ARMED ROBBERY AND BURGLARY PREVENTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 6386

ARMED ROBBERY AND BURGLARY PREVENTION ACT

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CONTENTS

ARMED ROBBERY AND BURGLARY PREVENTION ACT

THURSDAY, SEPTEMBER 23, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., room 2337, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Members present: Representatives Hughes, Sawyer, Fish, and Kindness.

Staff present: Hayden Gregory, chief counsel; Edward O'Connell, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. HUGHES. The Subcommittee on Crime will come to order. I am going to proceed with my opening statement so that we do not hold my distinguished colleagues, Senator Specter from Pennsylvania, as well as our colleague Ron Wyden.

This morning we will be considering two similar bills, H.R. 6386 and S. 1688, which would permit Federal prosecution of any individual who, after being previously convicted of two or more robberies or burglaries, is charged with a third robbery or burglary involving the use of a firearm.

The objective of these bills, as I understand it from the sponsors, is to add the power of the Federal Government to the efforts of local prosecutors in dealing with habitual violent offenders. The problems caused by the habitual violent offender, or as they are sometimes characterized, "career criminals," are substantial. I am quite familiar with them dating back to the some 10 years I had in law enforcement in New Jersey.

At the present time I am sponsoring a bill, the Justice Assistance Act of 1981, H.R. 4481, a facet of which would fund at the local level successful career criminal programs. I am pleased to say, by the way, that our first witness today, the distinguished Senator from Pennsylvania, Arlen Specter, has a very similar approach, that is, funding for the local career criminal programs in another bill before the Senate, S. 2411.

Senator Specter is to be congratulated in that on Tuesday, September 14, his Justice Assistance Act was approved by the full Judiciary Committee in the Senate. I would at this time like to reemphasize my appreciation to Senator Specter for his continuing efforts in this area which I know stems from his long experience

during his most distinguished career as the Philadelphia district attorney.

The bills before us today are a different approach to this problem and do represent a departure from what we normally consider to be the division of responsibility concerning crime between the Federal Government and State and local government. However, the problem is of the magnitude that it may well be that new directions are demanded. These bills do recognize this.

For example, they call for, before exercise of Federal jurisdiction, consultation with local authorities who ordinarily would be trying these street crimes. As you develop and refine your bill in further proceedings, I urge you to give further attention to this feature of the bill. Most local prosecutors have both the determination and the resources to bring cases of this type to trial in State courts and to obtain an appropriate sanction. A few do not, and I understand these bills are aimed at helping them.

Since the vast majority of these street crimes must continue to be tried in State courts, I believe any authorization for Federal jurisdiction should make clear that the primary responsibility for these cases will remain with State and local authorities. A strong standard for the declination of Federal jurisdiction is essential.

The other specific concern I have is the question of the availability of Federal criminal justice resources—investigators, prosecutors, judges, jailers—to process these claims. Federal authorities already have considerable criminal law jurisdiction and responsibilities, and in most instances this is not a two-way street. That is to say, if Federal resources are diverted from present responsibilities to handle this new jurisdiction, the crimes being neglected cannot be picked up by State and local authorities and will fall through the net. We must not let this happen.

In my view, the problem of gun abuse is a substantial national tragedy, and these bills are designed to do something about this. Guns, and criminals who use them in crimes, move with ease in interstate commerce, and the criminal misuse of guns is a legitimate Federal concern as these bills recognize.

To stem the tide of illegal gun use we must take sensible steps to discourage the use of guns to commit crimes and can do so without infringing upon a citizen's ability to have and use guns for legitimate sporting purposes and for purposes of the defense of person and property.

My own legislative package to eliminate handgun abuse includes four basic elements: One, a 15-day verification period to permit law enforcement officials to do a record check to determine if the potential purchaser of a handgun is an ex-felon or a lunatic. As my colleagues know, we require a handgun purchase applicant to fill out a form which asks them, "Are you a lunatic?; Are you a felon?" and anybody who answers the question "yes" has got to be a lunatic to be applying for a gun. [Laughter.]

Two, mandatory sentences for persons convicted of using a firearm during the course of a Federal felony; three, dealers should be required to report the theft or loss of handguns to the police. We find that some 30 percent of the handguns used in the commission of felonies have been stolen, and yet there is no requirement that

those who traffic in handguns report the theft to the police; and four, a ban on machineguns and silencers.

I believe that at least these four features are needed for any legislative initiative if we are to attempt a comprehensive approach to the problems of violent crime involving firearms. As you know, similar suggestions have also been made by the Attorney General's Task Force on Violent Crime which pretty much tracks those recommendations.

I am sure that my distinguished witnesses today will comment on these and other matters of interest to this subcommittee. We all welcome you here and hope that we can benefit from your wisdom.

The Chair has received a request to cover the proceedings in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods in accordance with rule 5(a). Is there objection? [No response.]

Hearing none, such coverage will be permitted.

I welcome, first of all, the distinguished Senator from Pennsylvania, Arlen Specter, who I have followed with great interest during the years that he was district attorney. I really believe, Arlen, that in the years that you were the DA in Philadelphia you helped move law enforcement ahead by leaps and bounds—not just by your work in Philadelphia, but also your work within the confines of the National District Attorneys Association. I could not be more pleased to see you on the Senate side as one of the top national crime fighters, because you are in a unique position to use that tremendous experience that you have gained in trying to plug some of the holes in the criminal justice process.

Senator, you may proceed as you see fit. Welcome.

TESTIMONY OF HON. ARLEN SPECTER, A U.S. SENATOR FROM PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman.

It is a pleasure to be before this committee today and to continue our joint work on the important problems of crime control in this country. Your initiatives, Mr. Chairman, have been most important in moving forward on this very important legislation, and this morning marks another step in our cooperation to enact a very sizable crime package touching critical areas where the Federal Government has a unique role to play.

I think it appropriate to mention for the record that you and I held a news conference in Philadelphia earlier this week on Monday morning outlining to the citizens of the Delaware Valley, which covers a good part of Pennsylvania and a good part of New Jersey, what we are trying to accomplish. Later on that same day, we had a meeting with officials in the executive branch to expedite efforts to enact the justice assistance program, which I consider to be vital. We have conferred on this matter already this morning and plan to do more work today to try to get that legislation passed into law before this session of Congress adjourns. We have the cooperation of the Senate Judiciary Committee, Senator Thurmond, on this very important step forward in appropriate Federal involvement in State law enforcement. I certainly do commend you and

this committee for your contribution and your continuing efforts on this very important matter.

The career criminal bills before the committee this morning I suggest are part of a very carefully crafted and very carefully delineated, and very carefully limited Federal approach to the crime problem. The issues which you have raised in your opening statement I will deal with first.

There has been a development within the past day and a half on S. 1688, when this bill was passed by the Senate Judiciary Committee and a key change was made to accommodate the concerns raised by some of my colleagues in the Senate on the issue which you have raised. That is, the exercise of Federal jurisdiction without the consent and agreement of the local prosecuting attorney. My view had been to the contrary for reasons which I will not amplify now, but in the spirit of accommodation and trying to move this matter along on what I conceive to be a unique opportunity to pass the bill in both Houses and have it signed by the President. Since so much gets done in the last 2 weeks of the session, I have been willing to make a concession on that part. The National District Attorneys Association had been concerned that the State prosecutor ought to have the final say on whether a Federal prosecution is brought.

Language is being worked out between Senator Thurmond and me which will make that plain. The essence will be that the Federal prosecutor may make a suggestion or there may be a referral by the State prosecutor. If there is a referral or a request, then there is no problem about the assumption of Federal jurisdiction. Or if the Federal prosecutor thinks it ought to be a Federal matter, he can make a suggestion but it will require the consent of the State prosecuting attorney which in effect gives the State the control so many people have looked for. So I think that would solve the problems of a lot of people.

The question which you raised on resources is a very significant question. You and I agree that the Federal Government does not direct sufficient resources to the fight on violent crime. I believe that your subcommittee, the full committee of the House, and my subcommittee, and the full Senate Judiciary Committee, with our two bills on justice assistance will take a significant step forward on getting some greater participation. You and I both know it has not yet been determined how much that participation is going to be because it is a matter of negotiation. But I think that it will be a start in the right direction. There are a number of areas where the Federal Government ought to be more deeply involved.

One area is in creating programs to rehabilitate convicted persons both inside and outside our State prisons and in the construction of new prisons. It is vitally necessary to have a correctional system that rehabilitates where possible, and confines where rehabilitation is not possible. This issue on addressing these issues of career criminals and sentencing reform I conceive to be key building blocks to getting better Federal involvement.

Now why is it appropriate to have the Federal Government take on this responsibility when it is not doing the job it should be doing in other areas? Because the criminals which will be addressed by this legislation are the worst, or at least among the worst, in the

country. In reaching the stage where we are now—it has been an effort of a year and a half—I have secured the personal approval of President Reagan. I have asked for one meeting with the President since I have been in the Senate, and that was on this bill. I sat down with him and explained it to him and he favored it, subject to working it out with the Office of Management and Budget.

That meeting was attended by Attorney General Smith, Counselor Edwin Meese, and representatives of OMB. It was a sticky point to get OMB's approval. We finally got it on the basis that there would be limited commitment of the Federal Government to 500 cases a year. I would have preferred more, but again, in the spirit of accommodation, I thought that with 500 Federal cases, perhaps as many as 25,000 cases would be influenced in the State courts.

The statute provides that upon the third felony, the third robbery or burglary, a Federal prosecution may commence. But the reality is that it is going to deal with people who have committed 8, 10, 12 robberies, 6, 8, 12 burglaries, and there are many, many criminals that match that description, I know, because I have seen their records. If one of these career criminals faces the possibility of being tried in the Federal court where he could get 15 years to life, he is going to be discouraged from manipulating the State court system through judge shopping, as is often done in many big cities. He is not going to subject himself to being in the Federal lottery to be tried in the Federal court with the individual judge calendar and the speedy trial and the tougher sentences. So the leverage will be overwhelming.

But as to the 500 cases themselves, you raise a good point, Mr. Chairman, and accurately so, that the Federal Government is not doing the job it should with its existing jurisdiction. But I would say if you took the 1,000 worst criminals in this country that the Federal system deals with, these 500 to be prosecuted under S. 1688 would be in that 1,000. In fact, these 500 might be in the 600 worst criminals, or the 550. These career criminals are, simply stated, the worst.

The whole process of law enforcement is a selective basis. No matter how active any prosecutor can be, he cannot prosecute all offenses. There must be discretionary selection. And these are the worst of the worst which I think directly deals with the very legitimate second concern you have raised: How can the Federal Government take on new responsibilities in light of its not having completed the responsibilities which it has? So I think that really is the answer.

Mr. Chairman, every time I take a look at the statistics that my superb staff prepares me for these sessions, I am appalled anew. They grow, and I testify on this subject with some frequency. The most recent statistics I have this morning are that there are 3 million burglaries per year; that there are 500,000 robberies per year; that it costs $125 billion per year; and that 10 percent of those arrested are responsible for more than 60 percent of the crime.

An old statistic is worth one word of mention. That is, the famous Baltimore study that 238 career criminals committed 500,000 crimes over an 11-year period. Now I know I do not need to convince you distinguished gentlemen, Mr. Chairman and Con-

gressman Fish, about the scope of the problem, but those statistics are worth having in the record.

Then we come to the statute itself, which is very carefully crafted, as carefully as I could craft it. I have been in this business since 1959 when I became an assistant district attorney, and have sought, as much as I could, for some answer to the problem of street crime which would be constitutional and which would be sound, and have come up with the idea which is embodied in the legislation which we are considering. It is based essentially on two existing statutes which provide, I would submit, very sound precedents.

One is the Federal gun law which says that it is a Federal offense for somebody to possess a gun, a firearm, when he has been convicted of a State court felony—any State court felony. I was asked in my Judiciary Committee the day before yesterday, "How can you base a Federal crime on a State offense?" The precedent is conclusive: 18 U.S.C. section 1202 provides that it is a Federal crime to possess a gun if you have been convicted of a State felony.

The second statute on which this law is based are the habitual offender statutes which 41 States have at the present time. Some States say that it is three offenses, some States say that it is four offenses, but that is the general range of the category for classification of an habitual offender after which they may be sentenced to life in prison. So this is not a novel departure in calling for a 15-year-to-life sentence. It is based upon those two existing precedents.

After a lot of consideration, it was decided in the drafting stage to limit the offenses to two: robbery and burglary. We considered rape. We considered arson. We considered narcotics offenses. But in order to move this legislation, we decided to pick the two critical offenses, robbery and burglary.

Now that is the essence of it, Mr. Chairman. My sense is really, after working in this field for some 23 years, that the Federal Government could make an enormous contribution; that when we talk about the exclusionary rule and we talk about a lot of the matters which are being discussed, they are palliatives and they are window dressing and they are an effort to make it appear that the Federal Government is doing something. But in this limited way, to really get involved with robberies and burglaries would be a most significant step forward.

That concludes my remarks. I tried to make them somewhat brief.

Mr. HUGHES. Thank you, Senator, for a very substantial presentation. I must say, you make some very good arguments. I understand that you have some time problems?

Senator SPECTER. I do. I am due at this very moment in an Appropriations markup on the continuing resolution. We always fight the quorum problem, which is a subject well known to this committee.

Mr. HUGHES. We are about to fight that very shortly, too.

I wonder if my colleague, Ron Wyden, would defer to the Senator and let me ask him a couple of questions, and then we will get into your presentation, if we could, if that is agreeable with you?

Mr. WYDEN. Certainly.

Mr. HUGHES. Just a couple of questions. I understand your legislation would contemplate a mandatory minimum sentence with no probation, parole, or suspended sentence. I trust you are talking in terms of preventing the plea bargaining that would in fact undercut the thrust of your legislation?

Senator SPECTER. Yes, I am, Mr. Chairman. I am also basing that provision on the expectation that when it is clear what is going to happen in the Federal courts that the State courts will try many, many more cases. That leverage is just enormous.

Mr. HUGHES. Also, if I understand the thrust of your legislation, where a third offense is committed with the use of a handgun and the offense is one of robbery or burglary, Federal jurisdiction would be triggered regardless of whether a handgun was used in the previous offenses?

Senator SPECTER. Yes; that is right, Mr. Chairman. The reason for that is that it is a practical impossibility, given the records' system, to go back and get into the facts of the other cases. I think that the reality is that when you deal with somebody who has been convicted of two or more robberies or burglaries—and I say it is going to really be a lot more in most cases—that we are dealing with someone where the State has already had a chance, and they have already had a chance.

I might just add one related point. I believe we have to move in the prison area so that we stop releasing functional illiterates. The State courts and prisons are going to have to turn out men and women who know how to read and write and have a basic skill. I have legislation pending to that effect, S. 1690, and I think that is something that you and I should address ourselves to in the next session. And I think this statute will move that along.

So that when a person has had that opportunity in the State court system, and even if we do not know that a firearm was used, we will be dealing with people who either ought to have made it by this time, or where we have to be very, very tough. But the direct answer to your question is that we do not contemplate proving the use of a firearm in the previous offenses.

Mr. HUGHES. Just one final question. We have considered, as has the Senate side, some of the elements of a handgun abuse bill, including mandatory sentences, the waiting period I mentioned, and the requirement of the reporting of a theft of handguns which I think is fairly noncontroversial. I do not know of many people who advocate the right to possess machineguns and silencers, so I would trust that that would be rather noncontroversial—although I am not sure about that.

How would the gentleman from Pennsylvania feel about a package that would include those provisions?

Senator SPECTER. Well, I would be favorably disposed toward some of them, Mr. Chairman, but I think that it would prevent passage of the bill at this time. Whenever you get into anything which starts to move toward gun control—which the waiting period would be and the confirmation period would be—then focus shifts to those elements and we loose sight of the career criminal provisions. There is no longer any time for protracted debate in this Congress on controversial gun control measures. It is just not doable.

However, I am prepared to work with you on that as we move down the line.

Mr. HUGHES. I think the gentleman is right on that, although I hate to say it.

Senator SPECTER. It just becomes an impracticality.

Mr. HUGHES. We were discussing with some select members of this body a few weeks back the subject of handgun abuse, and we never got beyond the title, "handgun abuse." There was even some debate about that. So I think the gentleman probably is correct in that regard.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

Senator, I just wanted to address one concern—that is, the Federal interest in this issue. I see no reference in the bill to interstate commerce. If I am correct, the Federal nexus in the legislation is merely the use of a firearm. Are there any limits on the Federal Government's ability to legislate in the firearms area?

For example, as I read this bill, a person who is not in possession of a firearm himself could be convicted of a Federal crime, even though he is unaware of the other participant's possession of a firearm. I question whether this is a sufficient nexus.

Senator SPECTER. Congressman Fish, the later drafts and the one as approved by the Judiciary Committee picks up the concern which you have expressed. I think the point you make is a very valid one. It had come to our attention and we have relied upon the interstate commerce aspect of the career criminal, as well.

Section 2 of the later version, which I am sorry we had not provided you with but shall: robberies and burglaries adversely affect interstate commerce; robberies of banks, stores, and travelers directly interferes with the free flow of funds, goods, services, and people; burglaries increase insurance rates, depreciate the value of real estate, and contribute to the decline of neighborhoods; et cetera. So we do base the authority of the Federal Government here on the commerce clause.

The clearest jurisdictional base would be the firearms issue, because there is litigation on that. I think a direct answer to your question is that the courts have upheld the Federal legislation on firearms without limit because of the facts that firearms do cross interstate commerce.

I believe factually, too, that when you deal with these career criminals and look at the criminal records, as I have on so many, once a person is in a career criminal category they have convictions in New York State, in New Jersey, in Pennsylvania, in Ohio, in California, and they are multicolored "crimmies," or criminal records. Not all of them do, but there is a sufficient nexus with a career criminal classification so that I think the conclusion of interstate activity is inescapable.

Mr. FISH. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you.

We thank you very much. Your statement has been most helpful, and we appreciate it very much.

Senator SPECTER. Mr. Chairman, I would add one word. I was talking with our distinguished colleague from the House, and the gentleman and I have been discussing the bail provision. I am not

inflexible on that. My sense is that a tougher bail standard would be appropriate, but that is something which is negotiable. I want to be flexible on the matter to get the central point, and I sense that there is an issue of momentum here. I should have added that I have talked to the majority leader, Senator Baker, who has assured me that I could have floor time on this bill if I get agreement to limit debate. I have talked to Senator Biden, the ranking member of the Judiciary Committee, who is agreeable to a 1-hour time limit, and I anticipate that we can get this passed in the Senate next week.

So I have got my fingers crossed; and you understand when I say "anticipate." But as long as we can preserve the central idea and move ahead, I think momentum is very important. As we work on the Justice Assistance Act and as we work here, and as we work on the whole package, I believe we can provide some teamwork with our respective committees and with the White House.

Thank you very much.

Mr. HUGHES. I agree. Thank you. We look forward to working with you to see if we cannot move something forward on this most important subject.

The hearing stands recessed for 10 minutes.

[Recess.]

Mr. HUGHES. The Subcommittee on Crime will come to order.

At this time we welcome our distinguished colleague from Oregon, the Honorable Congressman Ron Wyden. Ron graduated from Stanford University with an A.B. in political science with distinction. He subsequently attended and graduated from the University of Oregon School of Law in 1974. In his career he has been the cofounder and codirector of the Oregon Gray Panthers, director of the Oregon Legal Services for the Elderly, instructor of gerontology at the University of Oregon, Portland State, and the University of Portland. He was elected as Representative of the Third District of Oregon in 1980, and has committee assignments on Energy and Commerce, Small Business, and Aging.

