes of a defendant and these answers determine, in part, whether or not that defendant gets probation. Such measures are clearly not tamper proof.

2. Acquisition Time

Measures are used to make decisions. When they are the data elements, the measure itself should all be available before the decision is made. Obvious but important. Since we see priority as being defined, initially at least at screening we therefore conclude that priority must be based on data elements available at that time. This rules out a large class of candidate variables: identification of defense attorney, pre-sentence investigation, etc. This does not mean that such variables should never be used. For from it. It merely says, reasonably enough, that they are excluded from any decision made prior to their existences. The principle further illustrates the fact that the earlier a variable appears, the more important it is likely to be since the fate of a case seems to be determined at an early stage in the proceedings.

3. Cost

Cheapness in the context of criminal justice surely implies that a measure should be capable of being created by clerical-level persons. If every case must be read in detail and soul-searching analysis be made solely in order to generate a measure, that measure will never be employed. Further if a novel data element is only collected to form a measure, that measure is likely to be curtailed when cost-cutting becomes vital. We had

such complaints about collecting exotic data elements for BE. Clearly, then, subjective probability of winning is out since it can be generated only by a lawyer and BE is out since it involves collecting special data elements.

4. Generalizability

A measure will be generally applicable if it contains elements common to all jurisdictions. If it contains elements common only to some, its scope is limited. To take a simple example, if a measure employs elements that are quite different and demands separation of cases into felonies and misdemeanors, it is not applicable everywhere since some jurisdictions do not have the felony/misdemeanor contrast. As an example of a widely applicable scale, consider the Sellin-Wolfgang scale. It and its elements are applicable in every jurisdiction.

5. Context of Usage

A good measure in the criminal justice system should be embedded in an explicit context of usage. Generally speaking, this means that a measure of priority should:

1. assist the chief prosecutor in explicating his policy;
2. assist the chief prosecutor in seeing that his policy is carried out;
3. assist in actually making decisions about a defendant in the criminal justice system;
4. aid the prosecutor in determining what are the priorities of his constituents; and
5. assist in the determination of the fairness of decisions about defendants.

Thus, the measure of priority is relevant to assisting in decisions that are under the prosecutor's control. Many things are not under the prosecutor's control--like the general crime rate--thus, no variable should be collected and no measure made for its own sake. In fact a great deal of the information collected about crime is of no use whatsoever. Of what use is the comparison of the crime rate in New Jersey

to that in New York. What action can be taken with respect to such difference. Indeed the use of the Uniform Crime Reports has never been made clear to me.

I feel that 'priority' will stand or fall on its ability to aid in decision-making by prosecuting attorneys. If it aids, fine; if it doesn't, dispense with it. How well does priority meet these fine criteria? First, it is certainly secure. It is not based on any element supplied by the defendant alone. Secondly, its acquisition time is fast. In a typical office priority could be measured at the first review of the case by the prosecutor. Thirdly, it is cheap. It can be generated by clerical level personnel and it is based completely on data elements routinely collected by the police. Fourthly, it is generalizable since it can be applied to any jurisdiction in spite of variations in legal terminology. Fifthly, it is embedded in a context of usage. It was specially designed to aid a prosecutor in arriving at routine decisions about defendants flowing through the criminal justice system. Its use does not depend on broad styles of prosecution but instead can be accomodated to any known policy.

If we now cease from investigating the history and properties of this measure and instead accept it in its present form, we see that priority is measured by the SW score, the 'badness' scale of prior record and a set of dummy variables presenting evidence--all these with suitable weights. Even in this form (far from its finished form) it does surprisingly well in forecasting the fate of a case in the criminal justice system. Indeed in an intensive analysis of the hypothetical outcome of a standardized set of 30 cases given to prosecutors in four different large offices, priority proved to be a strong and sometimes very strong predictor of such events as whether or not a case is screened out, whether it goes to trial, whether the defendant will be locked-up and what sentence will be accorded to him. It is important to

note that not all the variables had the same weight independent of task, nor did they all have the same weight as between offices. And this is as it should be. Clearly, District Attorney's have more to say about some of these decisions than others and some offices emphasize or consider different aspects of the situation.

These results are presented in detail in BSSR's Phase I, Final Report on Research on Prosecutorial Decisionmaking and summarized in Tables 1 and 2. Table 1 presents the results of a set of pairwise regression equations in which the priority for prosecution had an explanatory power of more than .50. Table 2 shows the power of using priority to predict whether a case will go to trial. The ordering of these probabilities justifies our original premise that there is a weighing and evaluation that prosecutors perform and that the least serious cases rarely proceed to the work-intensive trial status.

Finally, I will add a result not reported in the final report. Using the data described above I did an analysis of whether or not sentences differed for those who went to trial compared to those who plead guilty. On the surface there seems to be a large difference. Those who plead get less punishment even where you can calculate, as I did, the probability of punishment times its length for all sets of interest. When you hold the priority of the case constant, the difference does not disappear completely but it shrinks to a fraction of its former size. Yes, those who plead get less time but the bulk of the difference can be accounted for by the fact that lower priority cases are more likely to plead.

Of course, the real test of 'priority' as a variable will be its test in use in real on-going situations. If it fails to have utility, it will fail no matter how technically perfect it is; if it has real use it will survive no matter how blemished by methodological inexactitude.

TABLE 1

SUMMARY OF IMPORTANT PAIRWISE REGRESSIONS EXPLAINING 50% OR MORE OF THE VARIANCE, BY SITE TESTED

Dependent Variables	Independent Variable: Priority of Prosecution Site	r^2
Probability of Accept	Salt Lake City	.504
Probability of Reduction at Disposition		
Probability of Trial	New Orleans	.799
	Salt Lake City	.627
	Brooklyn	.564
Probability of Lockup	Wilmington	.689
	New Orleans	.702
	Salt Lake City	.684
	Brooklyn	.722
Average Length of Sentence	Wilmington	.714
	New Orleans	.615
	Salt Lake City	.698
	Brooklyn	.564

(Note: All regressions are significant at the .05 level or less.)

Table 2

Probability of Case Being Disposed of By Trial For Each Site and All Sites Combined by Priority of Case

Priority of Case	All Sites	Brooklyn	Wilmington	New Orleans	Salt Lake City
1	0	0	0	0	0
2	.03	.02	.05	.14	.10
3	.17	.13	.18	.14	.23
4	.31	.24	.31	.33	.36
5	.45	.35	.44	.52	.49
6	.59	.46	.57	.71	.62
7	.73	.57	.70	.90	.75

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN JACKSON COUNTY, MISSOURI

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

Transmitting Prosecutorial Policy:

A Case Study in Jackson County, Missouri

Introduction

One of the key issues raised in discussions about the criminal justice system is the degree of uniformity and consistency in the process. These are attributes over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases should be quite small.

A major objective of "Research on Prosecutorial Decisionmaking" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. Consistency is defined as the amount of agreement between the assistants and the policymaker. Uniformity is defined as the amount of agreement among assistants in the office independent of a comparison to the leader.

This research assumes that prosecutors have a variety of policies affecting their decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit, and depend on a number of factors one of which is the size and organizational structure of the office.

In this paper, we examine uniformity and consistency in the Jackson County, Missouri prosecutor's office.

Background

Jackson County is located in the northwest section of Missouri and covers a 603 square mile area. It is the 56th largest county in the United States with a population of 600,000, most of whom live in Kansas City. The City itself is situated at the junction of the Missouri and Kansas Rivers. Although most of the city lies within the borders of Jackson County, its geographical growth pattern has caused its limits to extend into neighboring Clay and Platte counties. Kansas City's population of 528,000 ranks it 26th among U.S. cities.

Currently, Kansas City leads the nation in the production of flour, winter wheat, farm equipment, greeting cards, and envelopes. It is also the second largest assembler of automobiles. Major employers are General Motors, Ford and Bendix Corporation.

Criminal Justice System Facts

The Jackson County Prosecuting Attorney's office works with eight police agencies, the largest being the Kansas City Police Department, which has a centralized booking procedure and brings the prosecutor 90% of its workload. Ralph Martin the Prosecuting Attorney for Jackson County staffs six trial courts at two locations.

Criminal cases are processed by 6 judges assigned to the lower court and four to the felony court. The court is open five days a week and criminal courts do not hear any civil matters. The court uses an individual docketing system and has a rather liberal

continuance policy. The felony trial court has a backlog that occasionally presents problems. The court also operates with a speedy trial rule but it is rarely exceeded.

Public defenders provide 75% of the indigent felony defense services and 60% of the misdemeanor. Another 10% of the indigent felony defense services is provided by contract defense services; while assigned or court appointed provide the remaining 15% of felony and 40% of misdemeanor defense services. Public defenders who provide these indigent defense services are not allowed to maintain a private practice, however, the court appointed or contract defenders may. Approximately 4,000 felony cases were referred to the office last year. The three most prevalent offenses were robbery, burglary and assault.

Office Facts

Ralph Martin has been the Prosecuting Attorney in Jackson County for seven years. Currently his full office staff numbers 72, including 28 full time assistants. In addition there are 7 part-time assistants who also maintain private practices. The office has access to seven investigators, six employed by the office and one detailed to it. Generally the experience level of the assistants is high with 50% having over four years of experience, 45% between 1 and 4 years and 5% with less than one. The average length of stay for an attorney in the office (excluding supervisory and administrative assistants) is 24-36 months. Assistants' salaries start at $12,300 and reach a maximum of $30,355.

In 1978 the appropriated annual budget was $925,000, with an additional $290,000 available from federal grant funds. The office maintains one support branch office in Independence, Missouri. The prosecutor has jurisdiction over the following matters; misdemeanors, moving violations, appeals and tax cases. The office participates in a number of special programs including career criminal (federally funded) diversion, victim-witness, rape and sexual abuse, and computer theft. Major organizational divisions are warrants, trials, career criminal and organized crime.

Intake

Cases are most often brought over to the office by the Kansas City Police Department. The prosecutor has the opportunity to review all cases before they are filed in court. Generally, the office will receive an offense report, arrest and detective reports, a criminal history, witness statements and/or testimony. Before filing the charging assistant may interview the arresting officer, detectives, and even defense counsel. Last year, approximately 20% of the felonies brought over were declined for prosecution.

Charges are usually filed in court approximately 20 hours after arrest. Six assistants are assigned on a permanent basis for charging and screening decisions. Of this six, three have over 4 years of experience, two have between 1 and 4, and one has less than one.

Assistants need prior approval from their division chiefs for the following actions: to decline to prosecute, to change the police arrest charge, or to refer the case to another agency or treatment program. If an assistant defers prosecution he must also get prior approval. Once the charging decision has been made the assistants are only occasionally aware of the dispositions of the cases they send forward for prosecution -- their responsibility ending with the results of the preliminary hearing.

Accusatory

The accusatory process most often used is arrest to preliminary hearing. Usually a preliminary hearing is scheduled ten days after the arrest and first appearance. This preliminary hearing is not an ex parte procedure, but rather a mini-trial that is held to determine probable cause to bind over for trial. About 3,200 preliminary hearings were held in Jackson County last year. Since the lower court does not have jurisdiction to take a plea to a felony at the preliminary hearing these cases are bound over to the Circuit Court. The warrant desk (intake) has organizational and supervisory control over preliminary hearings and grand jury presentations. Three assistants routinely conduct the hearings; one is assigned to grand jury. None of these assistants subsequently tries the same cases.

The grand jury meets on a weekly basis. Indictments usually are handed up two weeks after arrest regardless of the release status of the defendant. Recommendations of no true bill and reductions to misdemeanors require prior approval. Trial assistants sometimes review the cases while they are still pending grand jury indictment.

Trials and Post-Conviction

The court controls the docket for initial and subsequent trial settings. Cases are generally assigned to the trial assistants at arraignment and they have approximately 90 days to prepare for the initial trial date. Pretrial conferences are not routinely scheduled and motions are not disposed of before the trial date. Approximately 60% of the cases are continued on the first trial date setting.

Last year 1,375 indictments were disposed of by pleas, 98 by jury trial, 30 by non-jury trial, and 8 by other means. There were 502 dismissals or nolles. Of all dispositions 10% were disposed of at arraignment, 60% after arraignment but before trial, 25% the first day of trial and 5% at the end of trial. From an evidentiary perspective, the majority of the cases that end up in trial were characterized as being marginal. Most of the dispositions by plea occurred during the period after arraignment but before the scheduled trial date.

The trial assistants need prior approval before they can make a plea offer, dismiss or nolle a case, recommend diversion or deferred prosecution. The average jury trial for property crimes against the person lasts three days, non jury trial two days. The average number of days from arrest to disposition not including sentencing is 120 days.

With respect to the experience level of the felony trial assistants, five have over four years, nine have between one and four, and three have less than one. The office will sometimes participate in a pre-sentence investigation, and usually in opposition to paroles and pardons.

Test Results

The Standard Case Set was administered to the Jackson County Prosecuting Attorney's Office on October 31, 1979. The test produced 32 responses to each of the 30 cases (31 assistants plus the Prosecuting Attorney).

Table 1 presents the percent distribution of all responses to the case evaluation. The figures in the table represent the percent of assistants who responsed to each item.

1. Overall response:

In examining the overall responses of the office, some points are of interest. First the distribution of cases along the priority scale is expected. It indicates first that a full range of cases was presented to the prosecutors - from lowest priority to top priority - and secondly, that the statistical tendency to normalize distributions at the average level was not violated. The fact that both of these conditions occurred gives credibility to the subsequent analyses.

Of all the cases reviewed, the assistants rejected 21%. Of the remainder that were accepted for prosecution, the office expected about 60% of them to be disposed of by plea and (30%) to be disposed of by trial. The major dispositional outlets in the court system appear to be in the period after arraignment and before the start of trial (45% of the responses) and jury trials (disposing of 30% of the cases).

RESEARCH ON PROSECUTORIAL DECISIONMAKING

TABLE 1

PERCENT DISTRIBUTION OF
JACKSON COUNTY, MISSOURI

All Responses

	Number of Responses
1. Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution.	949

10	13	13	37	13	10	4
Lowest Priority	2	2	Average or Normal	4	5	Top Priority

2. After reviewing this case, would you accept it for prosecution?	948

Yes: 79 No: 21

3. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one).	759

61 Plea
29 Conviction by trial
2 Acquittal
1 Dismissal and/or Nolle Prosequi
* No true bill
6 Can't predict
1 Other alternatives

4. Assuming the disposition you have given in Q. 3 occurs, where in the court process do you expect this case to be disposed of? (Check one).	737

2 At first appearance for bond setting and defense counsel appointment
18 At preliminary hearing
* At grand jury
* At arraignment
45 After arraignment, before trial
4 First day of trial
1 End of bench trial
30 End of jury trial

5. At what level will this case be disposed of?	745

58 Felony (as charged)
14 Felony (lesser charge)
12 Misdemeanor (as charged)
14 Misdemeanor (lesser charge)
1 Violation or infraction
1 Other (specify)

6. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one).

* None
4 Fine and/or restitution
1 Conditional release or discharge
23 Probation
26 Jail
46 Penitentiary

7. If jail or penitentiary, what should be the minimum actual time served.	746

Average length of sentence 5 years

A very high proportion of respondents (70%) expected the cases to be disposed of at the level originally charged, while only 28% expected them to be disposed of at a reduced level. Finally, of the cases that were convicted, the harshest sanction -- that of incarceration was considered to be reasonable and appropriate by 72% of the respondents. The average length of sentence stated by the assistants for all cases accepted for prosecution was 5 years.

2. Decisionmaking Factors

In reaching these decisions, an analysis was made to identify, if possible, the different factors that were taken into consideration for each of the six questions asked about the cases. Because the number of cases was small (only 30), the results presented here are provisional -- that is, they could change if more cases were included in the test.

(1) The results of the analysis of priority of the cases for prosecution indicate that two factors were significant in making this determination and one was marginally significant. The seriousness of the crime with respect to the amount of personal injury or property loss or damage increases the assistants' priority rating of the case. The fact that there may be a problem with the complaining witness degrades the priority -- that is, the priority of the case goes down. Of marginal significance is whether there are two or more police witnesses. This corroborating effect increases the priority of the case for prosecution.

(2) The analysis of the percent of assistants accepting a case for prosecution produces only one variable that is even marginally significant. If there is a problem with the complaining witness, it tends to decrease the probability of acceptance. The fact that there are few factors identified here as significant is not conclusive because the number of cases being rejected is very small (6 out of the 30 being presented). Hence it is difficult to identify significant factors based on a sample of six. With a larger sample size and more indepth study other variables may, in fact, play an important role in predicting acceptance.

(3) The results of the analysis of the percent of the cases disposed of by plea show that two important factors were considered. As the seriousness of the crime increases, the chances of it being plead decrease. The same is true for the defendant's prior record; the worse the prior record the less likely is it that the case will be disposed of by a plea.

(4) When analyzing the percent of the cases reduced, that is where the original charge is disposed of as a lessor felony or misdemeanor, we find only one factor that is marginally significant. The presence of two or more police witnesses tends to decrease the probability of a case being disposed of at a reduced level.

(5) The results of the analysis of the percent of the assistants who would dispose of a case by trial identify two factors as influential. The seriousness of the crime increases the chance of it being taken to trial. The seriousness of the defendant's past record also increases the chance of it being disposed of by trial. Notably,

the anticipation of a complaining witness problem does not appear as significant in determining whether a case is going to be disposed of by trial.

(6) The results of the analysis of recommendations for incarceration show that the primary determinant is the defendant's prior record. The worse the prior arrest record and the number of arrests involving crimes of personal violence increase the defendant's chances of being incarcerated.

In summary, the analysis of the factors considered by the assistants in making their decisions indicates that the office is behaving in a rational and expected manner, and that the decisions are based on factors that are logically consistent and logically related. The results are summarized in Table 2.

TABLE 2

Results of Analysis of

Jackson County Prosecutor's Office

Factors showing significant increase or decrease of probability	Questions with respect to: Priority for prosecution	Acceptance	Dispose of by plea	Dispose of at reduced	Dispose of by trial	Sentence incarceration
Prior Crimes Against the Person	*	*	*	*	*	+
Seriousness of Last Offense	*	*	-	*	+	*
Seriousness of the Crime	+	*	-	*	*	*
2 or more Police Witnesses	*	*	*	*	*	*
Complaining Witness Problems	-	-	*	*	*	*

* not significant

\+ increase

\- decrease

3. Levels of Uniformity and Consistency

The levels of agreement between the prosecutor and his assistants (called consistency) and among the assistants themselves (called uniformity) are presented in Table 3. The reader should note that the Methodology Section indicated that the effects of matching by chance have been removed although the effects of socialization and training have not been.

Table 3

Index of Agreement for All Assistants
Jackson County, (Kansas City), Mo.

Decision Variable	Consistency with leader	Uniformity among followers	Peer Group Leader	ID of Max
Priority	67	64	69	32
Accept	77	77	83	22
Disposition Type	60	54	63	8
Exit Point	55	52	57	19
Dispositional Level	59	52	59	1*
Lock-up	73	75	81	10

*ID = Chief

Table 3 presents the levels of agreement for all assistants in the office. The first column shows the level between the leader and the assistants. Column 2 shows the internal level of agreement among the assistants themselves. In Column 3 the leader was removed from the analysis and the figure represents the highest level of agreement reached in the office. Column 4 identifies by number the assistant in Column 3. One might want to observe whether some individual appears more than once as a peer group leader.

Jackson County generally shows high levels of agreement and consistency with respect to all variables. Numerous relationships can be seen in this table. First, the assistants are very much aware of the prosecutor's policy. This can be seen by the fact that the levels of consistency are, with one exception, higher than those of uniformity. Second, the highest level of agreement occurs with the accept/reject decision. With 77% of the assistants agreeing with the prosecutor, one can deduce that policy is being transferred to the assistant's charging decisions. This also shows in the dispositional level variable where the assistants agree more with the prosecutor about whether a case should be disposed of at a reduced level or not. The fact that there is very little difference between the consistency and uniformity scores indicates that not only is the prosecutor's policy known to the assistants but it has been integrated into their own decisionmaking processes. Even the maximum levels of agreement as shown by the peer group leader are not that different from the others. There is a slight tendency for the agreement between the leaders and

assistants to decrease as the decisions become more operational and process-oriented rather than policy oriented. But this is to be expected and it is significant that these levels do not drop below 50%.

In summary, the results indicate an office where the prosecutor's policy is known to the assistants and where the levels of uniformity and consistency in decisionmaking are almost equal.

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN WAYNE COUNTY, MICHIGAN

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

The cooperation and support of William L. Cahalan, Prosecuting Attorney, Wayne County, Michigan is gratefully appreciated and acknowledged.

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May 1980

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

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN WAYNE COUNTY, MICHIGAN

Introduction

One of the key issues raised in discussions about the criminal justice system is the uniformity in the process. Uniformity has at least one attribute over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases should be quite small.

A major objective of phase two of "Research on Prosecutorial Decision-making" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. For the purposes of this research consistency is defined as the amount of agreement between the assistants and the policy maker and uniformity is defined as the amount of agreement among the assistants in the office independent of a comparison to the leader.

We have made the basic assumption in this research that prosecutors have a variety of policies affecting decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit or implicit and they depend on a number of factors, one of which is the size and organizational structure of the office.

In this paper we will look at uniformity and consistency in the Wayne County, Michigan prosecutor's office.

Background

Wayne County, Michigan, is the third largest county in the United States with a population of 2.5 million dispersed over an area of 605 square miles. It has a complex mixture of urban and suburban population characteristics. About one half of the county's citizens live in the city of Detroit, a national center for the automobile industry, and a large percentage of that city's population is black. The other half lives in the predominantly white suburbs.

Criminal Justice System Facts

Some 47 arrest jurisdictions contribute to the caseload of the prosecuting attorney for Wayne County. The most significant police agency in terms of the prosecutor's caseload is the Detroit Police Department. This agency, which has a centralized booking facility, accounts for 65% of the arrests that are brought to the prosecutor.

The prosecuting attorney mans 38 trial courts in two locations around the country.

There are essentially two court systems with which the prosecuting Attorney's office operates. Recorders Court is a unified court handling all city of Detroit offenses except traffic: Forty-three judges are available regularly to hear criminal cases both felony and misdemeanor. The rest of Wayne County operates with a bifurcated court system that is composed of magistrate courts and a circuit court. The magistrate courts process misdemeanors and hold preliminaty hearings for felonies. Felonies are then bound over to the circuit court for prosecution.

There are 34 felony courts with 34 judges and four District Courts with four judges. The judges sit five days a week and may not hear civil cases on the same day they are sitting criminal. An individual docketing system is used and, at present, the court has a backlog.

Twenty-five percent of the indigent defense services are provided for by public defenders, while the other 75% are assigned counsels or court appointed. The public defenders are basically full time and may not maintain a private practice, although the assigned counsels may.

Wayne County has the following laws or procedures: discovery, minimum sentence legislation used for some crimes, habitual or multiple offender acts; statutory sentencing enhancements for firearm cases, indeterminant sentencing, post-conviction restitution and expungement. Ten thousand eighty-three felonies were referred to the office for prosecution last year. Of these, the three most commonly prosecuted were narcotics, concealed weapons and burglaries. Dispositions are counted by defendants.

Office Facts

The Prosecuting Attorney for Wayne County, William L. Cahalan, is in his thirteenth year and third term. At the time of the visit there were 175 persons employed full time by the office. One hundred sixteen of them are assistant prosecutors. Assistants may not maintain a private practice. They work under a civil service personnel system and are members of the union. Generally, the assistants stay with the office for about five years. An assistant's salary starts at $22,500 and can reach a maximum of $44,000. Currently, six of the assistants have less than one year's experience. Thirty-seven have one to four, and 73 have over four year's experience.

In 1979, the appropriated annual budget for the office was 5.2 million dollars, supplemented by $505,000 in federal funds. The office participated in a number of special programs including career criminal, organized crime and victim-witness which were supported by grant monies. The prosecutor had jurisdiction over misdemeanors, juveniles, moving violations in addition to traffic and appeals. The major organizational divisions in the office are as follows: screening and trials preparation, trial and appellate, repeat offenders, out-county screening, circuit court, civil, juvenile, administration, organized crime and investigation. The organization can generally be divided by Recorders Court functions, out-county operations (circuit court), and other functions that transcend the two court systems such as appeals, juvenile, etc. There is an office manual with guidelines for screening and charging.

Intake

In Recorders Court five assistants handle the intake matters in the office of the Prosecuting Attorney. Cases are brought over most often by courier within 24-48 hours of the defendant's arrest. The office does have an opportunity to review police charges before they are filed in court for felonies and misdemeanors. As appropriate, the incident offense, complaint, arrest, detective, and witness statements and/or testimony reports are received. Before filing, the assistants will usually talk to the victim or complaining witness and sometimes talk to the arresting officer, detective, other witnesses, the defendant, defense counsel and investigator. Approximately 11% of the cases are declined.

Charges are usually filed 24-48 hours after arrest by the intake unit which has the screening and charging responsibilities. In this unit, five assistants have over four years of experience. To decline to prosecute, refer a case to another court, refer a case to another agency or treatment program or defer prosecution or place on a stet file or docket will sometimes need prior approval. However, to change the police arrest charge may be at the discretion of the assistant. Sometimes the assistants are aware of the dispositions of the cases they send for felony prosecution but they never know the sentences ultimately imposed.

In the Circuit Court, the cases are most often brought over by the detective and charges are usually filed 24-48 hours after a defendant's arrest. The incident/offense/complaint, detective and witness statements and/or testimony reports are received when appropriate. Before filing charges, the assistant will usually talk to the detective and the arresting officer. The out-county offices do not have an intake unit, however, all nine assistants are available for screening and charging decisions as needed. With respect to the experience level of the assistants, four have from one to four years and five have over four. Decisions to decline to prosecute, change a police arrest charge or to refer a case to another agency or treatment program may be made at the discretion of the assistant. However, to defer prosecution or placement on a stet file or docket will always need prior approval. Approximately 10% of the cases are declined for prosecution.

Accusatory

The accusatory process most often used in Wayne County is that of arrest to preliminary hearing to filing of a bill of information. Approximately twelve days after arrest the case is set for a preliminary hearing. There were 7,349 preliminary hearings conducted last year and of those 13% were dismissed. Less than 1% were reduced for misdemeanor processing or disposed of by plea, and 86% were bound over. At this level the court has jurisdiction to take a plea to a felony. Hearings are conducted by the special services assistants in the screening and trial division. Sometimes the assistant who handles the case will conduct the preliminary hearing.

Grand Jury.

In Wayne County the grand jury meets at the pleasure of the Attorney General. The organized crime task force division handles the grand jury with four assistants routinely making presentations. The assistants have always needed approval to make decisions with respect to recommendation of no true bill. The Felony Trial assistant who presents the case to the grand jury also tries it.

Trials to Disposition

The court controls the docket for the initial and subsequent trial settings. Cases are generally assigned to trial judges seven days after the arrest or on the date of the preliminary exam, and to the trial assistants on the day of the placement on the docket. In Recorders Court motions are generally disposed and pretrial conferences are generally held before the initial trial date which is usually set for ninety days after arraignment. In Recorders Court, the office maintains a no reduced plea program (NRP) which supports plea negotiation through the pre-trial conference. If a plea cannot be negotiated, the offer is withdrawn, the case jacket stamped NRP and the case is scheduled for trial. Nineteen percent of the cases were continued on the first trial date setting.

Last year, of 7,237 total dispositions, 6,013 indictments or information were disposed of by plea, 641 by jury trial, 567 by non-jury trial, and 16 dismissed or nolled. The office estimates that less than 1% were disposed of at arraignment, 75% after arraignment but before the trial, 15% on the first day of trial, and 10% at the end of trial. Of the cases disposed of by pleas, most occurred during the period after arraignment but before trial date. Trial assistants sometimes need approval for plea offers as well as to open their case files to defense counsel. Most of the cases that go to trial are characterized by the office as being marginal in evidentiary strength. The average jury trial lasts three days; average bench trial, one day. From arrest to disposition, the median number of days elapsed is 45, not including sentencing. The experience level of the felony trial assistants ranges from 90% with one to four years and 10% with over four years. Following a conviction, the office sometimes participates in a presentence investigation and sentence recommendation activities.

Test Results

The standard case set was tested in the Wayne County Prosecuting Attorney's office on December 18, 1979. The test produced 103 responses to each of the 30 cases (102 assistants plus the Deputy Chief of the Warrant Section).

Table 1 presents the percent distribution of all responses to the case evaluation. The figure in the table represents the percent of assistants who responded to each item.

Overall Responses

In examining the overall responses of the office, some points are of particular interest. First, the distribution of the cases along the priority scale is as expected. It indicates that a full range of cases was presented to the prosecutors from lowest to highest priority, secondly, that the statistical tendency to normalize distributions at the average level was not violated. The fact that both these conditions occurred gives credibility to the subsequent analysis.