He has made a real mark for himself in the Congress in the short time he has been here, and we welcome you, Ron. We have your statement which, without objection, will be made a part of the record and you may proceed as you see fit.

TESTIMONY OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE THIRD DISTRICT OF PORTLAND, OREG.

Mr. WYDEN. Thank you very much, Mr. Chairman. I really am grateful to you and to other members of the subcommittee for holding this hearing. Just as an aside, freshmen around here look quickly for people that they wants to seek counsel from, and you have just been exceptionally kind to me in this area in the first year I have been in the Congress. I want you to know how much I appreciate the chance to counsel with you on these kinds of subjects and other issues, particularly on the ones that affect the metropolitan areas in this country.

Mr. Chairman, I introduced this legislation after hearing countless horror stories from my constituents in Portland, Oreg., about the dramatic rise in crime, and especially crimes against property

and how it has affected their daily lives. In our city of Portland we have seen an increase in these crimes of 24 percent in 1981, which is the fastest rate of increase in the country.

This surge was led by a 30-percent increase in robberies and burglaries. On a per capita basis Portland now ranks second nationally in serious crime, and second in crime against property.

You were gracious enough to talk a little bit about my background with senior citizens. That is really how I got interested in this area. I am not somebody who brings to this subject the kind of expertise that you do, that Senator Specter does. My background in law enforcement was limited to a couple of summers in a district attorney's office, so I know when I am over my head from a technical standpoint.

I got interested in this area from the senior citizens who literally in this country are just putting themselves in their homes almost as prison. They are afraid to go out at night. They are afraid of going out on the streets past 4 o'clock because they will be attacked, or their homes are going to be broken into and ransacked. This is not a situation that is unique to Portland, Oreg. I think it is true particularly in the metropolitan areas in this country and a lot of communities that do not consider themselves very large, as well.

Violent crime is anonymous; it is vicious. All the public opinion polls, to the extent we use those as a barometer, show that violent crime ranks at the very top of the problems that are of deep concern to Americans.

Now I do not expect H.R. 6386—and I think Senator Specter would say as well—to resolve all of America's crime problem by itself. I think it is a small, yet still very solid step in the right direction and in fact a chance for the Federal Government to lend a much-needed hand to the local criminal justice officials who really are just under siege. They are beleaguered; they are trying to grapple at a time of reduced resources with an unprecedented crime wave. I see this bill as a chance to throw a lifeline to them, to throw them a little bit of help in a time when they are strapped.

Eighty percent—and I use this just as an example of one jurisdiction in the country—80 percent of all convicted felons were sentenced to probation in my State of Oregon in 1980. Hard-core criminals sentenced to the State penitentiary end up serving an average of only 17 months, even though the average sentence levied for these felons is 9.9 years. I think it is almost exclusively due to the fact that there just are not the resources to handle them. These are dangerous people, but because the system is so strapped we just are putting these people back on the street and putting them out when it is a risk to society.

Now what Senator Specter and I seek to do is to expand Federal criminal jurisdiction by focusing on just the very worst habitual offenders. The number of crimes committed by these career criminals is pretty mind boggling. A leading study indicated that 50 percent of all crime, and two-thirds of all violent crime is committed by just 6 percent of the criminal population.

Because this legislation does not call for an increase in funding for the Justice Department, I think both the Senator and I want to emphasize that we do not see hundreds of thousands of prosecutions being brought under this legislation. In fact, that would really defeat the purpose. As the Senator said, the Justice Department has indicated that 500 cases would be prosecuted. We could do that without any increase in Federal resources. And as he outlined the impact on the State courts would be very significant.

Now even with limited Federal prosecution and incarceration, I think this bill could play a significant role in reducing what really is an epidemic of armed robberies and burglaries. If several hundred of the worst career criminals are sentenced to 15-year Federal prison terms, that in itself will prevent tens of thousands of felonies.

More important, the existence of this sort of no-nonsense tough Federal statute ought to have a deterrent effect; because we are trying to deal with a unique kind of person as far as the criminal justice system is concerned. That is somebody who is not acting out of impulse in a cavalier kind of way, but somebody who is rational, who is calculating, street smart, and who we think is going to get the message about a new Federal statute like this.

Once a career criminal has been apprehended, convicted twice of robbery or burglary, that person if this law is enacted has got to think long and hard about doing it again, because a third conviction no longer will automatically mean, well, you are just moving through the revolving door of the local criminal justice system that they know is strapped and they know is overloaded and they are back on the street. I think that in effect we are going to tell those people: You are no longer going to be able to assume that you can just thumb your nose at the system and quickly just go back on the street and take advantage of innocent people.

I would just like to touch for one quick second, Mr. Chairman, and then break this off, on some of the differences between the Senator's bill and mine. As he said, we want to remain very flexible on this to negotiate with you and with subcommittee members in every way possible because this is certainly not set in stone. Let me just touch on a couple of the considerations.

My bill does not have a restrictive bail provision, Mr. Chairman. It is silent on the question of whether or not prior convictions need be alleged in the indictment. The offense itself is defined a little more narrowly in H.R. 6386. Conspiracy to commit a robbery or burglary is not included. The section outlining the relationship between local and Federal prosecutors in deciding which cases ought to be prosecuted has been redrafted. Virtually all of these suggestions are ones that we followed up in conjunction with the subcommittee staff.

I do really want to compliment them on just really helping us very generously to try to deal with some of these areas that are quite tricky from a legal standpoint.

The other one is the issue of concurrent jurisdiction. I certainly want to emphasize that I would never condone the Federal prosecutors yanking jurisdiction away from local prosecutors without prior consultation. What we hear from local prosecutors is that, in effect, in the real world in what they have to face on a regular basis this is not likely to be a serious problem.

For one thing, the initial investigation would remain with local authorities. The U.S. attorney would most likely not even be aware

of the applicability of the statute to a particular defendant unless they were notified by the local authorities.

The second is, these are not high-profile, headline-grabbing kinds of crimes. I do not foresee a local prosecutor objecting to a limited Federal prosecution of carefully selected defendants.

I think the third reason that this should not be a problem is that the law enforcement coordinating committees that are now being established in each of the 94 Federal judicial districts, which is a key recommendation of the AG's Task Force on Violent Crime, ought to provide an excellent forum for consultation and coordination between State and local prosecutors.

I am told that nearly all of these committees now are in place and are working very well thus far. They are specifically designed to promote a sharing of information, joint investigations and prosecutions, and in effect trying to help us allocate our resources in the law enforcement area just as well as we possibly can.

Finally, Mr. Chairman, I think this bill is going to complement rather than interfere with a State habitual offender, and hence sentencing statutes. These statutes are of little value if prison space is not available or local prosecutors lack the adequate resources. A Federal career criminal bill again would assist those local officials by triggering a Federal prosecution, and again the prospect of incarcerating the worst habitual offenders.

This legislation would also compliment local career criminal prosecution units that have sprung up in response to the incredible number of crimes committed by the career criminals. By providing adequate investigatory time and resources and severely restricting plea bargaining, these units reflect a serious attempt to crack down on the worst habitual offenders. And again I think we are complementing those units with this kind of legislation.

I think, too, that this complements the direction we are going in with respect to the Justice Assistance Act that you so carefully drafted and have moved out of this subcommittee and gotten passed by the House really by a tremendous margin. It must have been 4 or 5 to 1 or something like that. I hope that the Senate is going to pass this bill before we go home for the election period, but I think this bill is also going to be a complement to that kind of direct financial assistance to local crime fighting officials.

With that, Mr. Chairman, let me break it off for your questions. Again, just from one freshman who looks for counsel from senior members, I want you to know how much I have appreciated working with you in my first term in the Congress. I am grateful to have the chance to work with you on this legislation, as well.

Mr. HUGHES. Well, thank you, Ron. You are kind. I do not think of myself as a "senior member." [Laughter.]

Does that mean I cannot run against the Congress anymore? [Laughter.]

You have really given us a good statement and I have got to commend you. You have done a good job in advancing your concerns in this area and I am grateful.

As you know, I have two basic concerns. One is the nexus issue which our distinguished colleague from New York raised. The second is resources. We are a lousy partner right now with State and local units of government. We are not providing the kind of

resources that are needed to do a good job. Our declination policy in bank robbery for instance right now is 80 percent in some jurisdictions—or at least that is what it was; I have not gotten an update on it.

We are doing a very good job in southern Florida right now with our task force operations, but we have moved them from other parts of the country. We have shortchanged other offices, and we have demonstrated that if we are really serious about addressing a particular crime problem, we can do it by committing the resources. So those two areas really give me some concern.

I agree with your assessment of the habitual offender provisions. The State prisons are overcrowded and they are up to their eyeballs. Many jurisdictions are now releasing prisoners because of a reassessment of prison space. Some jurisdictions are under court orders to reduce the prison population but, Ron, we are crowded now in the Federal system also, and we are going to be terribly overcrowded if we do not make some major commitments at the Federal level.

So I am not so sure that we are not going to have the same problem at the Federal level. My question to you basically would boil down to this:

I think something is needed to try to focus in on the career criminals. I think we have got to take the scarce resources and target them in a very focused way to try to incarcerate those people, those habitual offenders that find themselves in the system first as juveniles and then as adult offenders. We have got to start doing it early on in the juvenile area. The habitual offenders in the juvenile system need a lot of attention because they often become our graduate students committing adult crimes.

How would you feel about making the bill very focused and tying it in with those offenses where there is a Federal nexus, for instance "armed robberies," it is pretty obvious from the criminal history that the individual is crossing State lines to commit offenses. In those instances we can develop a career criminal program which actually impacts into State commerce and also show a Federal nexus? How would you feel about that?

Mr. WYDEN. Let me touch on the nexus question just for a second broadly, and then zero in on nexus as far as armed robberies are concerned. Mr. Chairman, it seems to me that when you talk about nexus you talk from the standpoint of both law and policy, public policy, and then from a strictly legal standpoint.

The Justice Department, the Congressional Research Service, and others who have studied the question of nexus in this area have indicated that our bill is constitutional. They have looked at it from a legal standpoint. The Supreme Court has upheld other Federal statutes that stretch the commerce clause at least this far. The interstate commerce definition of "nexus" here would include firearms traveling in interstate commerce. Many career criminals fence stolen goods in interstate commerce. Many career criminals are drug addicts and trafficking in drugs involved in interstate commerce. Robbed businesses have their goods that are stolen sold in interstate commerce.

So from a legal standpoint, I think we have passed constitutional muster and can meet the question of nexus. Those are opinions

13-616 O—83——2

that have been passed on, as I say, by the Justice Department, the Congressional Research Service, and several others who have studied the bill.

Then we get to the policy question.

Mr. HUGHES. That is the most important question.

Mr. WYDEN. Which is important. I would make the case that because of the wave of crime that threatens to engulf us, from a policy standpoint that nexus ought to be found.

Now you asked specifically about the armed robbery kind of situation where, yes, there is a sharper nexus there. And without probably having a chance to consult with the Senator who is pushing on the Senate side for this legislation, I probably should not get in too deep on this; but I think the feeling would be, Mr. Chairman, that if that was all we could get, that would be a beginning in the career criminal area. But before I would take a position on that, I would want to consult with him.

I just feel, as I say, that not only can we meet the legal standard for constitutional muster, but from the policy standpoint I just think that because of what we have seen in this country we ought to stretch to find the nexus to deal with a very real problem. I think that is what the founders of our governmental system thought we ought to do, to stretch to deal with the real-world problems, and I think we are going to have this problem on our hands for a number of years to come.

I can just share my feeling. I would much rather see us get adequate resources to the law enforcement system rather than spend for some Darth Vador weapon systems that are not working very well and would not secure us very much if they did. But that is not on the agenda right now. That is not the choice. So we have got to figure out how to make our resources stretch further.

So that is why I would hope that from a policy standpoint that we would find that nexus and be able to enact the career criminal legislation both on the robberies and on the burglaries side.

Mr. HUGHES. I understand, and I respect your position. I suspect I would be a little more enthuasistic about that approach if we were better partners right now with the States on the matters that are truly Federal in jurisdiction and that we were committing the resources to do it.

It has only been a few months ago that we had a declination policy in southern Florida of Federal prosecution of trafficking in two tons of marihuana or less. The State's attorney was up to his eyeballs, or she was, with marihuana and they were sending it back to the U.S. attorney. We have changed that policy, but that was the policy because of the lack of Federal resources in an area that is clearly Federal.

Mr. WYDEN. If I might, Mr. Chairman, just on this question of resources, I do not think anyone—and certainly no one who has been in this area—debates that our Federal prisons are overcrowded. I think that is obvious. But the projections are that several hundred beds would be available in the first year after this legislation was enacted. Specifically, the Federal prison in Atlanta is scheduled to release several hundred Cuban refugees. Also I understand that there is a Rand Corp. study in California that showed that by incarcerating the hardcore repeat offenders and not incarcerating the first or second offenders, the rate of robbery and burglary, and the total prison population could be reduced.

So in other words it is a matter of making sure what jail beds you have got in this system that you and I would like to see get more resources. What are we going to do to make sure that the available jail beds are used for the very worst kind of people that are out there in the system?

Mr. HUGHES. I certainly agree with that.

The gentleman from Michigan.

Mr. SAWYER. I am sympathetic with the notion that the vast majority of the crimes committed—are committed by a relatively small number of people—and I think anybody who has been in law enforcement would agree.

There are a couple of problems, though. One is the one the chairman just mentioned that, at least in my area, the western district of Michigan, the Federal Government will not prosecute most violations of the Doyer Act involving interstate transportation of stolen automobiles? They have stopped for a number of years prosecuting that.

They also will not normally prosecute bank robbery cases, even though they have jurisdiction. They will leave it to local prosecutors. This of course, is also the case with respect to small amounts of drugs and some are not really that small. They just do not have the resources to take care of all of the things over which they already have jurisdiction. I, therefore, question whether giving them additional criminal jurisdiction is going to result in their doing much with it.

There is a second and more important problem which I think has to be brought into play if this kind of thing is going to work. Michigan is one of five or six States now that have mandatory additional 2-year sentences, for any crime committed with a gun unless the crime itself is having a gun. These sentences are not subject to parole or suspension and the defendant is not eligible for probation.

We also have a career criminal statute, and have had for some time, which increases the penalty 50 percent, and by 100 percent for the third felony. We call it "supplementing."

The problem is that both the gun law and the supplementing law is that they are used for plea bargaining purposes. It is hard for me to see how you avoid that, as a practical matter. If somebody is arrested for armed robbery, very often they will plead guilty to the armed robbery—which in Michigan could carry up to life imprisonment, although they do not normally get that but to drop the mandatory gun and/or they will plead to some other underlying offense if you agree to drop the supplement.

With the prosecutorial loads being what they are, and since the resources on the State and county level are no different than on the Federal level in light of the tremendous demand created by the amount of crime, how do you make the thing work when you have those practical aspects entering into it?

Mr. WYDEN. Well, I think the proof in the pudding is that the local officials say they want it, and the Federal Government is on record as saying they want it. When I introduced this legislation, I consulted extensively with our district attorney and our U.S. attor-

ney's office. And they said the first thing they liked about this was that in no way could it hurt. It would give them another tool. It would give them a chance to, in a few cases, work to really help a criminal justice system that is beleaguered.

I started in my opening statement by saying that in Oregon if you are convicted of a serious felony and you are sentenced to 10 years, you are out in just 1½ years or something like that. I think that when you look at these examples—and I would ask you perhaps to just touch base with your own local officials and your own U.S. attorney's office, you will hear good things from them.

Mr. SAWYER. I am in touch with them all the time. But there is no argument. Every local law enforcement official, whether he be a prosecuting attorney, which is what we call them in Michigan, a district attorney in other areas, or U.S. attorney they want all the tools they can get. I am sympathetic with them, but I would like to go a step further and see it work and get some teeth into it that it cannot be used for plea bargaining. Of course, they are delighted to have something else to plea bargain with.

I just think it defeats the intent of the law when that is done so regularly, although it is hard for me to see how you prevent it from being done. I have been trying to draft some legislation myself to avoid this, but I have to confess that I have been less than satisfied with my own efforts along that line. Do you have any thoughts on that?

Mr. WYDEN. I would have some thoughts on it. The question again is not unlike the question the chairman asked Senator Specter about guns. It brings us into a whole new area that I think would weigh this legislation down with such political problems that it could not go anywhere. I am sympathetic to that point, as well, dealing with the plea bargaining problem; but we have tried to keep this relatively simple and relatively direct. That is why we avoided some of the gun questions, which I happen——

Mr. SAWYER. But the mandatory gun sentencing now has the support of the NRA, for example. Who would be one of the forces lobbying against it. They now support that.

Mr. WYDEN. You asked about the plea bargaining question.

Mr. SAWYER. Yes; right. But you injected guns into the plea bargaining question, which is a concern of mine.

Mr. WYDEN. No; I used that as another example. You wanted us to add something——

Mr. SAWYER. Right.

Mr. WYDEN [continuing]. Into the legislation dealing with plea bargaining. The chairman asked Senator Specter when he was here about some things that could be added to the bill with guns, and the two problems I think are analogous. I think both of them would create so many additional problems for this legislation politically that it just would not go forward. I am very sympathetic to what you are talking about, and I would like to work on that, but I suspect it is going to be in a separate bill rather than attached to something like this.

Mr. SAWYER. Well, what you say about Oregon, of course, is no different in the Federal Government or, really, in any of the States that I am familiar with. The actual time served is approximately about one-third of the sentence in most cases. If we ever get a

Criminal Code bill out of subcommittee, it will correct that in the Federal. We have what we call "truth in sentencing" there. The way it is now, everybody but the public knows what the actual sentence is. The judge knows when he says "9" he means "3." The defendant knows that when he says "9" he means "3," and so do all the lawyers. But the press says he was sentenced to 9 and the public goes happily on their way thinking he got 9, and it strikes me that that should be changed. But that is somewhat of an additional question.

But any thought you might give as to how you prevent a weapon or a tool, such as this from being used just for plea bargaining would be of interest to me. I would really like to help push a thing like that. As I say, I worked on it myself and I have not been totally satisfied.

Mr. WYDEN. As I said earlier, I am no authority on this area, and I am very sympathetic to what you are talking about. My only concern is, like another area that we would get into, that this could weigh down this bill and break off some momentum. I think we have got some momentum now because of the support of the Senate Judiciary Committee. I understand that the local law enforcement officials around the country are coming out for this, and coming out for it strongly. That is why I would like to keep this close to what we have got now and attack the plea bargaining issue in a separate legislative initiative. But I would like to work with you on it because I think it is important.

Mr. SAWYER. I yield back, Mr. Chairman.

Mr. HUGHES. Thank you.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

I share the concern of my colleagues on the question of resources in the Federal jurisdiction. Senator Specter, for example, advanced the argument that the mere existence of this bill on the statute books would cause career criminals to think twice about a third offense. But I submit to you that the career criminal is a businessman. He has made a decision not to be a Congressman or a lawyer, but to go into a very successful career with little overhead, small risk of apprehension, and no taxes. So that I think he would be the first person to find out that this really was not going to reach him and that it is just as a toothless tiger.

In determining the formulation in H.R. 6386, you must have considered other approaches and discarded them. Could you tell me about limiting the coverage to existing Federal crimes such as bank robberies, and other robberies within the Federal jurisdiction?

Second, if we are trying to reach what is basically a State responsibility, was any thought given to a model law, or approaching some group that is concerned with a uniform statute so that your mandatory provisions would be in effect throughout the 50 States?

Mr. WYDEN. On the first question of whether other crimes were considered, the answer to that is "yes." Senator Specter tried to touch on that, whether there ought to be rape—there were a wide variety of other crimes considered. These two were singled out because we felt that this was one area where you could have a cooperative relationship between local government and Federal pros-

ecutors when we talked to people at the local level. These were two areas that they singled out. That is why I tried to cite, for example, in my community the tremendous surge of crime in those two particular areas. I think that has been true around the country.

As far as the model law is concerned, I think that does not address what the local jurisdictions need the most, which is some help as far as individual cases, trying to stretch their resources, someone who would be able to throw them a relatively modest lifeline and get some of the very worst people in the community off the street.

I just happened to think when you touched earlier on the profile of the career criminal, a guy who is not thinking about paying his taxes and the rest, and I would agree with you. I just think those people play percentages. I think the idea now is that if you have got two convictions and this is on the books, you have got a chance. You have got a chance to be had; whereas, today, you just move through the revolving door of the criminal justice system.

You know the district attorneys are strapped. You know the court docket is overloaded. You know that everything in the system focuses today on your not being placed at much risk. We are upping the ante. We are playing the percentages now so that we have got another tool and that person has got to think a little bit more. I think that is something worth pursuing.

So many of the juvenile offenders, a kid steals something, makes a mistake, that is not the person we are talking about. Senator Specter said the people who are most likely to get this are the ones not third offense but 8, 10, 12 offenses with those multicolored criminal records all over the country. I think that this legislation does send a message to those kind of people and is worth pursuing for that reason.

Mr. FISH. There is just one other area I would like to comment on. I want to explore whether or not we have an ex post facto problem here. On the top of page 2 of the bill the relevant language provides that the defendant must commit either robbery or burglary and that before the date of that robbery he must have been convicted of two other robberies or burglaries.

Now let us assume this becomes law. Do you have a grace period? Or if this became law on January 1, and you committed a third robbery on January 2, is it applicable? Is this bill applicable to that individual?

Mr. WYDEN. Mr. Fish, I was not aware of that problem. With your consent and the chairman's consent, if we could get back to the subcommittee on that, it was in no way our intent to create an ex post facto problem.

Mr. FISH. Well, I do not know that you have.

Mr. HUGHES. The record will remain open so that you can submit that.

[The information referred to follows:]

Mr. WYDEN. The intent of HR 6386 is to permit prosecution of an individual charged with armed robbery or burglary even if the requisite two prior convictions occurred prior to the effective date of the new federal statute. I think this can be done without creating an ex post facto problem.

My understanding of the ex post facto prohibition is that conduct that was legal or innocent at the time it occurred cannot be deemed illegal after the fact. In my view, the two prior convictions necessary to trigger federal criminal jurisdiction under HR 6386 can in no way be classified as conduct that was legal at the time it occurred.

The Library of Congress, in analyzing the constitutionality of Senator Specter's bill, noted that this statute would in many ways be analogous to the Dangerous Special Drug Offender statute (21 U.S.C. 849). This statute permits enhanced sentencing for persons previously convicted of two or more drug trafficking offenses. In *United States* v. *Sierra* [297 F.2d 531, cert. denied 369 U.S. 853 (1962)] the Second Circuit Court of Appeals rejected a constitutional challenge to this statute based on both the Double Jeopardy Clause and the ex post facto prohibition.

Mr. WYDEN. I would like to talk to counsel about that. And should counsel and the subcommittee find a problem in that area, we would attend to it and remedy it quickly.

Mr. FISH. Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Wyden, I would appreciate your thoughts on another aspect of the practicality of this proposal, which involves law enforcement personnel investigating and preparing the evidence for prosecution. Let us suppose that we have a situation involving someone who has been convicted twice previously of robbery or burglary in the city of Portland or wherever, and local law enforcement resources are employed in gathering evidence, investigating the case, preparing for prosecution, and for the filing of an information or the obtaining of an indictment.

At what point would the U.S. attorney really have the authority or motivation to ask to have Federal law enforcement or investigatory resources applied to this case? The practicalities of it seem to me to be something that we have seen evidenced in other circumstances. It almost requires that you approach something of this nature with a task-force type of approach, and that implies a geographic fix on the approach.

Otherwise, there is likely to be a lack of actual concurrent action or the getting together of local and perhaps State and Federal law enforcement personnel to coordinate the investigation.

Would you have any comment in that area?

Mr. WYDEN. I think, first, that the law enforcement coordinating committees that are now being established in each of the 94 Federal judicial districts—and this was one of the AG's key recommendations—provides us that kind of a forum for coordination and consultation.

There is no question that concurrent jurisdiction is a tricky kind of matter. I just think with these committees now in place, the reports are that they are working well already, facilitating the kind of routine sharing of information that we would like to see, that this legislation will complement the effort that is taking place now.

The other thing is, you describe the way a situation like this might arise in a real world nature of law enforcement. My feeling is that the U.S. attorney is not likely to be aware of the applicability of this statute to a particular defendant unless the local authorities came forward.

So I think right from the outset you see some consultation simply because the local people are coming to them saying, you know, we have been working in this area, it is not a high-profile, headline-grabbing thing. The local people know they have something on their hands that is a problem. They want to sit down and

consult with people at the Federal level who might be able to give them some assistance, who might be able to move as we should on that person.

I think just by nature of how these situations are going to arise, with people on the Federal level not knowing about them until people at the local level bring them in to them, it is going to bring about the kind of consultation and dialog that we want to see.

Mr. KINDNESS. OK. I think I differ in my evaluation of human nature. If the resources have been employed to prepare a prosecution—that is, to get the case prepared for an indictment or information to be filed—presumably, barring some shortcoming of the State law, the local prosecutor is going to say in this kind of case: "We have got the goods on this person at this time and we will put him away for good."

I can hardly conceive of a situation in which, barring a shortcoming in State law, the local prosecutor would say, "Our people are turning this case over to you, Mr. U.S. Attorney," and the U.S. attorney would say, "We do not have any file on it at all; we have no evidence put together of our own, we have to do a certain amount of restructuring or reexamination of the investigation."

You have an element of delay, perhaps. Coordination might be a lot better than I am describing, but it is just a little hard for me to foresee very much use of this. You have indicated that the use of it would not be all that great, of course.

But let me turn to one other point, just as a small item. I believe I know the answer to this, but I want to be sure of the intention. On page 3 of the bill in lines 9 and 10, there is reference to the Attorney General or the Assistant Attorney General certifying two items. I believe that is intended to mean certifying in such a manner that that would be made part of the record of the court, in the U.S. district court, when the indictment or information is made a part of the record there.

Is that the correct intention?

Mr. WYDEN. I think that it is, yes.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman. I yield back.

Mr. HUGHES. Thank you, Mr. Kindness. And thank you, Ron.

Mr. WYDEN. Thank you very much, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF CONGRESSMAN RON WYDEN

Mr. Chairman, I first want to express my sincere appreciation to you and to the members of the subcommittee for holding this hearing and for giving me an opportunity to testify on behalf of the Armed Robbery and Burglary Prevention Act of 1982 (HR 6386), a bill I introduced on May 13 of this year.

As you know, this bill would permit federal prosecution of an individual who, after being previously convicted of two or more felony robberies or burglaries in any jurisdiction, is charged with a third robbery or burglary involving the use of a firearm.

Conviction under this new section of the federal criminal code would trigger a minimum 15-year sentence in a federal penitentiary with no possibility of parole.

Mr. Chairman, I introduced this legislation after hearing countless horror stories from my Portland, Oregon constituents about the dramatic rise in crime—especially crimes against property—and how it has affected their daily lives.

Serious crime in Portland increased 24 per cent in 1981, the fastest rate of increase in the country. This surge was led by a 30 per cent increase in robberies and

burglaries. On a per capita basis, Portland now ranks second nationally in serious crime and second in crimes against property.

Senior citizens and others are forced to become prisoners in their own homes, afraid that, if they venture out, they will be attacked on the street or their homes will be broken into and ransacked.

This situation is certainly not unique to Portland, Oregon. National statistics are equally sobering. Public opinion polls consistently show that crime ranks at the very top of problems that are of deep concern to all Americans.

Violent crime is anonymous and vicious. It is physically, psychologically and financially devastating to the lives of its innocent victims.

I do not expect HR 6386 to solve America's crime problem by itself. Instead, I see it as a small but solid step in the right direction, an opportunity for the federal government to lend a much-needed hand to beleaguered local criminal justice officials trying to grapple with this unprecedented crime wave.

It's no secret that local criminal justice resources are stretched to the limit—and beyond. Because of a limited number of prosecutors and investigators, a huge backlog of cases pending in our courts, and a severe shortage of jail space, our cities and states are rapidly losing the war on crime.

Local officials are forced to resort to excessive plea bargaining, too many probationary sentences and too-early parole for many serious offenders.

Eighty percent of all convicted felons were sentenced to probation in Oregon in 1980. Hard-core criminals sentenced to the state penitentiary end up serving an average of only 17 months, even though the average sentence levied for these felons is 9.9 years.

In New york City in 1979, only 4,000 fo 539,000 reported felonies resulted in even limited incarceration. The Deputy Police Commissioner recently noted that "large numbers of people with very serious criminal histories are serving only three to six months, largely because of plea bargaining."

My bill would expand federal criminal jurisdiction narrowly by focusing on the worst habitual offenders. The number of crimes committed by career criminals is truly mind-boggling. A leading study indicated that 50 percent of all crime and ⅔ of all violent crime is committed by just 6 percent of the criminal population.

Because this legislation does not call for an increase in funding for the Justice Department, I would not expect to see a large number of federal prosecutions. It is my understanding that the Justice Department has indicated that approximately 500 cases could be prosecuted—and 500 convicted defendants incarcerated—without any increase in federal resources.

Even with limited federal prosecution and incarceration, I believe this bill could play a significant role in reducing the epidemic of armed robberies and burglaries.

If several hundred of the worst career criminals are sentenced to 15-year federal prison terms, that in itself will prevent tens of thousands of robberies and burglaries.

More important, the existence of this sort of tough no-nonsense federal statute should have a substantial deterrent effect.

The type of criminal this legislation seeks to stop is rational, calculating and street-smart.

Awareness of this new federal statute will filter quickly down to the street. Once a career criminal has been apprehended and convicted twice of robbery and burglary, he will think long and hard about doing it again.

A third conviction no longer will mean another trip through the revolving door of a severely overloaded local criminal justice system.

These people no longer will be back on the streets again in a matter of a few hours, weeks or months—after pleading guilty to a reduced charge or after being paroled prematurely because the state penitentiary or county jail is overflowing.

Repeat offenders no longer will be able to assume that they can thumb their nose at the system and quickly return to a life of preying on the safety and property of innocent victims.

They instead will be faced with the very real possibility of spending 15 years in a federal penitentiary with no possibility of parole.

Mr. Chairman, HR 6386 is very similar to Senator Specter's Armed Career Criminal Act (S 1688). There are a number of minor differences, however, most of which reflect consultation with the subcommittee staff.

My bill does not include a restrictive bail provision. It is silent on the question of whether or not prior convictions need to be alleged in the indictment.

The offense itself is defined more narrowly in HR 6386. Conspiracy to commit a robbery or burglary and attempted robbery or burglary are not included.

The section outlining the relationship between local and federal prosecutors in deciding which cases should be prosecuted in federal court has been redrafted at the suggestion of the subcommittee staff to mirror the notification and certification section of the Criminal Code Revision Act of 1980.

I am aware that this issue of concurrent jurisdiction is a particularly sticky one. While it would not be appropriate to permit local officials to exercise absolute veto authority over a federal criminal statute, I certainly would not expect or condone federal prosecutors yanking jurisdiction away from local prosecutors without extensive prior consultation and consent.

I honestly do not feel that—in practice—this would be a serious problem.

For one thing, initial investigation of robberies and burglaries would remain with local authorities. The U.S. Attorney would most likely not even be aware of the applicability of this statute to a particular defendant unless notified by local authorities.

These are not high profile, headline—grabbing crimes. I do not forseee a local prosecutor objecting to limited federal prosecution of carefully selected defendants. Such individuals would have already passed through the local system twice and rehabilitation efforts would obviously have failed.

In addition, the Law Enforcement Coordinating Committees now being established in each of the 94 federal judicial districts—a key recommendation of the Attorney General's Task Force on Violent Crime—will provide an excellent forum for consultation and coordination between state and local prosecutors.

I am told that nearly all of these committees now are in place and are working very well thus far. They are specifically designed to facilitate routine sharing of information, joint investigations and prosecutions, and planning for resource allocation and overall law enforcement strategy.

In short, I feel that these committees are tailor made to avoid concurrent jurisdiction problems.

I also feel that this bill would complement rather than interfere with state habitual offender "enhanced sentencing" statutes. These statutes are of little value if prison space is not available or local prosecutors lack adequate resources. A federal career criminal bill would assist local officials by triggering federal prosecution and incarceration of the worst habitual offenders.

This legislation would also complement local career criminal prosecution units that have sprung up in response to the incredible number of crimes committed by career criminals. By providing adequate investigatory time and resources and severely restricting plea bargaining, these units reflect a serious attempt to crack down on the worst habitual offenders.

Career criminal units are one of 13 programs that would be eligible for federal matching funds under the Justice Assistance Act (HR 4481) that was so ably drafted by this subcommittee and passed the House by a 4–1 margin last February. It is my sincere hope that the Senate will also pass this bill before time runs out in the 97th Congress. There is no question that direct financial assistance is what local crime-fighting officials need more than anything else.

Mr. Chairman, I am well aware that the crimes punishment under HR 6386 traditionally have been left to state and local governments. I also believe that we should not expand federal criminal jurisdiction unless it is clearly necessary.

But I think we all must realize violent crime is a national problem that has reached the point where a modest and thoughtful expanded federal role should be seriously considered.

I honestly do not think a case ever would arise under HR 6386 where a US Attorney would commence prosecution over the objections of a local prosecutor. The nature of the crimes involved dictate instead a system of consultation and coordination, with local and federal authorities working together to deal swiftly and effectively with the worst habitual offenders.

With millions of Americans paralyzed by crime and the fear of crime, I believe the federal government should actively search for ways to lend a hand.

The Attorney General's Task Force on Violent Crime recognized that increased cooperation and coordination between federal and local prosecutors and investigators could effectively enhance the war against crime.

Your Justice Assistance Act, Mr. Chairman, would provide a much needed financial shot-in-the-arm to the local criminal justice system by helping fund proven successful programs.

I think a career criminal bill could provide a modest but solid third step in a rejuvenated federal effort to assist local officials in grappling with this unprecedented epidemic of crime.

Mr. HUGHES. I wonder if we can have Alexander Lehrer and Roger Olsen come forward, perhaps as a panel. Alexander Lehrer is the county prosecutor of Monmouth County, N.J. He is testifying on behalf of the National District Attorneys Association.

Mr. Lehrer was born in Toms River, N.J., and educated in their public school system. He went on to the University of Connecticut, where he graduated with a B.S. degree in business in 1966, and then from Notre Dame Law School in 1969. He subsequently clerked for a New Jersey Superior Court, chancery division, practiced law in Asbury Park, N.J., just north of my district, and has been a prosecutor in Monmouth County since 1978. He is also the State director of New Jersey's component of the National District Attorneys Association.

We welcome you, Prosecutor Lehrer.

Mr. LEHRER. Thank you, Mr. Chairman.

Mr. HUGHES. Mr. Olsen, who is no stranger to this committee, received his B.A. degree from the University of California in Berkeley in 1964, his doctorate in law from Boalt Hall School of Law in 1968, and his LL.M. in taxation from George Washington University in 1977.

He was a deputy district attorney in Oakland, Calif.; a trial attorney with the Tax Division of the U.S. Department of Justice and engaged in the private practice of law in San Francisco and Washington, D.C. His present responsibilities with the Department of Justice include supervision over the Fraud and Appellate sections, as well as the Office of International Affairs. Mr. Olsen, we welcome you here today once again.

Mr. OLSEN. Thank you.

Mr. HUGHES. We have your statements. Without objection, they will be made a part of the record. At this point, we are going to stand in recess for about 10 minutes, so we can go catch our vote.

[Recess.]

Mr. HUGHES. The meeting will come to order. Prosecutor Lehrer, why don't you proceed?

TESTIMONY OF ALEXANDER D. LEHRER, COUNTY PROSECUTOR OF MONMOUTH COUNTY, FREEHOLD, N. J., ON BEHALF OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Mr. LEHRER. Mr. Chairman, I sincerely appreciate the opportunity to address you on behalf of the National District Attorneys Association on this subject matter, and I am particularly honored to be here. Although you are not my Congressman, I have always felt that you have been, especially in the areas of criminal justice. The citizens of New Jersey to the north are very proud of the work you are doing, and very proud of you that you are representing New Jersey.

Mr. HUGHES. Well, thank you.

Did you get that?

The REPORTER [nods in the affirmative]. [Laughter.]

Mr. LEHRER. The National District Attorneys Association is opposed to this legislation and strongly urges that it not become the law of the land. This proposed legislation would establish a Federal

crime and provide a sentence of not less than 15 years for a third or subsequent burglary or robbery while armed.

The prosecutors of America have traditionally placed the highest priority on the apprehension, conviction, and incarceration of armed robbers and burglars. These crimes have historically been the responsibility of local law enforcement officials, and they are the ones most competent to deal with the problem due to their expertise and familiarity with local conditions and offenders.

Few dispute that law enforcement in America is essentially a local responsibility. This was most recently recognized by the Attorney General's Task Force on Violent Crime. The report was based on the premise that:

> In general, Federal action is appropriate when one or more of the following four conditions are met:
> The crime requires the creation and exercise of federal jurisdiction because it:
> Materially affects interstate commerce; occurs on a Federal reservation or in the District of Columbia; involves large criminal organizations or conspiracies that can be presumed to operate in the several states; or is a crime directed at a target of overriding national importance, such as the President of the United States.

The problem caused by career robbers and burglars does not, under the above guidelines, require the degree of Federal cognizance contemplated by this act. Indeed, this expansion of Federal jurisdiction in the absence of compelling reasons threatens the delicate balance between Federal and local governments.

There are other significant reasons why this legislation should not be enacted. In most jurisdictions encompassing large metropolitan areas U.S. attorneys cannot prosecute the serious cases currently presented to them and currently within their Federal jurisdiction. This is evident from the declination policies and prosecution guidelines presently being followed. Guidelines followed by U.S. attorneys under extensive latitude of the Federal Government determine the Federal caseload. Within these guidelines, a determination is made by the individual U.S. attorney as to what offenses will be prosecuted in Federal court, and what offenses will be declined and left for the local prosecutor to pursue or go unprosecuted.

These declination policies in the 3-year period from 1976 to 1979 resulted in a 48-percent decline in the prosecution of bank robbery cases, a 40-percent decline in the prosecution of mail fraud cases, and almost a 60-percent decrease in the prosecution of weapons cases. Prosecutions of other violence-related cases also were declining in that period. Auto theft prosecutions were down more than 63 percent; cargo theft prosecutions were down about 60 percent; and drug-related prosecutions were down about 37 percent.