RESEARCH ON PROSECUTORIAL DECISIONMAKING

TABLE 1

PERCENT DISTRIBUTION OF
WAYNE COUNTY, MICHIGAN.

ALL RESPONSES

	Number of Responses

1. Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution. — 3107

9	13	13	35	15	11	5
Lowest Priority	2	3	Average or Normal	5	6	Top Priority

2. After reviewing this case, would you accept it for prosecution? — 3133

Yes: 85 No: 15

3. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be (Check one). — 2665

64 Plea	* No true bill
24 Conviction by trial	7 Can't predict
3 Acquittal	1 Other alternatives (specify)
2 Dismissal and/or Nolle Prosequi	

4. Assuming the disposition you have given in Q. 3 occurs, where in the court process do you expect this case to be disposed of? (Check one). — 2627

2 At first appearance for bond setting and defense counsel appointment	56 After arraignment, before trial
4 At preliminary hearing	2 First day of trial
0 At grand jury	5 End of bench trial
5 At arraignment	26 End of jury trial

5. At what level will this case be disposed of? — 2574

29 Felony (as charged)	14 Misdemeanor (as charged)	1 Violation or infraction
43 Felony (lesser charge)	12 Misdemeanor (lesser charge)	2 Other (specify)

6. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one). — 2571

1 None	26 Probation
5 Fine and/or restitution	30 Jail
1 Conditional release or discharge	38 Penitentiary

7. If jail or penitentiary, what should be the minimum actual time served? — 1737

average length of sentence 4 years

*less than 0.5%

Of all the cases reviewed, the assistants rejected 15%. Of the remainder that were accepted for prosecution, the office expected about 64% to be disposed of by plea and about 24% to be disposed of by trial. The major dispositional outlets in the court system appear to be in the period after arraignment (56%) and before trial and the end of jury trials (26%). Over half of the respondents (55%) expected the cases to be disposed of at a reduced level.

Of all the cases where the defendant was convicted, the harshest sanction, incarceration, was considered to be reasonable and appropriate by 68% of the respondents. The average length of sentence, stated by the assistants, for all cases accepted for prosecution was 4 years.

Decisionmaking Factors

In reaching these decisions, an analysis was made to identify, if possible, the different factors that were taken into consideration for each of the six questions asked about the cases. Because the number of cases was small (only 30) the results presented here are provisional, that is they could change if more cases were included in the test.

1. The results of the analysis of priority of the cases for prosecution indicate that two factors were significant in making this determination. The seriousness of the crime, with respect to the amount of personal injury or property loss or damage, increases the assistants' priority rating for the case. The presence of a complaining witness problem degrades the priority of the case.

2. The results of the analysis for the percent of cases accepted for prosecution are somewhat disappointing. None of the factors are even marginally significant. This may be due to the fact that the attorneys accepted a very high proportion (85%) of the cases. It is difficult to predict the outcome of a case based on the small number of cases declined. We may find in a later, more in-depth, analysis that some of the other factors become important.

3. The result of the analysis of those cases that were disposed of by plea shows that the seriousness of the offense is a strong predictor of this disposition -- the more serious the crime, the less likely the case will be plead.

4. The results of the analysis of the cases in which the original charge was reduced indicate that two variables are significant. The seriousness of the offense and the existence of a complaining witness problem. The more serious the crime, the less likely it is to be disposed of by a reduced charge. If a problem with the complaining witness is anticipated, the chances of the charges being reduced are lessened. (See footnote on Table 2).

5. The results of the analysis of the cases that would be disposed of by trial identified two significant factors. The seriousness of the crime increased the chances of the case being brought to trial and the presence of two or more police witnesses also increased the probability of a trial disposition.

TABLE 2

RESULTS OF ANALYSIS OF WAYNE COUNTY PROSECUTING ATTORNEYS OFFICE

	Questions with respect to:					
	Priority for prosecution	Acceptance	Dispose of by plea	Dispose of at reduced level	Disposed of by trial	Sentence incarceration
Factors showing significant increase or decrease of probability 1/						
Prior crimes against the person	*	*	*	*	*	+
Seriousness of the crime	+	*	-	-	+	*
2 or more police witnesses	*	*	*	*	+	*
Complaining witness problem	-	*	*	-	*	*
2 or more civilian witnesses	*	*	*	*	*	*

* not significant
+ increase
- decrease

1/ Regression weights and their signs should be interpreted with caution. Although ideally almost all variables in a regression equation should be independent of each other, this is rarely the case. Consequently, the weights and signs might appear to be inconsistent with the actual state of affairs. Where this occurs, the reader, untrained in regression analysis, should not interpret this event as a contradiction.

6. The results of the analysis of recommendations for incarceration indicated the importance of the defendant's prior record. The likelihood of incarceration increases as the number of crimes against the person on the criminal record increases.

In summary, the analysis of the factors considered by the assistants in making their decisions indicates that the office is behaving in a rational and expected manner, and that the decisions are based on factors that are logically consistent and related. The results are summarized in Table 2.

Levels of Uniformity and Consistency

The levels of agreement between the prosecutor and his assistants (called consistency) and among the assistants themselves (called uniformity) are presented in Table 3. The reader should note that the methodology section indicates that the effects of matching by chance have been removed although the effects of socialization and training have not.

Table 3 presents the levels of agreement for all assistants in the office. The first column shows the level of agreement between the leader and his assistants. Column 2 shows the internal level of agreement among the assistants. In column 3 the leader was removed from the analysis and the assistant with the highest level of agreement was found.

The reader should note that the occurrence of higher levels of agreement among assistants (the uniformity measure) than with their leader (the consistency measure) is due to the fact that the test responses were grouped and two different methodologies were used to compute agreement levels.

Priority scores 1 and 2 were recoded as low; 3, 4 and 5 were recoded as medium; and 6 and 7 were recoded as high. Thus, if the leader chose 5, any assistant who chose 3, 4 or 5 would be in agreement with the leader.

The uniformity and consistency levels differ from each other in the way they are computed. The consistency level is the percentage of assistants agreeing with the leader. The uniformity level is computed in a three-step process. First, the leader is removed from the group. Second, each assistant is designated as a leader and a consistency level is computed for each assistant. Finally, an average of all the assistant's consistency levels is computed and that score becomes the uniformity level. The following illustrates this process:

Example #1

Leader chooses medium

Assistant	Consistent	Uniformity Level
#1 chooses medium	yes	50%
#2 chooses medium	yes	50%
#3 chooses low	no	25%
#4 chooses medium	yes	50%
#5 chooses low	no	25%

Consistency level =3/5 =60%
Uniformity level = (50%+50%+25%+50%+25%)÷5 = 40%

Example #2

Leader chooses medium

Assistant	Consistent	Uniformity Level
#1 chooses low	no	50%
#2 chooses medium	yes	0%
#3 chooses low	no	50%
#4 chooses high	no	0%
#5 chooses low	no	50%

Consistency level = 1/5 = 20%
Uniformity level =(50%+0%+50%+0%+50%)÷5 = 30%

TABLE 3

INDEX OF AGREEMENT FOR ALL ASSISTANTS: WAYNE COUNTY, MICHIGAN

Decision Variable	Consistency with Leader	Uniformity among followers	Peer group leader
Priority	62	61	70
Acceptance	87	83	87
Dispositional Type	49	54	61
Exit point	47	55	63
Dispositional Level	47	52	58
Lock-up	76	73	81

Wayne County generally shows high levels of uniformity and consistency with respect to all variables. A number of relationships can be seen in this table. First, the highest level of agreement occurs with the accept/reject decision. With 87% of the assistants agreeing with the leader one can deduce that policy is being transferred to the assistants' charging decisions. This can also be seen in the priority for prosecution and lock-up decisions where the agreement levels show that there is little difference between the leader and the followers. This indicates that the prosecutor's policy is known to the assistants and that it has been integrated into their own decisionmaking processes. Even the maximum levels of agreement, as indicated by the peer group leader, is not very different from the others. There is a slight tendency for agreement levels to decrease as the decisions become more operational and process oriented rather than policy oriented. But this is to be expected and is significant that these levels do not drop much below 50%.

In summary, the results indicate an office where the prosecutor's policy is known to the assistants and where it has been integrated into the processes of the assistants.

Table 4 presents a case by case analysis of agreement with respect to priority and acceptance. The first column, consistency is a measure of the percent of the assistants who agree with the prosecutor. Column two, uniformity is a measure of how well the assistants agree among themselves.

TABLE 4

INDIVIDUAL CASE ANALYSIS: WAYNE COUNTY
ANALYSIS OF AGREEMENT WITH RESPECT TO PRIORITY AND ACCEPTANCE

CASE NUMBER	Percent Agreement on Priority		Percent Agreement On Acceptance	
	Consistency	Uniformity	Consistency	Uniformity
1	52	48	74	61
2	88	78	93	89
3	86	75	98	96
4	88	79	99	99
5	5	53	43	50
6	15	68	92	87
7	51	49	99	98
8	77	62	99	98
9	85	74	97	96
10	61	51	68	56
11	40	51	56	50
12	77	64	51	50
13	46	49	70	58
14	78	65	100	100
15	88	79	99	98
16	57	49	92	87
17	48	49	93	87
18	72	57	46	49
19	42	51	100	100
20	74	60	98	96
21	63	52	99	99
22	76	63	83	71
23	32	52	97	94
24	85	73	99	99
25	76	62	99	98
26	3	83	95	91
27	63	53	82	72
28	60	58	87	77
29	86	75	96	93
30	76	63	100	100

In Wayne County the consistency levels range from a low of 3% to a high of 100%, uniformity, from a low of 48% to a high of 100%. With such diversity in the consistency and uniformity scores, we can assume that this data can be used by the prosecutor as a useful management training tool. With the exception of a few cases the consistency levels are higher than uniformity, which is to say that the assistants agree more with the prosecutor than they do among themselves. We can assume that transmitted policy is the contributing factor. Finally, the consistency and uniformity levels are generally higher for the question of acceptance than for priority, probably do to the fact that the question of acceptance is a routine one tested by the assistants daily.

79218

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN ERIE COUNTY, NEW YORK

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

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

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN ERIE COUNTY, NEW YORK

Introduction

One of the key issues raised in discussions about the criminal justice system is the uniformity in the process. Uniformity has at least one attribute over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases should be quite small.

A major objective of phase two of "Research on Prosecutorial Decisionmaking" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. For the purposes of this research consistency is defined as the amount of agreement between the assistants and the policy maker and uniformity is defined as the amount of agreement among the assistants in the office independent of a comparison to the leader.

We have made the basic assumption in this research that prosecutors have a variety of policies affecting decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit or implicit and they depend on a number of factors, one of which is the size and organizational structure of the office.

In this paper, we will look at uniformity and consistency in the County Attorney's Office in Erie County, New York.

Background

Erie County, located in the northwestern section of New York state, covers an area of 1,054 square miles and has a population of 1,113,000. The county is predominantly urban with the bulk of the population living in Buffalo, the principal city and county seat.

Buffalo has a population of 400,000 making it the 31st largest city in the nation. The principal industry in the area is manufacturing. Erie county is also a major distribution center for the northeastern U.S. and Canada.

Criminal Justice System Facts

Some 50 police jurisdictions contribute to the caseload of the District Attorney's Office for Erie County. The most significant agency in terms of the prosecutor's caseload is the Buffalo Police Department. This agency, which has centralized booking accounts for 60% of the arrests that are brought over to the District Attorney.

The court system is bifurcated. The District Attorney mans 50 trial courts in 40 locations around the county. There are 10 felony courts with 10 judges and 40 lower courts with 69 judges assigned. The judges sit five days a week in the felony and lower court, and may not hear civil cases on the same day that they are sitting criminal. An individual docketing system is used and, at present, the court has a backlog.

Seventy percent of the indigent defense services are provided for by public defenders, while the other 30% are assigned counsels or court appointed. Public defenders are employed full time and may not maintain a private practice although the assigned counsels may.

Erie County operates with the following laws and procedures: discovery, minimum sentence legislation, habitual or multiple offender acts, statutory sentencing enhancements, indeterminant and consecutive sentencing and post-conviction restitution.

Between 4,000 and 6,000 felonies were referred to the office for prosecution last year. Of these, the three most commonly prosecuted were homicide, burglary and robbery.

Office Facts

Edward C. Cosgrove, the District Attorney for Erie County, is in his sixth year of office. At the time of the visit there were 131 persons employed full-time by the office; 76 of them assistant prosecutors. Assistants may not maintain a private practice. They serve at the pleasure of the district attorney and are not unionized. Generally, assistants stay with the office for about three to four years. An assistant's salary starts at $18,000 and can reach a maximum of $23,000. Currently, 25% of the assistants have less than one year's experience, 50% have one to four, and 25% have over four years. In 1979 the appropriated annual budget for the office was $2.2 million.

The office participates in the following programs: diversion, citizen complaints, drug and alcohol, victim-witness programs, white collar crimes and economic crimes, consumer fraud, rape and sex abuse, arson, street crimes, organized crime and career criminal (which is federally funded). The major organizational divisions within the office are as follows: the Justice Court Bureau with eight assistants, City Court bureau with twelve, the Administrative bureau with four, the Case Analysis and Complaint Services

with three, Grand Jury bureau with two, the Supreme court bureau with 24, the Appeals bureau with six, and Organized crime, narcotics and consumer fraud with eight.

Intake Section

The office does not have the opportunity to review charges before they are filed in court. It is notified of the arrest usually one day to a week after. Police reports are not routinely sent to the office which generally requests them in order to review and prepare the case. The following reports are usually available at the next scheduled court appearance: the police offense incident complaint report, the arrest report, criminal history and witness statements and/or testimony. Prior to the court appearance, assistants always talk to the arresting officer, complaining witness, victim and the defense counsel and usually talk to other witnesses. At this hearing between 30 and 40% of the cases are referred down to the lower court. The Case Analysis and Complaint Service bureau has review responsibilities. They have three assistants with over four years of experience. The following decisions require a written justification: to dismiss or nolle the case, to refer the case to another court, to refer the case to another agency or treatment program or to defer prosecution and place on a stet file or docket.

Accusatory Section

The accusatory process used most often in Erie County is arrest to preliminary hearing to bind over for grand jury. Approximately 45 days after the arrest the case is set for the grand jury. There were 3,000 preliminary hearings conducted last year and of those 20% were dismissed.

Thirty percent were reduced from misdemeanor processing. Between 10 and 15% were disposed of by plea and between 25 and 40% were bound over. The preliminary hearing can be characterized as a mini-trial. At this level the court does not have jurisdiction to take a plea to a felony. A plea offer, dismissal or nolle or prosecution as a misdemeanor require prior approval from the assistant supervisor. Hearings are conducted by 20 assistants in the city and justice court division, and rarely will the assistant who handles the case conduct the preliminary hearing.

Grand Jury Section

Two thousand cases were sent to the grand jury last year and 1100 indictments were handed up. In Erie County, the grand jury meets daily. Generally, there are 30 days from arrest to grand jury indictment for jail cases and 45 days from arrest go grand jury indictment for bail cases. The grand jury bureau division handles the grand jury with two assistants routinely making presentations. Assistants always need approval to make decisions with respect to: recommendation of no true bill and recommendation of reduction to a misdemeanor and transfer. Felony trial assistants sometimes review cases while they are still pending grand jury indictments, and never will the assistant who handles the case also handle the grand jury presentation.

Trial Section

The court controls the docket for the initial and subsequent trial settings. Cases are generally assigned to trial judges and to the trial assistants at arraignment. Motions and pre-trial conferences are generally disposed of before the initial trial date which is usually set as soon as possible after arraignment.

Most of the cases that go to trial are characterized by the office as strong. The average jury trial lasts seven days, and the average bench trial lasts two days. From arrest to disposition the median number of days elapsed is 180 not including sentencing. For bail cases it is one year. The experience level of the felony assistants ranges from 10% with less than a year to 60% with one to four years to 20% with over four years. After a conviction the office will never participate in a pre-sentence investigation, sentence recommendation, opposition to paroles or opposition to pardons.

Test Results

The standard case set was tested in the Erie County District Attorney's office on November 13, 1979. The test produced 71 responses to each of the 30 cases (70 assistants plus the 1st assistant).

Table one presents the percent distribution of all responses to the case evaluation. The figure in the table represents the percent of assistants who responded to each item.

TABLE 1

PERCENT DISTRIBUTION OF
ERIE COUNTY, N.Y.

ALL RESPONSES

	Number of Responses
1. Circle the number that best represents the priority you, yourself, fee that this case should have for prosecution.	
8 — 14 — 15 — 32 — 16 — 10 — 5 (Lowest Priority: 2, 3; Average or Normal: 5, 6; Top Priority)	2107
2. After reviewing this case, would you accept it for prosecution?	2118
Yes: 90 — No: 11	
3. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one).	1905
71 Plea	
19 Conviction by trial	
2 Acquittal	
2 Dismissal and/or Nolle Prosequi	
1 No true bill	
4 Can't predict	
3 Other alternatives (specify)	
4. Assuming the disposition you have given in Q. 3 occurs, where in the court process do you expect this case to be disposed of? (Check one).	1859
6 At first appearance for bond setting and defense counsel appointment	
21 At preliminary hearing	
6 At grand jury	
1 At arraignment	
43 After arraignment, before trial	
1 First day of trial	
2 End of bench trial	
20 End of jury trial	
5. At what level will this case be disposed of?	1842
18 Felony (as charged)	
27 Felony (lesser charge)	
8 Misdemeanor (as charged)	
33 Misdemeanor (lesser charge)	
10 Violation or Infraction	
5 Other (specify)	
6. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one).	1799
2 None	
9 Fine and/or restitution	
7 Conditional release or discharge	
22 Probation	
36 Jail	
24 Penitentiary	
7. If jail or penitentiary, what should be the minimum actual time served?	1799
Average length of sentence .3 years	

Overall Responses

In examining the overall responses of the office, some points are of particular interest. First, the distribution of the cases along the priority scale is as expected. It indicates that a full range of cases was presented to the prosecutors from lowest to highest priority; secondly, that the statistical tendency to normalize distributions at the average level was not violated. The fact that both these conditions occurred gives credibility to the subsequent analysis.

Of all the cases reviewed, the assistants rejected 11%. Of the remainder that were accepted for prosecution, the office expected about 71% to be disposed of by plea and about 19% to be disposed of by trial. The major dispositional outlets in the court system appear to be in the period after arraignment (43%) and at the end of jury trials (20%). Over half of the respondents (60%) expected the cases to be disposed of at a reduced level. Of all the cases where the defendant was convicted, the harshest sanction, incarceration, was considered to be reasonable and appropriate by 60% of the respondents. The average length of sentence, stated by the assistants, for all cases accepted for prosecution was three years.

Decisionmaking Factors

In reaching these decisions, an analysis was made to identify, if possible, the different factors that were taken into consideration for each of the six questions asked about the cases. Because the number of cases was small (30) the results presented here are provisional, that is they could change if more cases were included in the test.

1. The results of the analysis of priority of the cases for prosecution indicate that two factors were significant in making this determination. The seriousness of the crime, with respect to the amount of personal injury or property loss or damage, increases the assistant's priority rating for the case. The presence of two or more police witnesses also increases the priority rating for the cases.

2. The results of the analysis for the percent of cases accepted for prosecution are somewhat disappointing. None of the factors are even marginally significant. This may be due to the fact that the attorneys accepted a very high proportion (90%) of the cases. It is difficult to predict the outcome of a case based on a small number of cases declined. We may find in a later, more in-depth, analysis that some of the other factors become more important.

3. The results of the analysis of those cases that were disposed of by plea show two factors are significant. The seriousness of the crime degrades the chances of the cases being disposed of by plea. The seriousness of the last offense the defendant was charged for also diminishes the chances of a case being plead.

4. The results of the analysis of the cases in which the original charge was reduced show that none of the variables tested proved to be significant predictors.

5. The results of the analysis of the cases which would be disposed of by trial produced two significant factors. The seriousness of the crime increases the likelihood of the case being taken to trial. The seriousness of

the last crime the defendant was charged for also increases the chances of the case being disposed of by trial.

6. The results of the analysis of recommendations for incarceration showed that one primary operational variable is used. The defendant's prior record is the single factor affecting the sentence of the defendant. The likelihood of incarceration increases if the defendant's prior record contains a number of crimes involving personal violence.

In summary, the analysis of the factors considered by the assistants in making their decisions indicates that the office is behaving in a rational and expected manner, and that the decisions are based on factors that are logically consistent and related. The results are summarized in table 2.

Levels of Uniformity and Consistency

The level of agreement between the District Attorney and his assistants (called consistency) and among the assistants themselves (called uniformity) are presented in table 3. The reader should note that the methodology section indicates that the effects of matching by chance have been removed although the effects of socialization and training have not.

Table 3 presents the levels of agreement for all assistants in the office. The first column shows the level between the leader and the assistants. Column two shows the internal level of agreement among the assistants. In column three the leader was removed from the analysis to identify the peer group leader. Column four identifies by number the person having the highest agreement level. One might want to observe whether an individual appears more than once as the peer group leader.

Table 2

Results of Analysis of Erie County District Attorney's Office

Factors showing significant increase or decrease of probability 1/	Questions with respect to: Priority for prosecution	Acceptance	Dispose of by plea	Dispose of at reduced level	Dispose of by trial	Sentence Incarceration
Prior crimes against the person	*	*	*	*	*	+
Seriousness of last offense	*	*	-	*	+	*
Seriousness of the crime	+	*	-	*	+	*
Two or more police witnesses	+	*	*	*	*	*
Complaining witness problem	*	*	*	*	*	*
Two or more civilian witnesses	*	*	*	*	*	*

* not significant
\+ increase
\- decrease

1/ Regression weights and their signs should be interpreted with caution. Although ideally almost all variables in a regression equation should be independent of each other, this is rarely the case. Consequently, the weights and signs might appear to be inconsistent with the actual state of affairs. Where this occurs, the reader, untrained in regression analysis, should not interpret this event as a contradiction.

Erie County generally shows high levels of agreement and consistency with respect to all variables. Numerous relationships can be observed in this table. First, the highest level of agreement occurs with the lock-up decision. With 80% of the assistants agreeing with the leader on who should be incarcerated, one can deduce that policy is being transferred to the assistants. This also shows in the accept/reject variable, where 76% of the assistants agree with the leader's charging decisions.

The fact that there is very little difference between the uniformity and consistency scores indicates that not only is the District Attorney's policy known to the assistants, but it has been integrated into their own decisionmaking process. There is a slight tendency for the agreement levels to decrease as the decisions become more operational rather than policy oriented. But this is to be expected and it is significant that the levels do not drop much below 50 percent.

In summary, the results indicate an office where the District Attorney's policy is known to the assistants and where the levels of uniformity and consistency in decisionmaking are almost equal.

Table 3

Index of Agreement for all Assistants Erie County, New York

Decision Variable	Consistency with Leader	Uniformity among Followers	Peer Group Leader	ID of Maximum Agreement
Priority.....	64	63	72	42
Acceptance.....	76	87	91	61
Dispositional Type.....	60	62	69	63
Exit Point.....	48	47	53	36
Dispositional Level.....	54	56	65	14
Lock-Up.....	80	77	83	55

Table 4 shows a case by case analysis of agreement with respect to priority and acceptance. The first column, consistency, is a measure of the percent of assistants who agree with the District Attorney. Column two, uniformity, is a measure of how well the assistants agree among themselves.

In Erie County the consistency levels range from a low of 3% to a high of 100%, uniformity, from a low of 48% to a high of 100%. With such diversity in the uniformity and consistency levels, we can assume that this data can be used by the District Attorney as a useful management training tool. With the exception of a few cases, the consistency levels are higher than uniformity, which is to say that the assistants agree more with the leader than they do among themselves. We can assume that transmitted policy is the contributing factor. Finally, the consistency and uniformity scores are generally higher for the question of acceptance than for priority, probably do due to the fact that the acceptance question is one tested daily by the assistants.

Table 4

Individual Case Analysis: Erie County

Analysis of Agreement with Respect to Priority and Acceptance

Case Number	Percent Agreement on Priority		Percent Agreement on Acceptance	
	Consistency	Uniformity	Consistency	Uniformity
1	60	51	86	76
2	83	71	94	89
3	10	78	3	93
4	81	68	99	97
5	64	51	66	54
6	77	62	99	97
7	46	48	99	99
8	79	64	94	89
9	86	75	100	100
10	81	69	59	51
11	49	49	69	56
12	71	58	21	64
13	33	55	21	65
14	73	59	100	100
15	94	89	97	97
16	39	50	3	92
17	74	61	99	97
18	19	47	26	58
19	43	50	100	100
20	74	61	100	100
21	76	63	99	99
22	89	80	79	66
23	71	58	99	97
24	20	65	100	100
25	77	64	99	97
26	96	92	100	100
27	31	56	3	92
28	37	56	91	84
29	81	68	93	88
30	91	84	99	99

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TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN POLK COUNTY, IOWA

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

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May 1980

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

Introduction

One of the key issues raised in discussions about the criminal justice system is the uniformity in the process. Uniformity has at least one attribute over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases should be quite small.

A major objective of phase two of "Research on Prosecutorial Decisionmaking" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. For the purposes of this research consistency is defined as the amount of agreement between the assistants and the policy maker and uniformity is defined as the amount of agreement among the assistants in the office independent of a comparison to the leader.

We have made the basic assumption in this research that prosecutors have a variety of policies affecting decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit or implicit and they depend on a number of factors, one of which is the size and organizational structure of the office.

In this paper, we will look at uniformity and consistency in the County Attorney's Office in Polk County, Iowa.

Background

Polk County, located in the south central section of Iowa, covers an area of 578 square miles and has a population of almost 300,000. The county is predominantly urban with the bulk of the population living in Des Moines, the state capital and county seat.

Des Moines is the largest city in Iowa, covering a 64 square mile area and at the junction of the Raccoon and Des Moines Rivers. It is the second largest insurance center in the United States with 56 home companies. It also is the home of Firestone, the second largest tire manufacturing plant in the nation. The 1970 census ranked Des Moines as the 66th largest city in the U.S. with a population of 201,400.

Criminal Justice System Facts

The Polk County Prosecuting Attorney's Office works with twelve police agencies, the largest being the Des Moines Police Department which accounts for 75% of their workload. Currently, the Police Department does not have access to a centralized booking facility.

The county has a single court system having both misdemeanor and felony jurisdiction. Twelve trial courts are manned by the prosecutor at two locations, with one judge assigned to the lower court, three to the felony trial courts and 22 altogether. Two judges regularly sit criminal in the lower court and three in the felony trial courts. Each judge sits five days a week. On any one day that a judge sits criminal, he will not hear any civil matters. An individual docketing system is used and, at present, the felony trial court does not have a backlog.

Fifty percent of the indigent defense services for felony and misdemeanor cases are provided by public defenders, while the other 50% are divided between assigned counsel and court appointed. Assigned or court appointed attorneys who provide indigent defense services may maintain a private practice, however, public defenders may not.

Polk County has the following laws or procedures: discovery, minimum sentence legislation, habitual or multiple offender acts, statutory sentencing enhancements, determinant or flat sentencing, consecutive sentencing, post-conviction restitution, expungement, post-conviction relief. Enhancements and the habitual offender acts are frequently used, when applicable, as are post-conviction restitution and expungement. Twenty-five hundred felonies were brought over for prosecution in 1979. The three most prevalent felonies prosecuted were armed robbery, driving while intoxicated and larceny theft.

Office Facts

Dan Johnston has held the office of County Attorney for 2-1/2 years. This office has 55 full-time employees, 24 of them are assistant prosecutors, none of whom may maintain a private practice. The office also employs three investigators. Assistant prosecutors are under a union contract. With respect to the experience level of the assistants, ten have less than one year, eight have between 1-4, and five have over four. Excluding supervisory and administrative assistants, the average length of stay in the office for attorneys is about 36 months. An assistant prosecutor's starting salary is $15,500 and may reach a maximum of $37,500.

In 1979, the appropriated annual budget for the office was $1,000,000, supplemented by $103,000 in federal grants. One support branch office is maintained by the prosecutor whose jurisdiction includes: misdemeanors, juvenile, moving violations, appeals, and civil cases. The office participates in the following programs: citizen complaints, drug and alcohol (federally funded), career criminal, victim witness, white collar crimes, rape and sex abuse programs and neighborhood mediation. The office has a policy manual setting out standards and guidelines for charging. Major organization divisions in the office are intake and screening with four assistants, general criminal with nine assistants, major offense bureau with four assistants, civil bureau with six assistants, and research and planning with one.