I respectfully submit that it is unreasonable to create a Federal crime for burglary and robbery when the U.S. attorneys cannot cope with their present serious caseload. And recent Federal cutbacks have further diluted the Federal presence in the most serious areas of narcotics and weapons enforcement.

The Attorney General's Task Force on Violent Crime found that a satisfactory level of cooperation between Federal, State, and local law enforcement officials does not now exist in every jurisdiction. This lack of cooperation is a chronic problem caused, among other things, by jurisdictional disputes.

In an attempt to remedy this, the Attorney General, following the recommendations of the task force, has instructed each U.S. attorney to establish a law enforcement coordinating committee in each Federal district. This committee is comprised of Federal, State and local law enforcement officials, including prosecutors, and is designed to improve coordination and cooperation and to resolve any disputes and misunderstandings which threaten to hamper law enforcement or threaten the amicable working relationship between the parties.

In addition to these positive efforts, a group known as the executive working group has been meeting quarterly since December 1979, in an attempt to resolve Federal, State and local conflicts between prosecutors. Members of the executive working group are drawn from the leadership of the National District Attorneys Association, the National Association of Attorneys General, and the U.S. Department of Justice. While much remains to be done and the task of course is an ongoing one, much progress has been made in resolving some of these age-old conflicts.

At a time when positive efforts are being made to improve the relations between Federal, State and local officials, the Armed Robbery and Burglary Prevention Act of 1982 will be counterproductive to these efforts.

The majority of States provide a penalty more severe than set forth in the proposed legislation for career criminals. In fact, we heard Senator Specter testify this morning that 41 States have that legislation out of the 50. This legislation provides for a penalty of not less than 15 years and a fine of not more than $10,000. Most States have habitual offender statutes which provide for a maximum of life imprisonment upon conviction of the repeat offender.

In New Jersey, for example a first offense conviction of burglary is a first degree crime with a maximum sentence of 20 years and a presumptive sentence of 15 years in prison. In addition in the New Jersey Criminal Code there are provisions for minimum mandatory paroles which would be one-half of that 15-year period, or 7½ years without parole for a first offense. There are also enhancement provision which under certain cirumstances can further increase the sentence of a first offense. New Jersey also has enacted a strong repeat offender statute that would allow a superior court judge to sentence up to life imprisonment.

The State judiciary has demonstrated a clear commitment to remove career criminals from our streets. It is respectfully submitted that the State judiciary would be more sensitive to the needs of the public in meting out harsh sentences for career criminals, since they must answer to the public on a daily basis through local media and in some cases through the electoral process. In addition, under the proposed legislation Federal courts would be sentencing the habitual offender for the first time from a written presentence investigation, while the local courts would be personally familiar with the defendant and his criminal history and propensities.

The National District Attorneys Association and the prosecutors of America have been the forerunners in State and Federal law enforcement cooperation for the safety and benefit of the American public. In the past, they have enthusiastically lobbied for any legislation on the national level which would strengthen cooperative

law enforcement efforts to insure the safety, peace and domestic tranquillity of the American public.

However, it is respectfully submitted that this proposed legislation will accomplish none of these laudable goals and we strongly urge its defeat.

The National District Attorneys Association as the voice for America's prosecutors will continue to offer its opinions on essential Federal legislation for the protection of the American public. It is respectfully submitted that the energies of this committee and the Federal Government are urgently needed in reestablishing LEAA and drafting Federal legislation to eradicate the epidemic importation and sale of dangerous drugs, which is the major contributing factor to violent crime in America.

Mr. HUGHES. Thank you very much for an excellent statement. I must say, you have put your finger right on a number of concerns expressed by this committee, and I'm also happy to report that there is some progress on the Justice Assistance Act.

Mr. LEHRER. I am well aware of that. We are following it. We support you 100 percent in it and if you need anything from us we will be happy to furnish it to you.

Mr. HUGHES. At this time I suggest we take Mr. Olsen's testimony. And then discuss these issues with both of you.

Mr. LEHRER. Fine.

[Statement of Mr. Lehrer follows:]

PREPARED STATEMENT OF ALEXANDER D. LEHRER, THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Mr. Chairman, members of the committee: I appreciate the opportunity to address you on behalf of the National District Attorneys Association on the subject of H.R. 6386, "The Armed Robbery and Burglary Prevention Act of 1982".

The National District Attorneys Association is opposed to this legislation and strongly urges that it not become the law of our land.

This proposed legislation would establish a federal crime and provide a sentence of not less than 15 years for a third or subsequent burglary or robbery while armed.

The prosecutors of America have traditionally placed the highest priority on the apprehension, conviction, and incarceration of armed robbers and burglars. These crimes have historically been the responsibility of local law enforcement officials as they are the ones most competent to deal with the problem due to their expertise and familiarity with local conditions and offenders.

Few dispute that law enforcement in America is essentially a local responsibility. This was most recently recognized by the Attorney General's Task Force on Violent Crime. The report was based on the premise that: "In general, federal action is appropriate when one or more of the following four conditions are met:

The crime requires the creation and exercise of federal jurisdiction because it: Materially affects interstate commerce; occurs on a federal reservation or in the District of Columbia; involves large criminal organizations or conspiracies that can be presumed to operate in several states; and is directed at a target of overriding national importance (e.g., an assassination atempt on the life of a high federal official."

The problem caused by career robbers and burglars does not, under the above guidelines, require the degree of federal cognizance contemplated by: "The Armed Robbery and Burglary Prevention Act of 1982". Indeed this expansion of federal jurisdiction in the absence of compelling reasons threatens the delicate balance between federal and local governments.

There are other significant reasons why this legislation should not be enacted. In most jurisdictions encompassing large metropolitan areas U.S. attorneys cannot prosecute the serious cases currently presented to them. This is evident from the declination policies and prosecution guidelines presently being followed.

Guidelines followed by U.S. attorneys under extensive latitude of the federal government determine the federal caseload. Within these guidelines a determination is

made by the individual U.S. attorney what offenses will be prosecuted in federal court and what offenses will be declined and left for the local prosecutor to pursue.

These declination policies, in the three year period 1976–79, resulted in a 48 percent decline in the prosecution of bank robbery cases, a 40 percent decline in the prosecution of mail fraud cases, and almost a 60 percent decrease in the prosecution of weapons cases. Prosecutions of other violence-related cases also declined; auto theft prosecutions down more than 63 percent; cargo theft prosecutions down about 60 percent; drug-related prosecutions down about 37 percent.

I respectfully submit that it is unreasonable to create a new federal crime for burglary and robbery when the United States attorneys cannot cope with their present serious caseload and recent federal cutbacks have further diluted the federal presence in narcotics and weapons enforcement.

The Attorney General's Task Force on Violent Crime found that: "A satisfactory level of cooperation among federal, state and local law enforcement officials does not now exist in every jurisdiction". This lack of cooperation is a chronic problem caused, among other things, by jurisdictional disputes. In an attempt to remedy this, the Attorney General, following the recommendations of the Task Force, has instructed each U.S. attorney to establish a Law Enforcement Coordinating Committee in each federal district. This committee is comprised of federal, state, and local law enforcement officers, including prosecutors and is designed to improve coordination and cooperation and to resolve any disputes and misunderstandings which threaten to hamper law enforcement or threatens the amicable working relationships between the parties.

In addition to these positive efforts, a group known as "Executive Working Group" has been meeting quarterly since December, 1979, in an attempt to resolve federal, state, and local conflicts between prosecutors. Members of the Executive Working Group are drawn from the leadership of the National District Attorneys Association, the National Association of Attorneys General, and the United States Department of Justice. While much remains to be done, and the task is an ongoing one, much progress has been made in resolving some age-old conflicts.

At a time when positive efforts are being made to improve the relations between federal, state, and local officials, "The Armed Robbery and Burglary Prevention Act of 1982" will be counterproductive to these efforts.

The majority of states provide a penalty more severe than set forth in the proposed legislation for career criminals. This legislation provides for a penalty of not less than 15 years and a fine of not more than $10,000. Most states have habitual offender statutes which provide for a maximum of life imprisonment upon conviction of the repeat offender.

The state judiciary has demonstrated a clear commitment to remove career criminals from our streets. It is respectfully submitted that the state judiciary would be more sensitive to the needs of the public in meting out harsh sentences for career criminals since they must answer to the public on a daily basis through local media, and in some cases, through the electoral process. In addition, under the proposed legislation, federal courts would be sentencing the habitual offender for the first time from a written presentence investigation while the local courts would be personally familiar with the defendant and his criminal history and propensities.

The National District Attorneys Association and the prosecutors of America have been the forerunners in state and federal law enforcement cooperation for the safety and benefit of the American public. In the past, they have enthusiastically lobbied for any legislation on the national level which would strengthen cooperative law enforcement efforts to ensure the safety, peace, and domestic tranquility of the American public. As previously stated, it is respectfully submitted this proposed legislation will accomplish none of these laudable goals and we strongly urge its defeat.

The National District Attorneys Association as the voice for America's prosecutors will continue to offer its opinions on essential federal legislation for the protection of the American public. It is respectfully submitted that the energies of this committee are urgently needed in reestablishing LEAA and drafting federal legislation to eradicate the epidemic importation and sale of dangerous drugs which is the major contributing factor to violent crime in America.

TESTIMONY OF ROGER OLSEN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. OLSEN. Thank you, Mr. Chairman.

I will not go through the entire statement. Let me just briefly highlight some of the points that I heard earlier this morning,

touching on those issues that are the focus of discussion this morning as they relate to: first, whether or not States already have in effect today career criminal provisions, mandatory jail terms, and whether or not those are ineffective in that they are used for plea bargaining purposes; second, what about the Federal prosecutorial efforts in the areas of bank robberies and auto theft; and third, what about the question of the sufficient nexus of making this constitutional.

With respect to the State career criminal laws, on whether or not they are ineffective and used as a tool for plea bargaining purposes, we do not think that is the correct assessment. We think that the career criminal laws that are in effect are effective. They are used effectively by the States.

The question of whether they are used for plea bargaining, however, is perhaps an incorrect assessment of their utilization. Rather, the States are so burdened with cases, the courts are crowded, that it is simply a fact of life in both the Federal and the State systems that plea bargaining exists.

I would not like the record to reflect the fact that there is a view that is prevailing that mandatory jail terms, minimum terms, are ineffective; and second, that they may be used for some improper purposes. I know that my colleague to my right agrees with me in that respect.

With respect to the question whether, since the Federal system has a history of declinations, which are a matter of record, how do we reconcile that with the proposal today? I think the answer is that you have to look a little bit to the history of bank robbery and the auto theft provisions, that they were enacted at a time when it was necessary to have Federal jurisdiction in order to provide assistance for local and State prosecutions.

But times have changed. As those times have changed, we have found that there are many cases involving bank robbery and auto theft that are primarily local in nature, that can best be handled by the State and local prosecutors. The declination policy with respect to the drug cases, I think, is an example of the problem that, as drug trafficking and smuggling increases in this country, which is a direct cause of violent crime, the Federal system does not have the resources.

But one of the things that I think is also clear is that this administration is focusing more and more on violent crimes and reestablishing the priorities for prosecution in those cases.

One question raised earlier was whether or not the statute, or the proposed bill, would be unconstitutional because it is ex post facto in nature. The answer is that in the view of the Department of Justice, it would not be. Whether or not it would be a sufficient nexus for the other interstate commerce provisions, we think, as I have stated in my written statement, that if there is sufficient language requiring that nexus in the impact on interstate commerce, that would respond to the constitutional questions.

I would now submit to any questions the chairman may have.

[The prepared statement of Mr. Olsen follows:]

STATEMENT

OF

ROGER M. OLSEN
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

I am pleased to appear before the Subcommittee to present the views of the Department of Justice on H.R. 6386, the Armed Robbery and Burglary Prevention Act. The Department endorses the concept of this bill for we share the belief of its sponsor that there is a definite role for the federal government in assisting the states to combat the menace to society posed by armed career robbers and burglars. We do not, however, favor the bill as drafted and will point out several areas in which, in our view, H.R. 6386 can be improved along the lines of S. 1688, a similar bill which the Department has endorsed.

As drafted H.R. 6386 would in limited circumstances provide federal jurisdiction for the prosecution of persons charged with armed robbery or armed burglary where the defendant has two prior burglary or robbery convictions. The proposed legislation involves a number of significant features designed to deal with the problem of the recidivist offender. The bill provides that defendants convicted under this provision are subject to a term of imprisonment of fifteen years to life without the benefit of probation, parole, or a suspended sentence. The bill also addresses the important question of concurrent federal-state jurisdiction that would result from its enactment.

These features of the bill are discussed more fully below.

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This legislative proposal is intended to assist the national effort to combat the rising incidence of violent crime. It recognizes the need to deal effectively with those offenders who habitually prey upon the property and safety of innocent victims, and it recognizes the impact which unchecked violent crime has upon the social and economic fabric of the entire nation.

H.R. 6386 is designed to apply to recidivist armed robbers and burglars. Studies consistently have underscored the fact that a small percentage of repeat offenders are responsible for an extraordinarily disproportionate percentage of robberies and burglaries. It is our judgment that the bill appropriately focuses on the critical problem of the repeat offender who uses a firearm in the commission of yet another robbery or burglary. The provisions of H.R. 6386 apply only to those recidivists who already have been convicted of two felony burglary or robbery offenses and who by engaging in the commission of a third such violent offense have demonstrated their incorrigibility and continuing danger to our society. This, we have concluded, is a proper area for federal assistance to the states.

Although robbery and burglary are offenses traditionally prosecuted by the states, it is our view that making available federal jurisdiction over a limited number of these crimes in the discrete manner of H.R. 6386 is both an appropriate aid to the states and is constitutional. Under the Commerce Clause, Congress has the power to regulate even purely

intrastate activity where that activity "combined with like conduct by others similarly situated, affects commerce among the states ...." See, e.g., National League of Cities v. Usery, 426 U.S. 833, 840 (1976).

Specifically, the courts have sustained Congress' authority to regulate intrastate transactions in firearms, see 18 U.S.C. 921-928, on the theory that such transactions affect interstate commerce. See Huddleston v. United States, 415 U.S. 814 (1974). Moreover, cases that have dealt with the power of Congress under the Commerce Clause to enact statutes prohibiting convicted felons from possessing firearms (see 18 U.S.C. App. Sec. 1202) have uniformly upheld such a power. See Stevens v. United States, 440 F.2d 144 (6th Cir.1971); United States v. Burton, 475 F.2d 469 (8th Cir.), cert. denied, 414 U.S. 835 (1973); United States v. Weatherford, 471 F.2d (7th Cir.), cert. denied, 411 U.S. 972 (1973); see also, United States v. Bass, 404 U.S. 336 (1971). The rationale supporting these firearms statutes applies equally to the use of a firearm in the commission of an offense as addressed by this bill. We would suggest, however, that Congressional findings as to the effect of armed burglary and robbery on interstate commerce would facilitate the bill's passing constitutional muster. See Perez v. United States, 402 U.S. 146 (1971).

With respect to the sentencing provisions of H.R. 6388 we support the concept of enhanced penalties for career criminals. The proposed Act provides a mandatory minimum penalty of no less than fifteen years' imprisonment and up to life. Substantial

periods of incarceration for persons who have demonstrated repeatedly that they are a violent threat is one way of ensuring the safety of our communities and curtailing the disproportionate number of offenses committed by career criminals. The sentencing provision of the proposed legislation is consistent with the mandatory sentence recommendations of the Attorney General's Task Force on Violent Crime. The effectiveness of the sentencing provision is underscored by the bill's prohibition against suspended sentences, probation, and parole. Defendants convicted under this Act will have to serve at least fifteen years in prison and will be ineligible for probation or parole.

The battle against violent crime is one of the top priorities of the Department of Justice. We believe this legislation targets a critical area of the violent crime problem and provides for a concrete federal participation in attacking that problem with a limited expenditure of additional resources. We do not anticipate significant additional expenditures for investigation and prosecution of the limited class of offenders targeted by this bill, nor do we expect that the limited additional federal prison population resulting from prosecution under this provision will impose an undue hardship. Although specific estimates are difficult to determine, it is our belief that this is one of the most cost-effective means of making an impact on violent crime. The incapacitation of even a small number of recidivist robbers and burglars would save our communities millions of dollars.

We are sensitive to the issues of federalism inherent in this bill, and we do not view this legislation as an invitation to intrude into those areas of law enforcement which state and local authorities traditionally have prosecuted. Indeed, we anticipate that there would be only a very limited number of federal prosecutions under this bill. H.R. 6386 recognizes the importance of federal-state law enforcement coordination in prosecuting violent crime as well as the principal role state law enforcement authorities traditionally have played in this area.

As indicated, however, although the Department of Justice supports the thrust of the bill and the specific features of it discussed heretofore, we have serious concerns about several of the bill's provisions and would like to suggest areas in which modifications or clarifications are necessary to enhance its effectiveness.

Our first and most serious concern is with the bill's attempt to dictate the precise manner in which the states and the federal government are to consult to decide which sovereign will prosecute an offense which is a violation of the new statute and also of state law. H.R. 6386 provides that notification of a federal prosecution must normally be given to state authorities. Moreover, no person may be prosecuted under the bill's provisions until the Attorney General or a designated Assistant Attorney General certifies that the state prosecuting authorities were notified of the proposed federal prosecution before the formal institution of charges and did not object, or

certifies that no state prosecution was pending or likely. The bill would also allow federal prosecution without notification of state authorities, even if state charges were pending, only on the personal, non-delegable certification of the Attorney General that federal prosecution was required in the interests of justice. Thus, H.R. 6386 would allow a state prosecuting authority to halt a planned federal prosecution simply by objecting to it for any reason in which event federal prosecution could only be initiated on the personal authorization of the Attorney General.

Our objections to this cumbersome procedure are three-fold. First, obtaining authority from the Attorney General would take several days during which the defendant may flee or the prosecution may become impracticable for some other reason; second, it seems extravagant and unnecessary to burden the Attorney General personally with such a decision; and finally, even though H.R. 6386 states that the failure of the federal government to comply with the notification and certification requirements would not create any rights for the defendant, the fact that such procedural requirements are set out as part of the criminal offense may cause a court to find an obligation on the part of the government to comply strictly or forego the prosecution. Thus, although we strongly concur with the author of H.R. 6386 that prosecutions under the new statute should be carefully coordinated between the concerned state and the federal government, we much prefer that this be expressed generally as the intent of Congress in a section of the bill

separate from that setting out the offense, the approach taken in S. 1688 as approved by the Judiciary Committee. As a practical matter we would anticipate that the Law Enforcement Coordinating Committees in each district would consider issues of concurrent jurisdiction arising out of this legislation. In some districts the decision as to which sovereign should prosecute would be made generally and in others on a case-by-case basis.

There are several other provisions of H.R. 6386 which we believe should be substantially redrafted.

First, H.R. 6386 does not cover conspiracies to commit robbery or burglary, although it would reach attempts by defining robbery and burglary as including attempted robbery or burglary. In our view it should clearly cover, as does S. 1688 as approved, anyone who commits, attempts to commit, or conspires to commit an armed burglary or robbery who has been twice previously convicted of robbery or burglary or an attempt or conspiracy to commit such an offense.

Second, H.R. 6386 requires that the firearm be in the actual possession of a person "present at the site" of a robbery or burglary. Applying the statute only to the person who carried the gun is too narrow. It should reach anyone who commits, conspires to commit, or attempts to commit robbery or burglary while he or an any other participant is in possession of a firearm. Moreover, the intent and scope of the phrase

"present at the site" is not clear. For example, it may preclude the prosecution of a lookout or getaway car driver, even if he was armed.

Third, the definitions of the terms "robbery" and "burglary" are not helpful. They are defined in H.R. 6386 as "any offense in violation of the law of the United States or of any State that, at the time of the commission of such offense (A) is classified by the jurisdiction involved as burglary/robbery or attempted burglary/robbery; and (B) is punishable by a term of imprisonment exceeding one year." It is not clear whether this would include state offenses that do not use the terms "robbery" or "burglary," such as a statute that proscribes criminal entry with different gradations for the types of structures entered and the acts intended therein. It would be preferable to cover attempted robbery or burglary in the offense itself and state in the definitional section or in the legislative history that burglary, for example, is intended to include not only common law burglary or an offense that uses the term, but any form of criminal entry.

Fourth, H.R. 6386 requires that the two prior convictions be proved as an element of the offense, whereas S. 1688 provides that they need not be alleged in the indictment or proved as an element of the offense but rather shall be proved to the court at or before sentencing to show jurisdiction. In one sense, requiring proof that the defendant is a twice convicted robber or burglar might be seen to enhance the prosecution of the case since the jury is made aware of his past

convictions for offenses similar to the one for which he is presently on trial. Such an approach is constitutionally permissible, and in fact is adopted in the Gun Control Act (18 U.S.C. 921 et. seq. and 18 U.S.C. App. Sec 1201 et. seq.) which prohibits convicted felons from receiving and possessing firearms, and in 18 U.S.C. 842(i) which prohibits convicted felons from receiving or transporting explosives.

Cases construing these statutes have generally held that the government may put in evidence of more than one prior felony conviction and is not required to accept a defendant's offer to stipulate that he is a convicted felon. United States v. Burkhardt, 545 F.2d 14 (6th Cir. 1976); United States v. Brinklow, 560 F.2d 1003 (10th Cir. 1977); United States v. Kalana, 549 F.2d 594 (9th Cir. 1976). The Seventh Circuit has held, however, that the government normally cannot prove more than one prior felony, United States v. Romero, 603 F.2d 640 (1979), and other courts have noted that there are situations where it might be prejudicial to permit the government to prove a large number of convictions. United States v. Smith, 520 F.2d 544 (8th Cir. 1975); United States v. Barfield, 527 F.2d 838 (5th Cir. 1976.)

Requiring proof of the prior convictions to the jury in our judgment can lead to unfairness to the defendant and seems unnecessary. Moreover, the lengthy mandatory sentence for a person convicted of this offense, while clearly appropriate, may cause some courts to examine especially critically the manner in which the convictions were presented or commented upon in an

attempt to find prejudice to the defendant. Allowing the convictions to be proven to the court to establish jurisdiction eliminates this potential problem. We would recommend that H.R. 6386 be amended to handle the proof of the prior felonies in a fashion comparable to that in S. 1688.

Finally, until such time as our bail laws are reformed generally so as to allow pretrial consideration of a defendant's dangerousness to the community, we would suggest that H.R. 6386 include a provision similar to that in S. 1688 providing that a person charged with armed robbery or burglary under the bill be admitted to bail pending trial or appeal only under the more restrictive conditions of 18 U.S.C. 3148 which apply after conviction or in capital cases and which allow a court to consider danger to the community as well as risk of flight.

The Department would welcome the opportunity to work with the Subcommittee in drafting the numerous changes in the bill I have discussed. Mr. Chairman, that concludes my prepared remarks and I would be glad to try to answer any questions the Subcommittee may have.

DOJ-1982-09

Mr. HUGHES. Thank you.

Mr. Olsen, I quite agree with you, I think that we are reexamining our commitment of resources. Unfortunately, we begin so low that I am afraid it is going to be awhile before we provide the various law enforcement agencies and the other links in the criminal justice system with the resources that are really needed.

Plea bargaining is certainly a necessary evil, but I look upon plea bargaining as just really meting out in many instances pragmatic justice simply because we do not have the resources to do the work. In these situations, cases become a statistic with the administrative office of the courts; if it is over 3 months, get rid of it. I do not care what you do, get rid of it. If you have to dismiss it, dismiss it. That is the attitude of a lot of folks, unfortunately, in the system, and it is a direct result of our failure to commit resources. Although I see some progress, it is not nearly enough.

And the drug problems, which as you aptly point out are directly related to crimes of violence and property crimes, they severely impact the States. Much of the States' caseload is caused because we have been lousy partners, in doing a decent job in intelligence gathering overseas. If we did a better job, a better job of interdicting where we could, at the choke points and other places, we would do a better job of stemming the flow.

This, I believe, is the major task of the Federal Government, in addition to trying to talk a little more to law enforcement agencies and use task force operations to leverage expertise. But I have some difficulty, I must concede, of enlarging the scope of Federal jurisdiction, unless there is that nexus, No. 1; and until we have managed to do a better job of providing resources for equally important areas of enforcement.

I asked the question of Ron Wyden, Congressman Wyden, when he was here, of how he would feel about making the legislation more focused, to make sure there is a direct nexus, tying it in with those instances where it has a direct impact on interstate commerce, for instance, where the record shows that a defendant is jumping around from jurisdiction to jurisdiction, convictions in Pennsylvania, New Jersey, New York, where perhaps there might be some direct connection, that we could tie it to interstate commerce.

That would address the four areas that the prosecutor has indicated are clearly areas that the Federal jurisdiction should be invoked. How would you feel about that?

Mr. OLSEN. There are two answers to that. One is, I think we would be in favor of them, but not as an alternative to what is proposed today.

I think the focus of Senator Specter's bill is really examining a small percentage of offenders who create a disproportionately large amount of crime, with the view that this vehicle, this proposal, would really be seen as a safety valve to relieve some of the pressure from the State systems with a minimum use of Federal resources, because the crimes themselves do not entail or require the utilization of exhaustive Federal investigative resources. So I think that is the focus on it, the object being to provide some mechanism by which the Federal criminal justice system could serve in some assistance capacity to the State and local criminal justice systems.

In terms of what my views are on expanding the sentencing provisions for three-time losers who are violating, I assume, purely Federal jurisdictional crimes, I am not sure the Department has officially taken a position on that and I would prefer to confer with my colleagues about that and to submit the views into the record at a later time.

But from a personal standpoint, I think the general view is that anything we can do to get greater jurisdiction over the offenders is something that we all want.

Mr. HUGHES. I have a couple of questions in that regard, then. The States do not feel that this is an area the Federal Government should move into. They feel that they can adequately handle, with existing tools, these offenders, and that they are the ones that often track these individuals.

They have the case histories, as the prosecutor indicated. They know the defendants. Under these bills, the Federal Government would be called upon to come in with somebody who might be totally cold to the Federal system, other than the fact that he has sustained a third conviction where a handgun was involved.

What response do you have to that? Here is a situation where the State does not feel that that is a problem for the Federal Government. It seems to run contrary to the general philosophy of the administration, which is basically to encourage the States, which have the primary responsibility for local offenses, particularly violent crime, to have local jurisdiction.

Mr. OLSEN. I think the answer is that this is not an attempt at criticizing State and local law enforcement and making any allegations that they are not capable or competent to handle the problem. It is really viewed as an overall assessment that working together is desirable—and one way to work more closely together is to provide a vehicle that would assist the State and local prosecutions in these areas.

But the object would be that these would be a relatively limited number of cases nationwide, they would not interfere with or impair the jurisdiction of the States and the county prosecutors, but that they would really be providing a safety valve, a vehicle to render some assistance.

The object really is to get the violent criminals off the streets. I think this proposal is a small step forward in that direction of recognizing that the Federal system of criminal justice ought to be playing a slightly greater role in terms of providing assistance in violent crime areas.

Mr. HUGHES. Why not do it in this fashion? The Justice Assistance Act, which as you know is one of my favorite topics, has a category for career criminals. In a lot of jurisdictions they do a pretty good job with habitual offenders. Some really do not do the job that other jurisdictions do.

But why would that not be the proper vehicle? Is there something magical about a Federal conviction that would send a different message? You know, what is it about a Federal conviction for an offender committing a robbery with a handgun carrying a 15-year penalty that would not be as equally persuasive by a statute such as New Jersey has, where life imprisonment can be imposed on that individual?

Mr. OLSEN. I think the answer is that, as far as the legislative proposal, I would have to go back and get my latest reading from OMB and Mr. Meese. As far as the overall question about how these cases ought to be prosecuted between the Federal and the State governments, I think the answer is that at the present time we do have an incredible level of violent criminal activity on the streets of America, that both the State and the Federal criminal justice systems are trying to figure out the best way they can to solve the problem.

It is wonderful to talk about jurisdictional guidelines and turf and where you are going and where you are not going. But to the people of America, what they want is a problem solved, and one of the ways of solving the problem is to look at whether or not the Federal criminal justice system might provide some assistance.

While it is clear that the primary responsibility is with the State and local prosecutions in this area, I think the idea is that States now have prisons that are overcrowded, that cause early release of offenders, that their courts are more crowded than the federal system is, and that while the Federal system may have a record of declinations, that perhaps one way of reevaluating that and providing direct assistance to the States and locals is to take what I call a minor step forward overall.

You are basically talking about three-time losers. We were outside during one of the breaks and some of the fellows from the Justice Department and I were talking about the fact that when we grew up, we grew up learning that three-time losers went away for life. Now we are talking about trying to get some Federal legislation to do something about three-time losers.

I do not think it is simply a turf battle. I think it is a matter of simply beginning to work more closely together. One way to do that is with the proposal that is really Senator Specter's.

Mr. HUGHES. Let me just ask you, then, one additional question. If I understand you correctly, you say that there is nothing magical about a Federal conviction as opposed to State. However, we have some prison resources that the States do not. Why could that not be addressed by an exchange program, where the Federal Government can take offenders, for instance violent offenders that fall into this category, on a contractual basis with the States?

Mr. OLSEN. Now I know I am in over my head, because I do not know the answer.

Mr. HUGHES. You see, I really believe that Prosecutor Lehrer, like most of the prosecutors I know without exception, would love to put away people that are three-time losers, and could do it without any question if we had the prison space. So space is a problem.

Mr. OLSEN. I agree with that.

Mr. HUGHES. Until we get our act together, until we do a better job of managing the scarce resources and building the new prisons that are essential in this country, it seems to me that that might be one way to address that problem.

Mr. OLSEN. It is perfectly clear that Federal, State, and local prosecutors have the same objective. It is a question of whether or not this vehicle that is one step in the right direction can satisfy those problems,

Mr. HUGHES. Prosecutor Lehrer.

Mr. LEHRER. If I could just address something that has arisen during your questioning. He talked about truth in sentencing, and I really believe firmly in truth in sentencing. I know from our papers, we say the rapist was sentenced to 25 years and it really means 5 years.

Let us talk about truth in legislation for a minute and let us talk about truth in Senator Specter's proposed legislation. What we are really dealing with here is 500 cases throughout this land, which means 5 cases per district. Let us not fool the American public that the American Government is going to come in and stop violent armed robbery crimes.

What they are really going to do is take 500 cases and tell the public that we are solving the problem, when we are not solving the problem. Let the Federal Government do what they are charged with by the Constitution. Let them prosecute bank robberies.

If I may share one little anecdote with you, being a young naive prosecutor about 4 years ago and having read all the books I was supposed to read and having watched all the J. Edgar Hoover movies I felt relatively secure that if my bank was robbed the FBI would come in and solve it within minutes. About 2 months into my term the FBI resident agent in charge of New Jersey came to meet with me and the 53 police chiefs in my jurisdiction and said, congratulations, men, you are now in charge of bank robberies in the county of Monmouth.

I said, wait a minute. Where is J. Edgar Hoover and all your FBI agents coming in to solve all these bank robberies? He said, the priorities of the Government have changed. You are now in the bank robbery business. You have to understand the impact on the 53 municipalities in my county and my office, because for over the 30-year period that the FBI had taken jurisdiction of bank robberies they had developed an excellent expertise and a fine working relationship with local departments and county prosecutors. All of a sudden we were now solely charged with that responsibility, an onerous responsibility.

We have been in the armed robbery business ever since 1776. The local prosecutors have always been in the armed robbery business. We know it better than everyone. You give us that prison space, we will make sure that these 500 people never see the light of day again. Repeat offender statutes are in effect in 41 jurisdictions in this country.

Now, the Congressman from Oregon spoke earlier, and I do not dispute he has a big problem in Oregon, but may I suggest to this committee and through this committee to the gentleman from Oregon, that this problem could be easily remedied by State legislation. All you have to do is look to the State of New Jersey for model legislation in that area, and I have outlined that previously in my testimony.

The Congressman from Michigan raised the issue of how do you enforce mandatory sentencing. We have what is called the Graves Act, which says if you commit a crime using a handgun or a weapon you will do at least 3 years. The way it was to be handled was discussed at a meeting of the 21 county prosecutors in the State of New Jersey. We agreed that the legislature had said that

those people will go to jail for at least 3 years. We have agreed that we should not plea bargain that offense away.

In addition to that, the courts have buttressed the legislature by saying once an indictment is returned charging a Graves Act offense, the judge cannot dismiss it unless the prosecutor can prove to the court on the record that he cannot prove his case. So the 3-year mandatory sentencing for a gun-related felony in New Jersey is very, very effective and is working, working so well that we are full at the inn. As you know, we are now using Fort Dix with a contractual agreement with the Federal Government to house our prisoners.

So those are issues I think we ought to look at. I want to make one other thing perfectly clear, sir. This is not a turf argument. I am not here to say I am jealous of my turf. I want—and I speak for the prosecutors of America—we want to enter into cooperative law enforcement efforts, and I have said in the main body of my text that we have always done that.

What we are really talking about and trying to bring to the attention of this committee is the fact that there are so many areas that the Federal Government is uniquely capable of handling that would take the pressure off of us so that we could do the things that we are supposed to be doing.

Mr. HUGHES. Let me just ask you a question. How much plea bargaining takes place prior to indictment?

Mr. LEHRER. Prior to indictment in Graves Act cases, sir?

Mr. HUGHES. Yes.

Mr. LEHRER. Very little. Very, very little. You mean in gun offense cases?

Mr. HUGHES. Yes.

Mr. LEHRER. I can speak only in Monmouth County's jurisdiction. Very, very little. I know this is not a popular thing to say in Washington, but I will say it: I am against handguns. I would love to see national legislation banning handguns.

Mr. HUGHES. Strike that from the record. [Laughter.]

Mr. LEHRER. I am sorry, but that is my personal prosecutorial philosophy. I have seen too many mangled and dead bodies as a result of handguns, and I feel any offense committed with a handgun must be treated as an example so that other people will not do the same thing. I know I will not be getting any contributions from the NRA now, but I am not running for office.

Mr. OLSEN. Mr. Chairman, there is a legal maxim that silence, if anything, connotes acceptance. I would like the record to reflect that I was not silent on that last point.

Mr. HUGHES. OK. Anything further?

[No response.]

Mr. HUGHES. Thank you very much, thank you both very much. We really appreciate the valuable contribution you have made to us today. Thank you.

I wonder if Dr. Wellford will come forward, along with Ms. Aiyetoro.

Dr. Wellford received his bachelor and master's degrees from the University of Maryland and his Ph. D. from the University of Pennsylvania. From 1976 to 1979 he was Deputy Assistant Direc-

tor, Office of Policy and Planning, Department of Justice, and Administrator of the Federal Justice Research Program from 1979 to 1981.

He is currently the director and a professor at the Institute of Criminal Justice and Criminology at the University of Maryland, where he is working on methods of predicting habitual offenders.

Welcome today, Dr. Wellford. We have your statement which, without objection, will be made a part of the record.

Ms. Aiyetoro, who is an attorney with the national prison project of the American Civil Liberties Union, is also most welcome here today. Ms. Aiyetoro has graduated with a B.A. degree from Clark University in Massachusetts, a master's degree in social work from Washington University in St. Louis, and cum laude from St. Louis Law School. Prior to her present responsibilities with the ACLU, she was with the Civil Rights Division of the Department of Justice.

Ms. Aiyetoro, we welcome you. And likewise, we have your statement, which without objection will be made a part of the record. You may proceed also as you see fit.

I wonder if we can, before we get underway—and we will start with you, Ms. Aiyetoro—if possibly we could just recess for a couple of minutes. I have something that I must take care of.

[Recess.]

Mr. HUGHES. The subcommittee will come to order.

I apologize for that delay.

OK, Ms. Aiyetoro, why don't you begin?

TESTIMONY OF ADJOA AIYETORO, NATIONAL PRISON PROJECT, AMERICAN CIVIL LIBERTIES UNION

Ms. AIYETORO. Thank you very much.

I am speaking on behalf of the national prison project, as you stated in your introduction. We are in opposition to the bill that is now before the subcommittee. I am not going to go over all of the testimony that we have submitted. I would like to highlight several points that we have made in our testimony, and then will answer any additional questions.

First of all, I think that it is important to set the context for why in fact we are opposed to the bill. In addition to the specific weaknesses we find in the bill and what would be an astronomical cost to the Federal Government, we believe that the resources required by this bill if we are in fact going to decrease the crime rate need to be put into programs other than increasing the incarceration time of persons who have been convicted of the crimes.

We feel that the studies that have been done on crime and criminal behavior once people are incarcerated as well as the numerous court cases which we have been involved with should be used by this subcommittee and any committee which is charged with the responsibility of addressing the problem of crime in our society. This case and studies clearly indicate that current incarceration practices and lengthening the time of incarceration are not the answers to the problem of crime.

More specifically as it relates to the specific bill that is before the subcommittee, we feel, as has been stated earlier by several

persons, that in fact this is, an unconstitutional extension of the Federal jurisdiction. To in fact make a Federal offense of crimes that have been traditionally local offenses stretches the responsibility of the Government in the criminal justice area to one which Federal Government intervention is not necessary or permitted.

More germane to the content of the bill, we believe that the costs of this bill are astronomical, and the costs are more startling because they are what we call hidden costs. The cost to this Government of in fact imprisoning 500 additional persons, as our testimony points out, will be $7.5 million per year in additional costs. The legislation requires a 15-year minimum sentence, and I am not good on the billions and trillions, my figure shows it is $1,025 million in addition to what has already been spent will be required if you in fact incarcerate 500 more men and women for a period of 15 years.

In addition to the costs of just incarcerating them, you would also have additional costs as it relates to building additional prisons, if you in fact are going to incarcerate 500 more people a year. The estimates, well documented estimates of the cost of prison construction is anywhere from $50,000 to $100,000 per cell for prison construction. If we take the low figure of $50,000, talking about 500 additional prisoners, we are talking about $25 million for the construction of one prison to house the additional 500 persons.

Now, why do we say prison construction is necessitated by this act. As some of the people have pointed out, and as we well know, at the prison project, since we have litigated many of the cases, the majority of prisons within the United States are woefully overcrowded. The Federal prison system is no exception. The Federal prison system in August 1982 was 17 percent overcrowded. That is 5,000 additional persons than in fact the rated capacity of the Federal prisons would hold.

Someone mentioned today that if you remove the Cubans that are now in the Federal prison in Atlanta, then you would have space for the 500 additional persons that this legislation would prosecute or would allow the Federal Government to prosecute. That in effect is an erroneous conclusion. When you are 5,000 persons overcrowded, the removal of several hundred Cubans is not going to have a real effect upon the overcrowded condition in the Federal prisons.