Intake

The office has the opportunity to review police charges before they are filed in court for both felony and misdemeanor cases. Most often the cases are brought over by detectives. The following written reports are always received when appropriate: incident/offense/complaint, arrest reports, detective reports, criminal history and witness statements or testimony. Before filing the charging assistant always talks to the detective and sometimes talks to the arresting police officer, the victim, or complaining witness and other witnesses. He rarely interviews the defendant, the defense counsel or the investigator. One-third of the cases are declined for prosecution.

Generally within eight hours after arrest, charges are filed by the intake and screening unit which has charging responsibility. Four assistants are assigned to this unit on a permanent basis. Of those 4, two have more than four years of experience, one has between 1-4 years experience, and one has less than a year. To change a police charge or decline to prosecute a case, an assistant may be required to obtain prior approval, however, decisions such as referring a case to another court, to another agency, to a treatment program, or deferring prosecution are at the discretion of the charging assistant. Usually charging assistants are aware of the dispositions of the cases that they send forward for a felony prosecution, and sometimes they may know the sentence imposed.

Accusatory

The accusatory processes used most often in Polk County are either arrest to direct filing of information, or arrest to preliminary hearing to filing of bill of information. The grand jury is rarely used. Generally, a case is scheduled for a preliminary hearing seven days after the arrest and first appearance. Of the 400 preliminary hearings conducted last year, ten percent were dismissed, 15 percent were reduced to a misdemeanor processing and 75 percent were bound over. The preliminary hearing is held to determine probable cause to bind over for trial, but it is not generally a mini-trial. The court does not have jurisdiction to take a plea to a felony at the preliminary hearing. Plea offers, dismissals or nolles may require approval from a supervisor. To reduce a

charge for prosecution as a misdemeanor always requires prior approval. The intake division handles the preliminary hearings and three assistants routinely conduct them. The assistant who eventually tries the case as a felony never handles the preliminary hearing.

Grand Jury

Forty five cases were sent to grand jury last year and 29 indictments were handed up. In Polk County the grand jury meets weekly and is in session for 161 days a year. Generally it takes 30 days from arrest to grand jury indictment for both jail and bail cases. Assistants do not need prior approval for either a recommendation of no true bill or a recommendation of reduction to a misdemeanor. The Major Offense Bureau handles the grand jury. Felony trial assistants always review the cases while they are still pending grand jury indictment, and usually the assistant who eventually tries the case also handles the presentation to the grand jury.

Trials to disposition

The court controls the docket for both the initial and subsequent trial settings. Cases are generally assigned to trial judges after motions and/or pretrial conferences have been completed and to trial assistants before arraignment. Pre-trial conferences are routinely scheduled and motions are disposed of before the trial date. The office does not have a no reduced plea or cut-off date after which offers are withdrawn. Generally, 80 days after arraignment, the trial date is set for both jail and bail cases. Thirty percent of the cases are continued on the first trial date setting.

Last year there were 2,104 indictments or informations disposed of by plea, 120 disposed of by jury trial, 10 by nonjury trial, 250 were dismissals or nolles, and 200 were disposed of by other means. Total disposed was 2,684. With respect to the above dispositions it was estimated that five percent were disposed of at arraignment, 60 percent after arraignment but before trial, 30 percent the first day of trial and five percent at the end of trial. From an evidentiary perspective, most of the cases that go to trial are strong. Of all the cases that have been disposed of by pleas, the stage at which this is most likely to occur is after arraignment but before the scheduled trial date. Trial assistants sometimes need approval to use open file practices, they usually need approval for a plea offer and always need approval for dismissals, nolles, diversion or referral of case out of system, or deferred prosecution. On the average, jury trials last two days and bench trials last three hours. From arrest to disposition the median number of elapsed days is 100 (not including sentencing) for bail cases it is 150 days. Four of the felony trial assistants have less than one year's experience, two have between one to four years of experience, and one has over four years of experience. After a conviction the office sometimes participates in the pre-sentence investigation, and sometimes recommends sentences or opposes paroles.

Test Results

The standard case set was tested in the Polk County Prosecuting Attorney's Office on October 31, 1979. The test produced 18 responses to each of the 30 cases (17 assistants plus the County Attorney).

Table 1 presents the percent distribution of all responses to the case evaluation. The figures in the table represent the percent of assistants who responded to each item.

Overall Responses

In examining the overall responses of the office (Table 1), some points are of particular interest. First, the distribution of cases along the priority scale is as expected. It indicates first that a full range of cases was presented to the prosecutors from lowest to highest priority, secondly, that the statistical tendency to normalize distributions at the average level was not violated. The fact that both of these conditions occurred gives credibility to the subsequent analysis (Table 1).

Of all the cases reviewed, the assistants rejected 14 percent. Of the remainder that were accepted for prosecution, the office expected about 60 percent to be disposed of by plea and about 40 percent to be disposed of by trial. The major dispositional outlets in the court system appear to be in the period after arraignment (48%) and the end of jury trial (37%). A very high proportion of the respondents expected the cases to be disposed of at the level originally charged (81%), while only 16 percent expected the cases to be disposed of at a reduced charge.

TABLE 1

RESEARCH ON PROSECUTORIAL DECISIONMAKING

PERCENT DISTRIBUTION OF POLK COUNTY, IOWA

ALL RESPONSES

	Number of Responses
1. Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution.	535

1 Lowest Priority	2	3 Average or Normal	4	5 Top Priority
5	8	15	38	15	14	5

2. After reviewing this case, would you accept it for prosecution?	537
Yes: 86 No: 14.	
3. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one):	461
57 Plea	N/A No true bill
36 Conviction by trial	5 Can't predict
1 Acquittal	1 Other alternatives (specify)
1 Dismissal and/or Nolle Prosequi	
4. Assuming the disposition you have given in Q. 3 occurs, where in the court process do you expect this case to disposed of? (Check one).	453
4 At first appearance for bond setting and defense counsel appointment	48 After arraignment, before trial
1 At preliminary hearing	* First day of trial
* At grand jury	2 End of bench trial
6 At arraignment	37 End of jury trial.
5. At what level will this case be disposed of?	455
49 Felony (as charged)	32 Misdemeanor (as charged)
6 Felony (lesser charge)	10 Misdemeanor (lesser charge)
	0 Violation or Infraction
	3 Other (specify)
6. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one).	453
* None	25 Probation
18 Fine and/or restitution	22 Jail
1 Conditional release or discharge	34 Penetentiary

7. If jail or penetentiary, what should be the minimum actual time served?

Average length of sentence 5 years

*Less than 0.5%

This would tend to confirm the existence of the use of charging guidelines, a procedure that is consistent with few changes in the level of charge once placed. Finally, of the cases where the defendant was convicted, the harshest sanction, incarceration, was considered to be reasonable and appropriate by 66 percent of the respondents. The average length of sentence, stated by the assistants, for all cases accepted for prosecution was five years.

Decisionmaking Factors

In reaching these decisions, an analysis was made to identify, if possible, the different factors that were taken into consideration for each of the six questions asked about the cases. Because the number of cases was small (only 30) the results presented here are provisional, that is, they could change if more cases were included in the test.

1. The results of the analysis of priority of the cases for prosecution indicate that three factors were significant in making this determination. The seriousness of the crime with respect to the amount of personal injury or property loss or damage increases the assistants' priority rating for the case. With the presence of two or more police witnesses the priority rating can also be predicted to increase. On the other hand, the fact that there may be a problem with the complaining witness degrades the priority rating.

2. The results of the analysis for the percent of cases accepted for prosecution are somewhat disappointing. None of the factors are even marginally significant. This may be due to the fact that the attorneys accepted a very high proportion--86%--of the cases. It is difficult to predict the outcome of a case based on a sample of four. We may find in a later, more in depth, analysis that some other factors may be important.

3. Results of the analysis of those cases that were disposed of by plea show two significant factors. The prior record of the defendant when it contains several charges of crimes against the person diminished the chances of a case being plead. The seriousness of the crime also proved to be significant; the more serious the crime, the less likely the case will be plead.

4. The results of the analysis of the cases in which the original charge was reduced indicate that two variables are significant. The fact that there may be a complaining witness problem tends to increase the chances of a reduction of the charge. The presence of two or more civilian witnesses also increases the chance of a charge being reduced.

5. The results of the analysis of the cases which would be disposed of by trial produced two significant factors. The seriousness of the crime increases the chances of the case being taken to trial. The defendant's prior (bad) record increases the likelihood of the case being disposed of by trial.

6. The results of the analysis of recommendation for incarceration showed that one primary operational variable is used. The defendant's prior record is the single factor affecting the sentence of the defendant. The likelihood of incarceration increases if the defendant's prior record contains a number of crimes involving personal violence.

In summary, the analysis of the factors considered by the assistants in making their decisions indicates that the office is behaving in a rational and expected manner, and that the decisions are based on factors that are logically consistent and related. The results are summarized in Table 2.

Table 2

Results of Analysis of Polk County Prosecuting Attorneys Office

Factors showing significant increase or decrease of probability 1/	Questions with respect to: Priority for prosecution	Acceptance	Dispose of by plea	Dispose of at reduced level	Dispose of by trial	Sentence incarceration
Prior Crimes against the person	*	*	*	*	+	+
Seriousness of the crime	+	*	+	*	+	*
2 or more police witnesses	+	*	*	*	*	*
Complaining witness problem	-	*	*	+	*	*
2 or more civilian witnesses	*	*	*	+	*	*

* not significant

\+ increase

\- decrease

1/ Regression weights and their signs should be interpreted with caution. Although ideally almost all variables in a regression equation should be independent of each other, this is rarely the case. Consequently, the weights and signs might appear to be inconsistent with the actual state of affairs. Where this occurs, the reader, untrained in regression analysis, should not interpret this event as a contradiction.

Levels of Uniformity and Consistency

The levels of agreement between the prosecutor and his assistants (called consistency) and among the assistants themselves (called uniformity) are presented in Table 3. The reader should note that the methodology section indicates that the effects of matching by chance have been removed although the effects of socialization and training have not been.

Table 3 presents the levels of agreement for all assistants in the office. The first column shows the level between the leader and the assistants. Column two shows the internal level of agreement among the assistants. In column three the leader was removed from the analysis to identify the peer group leader. Column four identifies by number the person having the highest agreement level. One might want to observe whether an individual appears more than once as a peer group leader.

Polk County generally shows high levels of agreement and consistency with respect to all variables. A number of relationships can be seen in this table. First, the highest level of agreement occurs with the accept/reject decision. With 85 percent of the assistants agreeing with the prosecutor, one can deduce that policy is being transferred to the assistants' charging decisions. This also shows in the dispositional level variable where the assistants agreed more with the prosecutor about whether a case should be disposed of at a reduced level or not. The fact that there is very little difference between uniformity and consistency scores indicates that not only is the prosecutor's policy known to the assistants, but it has also been integrated into their own decisionmaking process. Even the maximum levels of agreement as shown by the peer group leader is not that different from the others. There is a slight tendency for the agreement levels between the leaders and the assistants to decrease as the decisions become more operational and process oriented rather than policy oriented.

TABLE 3

INDEX OF AGREEMENT FOR ALL ASSISTANTS POLK COUNTY, IOWA

Decision Variable	Consistency With Leader	Uniformity Among Followers	Peer Group Leader	ID of Maximum Agreement
Priority . . .	66	68	76	15
Acceptance . .	85	85	88	14
Dispositional Type	49	58	66	10
Exit Point . .	48	56	64	17
Dispositional Level	67	63	70	18
Lock-up	75	76	83	1[a]

[a]ID 1= County Attorney

But this is to be expected and is significant that these levels do not drop much below 50 percent.

In summary, the results indicate an office where the prosecutor's policy is known to the assistants and where the levels of uniformity and consistency in decisionmaking are almost equal.

Table 4 shows a case by case analysis of agreement with respect to priority and acceptance. The first column, consistency, is a measure of the percent of assistants who agree with the prosecutor. Column two, uniformity, is a measure of how well the assistants agree among themselves.

TABLE 4

INDIVIDUAL CASE ANALYSIS: POLK COUNTY
ANALYSIS OF AGREEMENT WITH RESPECT TO PRIORITY AND ACCEPTANCE

Case Number	Percent Agreement on Priority		Percent Agreement on Acceptance	
	Consistency	Uniformity	Consistency	Uniformity
1	24	60	88	79
2	24	51	94	89
3	88	78	100	100
4	12	74	100	100
5	12	56	29	54
6	100	100	94	89
7	53	47	100	100
8	88	78	100	100
9	94	89	100	100
10	35	51	24	60
11	53	47	29	54
12	41	48	65	52
13	18	66	65	52
14	94	89	100	100
15	82	69	94	94
16	88	78	100	100
17	76	60	100	100
18	76	61	41	44
19	24	60	100	100
20	71	57	100	100
21	88	79	100	100
22	82	70	100	100
23	82	70	94	89
24	82	70	100	100
25	71	57	100	100
26	94	89	100	100
27	88	79	88	79
28	82	70	71	57
29	82	69	76	63
30	76	63	100	100

CONTINUED

2 OF 4

The Polk County consistency levels range from a low of 12 percent to a high of 100 percent, uniformity, from a low of 44 percent to a high of 100 percent. With such diversity in the consistency and uniformity levels, the use of this data for further analysis and discussion should result in a potentially useful management training tool. With the exception of a few cases, the consistency levels are higher than uniformity, showing that the assistants agree with the prosecutor more than they do among themselves. As a result, it appears that policy is being transmitted and has been integrated into the decisionmaking patterns of the office.

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN EAST BATON ROUGE PARISH, LOUISIANA

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner

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1990 M Street, N.W., Washington, D. C. 20036

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN EAST BATON ROUGE PARISH, LOUISIANA

Introduction

One of the key issues raised in discussions about the criminal justice system is the uniformity in the process. Uniformity has at least one attribute over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases should be quite small.

A major objective of phase two of "Research on Prosecutorial Decisionmaking" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. For the purposes of this research consistency is defined as the amount of agreement between the assistants and the policymaker and uniformity is defined as the amount of agreement among the assistants in the office independent of a comparison to the leader.

We have made the basic assumption in this research that prosecutors have a variety of policies affecting the decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit or implicit and they depend on a number of factors, one of which is the size and organizational structure of the office.

In this paper, we will look at uniformity and consistency in the District Attorney's office in East Baton Rouge Parish, Louisiana.

Background

East Baton Rouge Parish, located in the South central section of Louisiana, covers an area of 459 square miles and has a population of 311,000. Its principal city, Baton Rouge, which has a population of 294,000, ranks as the 48th largest city in the United States. The population is predominantly urban and has significant concentrations (28%) of blacks.

The port of Baton Rouge is the 4th largest in the nation handling over 74 million tons of freight. Baton Rouge is also the northern anchor of a 100 mile long petrochemical complex along the Mississippi River.

Criminal Justice Facts for East Baton Rouge Parish

Seven arrest jurisdictions contributed to the caseload of the District Attorney for East Baton Rouge Parish. The most significant police agency in terms of the prosecutor's caseload is the Baton Rouge Police Department. This agency which has centralized booking accounts for 40% of the arrests that are brought to the prosecutor. The District Attorney mans five felony courts at one location, Five judges sit five days a week and do not hear civil cases on the same day that they are hearing criminal. An individual docketing system is used and at present the court does not have a backlog. Seventy-five percent of the indigent defense services are provided for by public defenders while the other 25% are contract defense services. Public defenders and contract defenses services are allowed to maintain a private practice.

East Baton Rouge has the following laws or procedures:

1) Discovery
2) Minimum Sentence Legislation

3) Habitual or multiple offender acts
4) Statutory sentencing enhancements
5) Indeterminant and consecutive sentencing
6) Post-conviction restitution
7) Expungment.

Four thousand eight hundred sixty-four felonies were referred to the office for prosecution last year. Of those the most commonly prosecuted were armed robbery, sex crimes, and homicides.

Dispositions are counted by counts.

Office Facts

The District Attorney for East Baton Rouge is in his seventh year of office. At the time of the visit there were a hundred and twenty persons full time in the office, twenty-seven of them assistant prosecutors. Some of the assistants may maintain private practices. They serve at the pleasure of the prosecutor and are not unionized. Generally the assistants will stay with the office for about three years. An assistant's salary starts at $17,500 and can reach the maximum of $45,000. Currently three of the assistants have less than one year of experience, nine have from one to four years of experience, and fifteen have over four years.

In 1979, the appropriated annual budget for the office was 1 million, five hundred-sixty-four thousand, nine hundred sixty-three dollars, supplemented by an additional $250,000 in Federal funds.

The office participated in a number of special programs, including diversion, child support enforcement which was federally funded, citizen complaints, drug, alcohol or other, career criminal or major offense bureaus which was also federally funded, victim-witness programs, white collar crimes

and economic crimes, consumer fraud, rape or sex abuse programs and a child abuse program.

The office has a policy of procedures being set out either as standards or guidelines for charging.

The major organizational divisions within the office are criminal trial bureau division with twenty-one assistants, administrative services, special services with four assistants, and an executive office, and DA with two assistants.

Intake Section

The office has the opportunity to review the police charges before they are filed in court for both felony and misdemeanors. The cases are most often brought over by courier and when appropriate the incident offense complaint, arrest and detective reports are always received. Before filing, the charging assistant will always talk to the investigator and usually talk to the victim or complaining witness. Approximately 45 - 50% of the cases are declined for prosecution. Generally 30 - 40 days after arrest charges are filed. The office has no identifiable organizational unit that has charging responsibility, although each section chief has his own screening function.

Twenty assistants are assigned to screening and charging decisions. Of those seven have less than a year of experience, six have one to four years experience, and four have over four years of experience. Decisions regarding declining to prosecute or deferring prosecution always will require a prior approval. To change a police arrest charge will usually need prior approval and to refer a case to another agency or treatment program or to refer the case to another court may be made at the discretion of the assistants.

The assistants are always aware of the disposition and sentences of the cases they send forward for felony prosecution.

Accusatory

The accusatory process followed most often is arrest to direct filing of information. Generally five weeks after an arrest a case is scheduled for preliminary hearing. There were 800 preliminary hearings last year, of those 10% were dismissed, 15% were reduced for misdemeanor processing, 50% were disposed of by plea and 25% were bound over. The court does have jurisdiction to take a plea to a felony at the preliminary hearing and may also hold the preliminary hearing on the same day or jointly with the hearing to set bond and/or appoint council. The preliminary hearing is not an exparte procedure, it is often characterized as a mini trial. The preliminary hearing is held to determine probable cause to restrict the liberty of the defendant and to bound over for trial.

Decisions regarding a plea offer, dismissal or nolle or prosecution as a misdemeanor sometimes need approval or rejustification. The assistant who eventually tries the case as a felony will always handle the preliminary.

Grand Jury

Two-hundred-fifty cases were sent to the grand jury last year, 200 indictments were handed up. The grand jury meets weekly and usually for jail and bail cases it's three to four weeks from arrest to grand jury indictment. Decisions regarding recommendation of no-true-bill or recommendation of reduction to a misdemeanor and transfer may be made at the assistants discretion. The trial teams handle the grand jury presentation and 13 assistants routinely present them to the grand jury.

The felony trial assistants review the cases while there is still pending grand jury indictment and also the assistant who eventually tries the case will also handle the presentation to the grand jury.

Trials to Disposition

The prosecutor controls the docket for both the initial and subsequent settings. Cases are generally assigned to the trial judges and assistants for arraignment. The initial trial date is usually set for 45 days after arraignment. Approximately 75% of the cases were continued on the first trial date setting. Last year 75% of the indictments or informations were disposed of by plea, 15% by jury trial, 5% by non-jury trial, and 5% were dismissed or nolled. Of all the dispositions, 15% were disposed of at arraignment, 15% were disposed of after arraignment but before the trial date, 65% the first day of trial and 5% the end of trial. Of the cases plead, most of the pleas occured the day of the trial or during the trial. From an evidentiary prospective it has been characterized that the majority of cases that end up in trial are very strong. The average or median length of time from arrest to disposition not including sentencing is 6 months. The experience level of the felony assistants range from 2 with less than one years experience, 13 with 1 - 4, and 15 with over four.

Following a conviction the office may always participate in opposition to paroles and opposition to pardons.

Test Results

The Standard Case Set was tested in the East Baton Rouge Parish District Attorney's office on November 15 - 16, 1979. The test produced 33 responses to each of the 30 cases (32 assistants plus the Chief Assistant).

Table 1 presents the percent distribution of all responses to the case evaluation. The figures in the table represent the percent of assistants who responded to each item.

Overall Responses

In examining the overall responses of the office (Table 1), some points are of particular interest. First, the distribution of cases along the priority scale is as expected. It indicates first that a full range of cases was presented to the prosecutors from the lowest to highest priority, secondly, that the statistical tendency to normalize distributions at the average level was not violated. The fact that both of these conditions occurred gives credibility to the subsequent analysis (Table 1).

On all the cases reviewed, the assistants rejected 18 percent. Of the remainder that were accepted for prosecution, the office expected about 40 percent to be disposed of by plea and about 50 percent to be disposed of by trial. The major dispositional outlets in the court system appear to be in the period after arraignment (24%) and the end of jury trial (37%). A high proportion of the assistants expected the cases to be disposed of at the level originally charged (70%), while 27 percent expected the cases to be disposed of at a reduced charge.

Finally, of the cases where the defendant was convicted, the harshest sanction, incarceration, was considered to be reasonable and appropriate by 61 percent of the respondents. The average length of sentence, stated by the assistants, for all cases accepted for prosecution was 6 years.

TABLE 1

PERCENT DISTRIBUTION OF
EAST BATON ROUGE PARISH, LOUISIANA

ALL RESPONSES

		Number of Responses
1.	Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution. 9 11 15 34 16 9 6 Lowest Priority 2 3 Average or Normal 5 6 Top Priority	980
2.	After reviewing this case, would you accept it for prosecution? Yes: 82 No: 18	982
3.	Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one). 42 Plea; * No true bill 48 Conviction by trial; 6 Can't predict 1 Acquittal; 2 Other alternatives (specify) 2 Dismissal and/or Nolle Prosequi	807
4.	Assuming the disposition you have given in Q. 3 occurs, where in the court process do you expect this case to be disposed of? (Check one). 1 At first appearance for bond setting and defense counsel appointment; 24 After arraignment, before trial 2 At preliminary hearing; 3 First day of trial * At grand jury; 15 End of bench trial 19 At arraignment; 37 End of jury trial	788
5.	At what level will this case be disposed of? 45 Felony (as charged); 24 Misdemeanor (as charged); * Violation or Infraction 18 Felony (lesser charge; 9 Misdemeanor (lesser charge); 3 Other (specify)	788
6	In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one). 1 None; 26 Probation 11 Fine and/or restitution; 31 Jail 2 Conditional release or discharge; 30 Penitentiary	793
7.	If jail or penitentiary, what should be the minimum actual time served? Average length of sentence 6 years	483

*less than 0.5%

Decisionmaking Factors - East Baton Rouge

In reaching these decisions an analysis was made to identify if possible, the different factors that were taken into consideration for each of the six questions asked about the cases. Because the number of cases was small, only 30, the results presented here are provisional. That is, they could change if more cases were included in the test.

1. The results of the analysis of the priority of the cases for prosecution indicate that four factors were significant in making this determination. The seriousness of the crime with respect to amount of personal injury or property loss or damage increases the assistant's priority rating for the case. With the presence of two or more police witnesses the priority rating can also be predicted to increase. On the other hand, the fact that there may be a problem with the complaining witness degrades the priority as does the possibility a constitutional problem with the case.

2. The results of the analysis of the percent of cases accepted for prosecution show two factors as significant predictors. The seriousness of the crime tends to increase acceptance, however, the possibility of a constitutional problem with the case decreases the chances of it being accepted for prosecution.

3. and 4. The results of the analysis of those cases that were disposed of by plea and of the analysis of the cases in which the original charge was reduced, are somewhat disappointing. None of the factors are even marginally significant. It is difficult to predict the outcome of a case based on a small sample, however, we may find in a later, more in depth analysis that some other factors may be important.

5. The results of the analysis of the cases which would be <u>disposed of by trial</u> produce three significant factors. The number of prior crimes against the person, the seriousness of the last offense and the offense being committed in the presence of two or more police witnesses tends to increase the change of a case going to trial.

6. The results of the analysis of <u>recommendation for incarceration</u> showed that one primary operational variable is used. The defendant's prior record is the single factor affecting the sentence of the defendant. The likelihood of incarceration increases if the defendant's prior record contain a number of crimes involving personal violence.

In summary, the analysis of the factors considered by the assistants in making their decisions indicates that the office is behaving in a rational and expected manner, and that the decisions are based on factors that are logically consistent and related. The results are summarized in Table 2.

TABLE 2

RESULTS OF ANALYSIS OF EAST BATON ROUGE PARISH PROSECUTING ATTORNEY'S OFFICE

Factors showing significant increase or decrease of probability	Questions with respect to: Priority for prosecution	Acceptance	Dispose of by plea	Dispose of at reduced level	Dispose of by trial	Sentence incarceration
Prior Crimes Against the Person	*	*	*	*	+	*
Seriousness of Last Offense	*	*	*	*	+	*
Seriousness of the Crime	+	+	*	*	+	*
2 or more Police Witnesses	+	*	*	*	+	*
Complaining Witness Problem	-	*	*	*	*	+
Possible Constitutional Problem	-	-	*	*	*	*

* not significant

\+ increase

\- decrease

Levels of Uniformity and Consistency

The levels of agreement between the prosecutor and his assistants (called consistency) and among the assistants themselves (called uniformity) are presented in Table 3. The reader should note that the methodology section indicates that the effects of matching by chance have been removed although the effects of socialization and training have not.

Table 3 presents the levels of agreement for all assistants in the office. The first column shows the level of agreement between the leader and his assistants. Column 2 shows the internal level of agreement among the assistants. In column 3 the leader was removed from the analysis and the assistant with the highest level of agreement was found.

Baton Rouge generally shows high levels of uniformity and consistency with respect to all variables. A number of relationships can be seen in this table. First the accept/reject decision has the highest level of agreement. With 83% of the assistants agreeing with the leader one can deduce that policy is being transferred to the assistant's charging decisions. This can also be seen in the priority for prosecution and disposition type decisions where the difference between the leader and the assistants is very small (1%). This indicates that the District Attorney's policy is not only known to the assistants, but has been integrated into their own decisionmaking process. Even the maximum levels of agreement, as indicated by the peer group leader, is not very different from the others. There is a slight tendency for the agreement levels to decrease as the decisions become more operational and process oriented rather than policy oriented.

But this is to be expected and is significant that these levels do not drop below 50%.

In summary, the results indicate an office where the District Attorney's policy is known to the assistants and where it has been integrated into the processes of the assistants.

Table 3

Index of Agreement for all Assistants: Baton Rouge, Louisiana

Decision Variable	Consistency with leader	Uniformity among followers	Peer Group leader	ID of Maximum Agreement
Priority	63	63	72	6
Acceptance	83	82	89	32
Dispositional Type	52	51	60	4
Exit Point	55	56	60	26
Dispositional Level	50	54	61	32
Lock-Up	67	76	82	10

Table 4 presents a case by case analysis of agreement with respect to priority for prosecution and acceptance. The first column, consistency is a measure of the percent of assistants who agree with the leader. Column 2, uniformity, is a measure of how well the assistants agree among themselves.

In Baton Rouge the consistency levels range from a low of 3% to a high of 100%, uniformity from a low of 47% to a high of 100%. With such diversity in the consistency and uniformity scores, we can assume that this data can be used by the District Attorney as a useful management training tool. With the exception of a few cases the consistency levels are higher than uniformity, which is to say that the assistants agree more with the leader than they do among themselves. We can assume that transmitted policy is the contributing factor. Finally, the consistency and uniformity scores are generally higher for the question of acceptance than for priority for prosecution, probably due to the fact that the question of acceptance is a routine one tested daily by the assistants.

Table 4

Individual Case Analysis: Baton Rouge

Analysis of Agreement With Respect to Priority and Acceptance

Case Number	Percent Agreement on Priority Consistency	Uniformity	Percent Agreement on Acceptance Consistency	Uniformity
1.1	56	47	59	50
3	63	47	72	59
6	91	83	94	91
7	91	82	94	88
13	53	49	22	63
15	81	67	97	94
22.2	34	53	100	100
25	72	55	100	100
46	88	77	100	100
50	22	63	88	51
53	66	54	78	65
58	59	50	59	50
60	75	60	69	56
61.2	91	83	100	100
74	9	80	100	100
83	78	63	88	80
85	81	69	97	94
101	75	59	66	53
103.2	41	50	100	100
108	75	60	6	82
112	38	51	100	100
115	66	54	88	78
117.2	59	46	100	100
128	91	83	100	100
131	72	56	100	100
132	94	88	91	83
134	78	65	94	88
155	78	65	75	62
157	3	66	94	91
158	9	75	97	94

RESEARCH REPORT #2

7922/

TRANSMITTING PROSECUTORIAL POLICY: A CASE STUDY IN BROOKLYN, N.Y.