In addition to those costs would be the increased costs to the U.S. attorney's staff. The U.S. Government seems to want us to believe that there would be no additional cost and that the current staff could handle the situation. Either that means that, one, the current staff is not at this point working up to the level which they should, and I think that needs to be investigated if that is in fact the case, or it means that in fact they will change their priorities and not do some of the work they are doing now.

If in fact they are going to maintain their current workload it would necessitate an increase in staff to handle 500 additional prosecutions.

In addition to that, and perhaps a concern that we really don't want to take a real position on in terms of just the whole issue of plea bargaining, but if you look at what happens now, as relates to the trials of many persons, which was discussed briefly today,

many persons do not go through the whole process of trial because they in fact do plea, make a plea, as it relates to some crime.

Most people are not going to plead guilty when they are going to automatically get a minimum of 15 years without possibility of parole. So what you are also doing with this system is increasing the number of people that will in fact demand to have a full trial, which will require full governmental resources to in fact assure that the person gets the absolutely fair trial that they are supposed to get within the system.

As I stated earlier in the introductions to my remarks, the national prison project believes the amount of money we are talking about, the millions and millions of dollars for just instituting this legislation for the first year—we are not even addressing the total amount of money needed to maintain the program years after—this amount of money could be better spent by funding programs within prisons to develop educational and vocational programs so that persons who are one- and two-time offenders do not continue to come out of our prisons without training and skills, and further complicating the discrimination due to their incarceration.

Unskilled and untrained convicts of prisons, when released, become more desperate than they were even before they went into prison because they are unable to find meaningful employment and thus, they return to prison.

Two, using money for developing alternatives to long-term incarceration which would include a strong job-training program and programs within our many communities for persons who become involved in the criminal justice system for the very first time. Such programs have been instituted in some jurisdictions to deal with juveniles as well as first-time young adult offenders.

Three, developing restitution programs to victims (this is also a punishment to the person who has committed the crime), whereby the person committing the crime is required to pay some restitution not only in monetary ways but also in terms of work. Many programs that have been discussed in various jurisdictions would require the prisoner to do some type of work either specifically for the victim or as it relates to some aspect of the victim's life.

Additional alternatives to incarceration would include developing programs within the community for one- and two-time offenders, especially offenders of nonviolent crimes. I mention that because in fact part of the bill would in effect incarcerate persons who may not have in fact committed a violent crime prior to their third offense with a firearm.

Additionally, a problem with the bill, and I am jumping a little ahead of myself, but I think it fits in here, a problem with the bill is, not only could the two priors be nonrelated to firearms, they could be two burglaries, breaking into a warehouse where the door was not locked and it had been abandoned for years and stealing property in the value of $100 or $200. So, the crimes themselves that could be committed prior to the third offense could be crimes that were not violent crimes and were not crimes from what I understand the testimony of Mr. Specter and the other persons who speak in favor of the bill which in fact this bill was drafted to address.

We also believe that the evidence is strong that mandatory sentencing, as was mentioned by the representative from Michigan, is not really an effective legislation to deter crime. We think that many of the persons who have testified today have brushed over the issue of whether in fact mandatory sentencing or the Habitual Criminals Act being passed across the country have in fact done what they are intended to do.

The evidence is far from clear. In fact, if we look at the evidence very closely, we see that the evidence tends to show that at this point in time there is no deterrent, or a very, very minimum deterrent effect. The deterrent effect is usually related to the person who is sentenced to long-term incarceration, that is, it deters this person but it does not have to have an impact on the crime rate.

We point out that in Michigan and Massachusetts, where mandatory sentencing laws were passed, as well as in New York, the crime rate did not decrease. Rather than the crime rate decreasing, convictions and prosecutions decreased. The basic unfairnesses in the act results not only because it does not consider the various factors that make up the circumstances of the crime, but in fact, is directly related to the fact that the two priors may be without a firearm. The prior convictions may in fact be for crimes against property of very little monetary value. Those aspects of the bill make the bill very unfair to the individual person before the criminal justice system.

Thank you.

[The statement follows:]

TESTIMONY OF THE

NATIONAL PRISON PROJECT

BEFORE THE HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME

Introduction

My name is Adjoa A. Aiyetoro and I am a staff attorney with the Washington based National Prison Project of the American Civil Liberties Union. Through litigation and public education the National Prison Project seeks to protect prisoners' rights, to assist in bringing conditions in the nation's prisons up to constitutionally required minimums, and to develop rational, less costly, more humane and more effective alternatives to incarceration. We are primarily a litigation project and it is from the experiences we have had in prison litigation across the country that I testify on behalf of the National Prison Project.

The Armed Robbery and Burglary Prevention Act now before this Subcommittee is a mandatory minimum sentencing bill. The National Prison Project testifies in opposition to this proposed legislation. Mandatory sentencing laws are ineffective crime prevention mechanisms while at the same time they increase costs to taxpayers. Additionally H.R. 6386 treats similarly very different criminal conduct & contains a provision which exempts the Attorney General from compliance with its jurisidictional requirements by denying the court the authority to quash the indictment for failure to so comply.

H.R. 6386 and Mandatory Minimum Sentencing Laws

Mandatory minimum sentencing laws similar to H.R. 6386 are proposed for a number of reasons. (1) They are touted as assuring that a person committing a crime covered by the laws will be given a certain time as punishment for such commission by removing the discretion of the Court in sentencing. (2) The proponents of these bills assert that they serve as a deterrent to other persons contemplating commission of the crimes covered by the law. (3) It is claimed that such laws protect society from dangerous criminals. (4) According to sponsors of a similar bill in the Senate, in addition to the reasons outlined above, this Act is being proposed to assist the states which have been unable to secure sufficient sentences for people who are habitual offenders and in which overcrowded conditions within their prisons make it difficult for them to give sufficient sentences for the habitual criminal.

The Armed Robbery and Burglary Prevention Act does not eliminate discretion in deciding who will get the longer sentences. Rather, it substitutes the discretion of prosecutorial and state law enforcement officials for the discretion of the judge in a criminal trial. As U.S. District Court Judge Frank Kaufman noted,

> Fixed or minimum sentencing, which eliminates or minimizes the trial judge's opportunity to exercise discretion in sentencing, will only increase the present awesome power of law enforcement and prosecutorial officials to determine sentences. All persons committing the same crime are not similarly charged, whether because the apprehending officer or the prosecutor are "nice guys" or are friends of the offender or his family, or want

> cooperation or information from the offender, or for many other reasons. Some defendants are charged with one or more crimes with sentences totalling fewer years or carrying only fines as penalties. Still other offenders plead guilty under beneficial plea agreements, and some are not charged at all. Thus, fixed or minimum sentencing does not eliminate sentencing disparities and does not provide equal and predictable treatment for each would-be offender. Kaufman, The Sentencing Views of Yet Another Judge, 66 Georgetown Law Review 1247 (1978).

This Act contains no provisions addressing this problem. The federal government is not required by the Act to prosecute every person whose alleged criminal conduct falls within the ambit of the Act. Additionally, the practicality of the situation would seem to necessitate reliance on state law enforcement and prosecutorial agencies for information on persons whose conduct may be covered by the Act. For the reasons outlined by Judge Kaufman neither the federal prosecutor nor the state law enforcement and prosecutorial officials may choose to charge or prosecute the individual for a crime covered by the Act even though there may be ample factual support for accusing the person of and prosecuting them for commission of the covered crime. Such circumvention of the Act is not mere speculation. In New York, after passage of mandatory minimum sentencing law for drug convictions, indictments decreased for these crimes although crime rates did not similarly decrease. Joint Committee on New York Drug Law Evaluation, The Nation's Toughest Drug Law (1977).

The belief that mandatory minimum (but lengthy) sentences will in fact deter armed robbery and burglary with a firearm is likewise erroneous.

> While the concept of deterrence may have application in the area of white collar crime, it has little or no meaning in the alienated world of violent street crime. This world is one of savage deprivation. Virtually all street crime comes out of wretched poverty, broken families, malnutrition, mental and physical illness, mental retardation, racial discrimination, and lack of opportunity. Street crime springs from anger and resentment of those who have been twisted by a culture of grinding oppression. The roots of street crime are thus imbedded deep within the inequities of our very social structure. So long as these inequities remain the roots will be continually refreshed and rejuvenated. To speak of incapacitation and deterrence in this context is to consign oneself to a treadmill, unable to stem the increasing crime rate -- despite a succession of repressive measures. Bazelon, Missed Opportunities in Sentencing Reform, 7 Hofstra Law Review 57 at 59 (1978).

Even among those authorities who adhere to the general deterrence theory, there is relatively widespread agreement that deterrence depends both on the severity of the sentence imposed and on the certainty of its imposition. See Becker, Crime and Punishment: An Economic Approach, 76 J. Pol. Econ. 169, 176 (1968); Posner, Economic Analysis of Law §7.2 (2d ed. 1977). Indeed, it may well be that certainty of some punishment is far more important in producing a deterrent effect than length of imprisonment. See Block & Lind, An Economic Analysis of Crimes Punishable by Imprisonment, 4 J. Legal Stud. 479 (1975); Deterrence and Incapacitation 37.

As discussed above, H.R. 6386 does not make "certain" that every person accused of commission of the crimes covered by it will in fact be prosecuted under the Act. Additionally, there is

no guarantee that the federal courts and juries will find a person guilty of all the requisite elements of the proposed federal offenses when they believe that the mandatory sentence without possibility of parole is too harsh given the facts of a particular case. This phenomenon was reported in Michigan after that state adopted mandatory minimum two year sentences for offenders who carried a gun while committing any felony. See Heumann & Loftin, Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute, 13 Law & Soc. Rev. 393, 417-420 (1979). The conviction rate also declined in New York after the imposition of mandatory minimum sentences for drug crimes, from one-third to one-fifth of all drug arrests. The number of convictions relative to dispositions fell from 86 percent in 1972 to 80 percent in 1976, after passage of the mandatory sentencing laws. A 1977 study on the New York Drug Laws concluded, "The total number of convictions for drug offenses in felony courts in the period 1974 to mid-1976 was lower than would have been expected during the same period under old law disposition patterns." See Joint Committee on New York Drug Law Evaluation, supra.

The sentences imposed on offenders only affect those offenders who have been convicted -- a small fraction of those that commit crimes. Longer prison sentences will not bolster the low arrest and conviction rates that make punishment uncertain and deterrence weak. The net result may well be that notwithstanding the long sentences dictated by this legislation, potential offenders will perceive that the chances are low of being apprehended, charged, convicted, and sentenced and they will not be deterred from committing the crimes covered by the bill. Michigan and Massachusett

used mandatory sentences for felonies committed with a firearm. Violent crimes continued to rise along with the overall crime rate.

To the extent that the possibility of a long prison sentence generates any deterrent effect, the issue of equity and fairness is raised whether the minimal deterrent effect generated by the selective imposition of long sentences on a relatively few offenders can be justified. Fairness dictates that rather than subjecting a few offenders to fairly draconian sentences, law enforcement resources should be committed to ensuring that more offenders are detected and receive some punishment. See Perlman & Stebbins, Implementing an Equitable Sentencing System, 65 Va. L. Rev. 1175, 1189 (1979) ("The use of one person as a means to prevent others raises serious philosophical questions and the temptation to economize by deterring with a big -- although seldom applied -- stick makes those who are concerned with equity uneasy").

Laws such as H.R. 6386 will not serve to protect society from dangerous criminals. The impact on the federal prison system from an increase in the number of persons convicted under the federal laws will lead to more overcrowding of the system. Overcrowding has been found in many cases to lead to increased violence and inadequacies in educational and vocational programs. These conditions embitter offenders and lead to first time offenders committing further crimes upon their release. See Ruiz v. Estelle, 503 F.Supp. 1265 (S.D. Tex. 1980); Silberman, Criminal Violence, Criminal Justice, 505 n.(1978); von Hirsch, Prediction of Criminal Conduct, 21 Buffalo Law Review 717 (1972).

Arguments by proponents of this bill that states are unable to give lengthy sentences for the type of offenders covered by this Act are indeed unfounded. States regularly give extremely long sentences for similar crimes. See, e.g., the sentences given inmates in the state courts of Texas, North Carolina and Virginia. State legislators are not precluded, therefore, from authorizing longer sentences if they are convinced that such legislation will in fact lead to a decrease in crime. The federal prison system is currently 17% overcrowded. See, Monday Morning Highlights, U.S. Department of Justice, Federal Prison System. It seems to be a basic contradiction to propose to take federal jurisdiction of certain crimes due to the overcrowded conditions in state prisons while ignoring similar conditions within the federal system.

Mandatory miminum sentencing proposals are politically attractive schemes for reducing crimes because their costs are hidden. Proponents of mandatory minimum sentences often assert that even if mandatory sentencing does not dramatically reduce crime, at least it makes a beginning, with the implication that the "beginning" effort does not impose extra costs on the citizens it seeks to protect. This assumption is false on two counts. First, to be effective, mandatory minimum sentencing proposals impose enormous monetary costs on taxpayers, in terms of the costs of longer trials, the maintenance of greater numbers of people in prison, and the construction of new prisons. Second, the mandatory sentencing proposals divert resources -- both monetary and psychological -- away from effective means of fighting crime, thereby raising the levels of frustration and fear of citizens who continue to be

victimized by crime. Far from being a panacea in the battle against rising crime, mandatory minimum sentences often make the problem worse.

The overcrowded conditions of the federal prison system will eventually necessitate the construction of new prisons. Without new prisons, offenders sentenced under the bill would replace inmates imprisoned for other crimes, who would then be back out on the streets. The construction costs for new prisons range from $50,000 to $100,000 per cell. The total prison costs per additional inmate would be $65,000 to $68,000 for one year, and $15,000 to $18,000 for every year thereafter.

These prison expenses would make the cost of the bill enormous. If the bill's only impact was to incarcerate in the federal prison system 500 offenders, the cost would be $7.5 million per year & $25 million for prison construction. Imprisoning 1,000 additional offenders would cost $15 million every year, and $50 million in prison construction costs. An additional 2,000 inmates would cost $30 million a year, and $100 million in construction costs.

The experiences of states with mandatory minimum sentencing statutes support these predictions. New York State's mandatory sentences for drug crimes generated new prison construction at an expense of $160 million. A Pennsylvania legislative report estimated that mandatory sentencing proposals considered in 1976 would cost the state $54 million a year in operating expenses and $105 million in construction costs. See Testimony of William G. Nagel, Executive Vice President of American Foundation's Institute of Corrections, Joint Committee on the Judiciary, Connecticut

General Assembly, March 18, 1977.

Court expenses are another cost of the bill. If federal prosecutors charge offenders with the proposed measure, and judges sentence defendants under the sentencing provisions, most defendants would go all the way through the trial process, rather than plea bargaining for a 15 year minimum sentence. The plea bargaining for crimes against persons and property support this analysis. Convictions for violent crimes carry longer sentences than property crime convictions. In 1977, 90.5 percent of the property crime convictions came as pleas; but only 71.8% of the violent crime convictions were by plea. In 1978, property crime convictions were 91.1% pleas, and crimes against persons convictions were 81% pleas. Crime and Justice Profile: The Nation's Capital, 101 (1979).

Trial costs are far more expensive than plea bargaining costs. Jury trials in California average 24.2 hours at $3000 per trial. A guilty plea took 15 minutes and $215 (including all processing costs). Rhodes, Plea Bargaining: Who Gains? Who Loses?, 14 PROMIS Research Project at 54 (1978). New York spent an additional $32 million to enforce and implement its mandatory sentencing laws.

The secondary costs of the bill are also high. The $10 million, $25 million, $50 million or $100 million that the bill costs will come from reductions of other services - welfare, education, job training - and from higher taxes. The perception of citizens that they have wasted their tax dollars on illusory crime prevention will destroy their confidence in the police, courts, and government, and increase their despair that nothing can be done to fight crime.

In addition to believing that H.R. 6386, like other mandatory sentencing laws will not in fact do what its sponsors and supporters assert it will do, we object to this bill because of its failure to differentiate between conduct which may be very different.

The bill allows for the prosecution of a person convicted of two prior robberies or burglaries whether or not a firearm was in fact used in the prior crimes. In addition, a person whose past robberies or burglaries were of property of low monetary value is treated like a person whose convictions were for property valued at thousands of dollars. Likewise, one prosecution under H.R. 6386 can be for a crime where property values had a broad range and where the defendant neither personally carried the firearm nor knew that a participant had possession of a firearm.

H.R. 6386 would thus create unfairness among defendants convicted of the same offense because it would strip the court of its ability to consider the particular characteristics of the offender's criminal behavior, both past and present, when fashioning a sentence. The bill requires the court, upon conviction, to sentence the defendant to a minumum of 15 years without possibility of parole. According to Judge David Bazelon,

> The assumption that defendants or offenses can be categorized in a meaningful way is problematic. The variety of possible situations simply defies such bright lines...There are an infinite number of ways of characterizing any individual defendant, and which characteristics are relevant must be determined by the particular circumstances of the specific case. Bazelon, Missed Opportunities in Sentencing Reform, 7 Hofstra Law Review 57 at 62 (1978).

The formal elements of a particular crime admit of widely varying offender behavior with respect to such characteristics as how the offender treated his victim and whether the offender "master-minded" the criminal endeavor or merely participated as a relatively inactive co-defendant. Perhaps the most important such factor in sentencing an offender convicted of commission of an armed robbery or burglary is how the offender used the firearm. An offender who relied upon the firearm to coerce his victim should receive a harsher sentence than the offender who was merely discovered upon arrest to have been carrying a concealed firearm at the time of the offense, or one whom had no knowledge that a participant had a firearm.

Finally, the bill precludes the defendant from challenging the authority of the federal prosecutor to proceed with the prosecution of his case. It denies the Court the authority to quash the indictment for failure of the Attorney General to, among other things, give notice to the State of its intent to prosecute or to refrain from prosecuting the defendant because of a pending state prosecution. This denial potentially infringes upon the right of the defendant to be tried only once.

Conclusion

H.R. 6386, "Armed Robbery and Burglary Prevention Act", is an unnecessary, and possibly unconstitutional, expansion of the federal criminal laws. It intrudes into the province of the states to

prosecute persons accused of armed robbery and burglary. The bill, like similar bills passed by State governments, is based on incorrect assumptions that it will deter crime and decrease the discretion of courts and juries. Additionally, this bill unfairly treats as similar very distinct behaviors and denies the defendant the right to challenge the authority of the Attorney General to proceed with the prosecution. The National Prison Project of the American Civil Liberties Union Foundation, for the reasons discussed above, believes this bill, if passed, will have a negative impact on the federal prison system, increase costs to the taxpayers, and fail to achieve its stated purposes.

Mr. HUGHES. Thank you very much.
Dr. Wellford.

TESTIMONY OF CHARLES WELLFORD, INSTITUTE OF CRIMINAL JUSTICE AND CRIMINOLOGY, COLLEGE PARK, MD.

Mr. WELLFORD. Mr. Chairman, it is a pleasure to be here today with you and to describe to you two efforts, one at the Federal level and one at the State level, that I think are important for your consideration and the consideration of the subcommittee as you review this and related legislation.

The two efforts are a research effort done by Inslaw and the Department of Justice focusing particularly on career criminals in the Federal system. The second is an effort by the State of Maryland, which we call the repeat offender program experiment, which involves five local jurisdictions in Maryland attempting to use the results of current research to better structure career criminal programs.

As you know, and as the speakers before me have indicated, the research on career criminals is quite recent. Basically, all we have done is to document the fact that a very small percentage of people do account for a substantial amount of crime, and more importantly, a substantial amount of serious crime. The efforts to develop career criminal units in local prosecutors' offices have, according to the evaluations done by Mitre Corp., not enhanced our ability to deal with crime. Those career criminal units seem to have put into a more formal structure what prosecutors were doing all along, picking out bad cases and giving them special consideration.

When the Attorney General's Task Force on Violent Crime issued its phase 1 report, they suggested that the Attorney General direct relevant units within the Department to consider in what ways the Federal Government could contribute to dealing with the problem of habitual, chronic or career criminals.

One of the things the Attorney General did was to direct the Federal justice research program, which is located in the Office of

Legal Policy, to begin research on career criminals in the Federal system.

I know that Mr. Olsen, before he left, presented you with a copy of the final report from that project which is literally just being distributed today. I think you have the first copy given to anyone outside of the Department of Justice. That report, the summary version of which is called "Targeting Federal Resources on Recidivists," describes last year's effort to look at the problem of career criminals in the Federal system. Let me just highlight a couple of what I think are the critical findings in that study for your consideration.

First, the study considered criminal history of a sample of the individuals arrested and charged in the Federal system in 1976. We found that in about 25 percent of those individuals, a little over 2,000 of them, had substantial non-Federal arrest records. By substantial, I mean 5 or more non-Federal arrests in the last 10 years. As a matter of fact, they had averaged a little over 10 arrests per person during that time period.

So that the notion that Federal offenders, those people coming into the Federal system are very different from those in State and local systems may not be entirely accurate. There is a group of people currently in the Federal system who do have substantial involvement in crime, if we use arrest as one measure.

Another study we did as part of the Federal sentencing project involved interviews with current incarcerated offenders. Our estimate is, and I think it is a conservative one, that Federal offenders on average will commit about 20 offenses per year free. These are offenses now, not arrests. So these 10 arrests during this period will really stand for a substantial number of offenses that these individuals are committing. We suggest then in this report that there exists within the current Federal system a career criminal population that should be getting attention. The question for the Federal system, as it is for State and local is can those people be identified with any acceptable degree of accuracy before they are career criminals?

I think it is probably too late after a person has committed their third offense with a weapon. The impact on society of that individual will already be so substantial that we will be doing again what I think we have done all along, dealing harshly with the offender often they have finished their hearing involvement in crime.

The second part of the study was to develop a predictive procedure that could be used by U.S. attorneys, in selecting out cases for special prosecution. Attached as table 2 in the testimony is the prototype of what such a predictive system might look like. It is only one of many that could be developed. It is one that we think would be a fairly accurate one that would identify career criminals with a reasonable degree of accuracy. I offer it to you as an example of an approach where we would try to use the best knowledge available to identify earlier than we are now doing the career criminals currently caught up in the Federal system.

We estimate, and table 3 of the prepared testimony points to this, that if this instrument was used, we would identify a group each year of about 2,000. I am not sure where the number of 500 that has been used throughout this morning came from, but we

would estimate about 2,000 individuals who have had substantial involvement. That is, they meet the usual definition of a habitual offender used in research, five to eight or more offenses during a 5-year period, with a high degree of accuracy and that those individuals then could be given special handling, increased efforts to achieve a successful prosecution, and where appropriate, an enhanced sentence.

This could be done within existing Federal resources. That is why the report is labeled "Targeting Federal Resources." This would not require substantial expansion of the Federal prison system or investigative or prosecutorial resources. It would mean directing those resources in ways that are consistent with achieving a maximum impact on career criminals.

The research now is complete. It is in the hands of the Department, and we understand the Department is looking at this, making it available to the law enforcement coordinating committees, and assessing how it might best use the results of this research.

The second effort I would like to describe is the one in Maryland, this Repeat Offender Program Experiment (ROPE). On October 6 and 7, Maryland will hold a meeting at the College Park campus, University of Maryland. At that conference, we will have researchers, prosecutors, legislators, et cetera, from around the country, we will discuss this general problem and review a program that has been in development for about 2 years in the State of Maryland—ROPE.

A task force consisting of operational people and researchers has worked for over 2 years to develop this program. It is now being implemented in five jurisdictions who are going about the same kind of study I just described very briefly at the Federal level, to see if we cannot find a way to identify earlier than we are now and with some high degree of accuracy potential career criminals for special handling at the prosecutorial level.

I think the effort in Maryland is really a model that many other States, once it is better known, will follow, and you will see more of a concerted effort at the State level and local level to use the vast amount of research that the National Institute of Justice and the National Institutes of Juvenile Justice and Delinquency Prevention have made available, but right now it is not being used in a way I think it should be, except in rare instances such as Maryland.

Along with others today, I thank you very much for your support of the Justice Assistance Act. I think that approach will provide a mechanism by which State and locals can have the resources to test out and develop the kinds of programs that research has suggested. Without it, I am afraid the contributions of NIJ and the other Federal agencies that are supporting research will not be maximized to the degree they should.

Mr. HUGHES. Thank you. I appreciate the comments about the Justice Assistance Act. We quite agree. Both Hal Sawyer, the ranking minority member, and I are very, very committed to that national leadership.

Doctor, I found your proposed scoring system interesting. I can understand most of the categories. I suspect we can probably debate the weight you have put on some of the categories, but I no-

ticed that there isn't a category to deal with the personal environment of the defendant. For instance, does he have a job? Does he have any assets? Does he have a commitment of some kind to the community? What is his family relationship? Things that might represent social pressure on that individual. Is there some reason for that?

Mr. WELLFORD. There are two reasons, Mr. Hughes. One is the fact that these weights are derived from the statistical work that we did, and in a sense simply reflect the best predicters that were available in the large number of variables we had, including many of the things you mentioned. It just turned out that these items, the prior record, prior type of incarceration, et cetera were, more accurate predictors.

The second was that there was some concern that employment history, family structure, educational level, et cetera, while they may be reasonable predictors, may be too closely related to constitutionally suspect factors. For that reason, for example, the parole commission eliminated some of the family history variable from their predicters because they were just too confounded with the factors of race. They were introducing the potential for bias.

So, for both of those reasons, they do not fall in, although——

Mr. HUGHES. I have difficulty with that, because that cuts across racial, ethnic, and religious lines. We could almost predict with some degree of accuracy, when I was a young prosecutor handling juvenile offenders, almost predict from the family background the youngsters we were going to have problems with.

Mr. WELLFORD. I think the same way you could probably predict from the record the offense history of that person. I do not think anyone is suggesting one can predict prior to the first or second contact with the system. If we were doing that, then the kinds of factors you are suggesting would be terribly important, and the only ones that would be available.

What we are talking about is looking at a developing pattern of criminal behavior and seeing if we cannot interdict earlier to slow that down.

Mr. HUGHES. We are talking about crime prevention. That is something Ms. Aiyetoro touched on. It is extremely important, and we keep neglecting the other component, trying to provide hope and the realization of dreams and all the other things that are the intangible factors in our total crime picture.

One of the things that you stated in your testimony, Ms. Aiyetoro, I would like to comment upon is that in your opinion that certainty of punishment is far more important than the length of the sentence. A lot of the folks are saying today that the plea bargaining system has destroyed, to some extent, that certainty that you point out as being so important. Would you agree with that assessment?

Ms. AIYETORO. I would agree with it. I think the reason I am hedging on the whole issue of plea bargaining, as I stated in my testimony, is that, because we are not prosecutors and have not worked through the whole prosecutorial system, other than what we have read about the plea bargaining system, we are not experts on it, and I would not want to make any detailed statements on it based on just my opinions in that sense, but I think that is a point

that has been made by the ACLU in a couple of things they have done, that in fact we need to deal with more certain sentences. Whether or not we can do that within a plea-bargaining system, or whether we need to get rid of that system, is something that should be discussed by people who have the expertise in that area.

Mr. HUGHES. How about you, Doctor? Do you have any observations to make?

Mr. WELLFORD. I think the purpose of sentencing has to be tailored to the kind of offender that one is dealing with. When we are talking about career/habitual offenders, chronic offenders, professional thieves, however you want to label them, we are talking about, as someone said earlier, individuals who have made a relatively rational choice. This is not the casual juvenile who stumbles and finds a house open and burgles it.

Mr. HUGHES. They are playing the odds.

Mr. WELLFORD. They are playing the odds, and the level of deterrence that we can probably achieve in our system will not be a factor that will slow them down, so what we look to, unfortunately, is incapacitation. At the same time, we cannot give up the goal, as you stated, for prevention, or for making sure that people who are in prison need to be there.

There are substantial numbers. Prison administrators have said for years that we only need to have 15 percent, 20 percent, 8 percent, whatever the number has been, in our prisons. The rest are not benefiting, and do not need a prison experience. I think it works both ways, as we identify career criminals, incarcerate them, and recognize that their lengths of sentence will have the primary impact on those individuals, we must look at others more carefully and see if deterrence, rehabilitation, and community activities might not be a better way to go.

[The statement follows:]

Biographical Sketch

Dr. Charles F. Wellford

Dr. Wellford is a Professor of Criminology and Director of the Institute of Criminal Justice and Criminology at the University of Maryland. From 1976-1981 he was in the Office for Improvements in the Administration of Justice, U.S. Department of Justice. Since receiving his Ph.D. from the University of Pennsylvania, Dr. Wellford has written numerous articles and books on crime statistics, sentencing reform, and delinquency prevention.

STATEMENT BY CHARLES F. WELLFORD, DIRECTOR, INSTITUTE OF CRIMINAL JUSTICE AND CRIMINOLOGY, UNIVERSITY OF MARYLAND, COLLEGE PARK, MD.

Mr. Chairman, it is a pleasure to appear before the Sub-committee today to discuss with you the status of research and operational programs in the area of career or repeat offenders. As you know, criminological research in the last ten years has shed considerable light on the topic of career or repeat offenders. Beginning with the pioneering work of Marvin Wolfgang and his associates at the University of Pennsylvania and the publication of their book, Delinquency in a Birth Cohort, in 1972 our field has, with considerable support from the National Institute of Justice, conducted significant research in this area. Professor Wolfgang's original work estimated that approximately 6% of the juvenile birth cohort would account for 53% of the delinquencies of that cohort and 80% of the serious delinquencies. These findings and the analyses that were done of career juvenile offenders lead us to begin to focus our attention on those individuals who over a period of time maintain relatively constant involvement in criminal behavior. The RAND Corporation, with funding from the National Institute of Justice, has conducted over a period of approximately five years a considerable amount of research on adult career criminals and observed patterns similar to those depicted by Wolfgang and others.

I know that you are aware that in the 1970's the Law Enforcement Assistance Administration mounted a major effort to develop career criminal programs in local prosecutor's offices. These programs were to establish special units to prosecute career criminals so as to assure proper attention was given to their cases and maximum sentences were secured following conviction. An evaluation of the efforts of a large number of career criminal programs by the Mitre Corporation concluded that these programs had not had significant effects on crime reduction. The Mitre researchers found that

most of the programs had simply institutionalized what always had been done informally.

Still it is clear that the career criminal, if properly identified at an appropriate time, represents the best opportunity for the judicious application of limited criminal justice resources for the purpose of crime control. I would like to discuss with you this morning two recent efforts to bring greater clarity and effectiveness to our efforts to deal with career criminals.

In Phase I of the report of the Attorney General's Task Force on Violent Crime it was recommended that the Attorney General direct units within the Department of Justice to conduct research on the further development of career criminal programs particularly at the federal level. In response to that recommendation the Federal Justice Research Program of the Office of Legal Policy contracted with INSLAW Inc. to conduct a comprehensive and intensive study of the potential of career criminal programs at the federal level. I was at that time the Administrator of the Federal Justice Research Program and following my departure from the Department of Justice remained as a consultant to the project. That research is now complete and will be published shortly by the Department of Justice. I am pleased to be able to report to you today some of the principal findings of this project.

The Federal Career Criminal Project had four major components. The first component consisted of a survey of local prosecutors to determine their experience with career criminal programs at the local level and their expectations as to the likely value of career criminal programs at the federal level. The result of this component indicated considerable satisfaction with career criminal programs by local attorneys and their expectation that a

federal career program would be beneficial especially if it were well integrated and coordinated with efforts at the local level. The second component of the Federal Career Criminal Project involved a survey of U.S. Attorneys and Assistant U.S. Attorneys concerning their perceptions of the advantage and disadvantages of a federal career criminal program. Again the findings here are as we might expect. There was considerable interest in the Career Criminal Programs; many of the U.S. Attorneys and Assistant U.S. Attorneys had had experience with such efforts in local settings; and, while there was some concern that flexibility be maintained in the development of any such program there was the recognition by the vast majority of respondents that a properly executed program could be of benefit. The third and most important component of the project was a study of the pattern of recidivism among known federal offenders. In this particular aspect of the project we were interested in the following questions. First, is there a portion of defendants in federal cases that could be usefully classified as career criminals. Second, what are the career criminal patterns for these offenders; how much crime have they been involved in; third, can these offenders be identified in a systematic way without also identifying other individuals as career criminals whose future behavior would not involve heavy amounts of crime. Finally, could these identification proceedings be related to information that is routinely available to U.S. Attorneys.

What is not often realized is that habitual offenders who are responsible for much local crime frequently violate federal laws, and thus, have their cases considered by federal prosecutors. Indeed, 24 percent of all federal arrestees (by the FBI) have five or more local arrests. Table 1 reveals that

many of these "prior"s were for serious matters.

Moreover, arrest statistics fail to reveal the actual amount of crime that lies hidden behind apprehensions by law enforcement officials. From interviews conducted in federal prisons, INSLAW found that, on average, incarcerated offenders who were convicted of street offenses committed nearly 20 crimes per year when free to do so.

These findings strongly suggest that there can be a significant federal presence in an attack on local street crime. The effectiveness of this attack depends importantly on the ability of federal agents and U.S. Attorneys to identify the most repetitive offenders. This need brings us to the second assumption, that career criminals can be distinguished from more occasional offenders.

To test the second assumption, that career criminals can be identified, INSLAW observed the arrests for a sample of 1,700 people who had been convicted of street crimes (robbery, burglary, drug sales, and so on) in federal courts. Arrests were recorded for a five-year period that commenced the day that the offender was released from prison, or placed on probation, following his federal conviction. Our intent was to identify those offenders who were rearrested during this followup period.

Using statistical procedures, criteria were identified that were useful in distinguishing offenders who were engaged in "large" amounts of crime from offenders who were involved in lesser amounts of crime. Of course, "large" is a relative term. For purposes of illustration, a habitual offender is defined as one who is expected to commit <u>at least</u> eight serious offenses (exclusive of drug sales) per year at risk.

In fact, career criminals who satisfy this definition commit crimes far in excess of this figure.

Table 2 provides a selection criteria that would be expected to identify habitual offenders. The criteria assign points to salient factors that are associated with repeated criminal behavior. For example, an offender (or defendant, dependent on his or her legal status) receives 3 points for every serious property crime that resulted in an arrest during the five-year period preceeding the instant federal offense. When the offender receives a sufficient number of points--47 in this illustration--he is labeled as a career criminal.

These hypothetical selection criteria appear to do a good job of distinguishing career criminals from other offenders, at least in our sample. The numbers provided in Table 3 make this point.

In Table 3, estimates of the amount of crime that would be committed by career criminals and non-habitual offenders over a hypothetical five-year period during which both groups are assumed to be free of penal restraints. Career criminals are estimated to commit almost 200 serious offenses, exclusive of drug sales--almost 40 crimes per year. The non-habitual counterpart of the career criminal is responsible for an estimated 7 crimes per year. On the basis of differential offense rates, the selection rule does an exceptional job of distinguishing offenders.

Another way to test the validity of the selection criteria is to note that, among those offenders who were designated to be habitual, only 14 percent avoided arrest altogether over the entire five-year followup period. Almost half were rearrested during the first year of their freedom. In

Table 1

FEDERAL ARRESTEES WITH 5 OR MORE PRIOR LOCAL ARRESTS

Average and Total Numbers of Local Arrests for
2252 Federal Arrestees, by Type of Arrest

OFFENSE	ARRESTS PER INDIVIDUAL	TOTAL ARRESTS
ASSAULTS & HOMICIDE	0.717	1614
RAPE & KIDNAPPING	0.091	204
ROBBERY	0.464	1046
ARSON	0.186	418
BURGLARY	0.899	2025
LARCENY	1.878	4229
ATUO THEFT	0.599	1348
FORGERY	0.385	866
FRAUD	0.556	1251
DRUGS	1.517	3417
PROBATION VIOLATIONS	0.714	1609
WEAPONS	0.525	1183
OTHERS	2.344	5279
ALL OFFENCES	10.875	24489

Based on 9205 1976 federal arrestees; 2252 had 5 or more prior non-federal arrests during 1961-1975.

Table 2

PROPOSED POINT SCORES FOR SELECTING CAREER CRIMINALS

Variable	Points
Heavy use of alcohol	+ 5
Heroin Use	+ 10
Age at time of instant arrest	
Less than 22	+ 21
23 - 27	+ 14
28 - 32	+ 7
38 - 42	- 7
43+	- 14
Length of criminal career	
0 - 5 years	0
6 - 10	1
11 - 15	2
16 - 20	3
21+	
Arrests during last five years	
Crimes of violence	4 per arrest
Crimes against property	3 per arrest
Sale of drugs	4 per arrest
Other offenses	2 per arrest
Longest time served, single term	
1 - 5 months	4
6 - 12	9
13 - 24	18
25 - 36	27
37 - 48	36
49+	45
Number probation sentences	1.5 per arrest
Instant offense was crime of violence	7
Instant offense was crime labeled "other"	- 18

47 points:
Critical Value to Label an Offender
As a Career Criminal

Table 3. SELECTION OF CAREER CRIMINALS BY APPROXIMATE RULE

	Non-Targeted Offenders		Targeted Offenders		All Offenders	
	Projected	Rate	Projected	Rate	Projected	Rate
Violent	1282.232	0.845	1779.234	9.315	3061.456	1.792
Person	137.367	0.091	172.579	0.904	309.947	0.181
Robbery	1052.985	0.694	1529.031	8.005	2582.024	1.512
Arson	888.038	0.585	1183.001	6.194	2071.038	1.213
Burglary	2577.871	1.699	3425.677	17.935	6003.560	3.515
Larceny	11023.861	7.267	13048.663	68.318	24072.402	14.094
Auto Theft	1754.566	1.157	1662.731	8.705	3417.283	2.001
Forgery	1883.387	1.242	1695.522	8.877	3578.911	2.095
Fraud	1458.681	0.962	1821.728	9.538	3280.402	1.921
Drugs	105126.727	69.299	133855.359	700.813	238981.844	139.919
Probation	2452.632	1.617	2585.209	13.535	5037.843	2.950
Weapons	651.147	0.429	1057.184	5.535	1708.327	1.000
Other	5425.807	3.577	6662.147	34.880	12087.962	7.077
Total	135713.797	89.462	170475.984	892.544	306186.250	179.266
Number	1517.		191.		1708.	
Percent Recidivating:						
Between Years 0-1	14.766		49.215		18.618	
Between Years 1-2	9.427		21.466		10.773	
Between Years 2-3	6.262		9.948		6.674	
Between Years 3-4	3.230		5.236		3.454	
Between Years 4-5	2.373		0.000		2.108	
Not During Follow-up	63.942		14.136		58.372	

Notes: Projected offense rates were derived from the prediction equations. Percent recidivating were the actual percent of offenders recidivating in the sample.

contrast, almost two-thirds of the non-habitual offenders avoided arrest for the entire five-year followup period. Consequently, the selection criteria seem to pose little risk that persons who, in fact, would avoid arrest following release would mistakenly be identified as being career criminals.