Joan E. Jacoby
Leonard R. Mellon
Edward C. Ratledge
Stanley H. Turner
Sheldon Greenberg

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by

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INTRODUCTION

One of the key issues raised in discussions about the criminal justice system is the equity of the process. Equity has at least one attribute over which the prosecutor has a great deal of influence. The prosecutor must insure that similar defendants who have committed similar crimes are subjected to a similar set of decisions. This suggests that the variability in the decisions made about similar cases by assistants in the office should be quite small.

A major objective of phase one of "Research on Prosecutorial Decisionmaking" was to determine the amount of uniformity and consistency among chief prosecutors and their assistants. Consistency is defined as the amount of agreement between the assistants and the policy-maker. Uniformity is defined as the amount of agreement among assistants in the office independent of a comparison to the leader.

We have made the basic assumption in this research that prosecutors have a variety of policies affecting decisions with respect to the treatment of different kinds of offenses and offenders. These policies may be explicit or implicit, and depend on a number of factors one of which is the size and organizational structure of the office.

In this paper, uniformity and consistency are examined in the Kings County (Brooklyn) N.Y. District Attorney's office. The Brooklyn District Attorneys Office is the third largest in the United States (after Los Angeles and Cook County). It processes approximately 39,000 felony arrests and 30,000 misdemeanors a year with a staff of 305 Assistant District Attorneys. With this enormously large caseload, the philosophy of the District Attorney has been to prosecute cases as efficiently as possible. This has been accomplished by imposing sound management principles on an often awkward system of justice. The volume of crime has been sorted through and the office structured into bureaus to reflect these prosecutorial emphases.

The District Attorney, Eugene Gold, is assisted at the executive level by a Chief Assistant District Attorney, a First Assistant District Attorney and an Executive Assistant. The operational parts of the organization are adapted to the structure of the courts and large volume case processing needs. The Criminal Court Division, Early Case Assessment Bureau (ECAB) and the Investigations Bureau (with its associated Complaint Bureau) deal with case intake and proceedings in Criminal Court, the court of limited jurisdiction. The Indictment Bureau takes cases before the Grand Jury. The Supreme Court Bureau assigns an Assistant District Attorney and one investigator to each part (courtroom) of the Supreme Court, the court of general criminal jurisdiction.

Specialized bureaus exist to prosecute Supreme Court cases involving Rackets, Narcotics, Major Offenses, Homicide, and Economic Crimes and Consumer Fraud. Presently existing, but not operational at the time of testing, is a Sex Crimes Bureau. It is in these bureaus that attempts are made to assign cases to individual assistants on a trial team basis thereby reducing the problems associated with the assembly line case processing system ordinarily in use. The Appeals Bureau, although concentrating on traditional appellate matters, is also distinguished because of the advisory role it assumes with respect to cases handled by other bureaus before disposition is attained.

Some of the smaller bureaus have developed their own internal organizational procedures for handling cases. In Narcotics and also in Rackets, for example, one group of attorneys handles investigations and one group is assigned to trials. The two largest bureaus in the office, Criminal Court and Supreme Court, are more conventionally organized with attorneys assigned responsibility for all cases heard in specified parts of the respective courts. This means that in these bureaus the typical case may be handled by several Assistant District Attorneys in the course of its disposition. In contrast, Homicide, Narcotics, Rackets, Consumer Fraud and Sex Crimes cases are assigned to one Assistant District Attorney, who is responsible for it through all steps of the process.

The Homicide Bureau has developed a "riding assistant" program. An "on-call" duty assistant responds to the scene of any homicide where he obtains the available information about the crime, interviews witnesses, and provides legal advice to the investigating police officers to increase the strength of the evidence.

The Rackets Bureau is unique in the Brooklyn office because it is supported by police officers who are detailed to that unit by the New York Police Department and who have their own commanding officer, a captain. While the Rackets Squad's primary function is to provide investigative support in rackets cases, it also serves as a filter agency for requests to the New York Police Department for police court appearances and similar matters. In some cases the Squad also provides court authorized technical surveillance services to other bureaus (e.g., Narcotics). Since most investigative functions were carried out by the Rackets Bureau, the Squad has always been in close proximity to the Rackets Bureau. Now, however, all bureaus in the office make use of their resources;

and with the growing number of investigations being conducted by newly formed bureaus (Consumer Fraud, Sex Crimes) the office wide supporting role played by the District Attorney's Squad is ever expanding.

New assistants generally are assigned to the Criminal Court. A few who have shown special writing skills are diverted to the Appeals Bureau instead of Criminal Court. An assistant spends a 9 to 12 month "apprenticeship" in the Criminal Court, handling preliminary hearings, motions, pleas and calendaring. Although an assistant may have trials earlier, it is generally after 6 months that he is assigned misdemeanor trials. Before the end of the apprenticeship, he will have tried 4 to 6 misdemeanor cases.

After Criminal Court, assistants are routed to either the Indictment Bureau or to Investigations. Most assistants spend 5 to 6 months with the Grand Jury, making presentations and working closely with more experienced trial assistants assigned as liaison from the Supreme Court Bureau. Those assigned to Investigations work with trial attorneys in the specialized crime bureaus receiving training in the case preparation of specialized types of cases.

An assistant with 18 months experience is then assigned to one of the felony trial divisions. Some may move directly to a specialized bureau, but most start by handling general trial work in the Supreme Court Bureau. Assistants who remain in the office for more than six years often advance to the role of supervisor, beginning as senior trial attorney, and gradually moving on to a deputy chief or chief of a division or bureau.

The office has recently started a more intensive case screening effort by establishing an Early Case Assessment Bureau (ECAB) and locating it in the central booking facility of the Police Department. Screening is performed by experienced felony trial bureau personnel. Experience also is the criterion for assignment to the pre-trial conference parts where pleas are negotiated.

With this brief introduction to the office, we will first detail the overall methodology of the study, then present the analysis and conclusions. The reader is cautioned to read all sections carefully since this is research in progress and much of it is experimental. The methods and measurements are currently being reviewed and changes are still being made. Even since the issuance of the Phase I Final Report,[1] the analytical approach has changed substantially.

METHODOLOGY AND DATA

In the first phase of this project, a standard case set was developed. The need for this instrument was paramount in order to insure that the variables of interest were under our control. The alternative to this approach, sampling from closed cases in each office in the study, is not only too costly in terms of resources and time but also it is too difficult to interpret the results of the analysis since control over the contents of the case set is reduced. This is especially true for analysis across offices where the aim is to measure policy differences. We need to insure that everyone reviews the same or similar cases.

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[1] J. Jacoby, E. Ratledge, S. Turner, Research on Prosecutorial Decisionmaking Final Report: Phase I, BSSR, May, 1979.

At the time of this report the standard case set consists of 154 fundamentally different cases from which an infinite set of variations can be constructed depending on the needs of the research team. The cases were drawn from closed case files in Wilmington, Delaware. Over 300 were reviewed before making the final selections. One of the hazards of drawing from closed case files is that many cases are of the same type, e.g. burglary and larceny. Thus, oversampling is required to eliminate that problem and give a more uniform spread to the offense spectrum.

After selection, the cases were edited to reflect language that would be common across the country; they were rewritten in a standard format to yield a product that would be easily read by the evaluating attorney. Where there were elements of uncertainty about the crime, e.g. amount stolen or degree of injury, that information was specified. Uncertainty is an ever present problem to the prosecutor; however, at this stage in our research program, we do not feel that the introduction of uncertainty is productive.

From this set of 150 cases, 30 were selected for use in four pilot sites. A uniform spread of cases with respect to seriousness of the event was the primary criterion for selection. We did not wish to simulate the UCR rates for the site in question since so many of those crimes are similar and contribute little additional information.

The pilot sites which participated in the study were:

1) New Orleans, LA
2) Salt Lake City, UT
3) Brooklyn, NY
4) Wilmington, DE

Within each office, the majority of attorneys were asked to evaluate each case with respect to a series of decisions. These included:

1) Assign an overall priority for prosecution;
2) To accept or reject the case;
3) How best to dispose of the case e.g. plead, trial;
4) Determine the point in the system where it would exit;
5) Estimate whether the charge would prevail or be reduced; and
6) Decide whether the defendant should be incarcerated.

All of the points listed with the exception of (1) are daily decisions on the part of many assistants. The exception, priority, is a scale that runs from 1 (least serious) to 7 (most serious) and attempts to capture the overall importance of the case with respect to its priority for prosecution.

When the data collection was complete we had 13 observations on each of the thirty cases in Wilmington, 34 from New Orleans, 21 from Salt Lake City and 282 from Brooklyn. The latter, Brooklyn, is the focal point of this research since the sample size is substantial by any measure and, further, since it had a rich bureaucratic structure. Each of the other offices is used primarily for benchmarking the Brooklyn data to determine what is high or low with respect to uniformity and consistency.

The data elements suggested above were recoded into no more than 3 states for ease in analysis. The structure is described as follows:

1)	PRIORITY	1=LOW 2=MIDDLE 3=HIGH
2)	SCREENING	1=ACCEPT 2=REJECT
3)	TYPE OF DISPO.	1=PLEA 2=TRIAL 3=ALL OTHER
4)	CASE EXIT POINT .	1=EARLY 2=MIDDLE 3=LATE
5)	LEVEL OF DISPO.	1=ORIGINAL CHARGE 2=REDUCED CHARGE 3=VIOLATION OR OTHER
6)	LOCKUP	1=NONE 2=FREE BUT CONSTRAINED 3=INCARCERATED

The responses for each case for each attorney were evaluated using these variables. These responses were compared to the response of the designated "Bureau Chief" as determined from the site visits to measure the amount of agreement that exists between them.

The procedure used in developing a measure of agreement was straightforward. All attorneys were compared to their leader(s) and a matrix was constructed with the columns representing cases and the rows representing the attorneys. In the cells, a one was entered if a match occurred and a zero, if they disagreed. The average score was computed for each case and for each attorney. After these computations were made, a score was calculated across all attorneys to arrive at the basic index of agreement. If a case was rejected for prosecution, none of the subsequent decisions was relevant. Therefore, the measures of

agreement were calculated only if they agreed on the accept/reject decision.

Once the basic index of agreement was calculated, the measure had to be transformed to take into account the probability of two attorneys matching by chance. This depends on the number of states the variable assumes. For this analysis, it is either two or three. The transformation generally stated is raw score minus p divided by q: where p is the percent of matching by chance and q = 1-p. If the variable has two states, the transformation and measure is given by: raw score - 0.5 divided by 0.5. If the variable has three states, the final index is given by: raw score - 0.33333 divided by 0.666667. This transformation takes into account any agreements that might occur by chance and yields a "purified" agreement measure.

In addition to agreement by chance, there are other reasons why matches might occur that are independent of the effects of policy. There is the common law school background of all the attorneys that the case method of teaching affords; and there is the general effect of socialization. Both of these factors cannot be separated out from the results here, but their influences should be considered.

To gain some partial insight into their contribution to the levels of agreement measured, the following logic was used. If it is policy that is being transmitted, the assistants should match the leader closer than any randomly selected assistant. Rather than draw an assistant randomly, we assumed that each assistant was the leader and the others were followers and measured the agreement obtained. Each score was calculated in exactly the same way as described for the true leader. Then, an average agreement index was calculated and transformed as was done for the stated leader. This allowed us to then compare whether these agreement levels were higher,

lower or the same as the true leader. If they were lower, we assume that policy is the contributing factor. If they are the same, then either policy has been integrated into the group, or other factors such as socialization or common education backgrounds may be the prevalent forces. If they are higher, then the leader's decisionmaking system is not being reflected by the assistants. In this latter circumstance, we also identify the attorney within the set of assistants who best mirrors the decisions of his peers. He will be called here a peer group leader in contrast to the organizationally designated true leader.

The tables used throughout this analysis present, in the first column, the decision or organizational unit evaluated. In the second column is the level of agreement between the true leader and his assistants. The third column presents the average internal agreement among all assistants, excluding the designated leader. The fourth column identifies the maximum agreement that all assistants shared with one of their peers (the peer group leader) and the last column identifies who this peer leader is.

The reader should be cautioned that differences in agreement levels between the designated leader and the peer group leader, where the latter is higher, may be due in part to an informal delegation of policy making power to this peer leader unbeknownst to the researchers and not captured by the data.

COMPARATIVE ANALYSIS

Table 1 is the cornerstone of the analysis. It contains the basic data for the office's top policy maker and all the assistants in the office without respect for organizational placement, experience or function.

TABLE 1

INDEX OF AGREEMENT FOR ALL EXPERIENCED ASSISTANTS
BROOKLYN, N.Y.

Decision Variable	Consistency with Leader	Uniformity Among Follower	Peer Group Leader	Peer Leader Identifier
PRIORITY (Low, middle, high)	46.14	44.37	59.35	1281
SCREENING (accept/reject)	72.71	68.75	80.89	1188
DISPOSITION TYPE (Plea, trial, other)	29.95	31.97	44.72	1206
CASE EXIT POINT (early, middle, late)	27.02	29.49	43.79	1046
DISPOSITION LEVEL (original, reduced, other)	20.47	27.57	40.75	1266
LOCK UP	53.74	56.77	70.78	1057

In Table 1, the contrast is office-wide presenting the amount of agreement between each assistant and the office's top policy leader--not a bureau-level leader. Several relationships surface. First, the agreement index declines as the case travels the continuum from intake to disposition. In other words, the highest agreement index occurs with respect to which cases belong in the system. After that, the index declines with respect to how cases will be disposed of. Notice that the same declining relationship appears in the internal uniformity measure found under follower (column 3). That measure is an index of how well the assistants agreed with each other.

The agreement about priority is less than that for intake but higher than the dispositional decisions other than Lock-up. It is difficult to draw detailed

conclusions at this level of analysis except that there does not appear to be any substantial differences between the overall uniformity and consistency levels in the office. It also appears that there is a slight tendency for agreement between the leader and the assistants to decrease as the decisions become more operational than policy-oriented. Whether this is observable in the working environment is, however, questionable.

The last two columns address the question whether an assistant exists in the office with whom the group agrees more than the designated leader. For every decision variable there is at least one individual among the 216 attorneys analyzed who exceeds the agreement index of the leader. This, in itself, is not revealing because of the size and structure of the office. It does, however, give an upper limit to the amount of agreement found. The ID of the assistant who generates the highest agreement index is noted in the last column.

To give perspective and a baseline to the general level of agreement that exists in Brooklyn, we will first compare these general levels to those in the other 3 jurisdictions. Tables 2 through 4 report the results for Wilmington, New Orleans, and Salt Lake City.

TABLE 2

INDEX OF AGREEMENT FOR ALL ASSISTANTS:
WILMINGTON, DE

Decision Variable	Consistency with Leader	Uniformity Among Follower	Peer Group Leader	Peer Leader Identifier
PRIORITY	41.25	52.65	61.34	2012
SCREENING	73.33	83.84	90.30	2006
DISPOSITION TYPE	40.00	43.56	56.82	2004
CASE EXIT POINT	36.50	45.38	55.91	2006
DISPOSITION LEVEL	41.50	44.32	54.09	2009
LOCK UP	41.33	55.79	67.83	2009

Wilmington is the smallest of the offices surveyed having only 21 attorneys of which 13 participated in the test. Problems in communicating policy are few since all of the attorneys are situated on a single floor and can fit into one room for weekly staff meetings. Consistency with the actual leader (column 2) is higher for every decision variable than in Brooklyn. Further, there are higher levels of internal agreement (column 3) as well. Unlike Brooklyn, however, where priority and screening decisions were more in line with the leader than internally, Wilmington shows more internal uniformity among the assistants than agreement with the leader. This is surprising in light of the small office size where one would expect homogeneity. Even more interesting is the appearance of two assistants (2006 and 2009) twice as the peer group leaders. This pattern suggests that authority may have been delegated to other assistants who were not identified organizationally as leaders.

Additional research is under way to develop statistical and other methods to settle the issue.

In Table 3 the results from Salt Lake City are displayed. In that office a total of 21 of 24 attorneys participated in the test.

TABLE 3

INDEX OF AGREEMENT FOR ALL ASSISTANTS:
SALT LAKE CITY, UT

Decision Variable	Consistency with Leader	Uniformity Among Follower	Peer Group Leader	Peer Leader Identifier
PRIORITY	41.81	38.39	48.68	4010
SCREENING	60.34	63.90	74.95	4005
DISPOSITION TYPE	31.78	28.97	38.69	4005
CASE EXIT POINT	25.36	23.97	33.16	4011
DISPOSITION LEVEL	*	28.84	43.42	4022
LOCK UP	65.67	52.74	63.16	4012

*(Not collected for leader at this site.)

The results show how much disarray. The overall levels of agreement are quite low despite the fact that the office is small. Even the maximum levels of agreement are low and, in fact, uniformly lower than those displayed in Brooklyn whose office size is nearly fifteen times larger (24 compared with 320 assistants). These low levels may well reflect the effects of a "unit" style of operation which is described as follows in Policy Analysis for Prosecution:

> "The organization of the Salt Lake County Attorney's office delegates its discretionary powers to each attorney. Because cases remain with the assistant who decided to bring the charge and there is minimal review from the supervisory level, the decisionmaking power is vested more in the individual than in the office or its organizational units."[2]

The important question raised here is whether experience and socialization really do bring assistants to closer accord. The data certainly appear to support a conclusion that size, experience, and socialization are not substitutes for organizational structure if there is to be a policy implementation and agreement.

The results for New Orleans with 34 attorneys out of 61 attorneys responding are shown in Table 4.

TABLE 4

INDEX OF AGREEMENT FOR ALL ASSISTANTS:
NEW ORLEANS, LA.

Decision Variable	Consistency with Leader	Uniformity Among Follower	Peer Group Leader	Peer Leader Identifier
PRIORITY	40.60	38.94	51.09	3006
SCREENING	51.51	61.03	71.46	3025
DISPOSITION TYPE	34.20	35.70	48.44	3009
CASE EXIT POINT	37.95	37.75	52.66	3009
DISPOSITION LEVEL	-*	56.54	68.44	3025
LOCK UP	62.42	57.48	68.75	3028

*(Not collected for leader at this site)

[2] J. Jacoby, L. Mellon, Policy Analysis For Prosecution, BSSR, Washington, D.C., October, 1979, pg. 189.

The data in this table offer further confirmation that agreement is much higher for the screening decision; further, that the overall levels of agreement tend to decline as the office increases in size. Prosecutorial policy influences also can be clearly seen here. The New Orleans policy of intensive screening and high rejection rates relative to the other offices produces lower levels of agreement than for the other offices. Because more cases are being rejected, it becomes more difficult to make decisions about rejecting those that are clearly not trivial. Note also that the range between the follower index and the maximum value (peer leader) has increased reflecting this greater degree of discord. It is also important to see that the concordance between the leader and follower indexes is much closer in New Orleans. This most likely reflects the strong policy directives that chracterize the office particularly with respect to priority, screening and disposition.

Thus far, we have examined the range and variation in agreement levels among the offices in order to illustrate their highs and lows relative to Brooklyn. Now we will turn our attention to the sub-structure of the Brooklyn office to see how these levels change within the individual attorney's assigned organizational unit.

THE BROOKLYN DISTRICT ATTORNEY'S OFFICE

The Brooklyn District Attorney's Office is organized into the bureaus listed below followed by the number of assistants assigned to each:

1)	Criminal Court	35	6)	Fraud	7
2)	Supreme Court	57	7)	Investigations	11
3)	Homicide	17	8)	Grand Jury	14
4)	Narcotics	21	9)	Appeals	33
5)	Rackets	17	10)	ECAB (Early Case Assessment)	14

Each unit has its own administrative structure and technically its own leader. Further, many of the bureaus are specialized by crime type. Both of these conditions should produce more homogeneous groups than the office as a whole. The following tables will make these comparisons for each set of case evaluation responses.

There are several key points about the staffing and functions of the bureaus that should be made at the outset because they influence our interpretation of the results. The Criminal Court Bureau is the training ground for the newest attorneys and the work is largely with misdemeanor cases. We would expect the lowest levels of agreement to emerge here, both with the reported leader and within the unit, since the experience level of the assistants is minimal, hence their responses may be based more on guesses than a working knowledge of office procedures or policy. The Investigations Bureau is also composed of relatively inexperienced assistants. It operates as an information collection unit as opposed to a decisionmaking unit. Similarly, we would also expect relatively low levels of agreement about case processing.

The Grand Jury unit consists of assistants who have completed their tour in the Criminal Court Bureau and who are exposed, for the first time, to the complexities of felony case processing. This is the critical training point in the process. The leader of this unit acts as both a teacher and a policy setter. For that reason, the path to his desk is described as well worn. Consistency should be high,

The Appeals Bureau is composed of attorneys with relatively little trial experience. As a result, low levels of agreement about dispositions would be expected. The other units are staffed by attorneys with extensive trial experience. However, assumptions about expected levels of agreement are difficult to state at the outset. The special crime bureaus, may have

their judgment colored by the types of cases that they routinely prosecute. Since not all the test cases are routinely encountered, the response may be more variable. On the other hand, some of the specialized bureaus may be so small that socialization may be a factor in increasing uniformity and consistency. Without further analysis and testing these effects may be indeterminate.

The level of agreement about case priority for prosecution (Table 5) within the units mirrors that for all units measured. This is not unexpected because priority appears to be policy-free. There are two units that clearly exhibit strong leadership characterisitics--namely Narcotics and Grand Jury. In both cases, the assistants' agreement with the leader is greater than that of any peer. In fact it exceeds the highest value derived for anyone else within the unit. The opposite is observed in the Fraud Unit where there is significant variation, 17 points between the actual and peer leader, suggesting the absence of administrative leadership. However, it is noted that the peer leader was the deputy chief of the bureau. The consistency of agreement between the leaders and the assistants within a unit is generally higher than for the office as a whole. Major exceptions occur in the Homicide, Fraud, Investigations and Appeals Bureaus where the rates are lower. Within group uniformity, on the other hand, is consistently stronger than that of the office as a whole. This may support a finding that leadership is an important factor that cannot be ignored especially if the uniformity among assistants is higher than consistency with the leader.

Table 6 presents the results for screening. The accept/reject decisions at intake are policy-oriented and the high levels show that

TABLE 5

INDEX OF AGREEMENT BY UNITS FOR PRIORITY:

BROOKLYN, N.Y.

Unit	Consistency with Leader	Uniformity Among Followers	Peer Group Leader	Peer Leader Identifier
ALL UNITS	46.14	44.37	59.35	1281
CRIMINAL	47.94	47.34	60.15	1060
SUPREME	46.20	45.18	57.22	1075
HOMICIDE	44.37	45.58	53.68	1207
NARCOTICS	55.50	45.31	53.68	1240
RACKETS	54.06	56.79	67.00	1249
FRAUD	40.83	57.00	63.00	1141
INVESTIGATIONS	41.50	44.88	51.11	1084
GRAND JURY	66.92	56.60	65.00	1239
APPEALS	42.81	45.77	55.97	1160
ECAB	51.54	48.60	60.42	1177

TABLE 6

INDEX OF AGREEMENT BY UNIT FOR ACCEPT/REJECT SCREENING

DECISION: BROOKLYN, NY

Unit	Consistency with Leader	Uniformity Among Followers	Peer Group Leader	Peer Leader Identifier
ALL UNITS	72.71	68.75	80.89	1188
CRIMINAL	65.69	78.59	86.87	1096
SUPREME	75.07	71.59	78.85	1146
HOMICIDE	66.25	65.52	72.87	1103
NARCOTICS	78.33	73.60	80.00	1121
RACKETS	79.58	84.21	88.89	1111
FRAUD	72.22	82.67	88.00	1137
INVESTIGATIONS	70.67	72.15	80.74	1038
GRAND JURY	84.10	74.66	82.78	1239*
APPEALS	69.82	80.36	86.45	1166
ECAB	69.23	80.29	86.67	1183

the policy has been transmitted throughout this large office. Within this office, we would expect that uniformity and consistency should be the highest in the units most involved in this operational process. In Brooklyn, screening occurs primarily in ECAB and the Grand Jury unit. ECAB determines what charges are to be filed and the Grand Jury reviews the ECAB decisions for their "indictability". The experienced attorneys in ECAB show higher uniformity than consistency. In contrast, the less experienced assistants in Grand Jury have the highest levels of agreement with their leader than any other organizational unit in the office. The single asterisk beside the peer leader's identification number denotes that this is the second time he has been so designated. (Each star plus 1 equals the number of times the individual reaches the highest agreement level.)

The Supreme Court Bureau is the farthest downstream from the intake decision but ultimately they must dispose of the cases accepted and then indicted. There is some evidence of relatively strong leadership (which was confirmed on-site) but lower levels of uniformity. The specialized bureaus of Narcotics and Rackets also agree with their leader with respect to accept/reject decisions. With the exception of Grand Jury, all other bureaus agree more with their peer leader. Whether these differences are observable in the operations of the office is clearly of interest. Regardless of that answer, however, the high levels evinced by each group shows that, even with variations, there is overall consistency with respect to the important issue of case acceptance.

The most interesting aspects of the expected type of disposition, whether by plea or by trial, (Table 7) are low levels of agreement and the variation between the bureaus. The trial oriented units (post Grand Jury)

TABLE 7

INDEX OF AGREEMENT BY UNIT FOR TYPE OF DISPOSITION:

(PLEA, TRIAL, OTHER) BROOKLYN, N.Y.

Unit	Consistency with Leader	Uniformity Among Followers	Peer Group Leader	Peer Leader Identifier
ALL UNITS	29.95	31.97	44.72	1188
CRIMINAL	15.03	31.51	45.30	1040
SUPREME	36.85	38.01	49.45	1063
HOMICIDE	41.56	33.29	43.66	1205
NARCOTICS	56.25	43.87	53.42	1245
RACKETS	43.44	44.46	53.67	1255
FRAUD	42.50	56.33	66.00	1137*
INVESTIGATIONS	40.00	38.56	46.67	1085
GRAND JURY	54.62	40.71	47.92	1042
APPEALS	28.91	39.93	49.84	1030
ECAB	14.23	37.69	47.08	1183*

tend to have higher levels of uniformity and consistency than those units involved with earlier stages. The exceptions are Homicide, Narcotics, Investigations and Grand Jury. Part of this may be due to the functions of each unit relative to the decisions being made. For example, Criminal Court and ECAB assistants have little responsibility for felony processing past the very early process stages. Thus, their judgement about type of disposition is less certain and hence, more variable.

The large Supreme Court Bureau, which contains the majority of the felony trial assistants, also records a little less consistency with their leader than among themselves and with their peer groups leader. This may be a function of the size of the group. (Support for this thesis may be seen in the high levels recorded in the smaller specialized bureaus of Narcotics and Homicide). On the other hand, the numerical difference (37% to 38%) may not even be significant. Also of interest is the fact that in both Fraud and ECAB, a peer leader has emerged for the second time. (identified by an asterisk). The fact that Brooklyn is a plea-oriented office (in contrast to the trial-oriented offices of New Orleans and Salt Lake City) suggests also that more discretion is given to trial assistants. With a wide selection of dispositional strategies available, predictions about the type of disposition to be obtained could also produce these lower levels of agreement.

Agreement with respect to predicting case exit points is another area exhibiting much variation and low agreement levels. These indexes are found in Table 8.

TABLE 8

INDEX OF AGREEMENT BY UNIT FOR CASE EXIT POINT:

BROOKLYN, N.Y.

Unit	Consistency with Leader	Uniformity Among Followers	Peer Group Leader	Peer Leader Identifier
ALL UNITS	27.02	29.49	43.79	1046
CRIMINAL	20.99	24.56	36.97	1057
SUPREME	39.02	39.83	52.67	1174
HOMICIDE	45.31	37.96	52.00	1103**
NARCOTICS	60.50	45.31	60.00	1245*
RACKETS	45.00	44.54	53.67	1249*
FRAUD	51.67	46.66	58.00	1137*
INVESTIGATIONS	35.00	21.67	32.22	1085*
GRAND JURY	66.15	49.16	60.83	1042*
APPEALS	49.22	40.04	54.52	1030*
ECAB	41.54	35.57	47.50	1178

Once again the major source of variation appears to arise from differences among the units. This decision variable calls for a working knowledge of the dispositional patterns of the court system, and a sensitivity to their importance. The exit points of cases that are disposed at the trial stage or cases that have special characteristics such as those prosecuted by Rackets, Fraud, and Narcotics, probably can be predicted better than the general Supreme Court felony case. Of interest is that despite the wide range of agreement levels from 21% to 66% there is, with one exception more consistent agreement with the leader than among the assistants--thus, indicating policy direction in this area. The fact that the peer group leader records the highest levels may reflect the existence of more hands-on experience within the bureaus and agreement based on the operational realities of the system. The same assistant surfaces in the Homicide and Fraud Bureaus for the third time. This suggests that additional tests should be undertaken to determine whether that person could be identified by other means.

Table 9 displays decision variables for the level at which the charge will be disposed. Because this variable indicates the extent to which the original charge is maintained or reduced at disposition, we expect it to be policy sensitive.

With the exception of only 3 bureaus--Fraud, Appeals and ECAB, there is more consistency with the leader than among the assistants. Again there is substantial variability between the units that could be attributed to a lack of experience in bringing cases to disposition, or to liberal discretion in how cases are brought to disposition, or to different policy stances in the units about reduction in charges.

TABLE 9

INDEX OF AGREEMENT BY UNIT FOR LEVEL OF DISPOSITION

BROOKLYN, N.Y.

Unit	Consistency with Leader	Uniformity Among Followers	Peer Group Leader	Peer Leader Identifier
ALL UNITS	20.47	27.57	40.75	1266
CRIMINAL	35.63	29.29	41.21	1098
SUPREME	32.60	30.30	41.33	1002
HOMOCIDE	29.06	28.91	43.00	1205*
NARCOTICS	48.50	39.53	52.63	1266
RACKETS	42.19	40.17	52.00	1112
FRAUD	39.17	48.67	60.00	1141
INVESTIGATIONS	40.50	36.00	42.22	1037
GRAND JURY	38.85	38.07	50.83	1277
APPEALS	29.38	31.84	43.54	1151
ECAB	33.84	36.73	48.33	1183**

For whatever reasons, there appear to be peer leaders in each group who show higher levels of agreement than the designated leader. The double asterisk in the ECAB Bureau indicates that the same assistant has surfaced three times, thereby joining the Fraud and Homicide Bureaus having a clearly identifiable peer group leader.

CONCLUSIONS

At the start of this research, our goal was to see if uniformity and consistency in decisionmaking could be measured in prosecutors' offices using a standard set of cases. The results of this test show that this is possible. But like most research, the results produce more questions than answers. In the effort to obtain answers, the complexities of interpretation are made clear. Many of the findings reported here need to be subjected to the interpretation of the prosecutor himself. The answers sought are probably readily available in his store of knowledge; they clearly are not obvious from the examination of the measures themselves. This section then will present the findings and overall conclusions from these tests and note the areas where the questions have arisen.

The results of comparing the four sites suggest several conclusions. First, the smaller offices with clearly definable policies such as Wilmington, Delaware, tend to have overall higher levels of agreement than larger offices such as Brooklyn. However, size alone is not necessarily the critical variable. The fact that Brooklyn with 17 times as many assistants as Salt Lake City reaches higher agreement levels tends to support the notion that one must take into account the amount of policy direction and administration given to the assistants. The unit style of operation in Salt Lake City produces less uniformity than the highly structured and well-organized Brooklyn office.

The implications of this finding are powerful. If equity is to be enhanced in the criminal justice system, the decisions in the prosecutor's office must be directed by a strong central policy.

Second, the overall levels of agreement are relatively high which is encouraging with respect to the equity issue. Granted it is difficult at this juncture to determine the exact impact of training and socialization, however it is clear that these factors have influence in minimizing differences between attorneys.

Third, the highest levels of agreement occur with respect to the early decisions which determine which cases enter the system. Once cases are in the system a greater degree of variance occurs with respect to final disposition. This seems, at least in part, to indicate that once the intake decision is made, case disposition routes either offer more choices (reducing agreement levels) or a different decision process that is either not measured by the standard case set or sensitive to the questions asked on the evaluation form.

Fourth, the analysis of the unit structure in Brooklyn shows that uniformity and consistency are related to the trial experience of the assistants in the unit. It also depends on the relationship between the unit's mission and the decision under consideration.

Fifth, there is ample evidence to suggest that the style of the unit leader may lead to the development of a surrogate leader, as in the Fraud Bureau. The peer group leader not only has the most experience but he is also generally more available. The methods used to identify the peer group leader often led to some inconsistent results. Therefore, it is also clear that procedures need to be developed, tested and interpreted if this technique is to become operationally reliable.

Sixth, the use of the standard case set for analyzing internal problems in the office has been validated. The results have already been used to dissolve one unit and to provide a basis for training and staff

meetings with respect to policy. It appears that the utility of the process will depend greatly on the interest and creativity of the administrator who uses it and on the development of case sets that more clearly delineate the policy of the office.

The decisions themselves produce different levels of uniformity and agreement and with different ranges both among the sites and within the Brooklyn office. The order of agreement levels reached with respect to these decisions and the amount of variation that occurs can be ranked as follows:

Decisions	Agreement Range Within Brooklyn
1. Screening	65 - 89%
2. Priority	40 - 67%
3. Disposition Type:	14 - 66%
4. Case Exit Point	21 - 61%
5. Disposition Level:	28 - 60%

The highest levels of agreement with the smallest variations are in the highly controlled area of intake, thus indicating that the criteria for acceptance are apparently the best known by the assistants. The priority of the case for prosecution produced the second highest levels of agreement. Prosecutors tend to agree on what are important cases and what are trivial. As the decisions move to the disposition functions of prosecution, as opposed to the intake function, the agreement among assistants tends to fall off. Part of this may be due to the fact that these areas are less policy sensitive, less subject to prosecutorial control and in the long run may not be relevant to the goals of the office if such goals are efficiency or incapacitation, in the sense of depriving one of liberty.

The variations observed in the range of agreement levels are difficult to interpret from the data alone. The causes could be attributed to a number of sources. We have seen that increased policy direction and control tends to minimize the amount of variation. The experience of the assistants may be important since the less experienced may be guessing about parts of the process that they are unfamiliar with. The type of organizational unit and the type of crimes that it processes may introduce either higher levels of agreement or more discord. The nature of the leader is important. If he is strong and dictatorial he may receive higher levels of consistency than if he is permissive and discretionary in his approach to the work flow. The work process step itself may be important. The intake and accusatory processes make judgmental and predictive decisions about the validity of the case and its chances for surviving for prosecution, while the trial phase concentrates on the disposition. It is clear from the internal examination of the Brooklyn office that principles and statements need to be made to help assign the variability observed to some or all of these factors and perhaps others. The need for practical, empirical interpretation of the data has never been so obvious as here.

A final point with respect to the decisions levels recorded between the offices needs to be made here now that we have gained additional insight from an internal examination of one office. That is: the overall agreement levels of an office may hide some significant variations within the office that might be worthy of further exploration. For example, the level of agreement between the assistants and the designated leaders with respect to whether the case would be

disposed of by trial, plea or some other means for the entire office was 30%. Yet, one bureau reported a level as low as 14% and another as high as 56%. The differences between these organizational units clearly are numerically significant and call for explanation. Because of these variations, the weakness of using a measure for the office as a whole is exposed. It may be that only in comparative studies should this be done and that for internal management use, the overall value should be denigrated to that of a baseline; and individual measures, either for organizational units or process steps should be used in its place.

This opportunity to examine the extent of uniformity and consistency that exists within an office and within smaller organizational units is unparalleled. The findings emphasize, first, the necessity of being able to distinguish between what are empirically real differences as opposed to those that are statistically different. For example, if an agreement level varies from 65% to 89% with respect to the intake decision is this observable to the policymakers or administrators in the office, or in the unit; and at what level does it become observable? Until this type of question can be answered, the data are interesting but have little practical relevance.

The second area of interest that emerges from the type of examination conducted in Brooklyn is that which is derived from the different types of agreement. Consistency in decisionmaking has been defined as the state of agreement between the leader and his followers. It is vertical in concept. Uniformity has been defined as the amount of agreement among the followers. It is horizontal in concept. The technique

here measured not only these two aspects of decisionmaking but attempted to discern whether there were others in the organizational unit with whom the assistants agreed more than with the stated leader. The result was affirmative. In only a few areas did the designated leader score higher levels of agreement with the assistants than the peer leader. These are summarized as follows:

Decision Variables	Number of Units where peer leader less than designated leader	Identification of Units
1. Priority	2	Narcotics, Investigations
2. Screening	1	Grand Jury
3. Disposition Type	2	Narcotics, Grand Jury
4. Case Exit Point	2	Investigation, Grand Jury
5. Disposition Level	0	None

Explanations for the existence of these peer leaders are many; but few tests exist other than interpretation by the persons involved to attribute one cause or another to this event. As noted, the designated leader may have delegated his power and discretion to a deputy in the unit and this information was not noted in the collection of the data. Defining the leader begins to take on substantial importance to this type of analysis. The type of organization may be permissive and substantial discretion given to the assistants who tend to create their onw leader informally. The leader may be an administrator who is so far removed from the day-to-day operations of the unit that he has lost touch with their decisionmaking processes and the values they imply. For whichever reason, we can observe that, in general and with few exceptions, there is every indication that the policymaking function

has been delegated or is operating at lower levels than the designated administrative heads. This is true at the office level, which records some of the lowest agreements rates and it is generally true at the unit level where the highest rates occur with the peer leader. Whether these rates make a discernible difference is, of course, the relevant question?

In general, however, it is clear that the organizational units and their characteristics must be taken into account in this office when discretion and decisionmaking are evaluated. What is most important is the existence of generally high levels of agreement about the gatekeeping functions of the office--the intake function and the value of the cases accepted for prosecution--both with the designated leader and among the assistants. Once these are established, it is interesting that as decision-making proceeds further into the dispositional process, variability increases. One might suspect that other values transcending disposition are in operation and need identification.

If there is a single conclusion to be drawn from this test, it is that there is much more work that has to be done after the data have been examined and interpreted by the Brooklyn District Attorney's staff. Despite this, a start has been made toward quantitatively evaluating uniformity and consistency in the criminal justice system. These results while preliminary are quite encouraging.

RESEARCH REPORT #3

79222

THE EFFECTS OF LEARNING AND POLICY TRANSFERENCE ON PROSECUTORIAL DECISIONMAKING

Joan E. Jacoby
Leonard R. Mellon
Sheldon Greenberg
Edward C. Ratledge
Stanley H. Turner

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INTRODUCTION

This paper is one of a series of reports resulting from the LEAA sponsored research on Prosecutorial Decisionmaking.[1] The purpose of this research is to examine the factors affecting prosecutorial decisionmaking and to measure the differences that occur in decisionmaking within an office and among offices. Within offices, the research focuses on a separate but related issue; namely, the causes of disagreement in decisions among individual prosecutors themselves and in relation to their organizational leaders.[2]

A rich data base was collected from the Kings County (Brooklyn) District Attorneys office where 282 assistant prosecutors participated in the testing. This number included 65 brand new employee-trainees who were tested during their first week in the office while undergoing orientation and training. For the most part, these attorneys had just passed the bar. They had not been exposed to prosecution, the District Attorney's office policy, or the socialization that occurs during the training and learning period. Testing them at this time established a baseline against which all of these

effects could be measured to determine how their decisionmaking processes had changed and in what ways. The group was tested during the first week of their employment, and retested 7 1/2 months later with the same instruments. The results of the effects of learning and policy transference are reported here.

Methodology and Data

A quasi-experimental design employing a before/after test was used, the identical instrument was employed on both occasions. This instrument consists of 30 criminal cases with accompanying arrest records that were distributed uniformly over a range of seriousness from the trivial to the serious. Each case has three basic parts. The first describes the defendant, and the charges for which he was arrested. The second summarizes the circumstances of the case and the evidence that is available -- both physical and testimonial. The third provides the arrest record of the defendant including the age at each arrest, the offense for which arrested and the disposition.

Each attorney was asked to respond to 6 primary questions. He was asked to: (1) rate the case on a scale of 1 to 7 in terms of its overall priority for prosecution; (2) decide whether to accept or reject the case for prosecution; (3) note how he would dispose of the case, by plea or trial; (4) estimate where during the processing it was likely that the case would exit, before arraignment, after arraignment but before trial, and/or after trial; (5) anticipate whether the original charge would prevail or whether it would be reduced at disposition; and (6) state what sanctions should be imposed

if the defendant was convicted, particularly if he would be incarcerated.

In the analysis presented in Part I we will examine how these 6 decisions were made grouping all 30 cases together to note major changes over time. In Part II, we will examine each of the cases individually to determine, if possible, some of the factors that effected changes. Summaries of the results of the analysis follow.

NOTES

1. Supported by LEAA Grant No. 79-NI-AX-0034

The view and opinions expressed here are those of the authors and not necessarily the U.S. Department of Justice, LEAA or the Institute of Justice.

2. For the preliminary analysis and testing of this subject, see Transmitting Prosecutorial Policy: A Case Study in Brooklyn, N.Y., Research Report No. 2, J. Jacoby, L. Mellon. E. Ratledge, S. Turner and S. Greenberg, BSSR, 1979

Summary: Overall Test Results

In summary, it is clear that the assistants learned a great deal in the first 8 months of their work experience. Their ability to make decisions selectively from a wide range of alternatives and choices increased immensely, They became less extreme in evaluating the priority of cases for prosecution and their judgements tended to move toward the mean, suggesting an adoption of a sense of what the "average" case is. They became more sensitive to the office policy of what should be accepted for prosecution and what should be rejected, and as a result, their acceptance rate became more restrictive. Stated differently, they were better able to decide what cases did not belong in the system as evinced by the increased rejection rates.

The effects of becoming more familiar with the criminal justice process are indicated by the tests. The selection of different forms of dispositions other than pleas is demonstrated by the expectations of either a conviction on one side or an ACD* on the other. This also indicates better understanding of the factors involved in attaining the various types of dispositions.

The most pronounced changes occurred in specifying the case exit point in the process. Since the trainees had little operational knowledge about the system, this is not unexpected. In general, they learned how to distribute cases over the entire prosecutorial range and to refine their predictions about which were to be disposed of early and which would go to trial. This same shifting occurred with the level of disposition. Mostly the changes overtime reflect the adoption of a more conservative and harsher position with respect to reductions, trials and sentences. Along with this was a loss of

*Adjournment and Contemplation of Dismissal

uncertainty. The confidence of the assistants is shown most clearly in their optimistic approach to failures (dismissals, acquittals, etc.) and their unwillingness to accept a "Can't predict" response as legitimate. Clearly, after 7 months of misdemeanor trial experience the decisionmaking processes of the new assistants changed. It will be interesting to see whether they change again after they have been subjected to the complexities of felony prosecutions.

Summary: Individual Case Analysis Results

The use of the individual case analysis to identify changes that have occurred in the Assistant District Attorney's decision processes as they moved from trainee status to prosecutors with almost 8 months experience is beneficial from a number of perspectives. First and foremost, it shows that the attorneys become more discerning in their assessment of the cases with respect to certain decisions. These decisions focus on whether to accept cases for prosecution or reject them; the mechanics and strategies most likely to produce dispositions by plea or trial; the policy of the office and the characteristics of the cases with respect to whether they will be disposed of at a reduced level or on the original charge; and, to some extent the level of disposition, whether felony or misdemeanor, to be sought.

Second, the analysis of the individual cases confirms preliminary findings that some decisions are relatively policy-free and are normative. These are the case assessments for their priority for prosecution and the imposition of the most severe sanction of all -- incarceration. In both of these areas, even at the individual case level, the assessments placed initially before training and policy transference are remarkably constant 8 months later.

Third, the cases have an obvious utility for the training and management functions in the office. This is because they address specific decision processes and the issues that are unique to them; and they identify and permit the selective use of cases for actual training purposes.

The cases have been designed to range from the most trivial to the most serious, some with evidentiary problems, some without. Since they represent a range of characteristics they increase the likelihood of picking up issues or factors that need further explication or policy and procedures development. If one views the responses of the assistants as "votes" on a question, the priority training and management effort should be given to finding out why those cases that were originally voted one way later changed to another. These cases clearly show where training and experience sharpened or refined the decision processes of the assistants. Hence, they can be used as training tools without waiting for time and experience to accomplish the task.

For example, with respect to the accept/reject decision, in case 58, 75% of the assistants voted to accept it iniatially, but only 50% voted for its acceptance on retest. For case 16, 87% voted to dispose of it by a plea, upon retest only 48% preferred this route. With respect to the policy-dependent question of whether the case should be disposed of at a reduced level, case 6 originally had the support of 71% of the assistants and upon retest, it garnered only 36% of the votes.

The same approach can be taken to those cases where there is a great deal of uncertainty. The logic used here is that if the assistants are not in substantial agreement about the decision, then it should be subjected to review. A number of circumstances may apply. Either the case is ambiguously stated, or some assistants missed some important facts, or there was not enough information given to them;

or too much information which confused them; or there is genuine disagreement about the value of the case, policy or procedures; or the disagreement simply is a function of their organizational placement, and experience. Uncertainty is as much if not more a problem than a change in responses. Those cases where the agreement levels hover above the 50% mark clearly are also candidates for staff conferences and management review.

I. Results of Before and After Testing

This section compares the responses of the trainee group before they were assigned prosecutive duties to those obtained 7 1/2 months later. During this period most of the trainees had gained experience in the Criminal Court trying misdemeanor cases and conducting felony preliminary hearings. As we will note later, some of the responses are clearly affected by their lack of felony case preparation and trial experience.

1. Priority for Prosecution

Priority for prosecution is generally considered to be a universal variable -- that is, the value scale it takes should be relatively constant regardless of the assistants' experience, and it is. Although the difference in the before/after test is significant, the significance occurs not necessarily with a change in values but rather with a closing in on the mean. Using regression analysis to predict what the "after" rating (P_A) should be (based on the prior rating, P_B), Table 1 shows that cases that were originally considered to be more extreme (the 1's and 7's) now are less startling -- 7's tend to be reduced to 6's and 1's increased by half in their importance. The regression equation displayed at the foot of the table is highly significant.

TABLE 1

Expected Priority Rating Using First Rating to Predict Second

Priority Rating	
Before	After
1	1.6
2	2.4
3	3.1
4	3.8
5	4.6
6	5.3
7	6.0

Regression Equation: $P_A = 0.897 + 0.732\ P_B$

$F = 1598.4 \quad R^2 = .48$

TABLE 2

Distribution of Changes in Responses with Respect to Priority of Case for Prosecution

	Percent of Responses		
Priority Before	Same	Differ by one point	Differ by 2 or more points
1	56	26	18
2	33	48	19
3	27	51	22
4	42	35	23
5	33	48	19
6	40	36	24
7	58	27	15
Total	38	40	22

Table 2 shows that with the exception of the extremes, most of the responses were shifted by one point from the original. For all the cases, 78% were either unchanged or moved one point, higher or lower, 16% increased the level of priority by one point and 23% decreased the level by one point. The remaining 22% reflect decision changes of two or more points and this distribution is relatively constant independent of the priority of the case. Although it is difficult to interpret these findings with certainty, the data do suggest that the significant changes in the priority rating of cases are probably due more to refinements in knowledge, than major changes in values.

2. Accept/Reject Decision

In examining the decision of whether to accept the case for prosecution or reject it, we see a tightening up on the acceptance standards. Table 3 shows that only 11% of the cases were rejected originally, but that this figure jumped to 18% after the assistants gained experience. Of the 89% originally accepted, 11% were rejected by the assistants almost 8 months later, while 4% of those originally rejected were subsequently deemed acceptable for prosecution. It appears that the assistants have better knowledge of what should be accepted for prosecution even after limited work experience.

TABLE 3

Percent of Cases Accepted or Rejected

Before and After Training and Percent Change

	Training		
Percent	Before	After	Percent of Responses Identical
Accepted	89	82	88
Rejected	11	18	63
Total	100	100	-

3. Type of Disposition

The responses to the expected type of disposition show that the original expectation of the assistants was to a disposition by plea (66%), followed by a smaller percent of trials (22%). (Table 4). After work experience, the assistants were still generally plea oriented (54%), however, the decrease in this rate and the increase in the "other" disposition category (from 2% to 12%) reflects an increased knowledge of the justice system, the office policy and the existence of an "adjournment in contemplation of a dismissal" (ACD). This is an important disposition in Brooklyn because it permits the case to be adjourned at arraignment for 3 months at which time, if the defendant has not been rearrested, the case is dismissed. (It is coded "other" and probably explains most of the increase in this category). Of interest is the decrease in the percent of responses that originally couldn't predict an outcome (down from 5% to less than 1%). Uncertainty apparently diminishes over time.

The interesting analysis of this question lies in comparing the original responses with those given after misdemeanor trial experience had been attained. Table 5 presents some rather revealing insights into the dynamics of learning and experience. The major shift that occurred in the initial plea category was to move 22% of the pleas to a trial-convict status and 11% to the other (ACD) category. The assistants appear to be better able to discern between those cases that will be more likely to go to trial and those that will be disposed of by means other than a plea. On the other hand, only 10% of the cases that were initially expected to be acquitted by trial

TABLE 4

Percent Distribution of Expected Dispositions of Cases Over Time and Percent Changes

Expected Disposition	Percent Responses		Percent Responses Unchanged
	Before	After	
Plea	66	54	60
Trial (Convict)	22	28	53
Trial (Acquit)	3	1	10
Dismiss	1	4	29
NTB	0	0	0
Can't Predict	5	0	0
Other	2	12	0
Total	100	100	19

survived the second testing. Eight months later, the assistants were far more optimistic, seeing 49% plead out, 17% convicted and 22% disposed of by other means. Similarly for each of the other initially "unfavorable" decisions -- dismissals, no true bills -- the proportion of them surviving in this category decreased remarkably over time. Even for those cases in which they felt they could not predict an outcome as trainees, the assistants, 8 months later had no doubts about their outcome. The table is revealing in providing a measure of the degree of confidence and certainty that the assistants gained during their actual work experience.

Given that, as new employees, the assistants should not have been able to predict where cases were likely to exit in the adjudication process, it is not surprising to see major shifts in their responses as their knowledge of the system increased. Table 6 shows that most of the changes occurred in the accusatory and pretrial processing periods. It appears that more operating experience with the system produced a better discernment between what could be disposed of on the arraignment date (mostly pleas negotiated prior to arraignment) and those cases that could be disposed of prior to trial. Thirty six percent of the cases were originally expected to be disposed of in the pretrial period after arraignment. On retesting, only 14% were still expected to go out at that point.

On examinimg the shifts in more detail (Table 7) we see that the changes have been substantial and that it varies by the process steps. The intake and accusatory steps show a strong reliance on the arraignment as an exit point followed by the first appearance. Even

TABLE 5

Percent Distribution of Changes in Response by Type of Disposition

	No.	Percent	Pl.	Conv.	Acq.	Dism.	NTB	C.P	Other
Plea	918	100	(61)	22	1	6	0	0	11
Trial (Convict)	309	100	35	(53)	1	1	0	0	10
Trial (Acquit)	41	100	49	17	(10)	0	2	0	22
Dismiss	14	100	50	0	0	(29)	0	0	21
No True Bill	1	100	100	0	0	0	(0)	0	0
Can't Predict	68	100	52	27	3	4	0	(0)	15
Other	31	100	65	10	0	3	3	0	(19)

TABLE 6

Percent Distribution or Expected Location of Disposition

For Cases Over Time and Percent Change

Location	Percent Responses Before	Percent Responses After	Percent Unchanged
First appearance	12	17	35
Preliminary Hearing	12	7	7
Grand Jury	3	2	5
Arraignment	9	30	48
After Arraignment Before Trial	36	14	18
First Day of Trial	2	1	5
End of Bench Trial	1	2	0
End of Jury Trial	26	29	53

those cases initially expected to be disposed of later in the process, on retest, are now being moved to the accusatory and pretrial parts of the system. This suggests that the trainees better understand the uses of preliminary hearing, what will stand up in court and what will not. Only 7% of the cases that were originally destined to go out at preliminary hearing are still there after the retest. Approximately 1/2 of the cases that were originally destined to go out at the grand jury level now exit at the end of a jury trial. The high frequency of the selection of jury trials as a disposition point is suspect. One can assume that it results from little exposure to this end of the process and a lack of familiarity about what moves cases to this time, and resource, consuming point.

4. Location of Disposition

Clearly the shifts in the location of disposition demonstrate the ability of the assistants to learn parts of the process in a relatively short period of time. The fact that cases are shifted both back and forward further indicates that the assistants' expectations can change even without actual experience in its different parts. A powerful communication must exist in the organization, most likely, transmitted by the bureau chiefs. (Table 7).

TABLE 7

Percent Distribution of changes in Responses by Location of Disposition

Location of Disposition	No	%	F.A.	P.H.	G.J.	Arr.	AABT	FDT	EBT	EJJ
First Appearance	153	100	(35)	7	0	46	8	1	1	3
Preliminary Hearing	150	100	31	(7)	2	33	9	1	3	15
Grand Jury	42	100	7	5	(5)	21	12	0	0	50
Arraignment	113	100	24	9	0	(48)	8	2	3	7
After Arraignment Before Trial	476	100	14	6	1	32	(18)	1	2	26
First Day of Trial	19	100	21	16	5	16	0	(5)	5	32
End Bench Trial	13	100	0	8	0	23	8	0	(0)	62
End Jury Trial	343	100	6	5	2	15	15	0	3	(53)

5. Level of Disposition

One of the policy-dependent dynamics of the prosecution process is the extent to which cases are disposed of at a reduced level (usually the result of plea negotiation). Since the trainees were unaware of office policy and practices in this area, their original responses and the subsequent differences should reflect the amount of change that can be attributed to policy transference. Table 8 presents the basic information about the anticipated levels and shows where significant movement occurred after the retest. On the whole, there does not appear to be much change in the responses. There were increases in the percent of responses indicating dispositions as charged (from 22% to 30% for felonies and 6% to 11% for misdemeanors) and concomitantly, decreases in reductions. (Felonies down from 28% to 21% and misdemeanors, from 34% to 30%). But the more interesting insights are in the movement of these changes.

Only two types of cases -- felonies to be disposed of at the level of the original charge and misdemeanors that should be disposed of at a reduced level -- appeared to be most clearly discernible to the trainees (59% and 48%, respectively of the responses remained unchanged over time). The other changes that are reflected here indicate refined knowledge about misdemeanor prosecutions as reflected by considerable changes in their responses and relatively limited experience with felonies as reflected by less drastic breakdowns or shifts. Although 48% still considered the misdemeanor disposed at a reduced level to be the appropriate disposition level on retest, some 28% of these lesser misdemeanors are moved up to felony status and an additional 16% are upgraded to a misdemeanor as

TABLE 8

Percent Distribution of Level of Disposition Over Time and Percent Change

Disposition Level	Percent Responses Before	Percent Responses After	Percent Unchanged
Felony as Charged	22	30	59
Misdemeanor as Charged	6	11	16
Felony Reduced	28	21	32
Misdemeanor Reduced	34	30	48
Other	10	8	10

charged status. Similarly a spread is observed with felonies originally expected to be disposed of at a lesser charge. After the retest, 36% were upgraded to felony-originals and 28% downgraded to misdemeanor status. (Table 9).

An important change in the responses concerns the use of reductions. Table 10 shows that there is an overall stiffening in the expectations of the assistants after they gain experience. The percent of cases expected to be disposed of at the same level as charged jumps from 28% in the original test to 41% in the retest. One could assume that either some initial attitudes about the need to rely on plea bargaining as a dispositional vehicle disappeared over time; or, more likely, that the policies of the office with respect to reductions were made clear and that these policies were more restrictive than originally anticipated. It nevertheless shows a rather remarkable shift in expections.

TABLE 9

Percent Distribution of Changes in Dispositions by Level of Charge

Initial disposition Level	No.	%	Percent of Dispositions				
			Felony Orig.	Felony Lesser	Misd. Orig.	Misd. lesser	Other
Felony-orig	285	100	(59)	27	3	11	0
Felony-lesser	359	100	36	(32)	10	18	3
Misd.-orig	81	100	12	28	(16)	40	4
Misd.-lesser	436	100	16	12	16	(48)	8
Other	131	100	0	0	15	41	(35)

TABLE 10

Percent Distribution of Changes

In Level of Dispositions

	Trainee-Assistants	
To Be Disposed of:	Before	After
Total Number	1,292	1,292
Total Percent	100%	100%
As Charged	28	41
Reduced	62	52
Other	10	7

6. Imposition of Sanctions

In this same value/expectation area, the assistants' attitudes toward sentencing were also tested to examine whether they took a harsher stance on the imposition of sanctions. The question asked of them was value-oriented. It asked, "If convicted, what in your opinion, would be a reasonable and appropriate sentence?" The pattern that emerges is generally that of the imposition of more severe penalties. Table 11 shows that most of the movement with the exception of the incarceration penalties was to harsher ones. For example, not one of the original 19 respondents who initially selected no punishment as appropriate and reasonable did so on retest. It is only in the area of conditional release and probation that one sees some shift back to lesser punishments. This would indicate that as the assistants became more knowledgeable about the justice system, they were better able to assess cases with respect to an entire range of punishments and selectively choose those that appeared more

TABLE 11

Percent Distribution of Changes

by Level of Sanction

Sanctions Initially Selected	No. Percent	Sanctions Selected After Retesting: None	Fine	Conditional Release	Probation	Jail	Penitentiary
None	100	(0)	5	53	32	11	0
Fine/Restitution	100	2	(16)	34	28	19	1
Conditional Release	100	12	6	(43)	27	19	1
Probation	100	3	3	21	(32)	36	6
Jail	100	2	1	7	10	(61)	19
Penitentiary	100	0	0	2	5	45	(48)

suitable. For example, only 43% of the cases that were initially designated as being eligible for a non-probation conditional release program, remained in that category after experience in the courts. The initial group was instead spread over the entire range of sanctions possible from none (12%) to incarceration (20%). Clearly there is both a refinement in the judgment processes that occur as the job experience is achieved and a clearer understanding of the range of sanctions available. It is also interesting to note that with respect to incarceration (both jail and penitentiary), there was the least amount of shifting in opinion. Most of those who initially selected some form of incarceration opted for it again on the retest. The shift from penitentiary to jail bears noting. One can speculate that the assistants became more familiar with the sentencing practices of the court and the charging policies of the office that they noted the increased reliance on jail sentences rather than the state penitentiary sanctions. If both categories of incarcerations are grouped together, then the lack of change in the decision to impose the harshest punishment of all is impressive. Of those who initially opted for some form of lock-up, 85% did not change their decision.

II. Individual Case Analysis

In the first section we examined how the decisions of the new assistants changed with respect to the entire case set. That analysis noted the major changes, however, it could not determine whether these changes applied to all cases or whether the nature of the case itself affect the changes. In this section we will look at each one of the individual case responses. Our particular interest will be to determine whether the changes that occurred did so uniformly for all cases, or if not, the extent of variations in the cases. The tables that follow display the different responses by case and question. Table 12 has a different format from the others since the priority scale is nominal. Thus means and standard deviations can be computed. The other tables merely show percent responding to one of either two or three choices.

There are several statements that can be made about these tests. First, most of the variation in priority from time period 1 to time period 2 is caused simply by the lack of reproducibility of the data not by any systematic change in values. There are, to be sure, a few exceptions to this statement. For example, in case 3, the original priority average was 4.2; after retest, it falls to 3.1. This is the single largest shift of any of the cases in the entire set. In case 51, there is only a 1/10th shift from 2.0 to 1.9; however, that shift is statistically considered to be systematic. For the most part the changes are on the order of 2/10ths of the point, and they generally tend to decrease the original value by 2/10ths rather than increase.

TABLE 12

Means and Variances of Priority for Prosecution by Case and Percent of Variance Explained

	Before		After		
Case	Mean 1	Var.	Mean 2	Var.	R^2
1.01	2.98	.93	2.43	1.20	.087
2.00	2.87	.97	2.22	1.02	.055
3.00	4.21	.88	3.19	1.12	.143
6.00	3.93	.74	4.03	1.19	.017
9.02	4.98	.93	5.22	1.35	.077
13.00	3.27	1.95	3.02	1.20	.021
14.00	3.66	.92	3.81	1.14	.015
15.00	3.31	.60	3.25	0.92	.213
16.00	2.00	.69	2.09	0.99	.016
21.00	1.86	1.05	1.77	1.27	.158
22.02	4.63	0.68	4.45	0.78	.001
34.00	4.68	0.70	4.45	0.69	.034
39.01	4.32	0.53	4.42	1.42	.015
43.00	3.17	1.16	2.93	1.00	.126
48.01	3.38	1.66	3.47	2.22	.076
50.00	2.22	0.80	2.05	0.91	.132
51.00	2.00	1.66	1.91	1.52	.326
57.01	3.80	0.91	3.89	1.25	.000
58.00	1.51	0.36	1.45	0.49	.145
61.20	5.53	0.97	5.31	1.08	.105
64.00	4.82	0.93	4.85	0.94	.024
79.01	4.80	0.98	4.19	1.57	.010
90.00	1.29	0.82	1.71	1.13	.261
99.99	5.77	1.03	5.60	1.16	.019
103.02	4.67	0.86	4.94	1.24	.000
108.00	5.90	0.60	5.87	0.66	.028
113.00	6.71	0.42	6.64	0.48	.071
117.02	2.92	0.93	2.70	0.99	.004
120.02	4.00	1.09	3.88	1.68	.138
141.01	3.38	0.72	3.42	1.08	.105
OVERALL	3.84	2.49	3.72	2.78	.048

Another interesting result is that almost uniformly the variance has increased from time period one to time period two. This may be interpreted to mean training and experience allows for greater variability in the way one can assess an individual case. This would not be inconsistent if one assumed that when the trainees came in, they all suffered from a lack of experience and did so uniformly. After gaining experience, they not only can better interpret the information but assess it according to more dimensions. The overall conclusion is that the priority of a case for prosecution is fairly stable overtime, and is not particularly sensitive to the experience of the assistants after 7-1/2 months of exposure to prosecution.

The next set of questions relate to system and process decisions. The accept decision states the percentage of the assistants who accepted the case in the first place, and the percentage who accepted it afterwards. Although the acceptance rate tightened up on the retest (from 89% to 82%), some fairly dramatic shifts occurred within individual cases. For example, in case 1.01, 93% accepted the case in the first instance, and only 60% accepted in the second instance. In case 21, 42% accepted it initially and only 23% accepted it after experience. The general change appears to uniformly reduce the acceptance rate rather than increase it radically. (table 13).

TABLE 13

Changes in Percent of Cases Accepted

Case	Before	After
1.01	93	60
2.00	88	75
3.00	100	87
6.00	100	98
9.02	100	100
13.00	55	59
14.00	91	93
15.00	98	97
16.00	82	63
21.00	42	23
22.02	100	100
34.0	98	98
39.01	98	95
43.00	98	92
48.01	90	75
50.00	75	50
51.00	20	15
57.01	86	86
58.00	70	53
61.20	97	93
64.00	100	98
79.01	98	90
90.00	98	97
99.00	98	100
103.02	98	100
108.00	98	98
113.00	100	100
117.02	98	95
120.02	98	95
141.00	98	90
OVERALL	89	82

TABLE 14

Changes in Percent of Cases Disposed by Plea

Case	Before	After
1.01	70	46
2.00	93	57
3.00	86	88
6.00	85	58
9.02	27	38
13.00	71	67
14.00	80	67
15.00	97	86
16.00	87	47
21.00	67	44
22.02	63	63
34.00	55	41
39.01	58	44
43.00	91	76
48.01	46	39
50.00	100	74
51.00	N/A	N/A
57.01	73	49
58.00	88	60
61.20	55	39
64.00	83	53
79.01	56	48
90.00	91	71
99.00	17	26
103.02	53	51
108.00	26	17
113.00	29	17
117.02	91	62
120.02	66	71
141.00	89	81
OVERALL	66	54

Thus, the affect of training on the intake decision has been to restrict the acceptance of cases, but to do it selectively among certain cases.

With respect to the decision about the type of disposition that the assistants expected to occur, the overall finding was a drop in the proportion of cases that would be disposed of by a plea. (Table 14). The analysis by case shows changes. For example, in case 2, 93% of the assistants originally thought it would be plead out; on retest this changed to 57%. Cases moved in the opposite direction as well. In case 9.2 the initial expectations by 27% of the assistants increased to 38%. Overall the responses reflect wide variation not only among the cases but also overtime where some percentages remained stable and others shifted. The same pattern is repeated to cases expected to be disposed of by trial (Table 15). Although, the overall estimates showed an increase in the trial expectations from 25% to 30%, the cases themselves vary in both directions. For example, case number 6 moves from a 14% expected trial rate to 39% in the second test. In contrast cases 99, 103 and 120 show significant decreases. It is clear that experience produces substantially different assessments with respect to how cases will be disposed of. This conclusion had been indicated in earlier analysis and it is clearly a reasonable one. (Table 15).

Whether the case would be disposed of at a reduced level or as originally charged is a decision based on both office policy and experience. The original responses reflect neither. Thus the changes are important. Overall, the rate dropped from 62% reduced to 52%. (Table 16).

TABLE 15

Changes in Percent of Cases Disposed by Trial

Cases	Disposition by Trial: Before	After
1.01	9	3
2.00	2	2
3.00	6	4
6.00	14	39
9.02	48	35
13.00	29	10
14.00	14	24
15.00	2	12
16.00	3	3
21.00	11	11
22.02	29	29
34.00	40	52
39.01	36	47
43.00	0	44
48.01	27	12
50.00	0	0
51.00	N/A	N/A
57.01	22	42
58.00	0	0
61.20	38	52
64.00	12	31
79.01	35	40
90.00	5	13
99.99	71	66
103.02	40	39
108.00	68	72
113.00	66	73
117.02	2	6
120.02	24	20
141.00	78	14
OVERALL	25	30

TABLE 16

Changes in Percent of Cases Disposed at Reduced Level

Cases	Percent Reduced: Before	After
1.01	55	66
2.00	69	62
3.00	68	76
6.00	71	36
9.02	52	48
13.00	63	79
14.00	80	65
15.00	79	64
16.00	45	52
21.00	13	25
22.02	73	58
34.00	56	44
39.01	64	54
43.00	74	76
48.01	75	68
50.00	71	48
51.00	N/A	N/A
57.00	79	55
58.00	8	8
61.20	65	37
64.00	77	61
79.01	56	50
90.00	77	59
99.00	23	19
103.02	40	39
108.00	29	24
113.00	36	28
117.02	47	49
120.02	72	60
141.00	83	67
OVERALL	62	52

The case analysis shows variation in both directions. Some rather large differences occur between cases. In case 6, 71% initially anticipated reductions, only 36% did so later. In contrast, in case 21, 13% thought reductions would be in order initially. This rate nearly doubled (25%) with the second administration of the test. In other cases, the proportions hardly changed. In case 58, exactly 8% said they would reduce the case in the first place and 8% in the second.

One would expect that some of the legal and operational definitions as to what constitutes a misdemeanor or a felony would become clarified after training and experience prosecuting misdemeanor cases. This is precisely what occurred. Overall, approximately half of these assistants initially inidicated that they would charge felonies and approximately half, did so later. This could indicate a relatively stable situation. But by looking at the individual cases some relatively large shifts can be found. (Table 17). Case number 3, for example, loses almost half of its support for felony designation, moving from 56% to 24%. Case 21 also moves from 25% with felony dispositions in the first instance, to zero in the second. Case 57 in contrast moves from 34% expecting a disposition at a felony level to 74% upon review. Other cases, such as case 99 remainded unchanged. One benefit from this analysis is that it identifies cases that can be used for training. Where changes have been substantial these cases are good candidates for training and staff conferences.

TABLE 17

Changes in Percent of Cases Disposed as Felonies

Case	Percent Felony Dispositions Before	After
1.01	7	3
2.00	5	0
3.00	56	24
6.00	45	64
9.02	74	74
13.00	11	26
14.00	33	58
15.00	2	18
16.00	0	3
21.00	25	0
22.02	64	58
34.00	97	91
39.01	64	79
43.00	8	12
48.01	28	25
50.00	0	0
51.00	N/A	N/A
57.01	34	74
58.00	0	0
61.20	88	94
64.00	79	74
79.01	71	69
90.00	74	51
99.00	98	98
103.02	93	91
108.00	100	91
113.00	100	100
117.02	2	2
120.00	26	24
141.00	25	15
OVERALL	50	51

TABLE 18

Changes in Percent of Cases Recommending Incarceration

Case	Percent Recommending Incarceration Before	After
1.01	13	10
2.00	15	10
3.00	53	45
6.00	85	95
9.02	74	76
13.00	10	10
14.00	92	90
15.00	48	61
16.00	7	7
21.00	10	0
22.00	84	83
34.00	98	98
39.01	100	96
43.00	8	18
48.01	32	24
50.00	9	26
51.00	N/A	N/A
57.01	8	95
58.00	4	0
61.20	98	96
64.00	88	76
79.01	96	92
90.00	22	13
99.00	100	95
103.02	69	79
108.00	100	98
113.00	100	98
117.02	44	44
120.02	43	43
141.00	18	37
OVERALL	62	63

Whether it is reasonable and appropriate to incarcerate the defendant upon conviction is a question that measures the most severe sanction. Overall the percentages did not change, 62% to 63%. A look at the individual cases (Table 18) shows some cases where the amount of agreement either is increased or decreased. Case 141 showed the largest difference, changing from 18% recommending incarceration initially to 37% on retest. However, in no instance were the changes enough to tip the majority of the assistants to reverse their initial reactions. Incarceration appears, like priority, to be a normative variable.

PROSECUTORIAL DISCRETION IN AN AGE OF REASON

Joan E. Jacoby

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Society of Criminology
Conference-Newport Beach,
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A retrospective view of prosecution over the past two decades shows tremendous movement and growth in this sector. One can distinguish two ages in the past and the beginnings of a third as we enter the eighties. The first can be called the age of darkness; it existed prior to 1968. The second can be called the age of enlightenment and it blossomed until 1979 when inflation took it victim. Today, as we enter the decade of the eighties we can hope for a new age -- an age of reason that allows for a restructuring of prosecutorial resources and a new approach to the prosecution of cases.

Prior to the creation of LEAA in 1968, most prosecutors operated behind closed doors, in a world of paranoia, parochialism and darkness. Not only did researchers and planners know little about their activities, neither did the prosecutors themselves. They generally suffered from a lack of identity, viewing themselves as either an arm of the law or an officer of the court. Rarely did their perception encompass that of an

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independent agent operating in a justice system founded on the principles of checks and balances. As late as 1972, for example, at a conference for newly elected prosecutors held in southern Illinois, the then States Attorney from Burlington, Vt. (now a U.S. Senator) responded to a question about how to handle a case prepared so inadequately that the complaining witness was not even identified. When asked, "what should I do?" Senator Leahy said, "Refuse to prosecute". The newly-elected prosecutor asked, "Can I do that?".

With the advent of LEAA, the doors to prosecution were opened and the age of enlightenment began. Sparked by massive support and interest, a whole range of programs was introduced and described as new, innovative, and/or creative. During this age, one could find support for the National Center for Prosecution Management, the National College of District Attorneys, police-prosecutor conferences, screening and diversion programs, career criminal programs, programs addressing victim/witness, community corrections, mediation, economic crimes and organized crime -- a vast array covering a broad spectrum! The net effect of all these programs and events was mixed. On the negative side, in our quest for enlightenment we infused the prosecutorial world with a set of fragmented programs, some good, some bad. With little conceptual or empirical knowledge as a foundation, many programs were devised and implemented almost at random -- as much as to provide knowledge to the initiators as to improve prosecutorial operations. Evaluations of which to keep and which to shed were almost impossible because of the independent and autonomous approaches taken.

On the positive side, however, they broke down the barriers encapsulating the darkness. That was very important. Never before had the prosecutorial function been so open, so available for scrutiny. The important result for prosecutors was that they learned to do things in different ways and they learned that there were different ways of doing things.

Three examples of this diversity follow. [1/] Alexander Hunter, District Attorney in Boulder, Colorado and a former defense attorney, first ran on a platform opposed to the prosecution of possession of marijuana (a stance not unsympathetically received in that university town). After election, he moved to fill the void of a lack of alternatives to prosecution by using diversion and deferred prosecution extensively. He diverted a large bulk of his felony caseload in these first years because he believed that many of the defendants could not benefit from the stigma attached to criminal prosecution. In addition, he extended his activity into the post conviction area by helping many of the convicted persons gain an expungement of their record after "staying clean" for a number of years. In fact, it was his interpretation of the case law that was eventually legislated into Colorado state law.

Ralph Martin, Prosecuting Attorney for Jackson County, (Kansas City) Missouri with extensive administrative and judicial experience opted for efficiency. Being understaffed and having received no budget increases for a number of years, Martin "frontloaded" his system to weed out cases having questionable prosecutorial merit and speed the disposition of those accepted. At one time, three diversion programs operated in

conjunction with the intake section (warrant desk). The warrant desk screened extensively, working up the cases with the detectives. As a result the office was able to anticipate its intake and the trial experienced assistants who manned the desk were able to bottomline the charges at that point before sending them to their negotiated destination. All the ingredients for a successfully implemented, efficient system were used.

Harry Connick, the District Attorney for Orleans Parish (New Orleans), Louisiana came out of the U.S. Attorney's office with a belief in public safety through incapacitation and the professional and ethical duty of the prosecutor to charge responsibly. He ran on a platform condemning plea bargaining. This meant that he would not routinely change a charging decision because he believed that if it could not stand the test of trial sufficiency at the very beginning, then it either should not be accepted for prosecution, or if charged, not subjected to plea negotiation or change. Thus, it is not surprising to find that New Orleans declines upwards of 50% of the cases at intake. The trial assistant is not allowed to change charges unless he has the approval of either the charging assistant or the first assistant. Dismissals are not allowed without permission of the co-chiefs of criminal trials. Defendants go to trial or plead to the original charge.

The importance of these examples is that although these prosecutors are all performing the same function, they approach their jobs with different policy perspectives and different emphases on the use of their discretionary power to achieve their goals. The age of enlightenment

served a good social purpose because it exposed prosecutorial policy and discretionary strategies to public scrutiny and ultimately, one would hope, to public judgment.

Suddenly, in the course of all this experimentation and growth, we met inflation. Federal and state support for innovative programs and system modernizations were reduced along with local appropriations in the jurisdictions. The critical issue became the allocation of existing (reduced) funds to all agencies involved in the delivery of public services. In Wayne County (Detroit), Michigan, the Prosecuting Attorney sued the Wayne County Board of Commissioners after it ordered a one-third reduction of all Wayne County employees including the prosecutor's staff. [2/] The issue revolved around two questions:

1. When can constitutionally mandated services be reduced; and
2. how deep can the cuts be before the provision of these services is in violation of the mandate? In Maricopa County (Phoenix) Arizona, the County Attorney has had to close two of his branch offices because of reduced county board funding; and as we are all aware, California was a frontrunner in this movement with its passage of proposition 13. These are not isolated events. The trends are very real and the effects can be very serious. The bittersweet conclusion is that we simply cannot afford the luxurious age of enlightenment in these inflationary times; yet the knowledge they produced can be used to help us move into a new age.

The age of reason is a conservative one. It is premised on the following assumptions:

1. Cutbacks in services and programs are in order and forthcoming;

2. They should, however, be implemented in a reasonable and rational manner using existing programs that have been tried and tested in combination with the knowledge we have gained about prosecution systems from our research and studies.

3. Any changes or modifications introduced should not disrupt the discretionary function of the prosecutor but rather support it.

Fortunately, the ingredients for moving into this age of reason are already present in the form of existing programs. Even though many of them were developed in a fragmented fashion, they are capable of being integrated into a workable, comprehensive plan that distributes the prosecutor's workload in an equitable and efficient manner. This is the underlying goal. It means that criteria need to be stated and guidelines developed so that each dispositional decision is based on a consideration of the same set of factors and that new methods of case distribution need to be established that are more efficient.

Decisions about dispositions generally are made on the basis of two considerations. First, by evaluating the case with respect to the level of punishment (or sanction) that should be sought; and secondly, by evaluating how best to obtain it. We can broadly classify both the punishment levels and dispositional routes into three major areas. Sanction levels clearly revolve around the issues of incarceration

versus freedom. Thus sanctions can be classified three ways: Incarceration -- including both jail and penitentiary sentences; conditional release -- including probation, diversion, and other conditional release programs; and release -- including no punishment, fines, restitution, or community service programs, etc.

Dispositional routes likewise can be grouped into three major areas; (1) those that are disposed of by non-adjudication in the criminal justice system, such as mediation, and family dispute centers, etc.; (2) those that are disposed of by a negotiated disposition (most generally a negotiated plea); and (3) those that are disposed of by trial.

If one constructs a matrix of these conditions, then it can be seen that not all sanctions are logically available for all dispositional routes. Figure 1 illustrates the most likely outcomes of different dispositional routes.

FIGURE 1

Most Likely Sanction
Attached to Dispositional Route

Dispositional Route	Sanction		
	Release	Conditional Release	Incarceration
Non-adjudication	x		
Negotiation		x	
Trial			x

There is, of course, some slippage to this idealized matrix. Plea negotiations, for example, may result in lesser incarceration time; and trials may result in acquittals. But bearing this in mind, we can generally observe a close relationship between how cases are brought to disposition and the expected level of the sanction.

Further, as a result of current research on prosecutorial decision-making, [3] we are able to make some statements about the factors that are taken into consideration in evaluating the priority of the case for prosecution (and hence, its preferred outcome). From the prosecutor's view, the priority of the case is closely related to the expected sanction. Top priority cases (the most serious) tend to be disposed of by trial. Trivial cases either are rejected outright or sent to non-adjudicatory alternatives if they exist. If not, they usually are disposed of with a plea carrying with it the least restrictive sanction.

In our research, we established a continuum having 7 points on which cases could be located by their priority for prosecution. One represented the lowest priority, 7 the highest and 4 the average. Using these priority ratings, we were able to predict with a great deal of confidence which cases would go to trial and which would be disposed of by other means. Figure 2 illustrates this relationship.

FIGURE 2

Relationship of Priority for Prosecution to Type of Disposition

	Lowest Priority			Average			Highest Priority
Priority Scale	1	2	3	4	5	6	7
Expected Disposition	Non-adjudication		Plea or Negotiation			Trial	

Thus it appears that if one can determine the priority of the case for prosecution, he can make probability statements about its likelihood of going to trial, in contrast to its being disposed of by non-adjudication or by a plea. The question that needs asking at this point is whether the factors that determine priority can be isolated and if so, are they the same factors considered within and among sites. For if priorities are based on factors that differ widely within and among offices, then their use for predictive purposes is subject to attack.

The preliminary results of our research at four jurisdictions showed that there was no significant difference between jurisdictions with respect to the factors that were taken into consideration to set the priorities for prosecution. They all considered the criminal history of the defendant, the seriousness of the offense in terms of

personal injury or property loss, and the legal/evidentiary strength of the case. (Evidentiary problems lowered the priority rating, corroborative testimony increased the priority). Not only was there no significant difference between the sites, but the amount of the variance explained by these few factors that were tested was very high (overall 76%). [4] Thus, we feel confident that the set of factors will not vary significantly from one office to another even as we extend our research to 10 additional jurisdictions. [5] Further, we believe that we can set forth in a preliminary fashion, a proposal to restructure the distribution of the caseload in an equitable and efficient manner.

We propose that the caseload in a jurisdiction be distributed at intake in such a manner that it is referred to one of the three major dispositional routes. The dispositional routes are: (1) non-adjudication; (2) plea negotiation; and (3) trial. Work would be referred to one of these three routes based on the characteristics of the cases. Much like sentencing guidelines, the selection and referral process would be flexible, permitting deviation from the standard course of action and would have incorporated in it feedback techniques to monitor the continued applicability of the criteria used for these decisions.

The criteria used for this decision process would be based on those factors identified as significant in establishing the priority of the case for prosecution. Since it appears that the factors are universal (only their weights change to reflect office policy), that they are

non-legalistic, relatively tamper proof, generally applicable to all jurisdictions, and can be routinely acquired at a small cost, they offer a high potential for success in application. Thus, by being able to place priority measures on cases, we can, in turn, distribute the cases to a recommended dispositional mode.

To illustrate these concepts. Let us first look at the least serious or trivial cases (those with a rating of 1 or 2 on our hypothesized scale). These cases, generally, either are not accepted for prosecution in some jurisdictions having extensive screening and intake review procedures; or if they are accepted, they are disposed of quickly with minimum sanctions. For example, a trivial case might result from the arrest of a woman who became angry when someone cut in line in front of her so she hit the person with her pocketbook. If this action resulted in an arrest, then it would generally rate low on the prosecutor's priority scale. If it were accepted for prosecution at all, it may be disposed of by mediation, a fine, or even deferred prosecution. For these types of cases, a non-adjudicated dispositional route is the preferred one.

At the opposite end of the continuum are the most serious cases, those that rate 6 or 7 on the priority scale. These cases involve serious personal injury or high cost property loss. In addition, they are generally caused by defendants with serious criminal histories, the well known career criminals. Because the prosecutor's preferred sanction is incarceration, these cases are rarely negotiated out by

a plea. Instead, they tend to move to trial and thereby, make heavy demands on the prosecutor's time and resources. Since trials are the most work-intensive part of the prosecutor's workload, it is reasonable to expect that the priority attached to cases moving to trial should be very high. This is especially true if court capacity is limited. Since these cases carry with them the likelihood of long periods of incarceration, their adjudication should be subjected to judicial determination. In addition to these, there is another dimension to the trial dispositional route. That is, that some trial capacity should also be reserved for those serious cases (not necessarily 6 or 7's) in which there is a question of guilt. Cases with marginal evidentiary strength should be referred to trial rather than sent to disposition by negotiation.

Once trial resources are exhausted, or their capacity is used up, then it is necessary to consider what happens to the middle group of cases -- those rated 3, 4, or 5 on our continuum. Our research has shown that these are the ones most likely to be disposed of by pleas with sanctions that restrict or curtail the liberty of the defendant rather than incarcerate him. It is in this group of cases that the sanctions of probation, conditional release, and other treatment programs are most commonly used. Although there is much more variability in defining the boundaries of this group among jursidictions, it does exist and often serves as the major dispositional vehicle for the largest proportion of the caseload in an office. Some jurisdictions define this group much more narrowly than others either because of court

capacity constraints, screening and charging policies or attitudes towards plea bargaining. Thus while its legitimacy is not variable its size is.

By integrating the research findings from our project on prosecutorial decisionmaking with others dealing with discretionary decisionmaking [6/] and with the real world of prosecution, we are theoretically able to establish a plan that will distribute the criminal caseload in an office according to preferred dispositional routes, thereby producing a reasonable and efficient allocation of resources. This can be accomplished by restructuring the availability of the criminal justice programs already in existence according to their implied treatment or sanction and linking these programs to the priority groupings. In this manner, we can:

1. Send trivial cases to mediation, diversion, family dispute centers or other similar programs for resolution. If these non-adjudicatory routes are not available or are not sufficient, then other sanctions could be used such as fines, restitution or community service. The goal for this group of cases would be to exclude them from the formal criminal justice process to the extent possible.

2. Negotiate dispositions for the middle range of cases, those that border on being either more than trivial but less than serious. Through the use of structured conferences, not unlike many existing pretrial conferences, the disposition of the case can be negotiated and made subject to judicial approval. The sanctions imposed here would include most probations, and many other forms of conditional release programs such as diversion or drug treatment programs. All essentially

would have the goal of circumscribing the freedom of the defendant without incarceration.

3. Prepare for trial, those cases that are most serious and/or are of questionable guilt. The latter is important because it is only reasonable and equitable to expect that where there is a question of guilt, the case should be adjudicated by a court of law. The sanctions most generally reserved for this group would be incarceration or a mixed sentence involving incarceration (for example jail and probation).

By utilizing a dispositional routing system for the criminal caseload, we should be able to develop a conceptual analogy to sentencing guidelines which we can call disposition guidelines. These guidelines would not diminish the discretionary power of the prosecutor or the other actors in the criminal justice system. They would not specify what charges to file or what dispositions to seek; rather they would recommend a dispositional route to be followed. Where there is adequate information at intake (and this is not yet universally true), the referral of cases to one of three dispositional route clusters should yield immense benefits and savings in the distribution of prosecutorial and criminal justice resources in the processing of criminal cases.

The very fact that a foundation can be laid for the rational distribution of resources and capacity establishes our ability to provide the system with improved planning and budgetary procedures -- procedures capable of specifying in an objective fashion the needs of the jurisdiction, thereby reducing unnecessary programs and expenditures

while providing the ability to monitor the system for changes. The major advantage to this proposal, however, is that it supports the existence of prosecutorial policy differences and community priorities while at the same time permitting a rationalization of the system and its objectives. The recommended dispositional routes as a concept simply provides a systematic and objective basis to the decisions that are already on-going in the everyday world of prosecution and criminal justice. Their unique contribution, however, is to move prosecution into the age of reason and bring with it the means for a more equitable distribution of justice and justice resources.

NOTES

1. For a more detailed description of the different policy perspectives adopted by these offices, see Chapters 8, 9 and 10 of The American Prosecutor: A Search for Identity (J. Jacoby, Lexington Books, Lexington, Mass., 1980). Also for a similar description of 10 other sites using a policy perspective see, Policy Analysis for Prosecution (J. Jacoby and L. Mellon, BSSR, Washington, D. C. 1979)

2. The Michigan Court of Appeals found for the Prosecuting Attorney.

3. The second phase of Research on Prosecutorial Decisionmaking conducted by the author at the Bureau of Social Science Research is based on observations and tests in 10 sites supplemented by a survey of large urban prosecutors' offices. It has as its primary focus the examination of uniformity and consistency in discretionary decision-making, and the identification of the factors taken into consideration by prosecutors.

4. A Quantitative Analysis of the Factors Affecting Prosecutorial Decisionmaking, Research Report #1, J. Jacoby, L. Mellon, E. Ratledge, S. Turner, BSSR, Washington, D. C. October 1979, page 11.

5. This research is expected to be completed by Fall, 1980 although preliminary analysis on this subject may be available soon. The sites included in the testing to date are: Baton Rouge, La.; Buffalo, N.Y.; Des Moines, Iowa; Detroit, Mi.; Kansas City, Mo.; Lake County, In.; Miami, Fla.; Montgomery County, Md.; Phoenix, Ariz.; and Seattle, Washington.

NOTES (cont'd)

6. The research results of the Phase 1 study is reported in Research on Prosecutorial Decisionmaking. Phase 1: Final Report, J. Jacoby, E. Ratledge, S. Turner, BSSR, Washington, D. C., May 1979. Also of importance is the monograph, Decisionmaking in the Criminal Justice System: Reviews and Essays., edited by D. Gottfredson with contributions by H. Pepinsky, L. Wilkins, R. Burnham, National Institute of Mental Health, DHEW. Publication No. (ADM) 75-238, Washington, D. C. 1975. The work of Peter Hoffman, Leslie Wilkins and Don Gottfredson in developing the parole guidelines and the sentencing guidelines has great relevance to this research and the concepts proposed here. The analogy to developing sentencing guidelines is most observable in: Federal Parole Decisionmaking: Selected Reprints, Volume 1, 1974-1977. U. S. Parole Commission Research Unit; Washington, D. C. June, 1978.

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DEVELOPING A SERIOUSNESS SCALE FROM CRIMINAL HISTORIES

Stanley H. Turner

I. CONCEPTS AND APPROACH*

Introduction

As part of a larger effort to determine how prosecutors and their assistants make decisions about offenders, this section will focus on one important dimension of information that routinely enters into many, if not all, such decisions: the prior record of the offender. Excluded from consideration, therefore, are the welter of other segments of information; the current offense, the social background, the type of defense, etc. Thus, the purpose of this paper is to develop an objective, simple scale that will reproduce the judgements of experienced prosecutors as to the overall "badness of an offender's prior record.

Ethical Consideration

A point can be raised that the use of the prior record of an offender is unjust. In fact more positions can be raised:

1. The prior record of an offender should never be used against him by anybody;

2. The prior record of an offender should always be used against him by anybody;

3. The prior record of an offender should be used by the prosecutor in making a decision about the defendant;

4. The prior record of convictions (guilty by plea or trial) should be used by the prosecutor in making a decision about the offender.

Readers interested in either of the first two positions (which will not be considered in this paper) are referred to The Punishment Response, Graeme Newman, J.B. Lippincott, 1978, where such issues

*This section was prepared with the assistance of Ms. Aysha Latib.

are discussed within the framework of contemporary criminology. This paper assumes that it is legitimate for a prosecutor to possess and act upon the prior record of the defendant. This paper will investigate the actual effect of withholding disposition information. That is, it will present identical records but in one case disposition information will be present and in the other it will be absent. Thus, we will be able to determine how much disposition information accepts the decision of the prosecutor and what type offender is most affected.

Methodology

There are two contrary procedures that could be followed. We could either sample prior records from actual files, change all identifying information and present them in a standardized format or, alternatively, we could simulate prior records. There are advantages to both procedures. In the first you gain representativeness--the cases are close to reality, but in the second the cases can be generated by deliberately combining preselected variables--the research gains control. In the sense that a range of prior records can be generated to cover all types of possibilities e.g., a long but trivial prior record, a short but very serious prior record, a short but very serious prior record sheet. What was selected here was a kind of blending of the two above contrary strategies. We selected adult prior records from New Jersey, edited them and standardized their format--thus we followed the first strategy that of using prior records from an actual file. But we selected the actual case to be used so that the full range of cases to be used would appear.

Random vs Non Random Selection

Clearly we have opted for non random selection of cases. There are costs associated with this choice but we feel the benefits outweigh them. If we relied on a random sampling of say 50 cases from the court dockets of a

typical big city court there would be too many trivial cases and not enough serious ones. What we wanted was the full range from no prior record at all up to extremely lengthy and serious prior records. Thus to ensure that at least one of all the types of results that we thought to be important would appear we chose a judgmental rather than a random sampling plan.

Gradually as we obtain a firmer grasp as to which variables are important and which may be safely discarded we aim at fully simulated prior records that will also resemble real cases. Such cases could then be completely computer generated. This would entail the realization of the second strategy discussed above.

Selection of Relevant Variables

Which variables are most important in affecting the judged seriousness of a prior record? There is of course no clear answer to this question. Theory, guesswork, trial-and-error all play their part. Strictly speaking we are discussing the "admissability criterion" in the following form:

$Y = f(Xa, Xb, Xc...)$

Y (the judged seriousness is dependent upon some cluster of variables which we have to specify).

Our suppositives are as follows:

1. LENGTH. All other things being equal the larger a prior record, the worse it is.

2. SERIOUSNESS. The 'worse' the crime the worse the prior record. We are already able to measure the seriousness of crime by building on prior work in criminology. (See the large body of work starting with The Measurement of Delinquency, T. Sellin and M. Wolfgang, J. Wiley, 1964).

3. ORDER. Though two records have the same seriousness, one might be thought more serious than the other because of the pattern of the events. Thus if a record went from least serious on up in an ever-increasing pattern of seriousness it might be thought much worse then one than was regularly decreasing or one that was randomly distributed, without any pattern at all. Another exotic possibility would be to consider a cyclical pattern in a prior record. (See especially here the work of R.M. Fijlio in Delinquency in A Birth Cohort, Wolfgang, Fijlio and Sellin, University of Chicago Press, 1972).

One final possible effect is the 'undue' influence of the last offense (not the one that the defendant was arrested for but the one just before that). Some of our results suggest that this offense may have more influence on voters than any other offense.

4. DISPOSITION INFORMATION

A. Sufficiency.--Most people with experience in a big city criminal justice system deplore the incompleteness of disposition information.

B. Degree of detail.--Sometimes, as in Chicago, very detailed information (charge at conviction, court, sentence imposed) is present. Most frequently however disposition information is recorded merely as one of the following: (Acquitted, Dismissed, Convicted, etc.).

C. Type of information.--There are essentially two different types of information, charge at arrest or charge at conviction. Sometimes prior records do not indicate which stage is being used, most frequently charge at arrest is on the prior record.

5. SPECIAL OFFENSES. Some prosecutors in informal interviews expressed concern over certain offenses. Offenses like herion sales or aggressive crimes against the person seemed especially of interest to them. No doubt such crimes are serious and seriousness has already been dealt with above. Yet it was

felt that we would include it as a distinctive category to see if offense type had had some impact on prosecutor's decisions over and above the seriousness of such offenses.

6. 'TREATMENT' FAILURE. Some offenses (e.g. Parole Violation) or statuses (on conditional release at time of arrest) show that the offender has been given a 'break' previously and has abused it or that he received treatment, instead of punishment, and has 'failed.' Such indicators may lead some prosecutors not to give the offender a second 'break.'

7. TIME. There is a human tendency to forgive offenses committed against the public years ago. Each offense can be seen to have an age of its own. For example, an old offense is more likely to be overlooked than a recent one. Similarly each offender has an age. Thus, the very young offender and very old offender is more likely to be approached with a greater degree of sympathy and understanding and hence there is a greater possibility in these cases to be given a "break."

8. COMPLEX VARIABLES. Many complex variables may be created out of the 'simple' variables above. For instance the Density of a criminal record could be measured by the total Seriousness divided by its Length.

II. PRETESTS

The preliminary format developed was a set of sheets, one per rap sheet, bundled together. Each subject was to receive a bundle plus instructions. The task for each subject was to provide a number that represented the subjects estimate of the 'badness' of each prior record. A preliminary set was generated following the lines laid down in Section I. This preliminary set proved to be inadequate and a number of changes were made as to the format of the prior record sheets to be presented to the subject.

Communication of Tests:

The first schedule was presented with no scoring scale. In other words, the subject was requested to fill in a number he thought appropriate. This made it difficult to interpret some responses.

The second schedule consisted of a preprinted 11 point scale. A new element was introduced e.g., anchors, that is two examples of extreme prior record sheets with the scoring 1. a trivial offense and 2. a very serious prior record. This gave the subject some "anchoring" conception of how the scoring is done. On the administration of this test it was discovered that the scoring scale was too long.

Thus a 7 point scale was substituted for the 11 point scale.

Dispositions

All the pretests were identical except that 50 percent of the subjects were presented with a schedule including disposition and the other half excluding dispositions. Regarding dispositions there was a problem concerning the disposition "unknown." This word seemed to create disagreement and ambiguities and was thus changed to a more definite category--"dismissed."

Bimodal responses also occurred regarding the offense termed as "dangerous drugs." Here again a change was made to include more definite categories of offenses on the same level of seriousness, namely, P.C.P., cocaine. However, more problems were encountered with regard to the offense P.C.P. A number of respondents did not understand this term and again heroin and cocaine were substituted.

Generation of Prior Records:

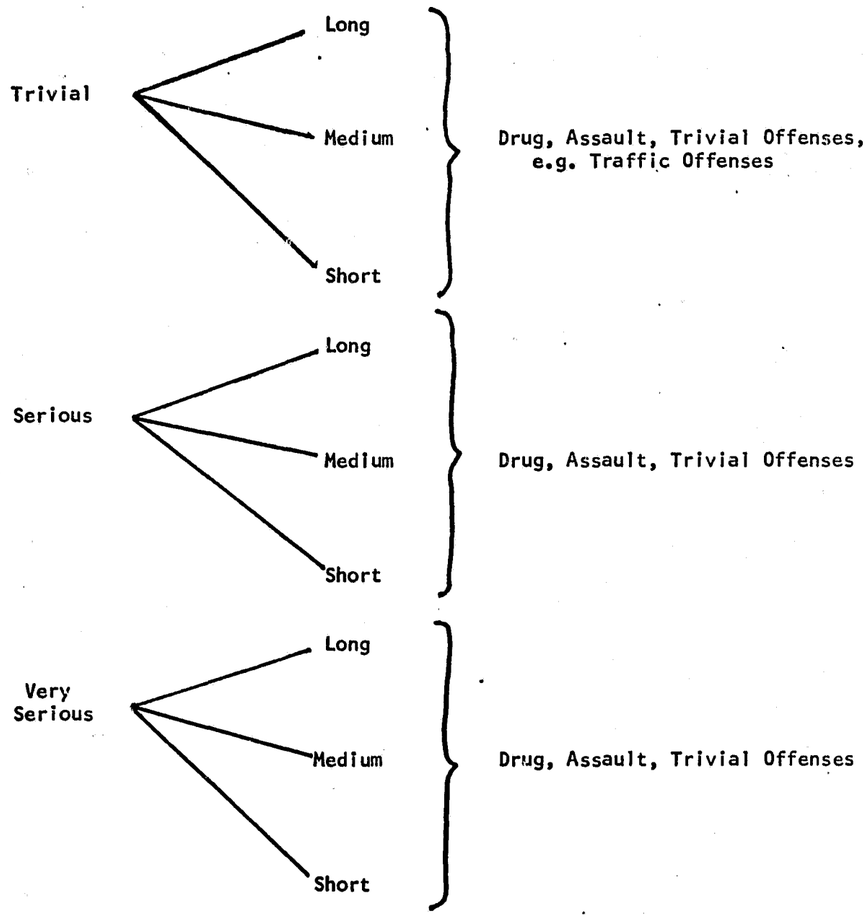
We generated prior record sheets to complete the range of offenses possible. We produced set of offenses that were apparently unambiguous with a broad range of types.

After careful scrutiny of responses to previous tests and to the prior record sheets, three categories of crimes were apparent: 1. Drug offenses; 2. Assault including murder and robbery; 3. Trivial offense e.g., loitering, traffic violations, and thus each category of offense was included in all the judgmental categories (serious, very serious, trivial).

Randomization:

An effort was also made to randomize each schedule so that no two respondents would receive the same sequence of prior records. This was done in an attempt to insure, that in the long run, each offense would appear first, second and so on until the last an equal number of times. In this way, the positional bias is minimized when you sum over subjects.

EXAMPLE



Results

The results of the stepwise forward regression that was performed indicate that the seriousness of the defendant's record can be explained by the following five factors: (1) the percent of arrests that are Sellin and Wolfgang index offenses (basically crimes against the person and crimes involving property loss or damage); (2) the length of the record based on the number of prior arrests; (3) the seriousness of the last arrest based on four classes ranging from trivial to serious; (4) the number of arrests for crimes against persons; and (5) the number of arrests for offenses involving "hard" drugs, principally heroin.

The summary of this analysis is presented in Table 1 below:

Table 1

Results of Regression Analysis of Seriousness of Defendant't Record

Step	r-Square	Std. Error	Variable	Partial	Significant
1	.50114	1.2066	Index	.70791	.0003
2	.75106	.87573	Length	.70780	.0005
3	.83372	.73645	Last Arrest	.57625	.0098
4	.87218	.66558	Crime Against Person	.48089	.0434
5	.90893	.58021	Drugs	.53626	.0265

Despite the extremely small sample, only 21 responses, it is important to note the high explanatory power of these few variables, the monotonically decreasing standard error of the estimate and the levels of significance. Clearly, areas for further development and testing have been indicated.

ARITHMETIC MEAN OF JUDGED "BADNESS"
OF PRIOR RECORDS*

CRIMINAL HISTORY	PRETEST 1 DISPO. SHOWN NO ANCHORS 11 POINT SCALE	PRETEST 2 NO DISPO ANCHOR 11 POINT SCALE	PRETEST 3 NO DISPO ANCHOR 7 POINT	PRETEST 4 DISPO ANCHOR 7 POINT
1	4.5	3.07	3.71	3.42
2	9.4	8.74	6.42	6.08
3	6.1	6.11	6.13	4.58
4	4.4	3.19	3.58	2.58
5	5.9	4.19	-	-
6	1.9	1.26	1.83	1.50
7	4.2	3.85	3.79	2.92
8	9.2	9.04	6.25	5.38
9	5.2	5.11	5.33	4.17
10	9.7	7.93	5.54	5.13
11	8.9	7.04	5.54	-
12	7.0	6.81	5.13	3.46
13	7.9	7.07	5.79	5.42
14	7.1	6.55	5.38	3.56
15	3.3	1.55	-	-
16	6.1	4.70	4.67	4.25
17	10.3	10.22	6.63	6.29
18	9.1	8.37	5.79	5.79
19	7.1	4.63	4.54	4.38
20	6.6	6.77	5.42	5.08
21	7.1	7.08	5.42	4.83
22	-	5.77	4.75	4.04
23	-	1.32	1.17	1.04

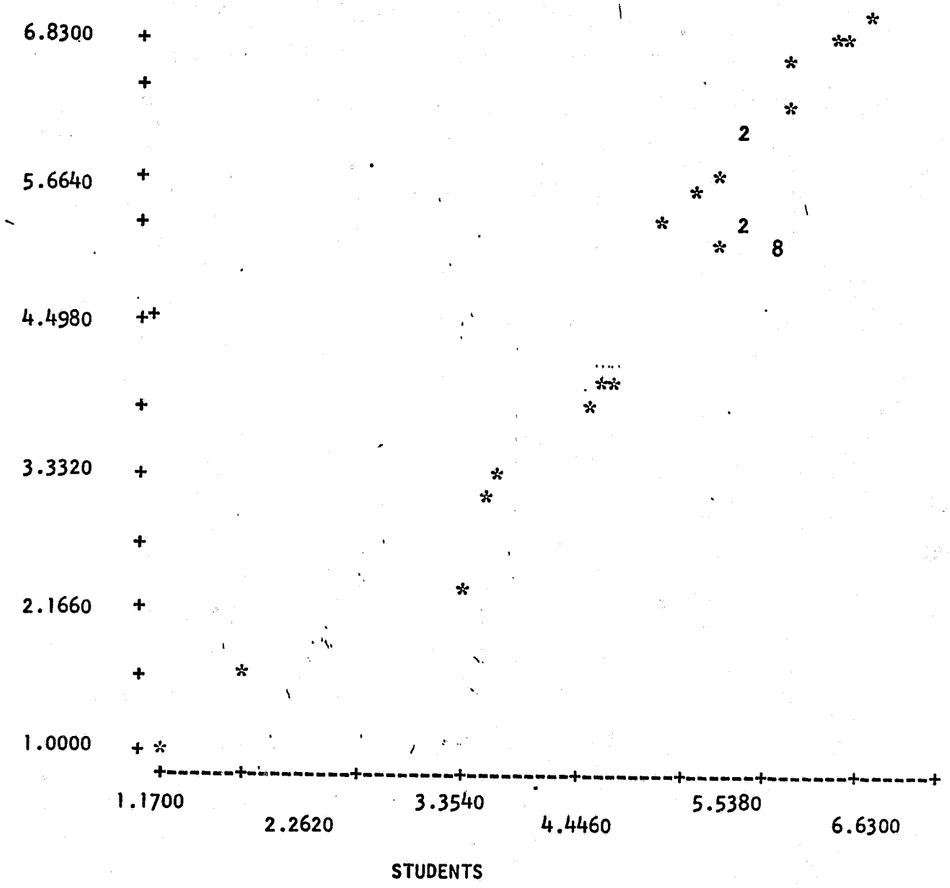
*All subjects are college students

ARITHMETIC MEAN OF JUDGED "BADNESS"
OF PRIOR RECORDS*

CRIMINAL HISTORY SHEET	NO DISPOS SHOWN ANCHORS 7 POINT SCALE
1	2.67
2	6.50
3	4.83
4	2.17
5	-
6	1.50
7	3.00
8	6.50
9	5.33
10	5.12
11	5.12
12	5.00
13	5.67
14	4.67
15	-
16	4.00
17	6.83
18	6.33
19	3.67
20	5.50
21	5.50
22	4.00
23	1.00

*All subjects are ADA's Dade County, Fla.

SERIOUSNESS OF A PRIOR RECORD SCALED
BY STUDENTS AND ASSISTANT PROSECUTORS
(For 21 Criminal Histories)*



No Dispositions shown, anchors, seven point scale

The tables show the results of testing. Some of the conditions had dispositions while others had none. Some had 'anchors' (pre-test extreme cases defined by the experimenter to have the highest and lowest values possible); others had none. Some conditions had eleven point scales and some had seven point scales. At the end, we adopted the seven point scale with no anchors as the standard.

The scatter plot shows the relation between the students' estimates and those of a small group of assistant District Attorney's. They are in substantial agreement. This raises, but does not establish, the hypothesis that there is numerical agreement between the prosecutor and his constituents as to what constitutes a serious prior record of an offender.

The question of the effect of including or excluding disposition may be <u>partially</u> answered. The following table shows that for Kings County Assistant District Attorney's essentially the same responses were given whether or not dispositions are included. However, there are some exceptions and work is currently being undertaken to find out if there is any coherent explanation for these differences.

Other analysis (not displayed) gives rise to the following hypothesis: Withholding disposition information causes estimates to regress towards the mean. That is, if an offender has been acquitted of all charges on all offenses and this information is withheld, then the estimate of his record will be in the direction of <u>more</u> serious. If an offender has been convicted of every offense and this is withheld, then the estimates will be towards less serious. In other words, the

"very innocent" would be harmed and the "very bad" would be rewarded. Whether this is really true and, if so, how extensive the effect is has yet to be determined.

The data so far derived were cast into a regression format and subjected to a forward step-wise regression analysis. Since the numbers are small and are derived insofar as attorneys go, from a single office, the reader is urged to employ even more caution than usual in interpreting the results which are, nevertheless, interesting.

In particular, the results show a good deal of agreement between students and prosecutors but the prosecutors seem able to employ more variables in arriving at a decision. Thus, very tentatively, we suggest that a prosecutor, when he looks at a prior record, acts as if he does the following:

1. Start out with 1.4
2. Add 7% of the number of arrests
3. Add 16% of the number of crimes against persons
4. Add 38% of the value of the last offense (which ranges from a low of 1 to a high of 4)
5. Add 19% of the percent of SW index offenses (served in 10 values)
6. Add 16% of the number of offenses involving 'heavy' drugs.

Clearly, the above model is not only tentative but "artificial". A much more straightforward model is now being tested and shows promise. But even this preliminary work promises that the simulation of how a prosecutor makes up his mind about a prior record is within our grasp.

Table 1

Comparison of Ratings Assigned by Assistant District Attorneys, Kings County, N.Y. on Criminal Histories With and Without Dispositions*

Criminal History		Min.	Max.	$\bar{x}$	Mdn.
1.	No Disposition	1	3	3.3	2
	Disposition	1	4	2.2	2
2.	No Disposition	5	7	6.0	6
	Disposition	4	7	6.1	6
3.	No Disposition	3	5	4.4	5
	Disposition	2	5	3.4	3
4.	No Disposition	1	2	1.7	2
	Disposition	1	2	1.7	2
5.	No Disposition	2	5	3.9	4
	Disposition	1	5	3.0	3
6.	No Disposition	1	2	1.3	1
	Disposition	1	2	1.2	1
7.	No Disposition	2	3	2.4	2
	Disposition	1	3	1.6	2
8.	No Disposition	5	7	6.6	7
	Disposition	6	7	6.6	7
*9.	No Disposition	5	6	5.8	6
	Disposition	2	4	3.0	3
10.	No Disposition	3	7	5.3	5.5
	Disposition	2	6	4.8	5
11.	No Disposition	4	7	5.1	5
	Disposition	2	7	5	5
*12.	No Disposition	4	6	4.9	5
	Disposition	1	3	1.9	2
13.	No Disposition	3	6	4.9	5
	Disposition	5	6	5.7	6
*14.	No Disposition	3	6	4.6	5
	Disposition	1	4	2.6	3

*Based on ten raters who received histories without dispositions and nine raters who received histories with dispositions

Table 1 Cont'd

Criminal History		Min.	Max.	$\bar{x}$	Mdn.
15.	No Disposition	2	6	2.7	2
	Disposition	2	6	3.4	3
16.	No Disposition	2	5	3.4	3
	Disposition	2	5	3.4	4
17.	No Disposition	5	7	6.8	7
	Disposition	4	7	6.6	7
18.	No Disposition	5	7	6.4	6.5
	Disposition	6	7	6.9	7
19.	No Disposition	2	5	3.5	3.5
	Disposition	1	5	3.4	4
20.	No Disposition	6	7	6.5	6.5
	Disposition	3	6	5.5	6
21.	No Disposition	3	7	5.0	5
	Disposition	4	7	5.4	6
22.	No Disposition	2	4	3.3	3
	Disposition	2	5	3.8	4
23.	No Disposition	1	1	1	1
	Disposition	1	1	1	1
24.	No Disposition	2	2	2	2
	Disposition	1	3	1.6	1
25.	No Disposition	7	7	7	7
	Disposition	7	7	7	7

DATA PROCESSING--TECHNIQUES, PROCEDURES AND ANALYSIS

Edward C. Ratledge

Data Processing--Techniques, Procedures and Analysis

The handling and preparation of the data set for this project was more complex and difficult than that associated with the typical type of statistical analysis. Part of this was due to the two-fold effort of analyzing the dependent variables and designing a system capable of meeting the needs for the long-range analysis of the independent variables. Furthermore, since the data was being gathered at four different sites and the need for extensive quality control measures was increased to ensure the validity of each site's responses.

As each evaluation form was received for processing it was edited for completeness and assigned an identification number. Originally it had been anticipated that data entry would be done directly from the evaluation forms. However, the manner in which many assistants chose to answer the questions and the difficulty that the keypunching staff had in accurately transferring the data from the forms to the cards dictated the use of coding sheets. In the end this approach was easier, faster and entirely more accurate. Thus, each item of data was transferred from the form to the coding sheets prior to key-punch and verification.

Fifty cases from the Brooklyn data set was entered to determine what types of problems were likely to surface during the analysis. Based on the results of that pre-test, the analysis program was designed. After input, each of the four separate data files was loaded to a disc file on the University of Delaware's Burroughs B7700 computer system. Each data set, in turn was subjected to two computer based edits. The first edit checked the sequencing of each record to insure that each assistant was associated with 30 records (cases.) Further, the program evaluated whether the case numbers were those that were required and whether they were in the proper order. As a result of this edit, cases were identified where the attorneys had skipped cases or had formed the evaluations out of sequence. This was not unexpected since a

decision had been made to collect the data at each site without the active supervision of a project team member. This approach was taken with the idea that a large number of offices might be done at some later time. It was confirmed that the computer edits were sufficient to permit data collection to proceed unsupervised and that the quality of the data could be assured.

After all basic problems with the sequencing of the data set were completed, the data was edited a second time. This edit had several purposes. First, it validated each field to insure that the value contained in the data on the record, fell within the allowable range; or where the value was a table value and could be checked independent of the range, such checks were also made. Second, if data were missing, the appropriate missing data codes were assigned. In the initial instructions skip patterns were not specified; instead, they were to be set after the data was collected. For example, in one question the assistant was asked whether the case should be accepted for prosecution. If the response was negative, the initial instructions were ambiguous as to whether he should at that point, skip to the next case and not answer the remaining questions. Only after reviewing the forms and weighing the effects of either decision it was decided to exclude any answers following the response that the case would be screened out. Thus, for analytical purposes data codes were automatically generated for the case where the question was answered. However, the original data as collected is maintained in the original data file.

At this point, to further simplify the identification of the cases in the office a base sequential number was assigned to each assistant and the cases were renumbered from 1-30. The original I.D. numbers and the original case numbers were maintained; however, for simplicity these additional codes were entered along with the set number and a new variable which specified that

a particular attorney was a leader. The leader variable does not appear on any of the coding directions; a value of zero is assigned if the individual is a leader and a one if he is not. This permits proper sorting. Coding the Brooklyn data required the preparation of a completely separate data file for the analysis of multiple leaders i.e. unit chiefs. In that particular case, the leader will always appear at the front of the set of followers in each specified unit. The output of this second edit is the third data file created in the series. A fourth data file was created which reorganized the data set by case number. The structure of that data file has each case sorted in numerical order and the number of assistants rating that case following sequentially. In the previous data file, of course, the assistant was the key variable and his 30 cases were sorted in case number order. It should be noted that where an individual leader served more than one unit, additional records were inserted at the front of each unit. Thus, the final number of records in the specialized unit is different from those found in the original data files. Since some types of analysis as well as the structure of the data files were not generally suitable for the production of reports by standard statistical packages, several report generators were written. The first r eport produces a frequency distribution of the dependent variables beginning with priority and ending with sentencing. The results for each office and for each case within that office appear on separate pages. Where the data was appropriate, means and standard deviations were also reported. Futhermore, a summary table for all cases was produced at the end of each report. For Brooklyn, a report was generated for each unit in addition to one for the office as a whole. Since approximately 60 of the individuals taking the test in Brooklyn were new assistants, they were segregated in the analysis from all other attorneys. Thus, there are 216 assistants included in the basis analysis for Brooklyn with 282 attorneys processed in the extended analysis.

A second report displayed, for each of the dependent variables, the responses supplied by the designated leader followed by the responses of each assistant with the assistant sorted in order from least experienced to most experienced. This assisted in determining outliers very quickly with respect to both policy and with respect to all other individuals in the group. The report generator deals with the congruence or agreement of the individual assistant with the decisions of the policy maker.

To eliminate some of the complexity in the congruence analysis only, each of the dependent variables was recorded. The priority scale was reduced from 7 states to 3 where values 1 and 2 were coded to the first category 3, 4, and 5 to the second and 6 and 7 to the third. A fourth category was formed for missing data. For the screening variable, there are only 3 categories with yes =1, no =2, and missing data =3. Disposition was recoded so that the first category contained pleas; the second, convictions; the third, was all other types of disposition, and the fourth missing data. Exit point was recoded to indicate the pre-arraignment stage, the post arraignment but pre-trial stage, and the unit trial stage with missing data in the fourth category. The final variable, level of charge, was defined in two ways. The first placed felonies in the first category, misdemeanors in the second, violations in the third and missing data in the fourth category. Alternately, category 1 contained "as charged" responses, category 2, "reduced charges", and the remainder were coded as in the previous method.

The responses of each assistant were then matched with those of the leader for all 30 cases--matches were assigned a value of 0 and mismatches the value of 1. An index agreement is computed by comparing the total matches to the total possible matches. The index is constructed for all dependent variables. If the leader has rejected a case, any responses made by the assistant

about disposition, exit point and level at exit are not considered. The match and mismatching for those are accounted for in the analysis of the screening variable. To carry the technique over the latter process step variables would misstate the level of agreement.

The final report deals with a measure of a quantity which we call IQV (Internal Quotient Variation). IQV measures the total amount of variability in the system as compared to the theoretical possible variation that could have been observed. This can be illustrated by a three state variable on a nominal, interval or ordinal scale. Maximum variance would occur when the responses are equally divided among the three responses. The least possible variance would occur when all responses were the same. This particular type of analysis was used to measure the uniformity among assistants within the office or within an organizational unit of an office when respect to each of the dependent variables. It is particularly useful in identifying disagreements with the policy maker where a relatively low value is found on the agreement index but the assistants agree on IQV. Uniformity within a unit can also be measured and the degree of agreement with the leader when compared to the office leader of the extent to which the policy was either misunderstood or was being transmitted poorly.

The output report for this generator contains IQV scores for each case. In addition, an average score is recorded to obtain the total index for the 30 cases. In calculating the index of agreement, we considered the entire matrix independent of the cases. For IQV, this is clearly an inappropriate measure. The scores produced for IQV are inverted since a large value of IQV indicates relatively low levels of consistency in the answers. The IQV values have been modified to move in the same direction as the index of agreement.

That is the value presented in all tables in 100 minus the calculated IQV score. Normally an IQV of zero represents complete agreement or the lowest possible variance in the system. With the transformation, the value shown in the tables would be 100. Thus, for both the index of agreement and the index of IQV the higher the score the greater the degree of agreement or uniformity.

In this particular report, a case-by-case analysis was not sent. Even though measures both of IQV and the index of agreement have considerable value in identifying problems in cases, the measurement of total agreement across all cases was the primary objective. The analysis of the individual cases was reserved for incorporation into the analysis of the independent variables.

Special software was also written which took the leaders from each one of the offices and substituted their responses to the other offices. In this way the leader in Brooklyn for example, was matched to the assistants in Wilmington, Salt Lake City and New Orleans, as well as his own office. Adjustment had to be made to the cases since only 24 of the 30 cases were common to all four offices. While only one case was totally different for Salt Lake City and New Orleans as compared to Wilmington and Brooklyn, five others had small modifications performed to tighten the scenarios.

As a final note, it should be noted that all software written for this project was prepared in Algol, although analysis was conducted using both SPSS and MIDAS with the SPSS work being done at the University of Delaware on the B 7700 and the DEC KL 10 with MIDAS being used on the Michigan Terminal System via Telenet. The data files, however, were identical in both cases indicating very clearly that the structure of the files was sufficient for transferring between systems.

METHODOLOGY FOR STUDYING TRANSMISSION OF PROSECUTORIAL POLICY USING THE STANDARD CASE SET

METHODOLOGY

In order to measure the amount of uniformity and consistency in an office, a set of cases was given to each assistant accompanied with an evaluation form that asked six questions about each of the 30 cases.

The attorneys were asked to evaluate each case with respect to a series of decisions. These included:

1. Assign an overall priority for prosecution;
2. To accept or reject the case;
3. How to best dispose of the case, e.g., plead, trial;
4. Determine the point in the system where it would exit;
5. Estimate whether the charges would prevail or be reduced; and;
6. Decide whether the defendant should be incarcerated.

The use of a test instrument approach insured that the variables of interest were under our research control. The alternative to this approach, sampling from closed cases in each office in the study, is not only too costly in terms of resources and time, but also yields results too difficult to interpret since control over the contents of the case set is reduced. In addition, since our research also included the comparative analysis of some offices to measure policy differences, this test instrument approach using the standard case set insures that everyone reviews the same set of cases.

At the time of this report the standard set consists of 235 fundamentally different cases from which different combinations can be

selected depending on the needs of the research. The cases were drawn from the closed files of the Attorney General's Office in Wilmington, Delaware, and supplemented by cases from Brooklyn, New York and Miami, Florida.

After review and selection, the cases were edited to reflect language that would be common across the country; they were rewritten in a standard format to yield a product that would be familiar to the evaluating attorney; and where there were elements of uncertainty about the crime, e.g., the amount stolen or degree of injury, that information was specified. (Uncertainty is a very real problem in prosecutorial decisionmaking, however, at this stage in our research program, to introduce uncertainty is not productive.)

All the questions listed above with the exception of one reflect assessments made by assistants on a daily basis. The exception is the priority for prosecution scale that runs from one (least serious) to seven (most serious). This scale attempts to capture the overall importance of the case with respect to its priority for prosecution.

The responses to each of these questions were compared to the responses of the Chief Prosecutor or his designated chief so that the amount of agreement could be measured. This was not a simple task as it might appear to be on the surface. Once an index of agreement was calculated, it had to be transformed to account for any agreements that might have occurred by chance. In addition to these chance agreements, other factors need to be accounted for. These include the common law school background of the attorneys in addition to the more general effects of socialization. Although

these factors cannot be separated from the results presented here, their influences should be considered when the analysis is displayed.

To help control the influence of these outside factors, some of the variables used in this report were recoded. This procedure was adopted to permit slight variations in the level of response given to those particular variables. For ease of analysis, no more than three levels were accorded to any variable recoded. The structure is described as follows:

1) PRIORITY	1=LOW 2=MIDDLE 3-HIGH
2) SCREENING	1=ACCEPT 2-REJECT
3) TYPE OF DISPOSITION	1=PLEA 2=TRIAL 3=ALL OTHER
4) CASE EXIT POINT	1=EARLY 2=MIDDLE 3=LATE
5) LEVEL OF DISPOSITION	1=ORIGINAL CHARGE 2=REDUCED CHARGE 3=VIOLATION OR OTHER
6) LOCKUP	1=NONE 2=FREE BUT CONSTRAINED 3=INCARCERATED

After the recoding procedure, the responses for each case for each attorney was evaluated using these variables.

In interpreting the results, the following logic was used: if policy is being transmitted from the leader to assistants, then the leader should match closer to the assistants than any randomly selected assistant in the office. We applied a more rigorous test. Rather than selecting an assistant randomly, we assumed that each assistant was the leader and the others were the followers and measured the agreement obtained for each pair. Then, an average agreement index was calculated and transformed in the same way as it was done for the stated leader. When a comparison of these agreement levels was made with the true leader, we were able to interpret the results as follows. If peer group agreement is lower, we assume that the contributing factor is due to policy transfer. If they are the same, then either the prosecutor's policy has been integrated into the group, or the factors of socialization or common education backgrounds may be the prevalent forces. If the peer group agreement rates are higher, then we will assume that the leader's policy or decisions is not being reflected by the assistants. In this latter circumstance, we will designate the highest ranking attorney, the one who best mirrors the decisions of his peers, as the Peer Group Leader in contrast to the organizationally designated True Leader and display the level of agreement. In this way, the amount of difference between him and the prosecutor can be presented. The reader should be cautioned, however, in interpreting differences between the leader and the peer group leader that show the peer group leader to have higher levels of agreement. In some instances, the peer group leader may have such authority delegated to him. In other instances, the true leader may not be involved in the day to day decisions of the office but rather reserve only the special (or sensitive) issues for his attention. Clearly, this type of delegation needs to be identified before the results can be interpreted with respect to policy transfer breakdowns.

A NEW LOOK AT CROSS-SITE PROSECUTORIAL DECISIONMAKING

By

Edward C. Ratledge

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Introduction

Interest in the discretionary power of the prosecutors of this country has grown steadily over the last decade. Much of that interest has been focused on the single issue of "plea bargaining." We have seen laudatory statements flowing about no plea policies which have been instituted in jurisdictions such as New Orleans and the state of Alaska. At the same time, offices which rely heavily on plea negotiation as a means of disposing of cases have been castigated for "putting criminals back on the street." At the central core of both of these policies must lie a decisionmaking framework since the decision as to how each defendant will be dealt with is not random. Certain factors influence the decisions although they may be weighted differently among jurisdictions.

The research reported in this paper is on-going. It is an extension of work which began at the National Center for Prosecution Mangement in Washington, D.C. in 1973 [1] and more recently was continued at the Bureau of Social Science Research [2,3,4]. This research has focused on several objectives:

1. To describe the decisionmaking process common to all prosecutors;
2. To determine which variables impact each one of these decisions;
3. To measure the weight of each variable with respect to each decision;
4. To identify differences in the structure of these decision models between different sites and similarities if they occur.

This paper will summarize the experiments which have been carried out in the past three years in fifteen prosecutor's offices. It will suggest that there are indeed common variables used in evaluating cases and that different variables play a role at the various decision points. All in all it suggests that prosecutors are rational and consistent in carrying out the policies of their respective offices.

The paper is divided into four sections. Following this introduction the basic methodology of the study is described and this is followed by a discussion of the database and its characteristics. The third section contains the results of the work and the last section is a general statement of findings and conclusions.

Methodology

This research has been conducted in two phases. In the initial phase a deliberate decision was made to develop instruments which would allow absolute control on the stimuli in the experiment. The basic instrument, an example of which is included in the Appendix, is a criminal case and the criminal history of the defendant. This case is one of 241 which have been tested across the country at this time. Each case in that set was developed from a real case but was standardized to eliminate regionalism and to provide a good format. The research team also has altered certain facts of the case to deliberately introduce variance with respect to evidence and severity of the crime in its research design.

The criminal histories were generated synthetically and are also totally under the control of the research team [5]. These instruments also had their roots in real "rap sheets" but were then produced

via simulation in order to avoid the appearance of pattern and to handle the problem of missing information.

The final instrument administered to prosecutors and their assistants consisted of 30 of these standardized cases. Each attorney provided his response to a series of decisions. In this paper we are concerned only with four of those responses. First, we are concerned with the overall priority for prosecution. While the Sellin-Wolfgang scale attempts to measure the seriousness of the event, it does so without reference to a defendant. Over the years we have seen that a serious crime committed by an "inexperienced" defendant is not viewed as seriously as one committed by a defendant with a long criminal history. In this research, we have used a balanced design with 3 levels of seriousness and 3 levels of criminality to allow for measurement of the off-diagonal elements. Priority is an attempt to combine this two dimensional problem along a single vector.

The second response is whether the case will be prosecuted at all. This decision is absolutely crucial since it is at the crux of the plea bargaining controversy. In New Orleans for example, the policy is not to plea but also not to accept cases which might have to be pled out at a reduced charge in order to dispose of it. In contrast, Wilmington might choose to accept the case but be willing to reduce the charge in order to get some type of adjudication. The accept-reject decision in large part specifies what methods or dispositional routes are going to be used later on.

The third response attempts to capture the likelihood that the case will be pled to a reduced charge. Here we are attempting to determine what factors influence this decision. Is it a weak case or

perhaps a case with a first time offender? These are important judgements if plea negotiation is to be consistent.

Finally, the respondent is asked whether the case is likely to go to trial. Just as in the case of reductions there must be some rational reason why some cases go to trial and others don't. In this research, we find that trial rates tend toward 8 percent of all cases independent of jurisdiction or legal system.

In phase I of this research four sites were chosen for an extended pre-test of the concepts contained in the standard case set. They are listed below:

1. Attorney General's Office, Wilmington, Delaware.
2. County Attorney's Office, Salt Lake City, Utah.
3. District Attorney's Office, Orleans Parish, Louisiana
4. District Attorney's Office, Brooklyn, New York.

Each of these offices was tested with the same set of case-defendant instruments. In Phase II, another comparative set of offices was chosen. All of these offices rated the same case set although a different set from those listed above. These new sites were:

1. County Attorney's Office, Des Moines, Iowa.
2. Prosecuting Attorney's Office, Kansas City, Missouri
3. Prosecuting Attorney's Office, Detroit, Michigan.
4. District Attorney's Office, Buffalo, New York.
5. District Attorney's Office, Baton Rouge, Louisiana

Finally, in order to expand the number of case-defendant combinations giving a wide variety of different characteristics, six additional sites were tested each with completely different cases. These sites are listed below:

1. Minneapolis, Minnesota
2. Phoenix, Arizona
3. Miami, Florida
4. Crown Point, Indiana
5. Rockville, Maryland
6. Seattle, Washington

In the final analysis, more than 800 attorneys responded to these instruments giving 449 different case-office measurements on 231 case-defendant combinations.

Database

A decision was made early on in this research that we would concern ouselves only with inter-office variance for this analysis. The entire issue of uniformity and consistency within an office is examined in other papers [5,6]. Thus, the dependent variables in this study represent office average responses. PRIORITY, a seven point scale, is the arithmetic average of all respondents to the case who rated that variable. ACCEPT is the proportion of responding attorneys who would have accepted the case. REDUCE is the proportion of attorneys accepting the case who would plead the case to a reduced charge. TRIAL is the proportion of all attorneys accepting the case who would take that case to trial.

To each of these summary measures were appended the independent variables associated with that case. These were drawn from three separate files:

1. The evidence file which contains the characteristics of the crime and the circumstances of arrest;

2. The seriousness file which contains the elements of the Sellin-Wolfgang scale and the summary score;
3. The criminal file which contains the attributes of the criminal history and the Criminality Scale.

Together these form the observations which will be analyzed in this paper. A complete list of the variables included in the analysis are found below:

1. CONFESS--One if there was a confession made in this case.
2. SWSCORE--The Sellin-Wolfgang seriousness index.
3. CRIMINAL--The Criminality scale developed in this project in log form.
4. COMPLEX--A subjective measure of the legal complexity of the case type (1 to 4).
5. CONSTPROB--One if there was a constitutional problem in the case, e.g. Miranda.
6. CIVWITCRED--One if there is any problem with the credibility of the witness.
7. CIVWITPRIOR--One if the witness has a prior record.
8. POLWIT2U--One if there is more than one police witness.
9. CIVWIT2U--One if there is more than one civilian witness.
10. INTIMATE--One if the defendant was intimate with the victim.
11. KNOWN--One if the defendant was known to the victim but not intimate.
12. GUN--One if a gun was used in the event.
13. PROPOSS--One if property was found in the possesion of the defendant.
14. TESTIM--One if there was testimonial evidence available.

15. FORENS--One if there was forensic evidence available.
16. ONSCENE--One if arrested on the scene.
17. HOURS24--One if arrested within 24 hours but not at the scene.
18. ADMISS--One if there was an admission made but not a confession.
19. OFFICE--A dummy variable is entered representing each of the offices and Des Moines becomes the base office.

Before turning to the results a couple of clarifications are in order. First, the choice of the evidentiary variables was dicated partially by experience and partly by the variation which we introduced in the cases. While some 80 variables were available, there was not enough variation to permit their use. Exploration for these effects will have to wait for an expansion of the sample.

Second, there is at least some overlap between evidence and SWSCORE since the presence of a weapon increases the SWSCORE. Our experience shows that seriousness does not capture all of the variance however. Third, COMPLEX has not been developed fully as a scale and interpretation of the variable is limited. Each NCIC codes was rated on a scale of 1 to 4 with respect to the complexity of the proof required.

Finally, the dummy variables representing POLWIT2U and CIVWIT2U were selected based upon the opinion of several District Attorneys and measure the existence of corroborating evidence. The complaining witness and the arresting officer are in a sense interested parties and will require backup.

Results

The models predicting each of the four dependent variables, i.e. PRIORITY, ACCEPT, REDUCE, and TRIAL are estimated using ordinary least squares regression. As you will recall the first variable has a value which varies continuously between 1 and 7 while all of the other variables vary between 0 and 100. From a methodological point of view, we would have preferred to use a combination of regression and probit analysis for REDUCE and TRIAL since the response is dependent upon accepting the case. Software is now being converted to handle this problem. Thus, those results may change after some future analysis.

In Table 1 we find the results for predicting PRIORITY. The adjusted R SQUARE for this equation is .56 with an overall F(32,416) of 18.8 which is significant at the 1 percent level of confidence. The coefficients indicate the increase (decrease) in PRIORITY associated with a 1 unit movement in that variable.

The Sellin-Wolfgang score is a powerful predictor of the priority of a case for prosecution. For each unit in SWSCORE, PRIORITY increases by .09 which translates to a possibility of moving the PRIORITY a maximum of 3 points over its range. Note however that CRIMINAL is also a strong predictor after considering SWSCORE. This variable will shift PRIORITY about 1 point over its range. This would imply that the offender has a significant role in the decision process but the crime will be the controlling variable.

It is interesting to find that COMPLEX is significant. This suggests that prosecutors do not necessarily downgrade complex cases simply because they are difficult. COMPLEX will only shift PRIORITY about 1 point over its range.

TABLE 1

FACTORS AFFECTING THE PRIORITY FOR PROSECUTION

	Coefficient	F-Statistic
SWSCORE	.092	66.3
CRIMINAL	.313	25.1
COMPLEX	.183	6.6
CONSTPRB	-.466	7.0
POLWIT2U	.513	35.5
CIVWIT2U	.383	16.6
KNOWN	.310	9.6
GUN	.825	31.4
ADMISS	.219	4.5
(Constant)	2.103	
Site: Brooklyn	-.751	12.0

If there is a constitutional problem, the case will be downgraded on the average .5 units. If a search problem exists or perhaps a Miranda issue the prosecutor will lower the case in its priority for prosecution.

Both the existence of corroborating civilian witnesses and police witnesses are important and can shift PRIORITY about one half a point. It appears that police witnesses might be slightly more valuable but a simple T-test shows that the two coefficients (.51 and .38) are not statistically different.

Among the remaining variables, GUN, KNOWN, ONSCENE, and ADMISS are statistically significant. Predictably, GUN has the largest coefficient and can shift PRIORITY nearly a full point. This indicates also that the SWSCORE does not fully capture the effect of the variable. ADMISS and KNOWN are both significant and have the appropriate sign. However, it is interesting that their counterparts, CONFESS and INTIMATE, are not significant. Finally, ONSCENE has the opposite sign which we would expect. While one can only speculate, it may reflect the characteristics of those cases in which the arrest is made on the scene. This is currently under investigation.

The last class of variables are the site dummies. Originally, we had hypothesized that PRIORITY should be a universal variable without regional or jurisdictional variation. While nine of the sites have statistically the same value for this variable, six are technically different. However, only Brooklyn has a value more than .5 away from the base site. One might conclude that Brooklyn has such "heavy" cases that their overall ranking would tend to be lower. All in all, the sites do tend to group together.

In Table 2 the results for the model predicting ACCEPT are reported. The reader is reminded that each unit of the coefficient now relates to percentage points, e.g. a coefficient of 9.0 means that a 1 unit move in that variable shifts ACCEPT by 9 percent.

In contrast with PRIORITY, the adjusted R-SQUARE is only .26 with an F (32,416) of 5.8 which is significant at the 1 percent confidence level. This variable does not have a desirable distribution in that usually 90 percent of the attorneys accept the case or 10 percent of the attorneys accept it. There is not the nice smooth

continuum which we find in the other variables. To get that type of distribution would require a much larger sample or would have resulted in a compromise of the other objectives.

TABLE 2

FACTORS AFFECTING THE DECISION TO ACCEPT A CASE

Variable	Coefficient	F-Statistic
SWSCORE	.950	10.6
CONSTPRB	-17.830	15.5
POLWIT2U	9.611	18.8
(Constant)	66.475	
Sites:		
Minneapolis	-13.741	4.7
Salt Lake	- 9.611	3.0
New Orleans	-10.454	3.5

Referring to Table 2, it is clear that the model is different from overall priority. While SWSCORE remains significant and can shift ACCEPT by 30 percent over the range, CRIMINAL is not a significant factor at this point. This suggests that prosecutors are not looking primarily at the defendant at this stage but rather the crime and its characteristics. This is further supported by CONSTPROB. If there is a constitutional problem with the case, ACCEPT will decline by 18 percent. Police witnesses appear to be more important at this stage since the prosecutor has usually not been able to interview civilian witnesses

at this point. Having two or more police witnesses shifts ACCEPT by 10 percent while CIVWIT2U is not statistically significant. It is also interesting that ADMISS, CONFESS, and GUN play no role at this stage in the process.

Among the site dummies, only Minneapolis, Salt Lake City, and New Orleans are different than the base site. Those sites also have an expressed policy of heavy screening.

Table 3 contains the results for REDUCE. The adjusted R-SQUARE for the model is .50 with F (33,415) of 14.6 which is significant at the .01 level of confidence. This model is decidedly different from PRIORITY and ACCEPT. The seriousness of the crime does not play a significant role but CRIMINAL does. For each point on the logged CRIMINAL scale REDUCE falls 5 percent. Thus, prosecutors are less likely to reduce charges for serious defendants independent of the seriousness of the crime. You will recall that the opposite was true for ACCEPT. First time offenders with serious crimes will get in the system (ACCEPT) but will probably be disposed of with a lesser charge (REDUCE).

There are a number of interesting results in the rest of the model. First, CONFESS and ADMISS go in different directions. If you confess to the crime REDUCE increases by 9 percent but if you admit to the crime but are unwilling to confess the prosecutor will view this negatively and decrease REDUCE by 4 percent. If the case is complex the prosecutor is more likely to reduce the charge. In a previous model, it was noted that PRIORITY increased with COMPLEX indicating that prosecutors do not avoid the tough cases, but this model suggests that the case will be accepted for prosecution but the prosecutor will

TABLE 3

FACTORS AFFECTING THE DECISION TO REDUCE CASE CHARGES

Variable	Coefficient	F-Statistic
CRIMINAL	- 5.088	18.8
CONFESS	9.227	3.7
ADMISS	- 4.493	5.4
COMPLEX	3.363	6.3
KNOWN	- 9.099	23.7
GUN	- 5.239	3.6
(Constant)	28.032	
Sites:		
Kansas City	12.817	10.3
Buffalo	38.719	94.4
Detroit	34.433	74.7
Phoenix	23.367	29.7
Brooklyn	35.531	77.1
Rockville	18.335	20.2
Wilmington	11.165	7.6
New Orleans	- 9.407	5.4

avoid sending it to trial. Finally, if the defendant is KNOWN but not INTIMATE or if there is a GUN involved then the case is much less likely to be reduced.

The most striking difference in the model is within the set of site dummies. Kansas City, Buffalo, Detroit, Phoenix, Brooklyn, Wilmington, and Rockville all reduce charges at a higher rate than the base site and New Orleans reduces at a smaller rate. The remaining seven sites are not statistically different. Clearly this is a policy variable and also is reflecting the screening rate (ACCEPT). The range from the lowest office to the highest office is more than 40 percent.

The final model is found in Table 4. The dependent variable in this model is TRIAL, i.e. the proportion of attorneys who said the case would go to trial given that the case was accepted. The adjusted R-SQUARE is .52 with F (33,415) of 15.5 which is significant at the 1 percent level. The structure of this model is different than those that were discussed thus far. Both SWSCORE and CRIMINAL are very strong. SWSCORE will shift TRIAL almost 50 percent over its range. Clearly, this reflects the likelihood that a defendant will plead to a serious crime. CRIMINAL can shift TRIAL nearly 30 percent which reflects the fact that the prosecutor will be unwilling to plead the defendant to a reduced charge.

CONFESS and ADMISS are consistent as well. The probability of a trial goes down by nearly 19 percent if there is a confession and up by 14 percent if there is an admission without a confession. The case is also more likely to go to trial if the defendant knows the victim, if there are corroborating witnesses, or if there is a gun involved.

TABLE 4

FACTORS AFFECTING THE DECISION TO TRY A CASE

Variables	Coefficient	F-Statistic
SWSCORE	1.402	30.3
CRIMINAL	8.999	41.9
CONFESS	-18.554	10.6
ADMISS	13.624	35.3
GUN	10.273	9.9
KNOWN	9.821	19.7
INTIMATE	10.233	6.1
POLWIT2U	7.000	12.9
CIVWIT2U	5.172	6.2
(Constant)	- 1.680	
Sites:		
Baton Rouge	12.207	6.7
Salt Lake	10.319	4.6
New Orleans	11.835	6.1
Buffalo	-15.620	10.9
Phoenix	-15.663	9.5
Miami	-13.021	7.1
Brooklyn	-20.673	18.6

The site dummies exhibit some differences although not as extreme as for REDUCE. Baton Rouge, Salt Lake City, and New Orleans all tend to take more cases to trial than the base site and Buffalo, Phoenix, Miami, and Brooklyn take less to trial. These differences reflect not only trial capacity but also the overall plea policy of the office.

Summary

When we embarked on this research, there was only a gut feeling that there should be a great deal of similarity in the way decisions are made in prosecutor's offices across the nation. This feeling was based on observation in scores of offices during the past ten years. The reason for this degree of similarity may be in large part the law school training or perhaps a kind of socialization among assistants which is inherited over time or a general ethical standard. It is likely to be a function of all three.

The work which has been presented views the decision process from four angles: (1) the crime, (2) the criminal, (3) the evidence, and (4) the site. Each of the decision variables looks different when viewed in this way. PRIORITY included the broad range of all three variable sets. There were only minor differences between sites. ACCEPT largely ignores the defendant and much of the evidence data and relies upon the seriousness of the crime, the police officers, and the kind of constitutional problems which would cause the prosecution to lose later on.

REDUCE depends more upon the criminal then on the event. Prosecutors do not reduce charges for "bad guys" and certainly not for

those who will not confess. They are more likely to reduce charges for complex cases on which they will have to expend a large amount of resources to try and possibly lose. Finally, TRIAL is a function of both the crime and the criminal with little weight going to the evidence variables. This probably reflects the fact that cases which are locked will plead to the original charge unless it is really serious or the defendant knows he will get the maximum sentence even if he pleads. In other words there is nothing to be gained by pleading.

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APPENDIX

APPENDIX

CASE NUMBER 48

1. One June 3, 1977, the defendant, female, was arrested and charged with Attempt to Commit a Crime (to wit Murder in the First Degree) and also Possession of a Deadly Weapon During the Commission of a Felony.
2. On June 3, 1977, the arresting officer responded to a call concerning a knifing. When he approached the crime scene he noticed a group of people standing on the northside of the street waving to him. As the arresting officer (Witness #1) exited his vehicle he saw a male lying face down on the sidewalk with five or six people standing around him. The arresting officer then asked a female standing near the victim what happened. She stated her name and that she was the victim's girlfriend. At this point the the suspect was taken into custody. After advising the defendant of her rights, the arresting officer asked the defendant why she had stabbed her boyfriend and she stated "He was beating with his buckle and I'm pregnant so I stabbed him." Thereafter the defendant stated that she had only "sliced" the victim across the chest. The victim was transported to the General Hospital where he was treated and released.

Witness #2 who was at the scene stated that the defendant and the victim had been guests in her house during a crab feast and that approximately one half hour before the stabbing the two had left the house and walked across the street where an argument ensued, resulting in the incident and crime in question. Witness #2 saw the victim hit the defendant with a belt buckle. Witness #3 saw the same incident and saw the defendant stab the victim.

Defendant #19

Date of Birth: 11/8/47

Age at Arrest	Offense	Disposition
18	Possession of Heroin	Conviction
18	Possession Narcotics Equipment	Conviction
18	Possession of Heroin	Conviction
19	Possession of Heroin	Acquittal
23	Possession of Marijuana	Conviction
25	Procure for Prostitution	Dismissed

RESEARCH ON PROSECUTORIAL DECISIONMAKING*

Case Evaluation Worksheet

1. Case Number: _____ 2. Your Initials: _____

3. Circle the number that best represents the priority you, as a prosecutor, feel that this case should have for prosecution.

1	2	3	4	5	6	7
Lowest Priority			Average or Normal			Top Priority

4. After reviewing this case, would you accept it for prosecution?

(1) Yes: ____ (2) No: ____ If no, stop here. Go [redacted]

5. Consider the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one)

__1. Plea
__2. Conviction by trial
__3. Acquittal
__4. Dismissal and/or Nolle Prosequi
__5. No true bill
__6. Can't predict
__7. Other alternatives (specify)

6. Assuming the disposition you have given in Q. 5 occurs, where in the court process do you expect this case to be disposed of? (Check one).

__1. At first appearance for bond setting and defense counsel appointment
__2. At preliminary hearing
__3. At grand jury
__4. At arraignment
__5. After arraignment, before trial
__6. First day of trial
__7. End of bench trial
__8. End of jury trial

7. At what level will this case be disposed of?

__1. Felony
__2. Felony (lesser charge)
__3. Misdemeanor (as charged)
__4. Misdemeanor (lesser charge)
__5. Violation or infraction
__6. Other (specify)

8. In your own opinion and irrespective of the court, what should be an appropriate and reasonable sentence for this defendant? (Check one).

__1. None
__2. Fine and/or restitution
__3. Conditional release or discharge
__4. Probation
__5. Jail
__6. Penitentiary

9. If jail or penitentiary, what should be the minimum actual time served?

(1) Years: _____ (2) Months: _____ (3) Days: _____

*LEAA Grant Number 79NI-AX-0034

END