Using these selection criteria to identify career criminals, it is estimated that there are currently about 2,000 career criminals prosecuted in federal district courts. Of course, this estimate is subject to the definition of an habitual offender. By relaxing the number of "points" required to qualify a person as a career criminal, the pool of habitual offenders would increase. As a result, however, the estimated number of crimes per offender would fall, and the number of non-habitual offenders erroneously selected would increase. The effect would be the opposite if the criteria were tightened.

Based on these findings, it can be concluded that there exists in the federal system a core of highly active criminals who account for disproportionate amount of street crime. Moreover, many of these local offenders frequently commit federal crimes, and are liable for federal prosecution. The INSLAW research reveals that this core of habitual or career criminals can be identified, and thus subjected to special handling by U.S. Attorneys. These findings seem to point toward a conclusion that the federal government can play an important role in fighting what is too often considered to be a local problem: crime on the streets. I believe these results clearly indicate that there is a considerable opportunity for the federal law enforcement agencies to assert a significant influence on the problem of career criminals through developing appropriate programs and guidelines at the federal level.

This would require no extension of federal jurisdiction, this would require no intrusion or direct operation of federal authorities within more clearly local jurisdiction matters, and it would require no additional resources except those required for coordination and information purposes.

In addition to the work recently completed at the federal level, it is important to note also that efforts are underway at state and local levels to refine and improve career criminal efforts. Most notably the State of Maryland has completed a two-year planning effort to develop what they refer to as their Repeat Offender Program Experiment or ROPE. This program will be fully discussed at the First National Conference on Repeat Offenders which is being held at the University of Maryland October 6 and 7 under the direction of the Maryland Criminal Justice Coordinating Council. The ROPE program involves five jurisdictions in the State of Maryland that are engaged in a local planning process to identify the career criminal population within their jurisdictions, and to develop criteria for use in the future selection of career criminals for special handling and processing. This represents a comprehensive effort at state level to develop rational, effective programs to deal with career criminals. We fully expect that within the next six months to a year that a number of innovative efforts will be underway in the State of Maryland to address the important problems of career criminals.

An issue today before the Subcommittee is the interest in creating an opportunity for the federal criminal justice system to assist state and locals in their dealings with career criminals. I think that this general goal is quite commendable and important, and I urge the Subcommittee to consider the possibility of encouraging or directing the Department of Justice

to utilize the results of the federal career criminal project to establish an information system and guidelines that would facilitate, within all major federal districts, the identification and prosecution of career criminals. In addition, I would suggest to you that the federal government should provide assistance including, obviously, financial assistance to those state and local efforts that are attempting to develop career criminal programs based on the most recent research and understandings. Without such help I do not believe we will be able to benefit as much as we should from the research sponsored by NIJ.

Thank you, Mr. Chairman, very much for the invitation to appear before the Subcommittee. I will of course attempt to answer any questions that you or the members of the Subcommittee might have now or at some time in the future.

92900

REPORT OF THE SURVEY OF LOCAL CAREER CRIMINAL PROGRAMS

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INSLAW, Inc.

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INTRODUCTION

The Career Criminal Program has been praised by practitioners, policymakers, and researchers alike for being an LEAA success story. The Acting Director of OJARS recently testified before the Attorney General's Task Force on Violent Crime and identified the Career Criminal Program "as one of LEAA's most successful and worthwhile efforts."[1] Similarly, Edwin Meese, Counselor to the President, in addressing a group of prosecutors and judges, recently observed that:

> LEAA did a lot of good, and we must not forget that as we look ahead to planning what ought to happen in the future. One of the things it did very well, was to provide money for programs such as this, for the career criminal program.[2]

In recognition of the accomplishments of the state and local career criminal programs, the Attorney General's Task Force on Violent Crime has recommended that:

> The Attorney General should direct the National Institute of Justice and other branches of the Department of Justice to conduct research and development on federal and state career criminal programs, including programs for juvenile offenders with histories of criminal violence.[3]

Consistent with this recommendation by the Task Force, the Office of Legal Policy, Department of Justice, contracted with INSLAW, Inc., to provide analytic support for an examination of the feasibility of a federal career criminal program. One of the objectives of the analysis is to survey existing local and state career criminal programs to determine the range of case selection criteria and targeting strategies used by the various programs across the country. Another purpose is to assess the extent of local and federal coordination in the identification

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and prosecution of violent offenders. This report documents the results of the survey.

BACKGROUND OF THE LEAA CAREER CRIMINAL PROGRAM

In May 1975, LEAA initiated the Career Criminal Prosecution Program to assist prosecutors in their efforts to identify and vigorously prosecute recidivistic offenders arrested for such offenses as robbery, burglary, rape, and felonious assault. Since 1975, LEAA has funded the implementation of Career Criminal Prosecution units in 48 jurisdictions through the Discretionary Program and four multisite programs, involving 24 additional programs, through the Incentive Program. Another 60 jurisdictions have implemented the program with State Block Grant funds, and still other jurisdictions have adopted the program using local funds. In total, between 1975 and 1981, LEAA provided approximately $30 million in federal funds to local and state prosecutors for implementation of this program.

Within very broad federal guidelines--offenders must have at least one prior felony conviction and the instant offense must be one of a set of specified serious offenses, such as robbery, burglary, rape, or felonious assault--each jurisdiction has been encouraged to design a program that best fits local needs and conforms to local law, practice, and custom. There are, however, several concepts or programmatic features that are common to most, if not all, programs. The central tenet of the program is to focus law enforcement and prosecutory resources in order to increase the probability of early identification, enhanced investigation, expedited

prosecution, conviction to the most serious charge, and incarceration of those individuals who have repeatedly demonstrated a propensity to commit violent crimes.

Within these broad guidelines, local programs have been free to design their operating procedures and selection criteria consistent with the local crime problem. In a recent critique of the Career Criminal Program, Greenwood noted that the strength of the national program has been its emphasis on focusing on local needs:

> The positive aspects of the program were that 1) it was developed by practitioners; 2) adopting sites were encouraged to adapt the program model to their own unique situation; and 3) a technical assistance contractor was provided to assist adopting sites with implementation problems and to facilitate the exchange of knowledge between sites.[4]

The success of the Career Criminal Program may well be attributable to the fact that the program was developed and implemented with an appreciation that crime is a local problem that creates unique needs and concerns within each community. Successful government programs are those that are sufficiently flexible to accommodate local considerations while maintaining a high degree of national uniformity in programmatic scope and purpose.

Although the primary thrust of the Career Criminal Program is to identify and effectively prosecute recidivistic offenders, a significant corollary benefit has been the program's effect on the organization and operation of prosecutors' offices. The entire sequence of prosecution--from arrest through disposition--has been improved through the

introduction of the program's case and resource management techniques.

Throughout the six-year history of the Career Criminal Program, prosecutors have endorsed the program as a workable, commonsense approach to a menacing public problem. As a result of the program, prosecutors have adopted prosecutive techniques that support and improve their efforts to manage their offices.

From a management perspective, the Career Criminal Program has enabled prosecutors to do the following:

- Prosecute a select group of cases vertically rather than horizontally, following these cases from beginning to end and taking responsibility for every step of the process. This requires that prosecutors fully prepare all of their cases for trial.
- Provide complete victim/witness services. Since one prosecutor handles a case from arrest through disposition, he or she can establish personal contact with victims and witnesses. This may involve referring victims and witnesses to various community services or meeting with witnesses to explain upcoming court proceedings.
- Develop policies on such issues as limited plea bargaining. It is often difficult to adopt new policies on an office-wide basis. The Career Criminal Program provides an opportunity for the prosecutor to test new policies on a limited basis and then incorporate those that are viable into the regular office case-processing procedure.

In addition, the program has fostered cooperation between police and prosecutors, which has traditionally been difficult to establish. For example, police officers frequently complain that prosecutors do not clearly articulate standards for the types of cases they will accept for prosecution. By making their selection criteria known to the police, career criminal units promote communication and cooperation. Police officers can focus their efforts on repeat violent offenders, knowing

that the career criminal unit will work with them to improve the chances that the case will be tried on a solid, accurate charge and lead to a conviction on that charge rather than to a plea reduction or dismissal.

With the exception of a few jurisdictions that have received extensions to operate until the end of 1981, the LEAA Career Criminal Program, for all practical purposes, will end on September 30, 1981. Exhibit 1 presents a list of those jurisdictions that have received federal implementation funds, the level of that funding, and the years of funding. The exhibit shows that most jurisdictions were funded between 1977 and 1979. Reduced funding for LEAA's Office of Criminal Justice Programs (OCJP) in the past two years has resulted in the Adjudication Division's not having funds to maintain the Career Criminal Program. Thus, the program is at a crossroads in its development. With federal funding due to expire within the next few months, many jurisdictions can be expected to let the program lapse because of local budget reductions. Of the 14 federally funded programs that are no longer operational, 13 listed funding cutbacks as the primary reason for the discontinuation of the program. (See Part I of this report, response to survey question 2.) It is reasonable to assume that additional programs will be discontinued within the next year.

Exhibit 1. FEDERAL FUNDING OF CAREER CRIMINAL PROGRAMS

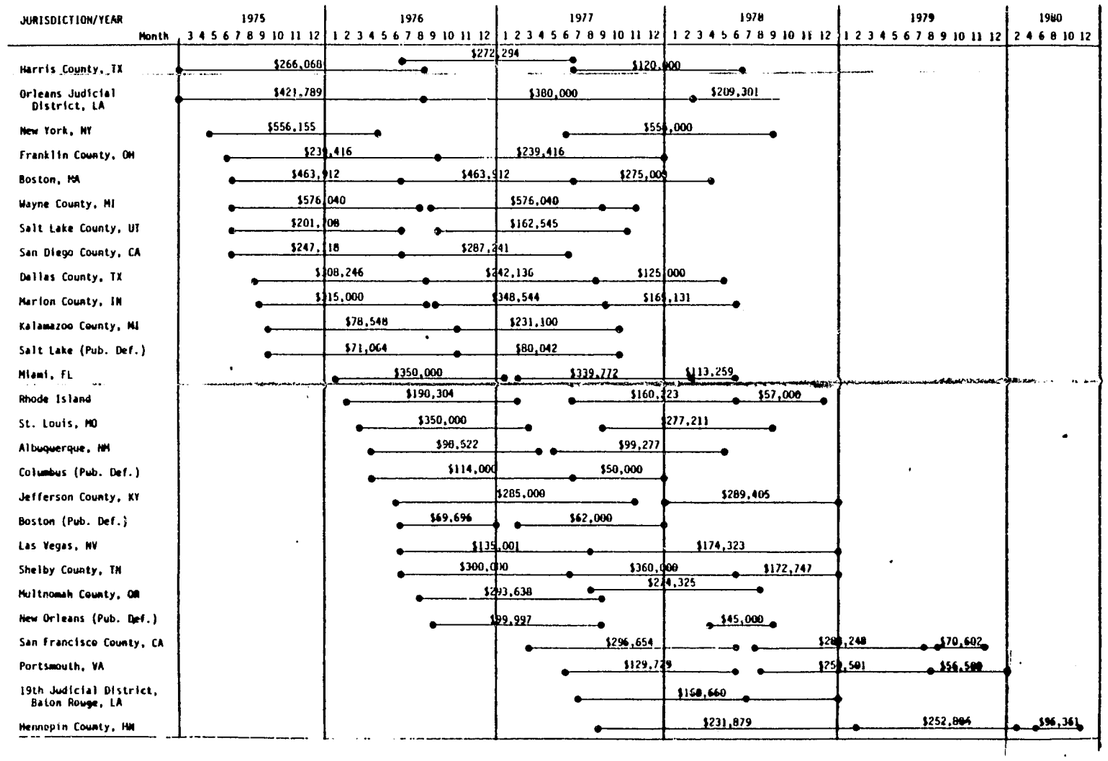
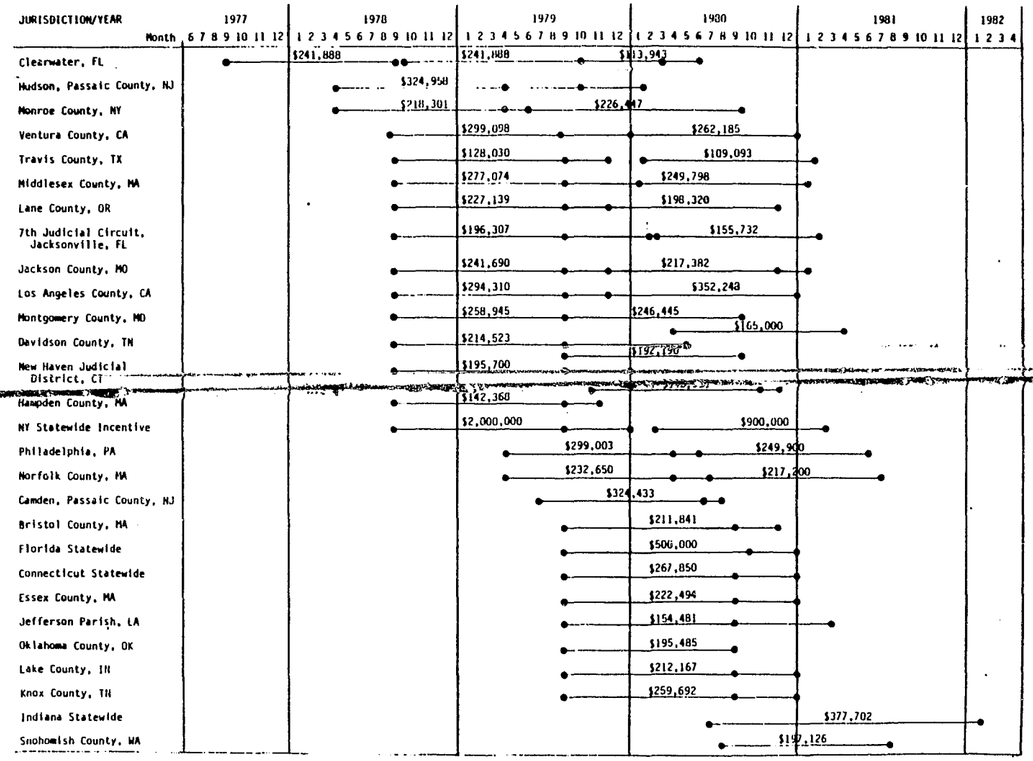


Exhibit 1 (continued). FEDERAL FUNDING OF CAREER CRIMINAL PROGRAMS



THE SURVEY OF EXISTING PROGRAMS

As noted above, the purpose of the survey task is to produce profiles of existing career criminal programs that are focused on the following questions:

- How are career criminal units organized?
- How are they funded?
- What are their selection criteria?
- What are their target offenses?
- What is the extent of their interaction with federal investigative and prosecutory agencies?
- What is their reaction to the concept of a federal career criminal program?

In order to address these questions, *INSLAW* developed a 55-question telephone survey. The survey was administered July 2 through the 16th. Using the Directory of Career Criminal Programs to identify those jurisdictions operating career criminal programs, interviewers were able to contact approximately 85 percent of the eligible jurisdictions.[5] Project staff interviewed the district attorney, the career criminal project manager, or a career criminal attorney thoroughly familiar with the development, implementation, and operation of the program. Interviews took between 30 and 45 minutes. Nonrespondents were either out of town, in court, or otherwise unavailable. Two jurisdictions declined to participate in the survey.

In addition to the telephone surveys, INSLAW staff interviewed career criminal prosecutors and investigators in person in the Bronx, Manhattan, Chicago, Detroit, Seattle, Los

Angeles, and San Diego. Site reports for those interviews are included as appendixes to this report.

Throughout this report, survey responses are presented by population groups. The first group consists of those jurisdictions with populations that exceed 1 million; the second, jurisdictions with populations between 500,000 and 1 million; the third, jurisdictions between 250,000 and 500,000; and the fourth, jurisdictions with populations between 100,000 and 250,000. Responses have been grouped in this way because programs within population groups are likely to have more in common with each other than with programs in other population groups. For example, the nature of the crime problem in the Bronx is generally more like that in Detroit and Washington, D.C., than in Syracuse or Elmira. Moreover, the organizational structure of large offices is significantly different from that in small offices. Thus, in order to allow valid comparisons between programs, we have divided them into these four groups.

However, it is interesting to note in the survey responses the large number of differences within population groups. As noted above, LEAA promoted the concept of local diversity within broad guidelines, and it appears that that diversity has been maintained throughout the six years of the program's existence.

The results of the survey are presented in four parts:

I. Program and Office Characteristics
II. Selection Criteria and Process
III. Interagency Coordination
IV. Impact and Attitudes

CONTINUED

1 OF 4

The final section of the report presents our conclusions. Site reports are included as Appendixes A - F.

NOTES

1. Robert Diegelman, May 1981.
2. Edwin A. Meese, III, "Transcript of Remarks to the PROMIS Users Group Meeting" (INSLAW, April 1981): 11.
3. Task Force on Violent Crime, Phase I Report (June 1981): 25.
4. Peter Greenwood, "Crime Control: Explaining Our Ignorance," draft report (Santa Monica, Calif.: Rand Corporation, 1981): IV-2.
5. National Directory of Career Criminal Programs (INSLAW, 1980).

Part I

PROGRAM AND OFFICE CHARACTERISTICS

This series of questions was designed to provide a profile of career criminal units in terms of staffing patterns, organizational structures, and funding sources.

It is notable that 80 percent of those jurisdictions that received federal funds to implement and operate career criminal programs are still running active programs. Although federal funding expired two or three years ago for many of these programs, they have been largely successful in obtaining financial support from state and local sources. It remains to be seen whether they will be able to secure funding when their state and local governments face budget cutbacks.

Survey Responses*

Additional detail on Part I survey responses is provided in Exhibit 2, pages 24-27, and Exhibit 3, pages 28-31.

1. Do you have a career criminal program operating in your office? If yes, was it initiated under LEAA funding?

	All Programs	LEAA Funded
No. of responses	117	72
Percent Yes	82%	80%

*More than one response for each jurisdiction is sometimes possible.

LEAA-funded programs fared slightly worse than the national average in terms of whether the program was still operational. The jurisdictions initially funded federally that have discontinued their programs are Boston, New Orleans, Kansas City, Minneapolis, Jersey City, Jacksonville, Oklahoma City, Tallahassee, Kalamazoo, Miami, Broome County, Pensacola, Daytona Beach, and Titusville. With the exception of Boston, New Orleans, and Kalamazoo, all of the programs were recently begun and appear not to have had sufficient time to develop before their funding expired.

2. Why did you discontinue the program?

	Total	Population* 1	2	3	4
No. of responses	18	1	8	3	6
Lack of funding	17	0	8	3	6
Legal Complications	1	0	1	0	0
Political problems	6	1	3	2	0
Other	1	0	1	0	0

*Group 1 = population of 1 million or more; 2 = 500,000 to 1 million; 3 = 250,000 to 500,000; 4 = 100,000 to 250,000.

Funding is the major reason that programs have been discontinued (94%). In an additional six jurisdictions (33%), programs were discontinued when new district attorneys were elected. One jurisdiction, Seattle, discontinued the career criminal program, per se. However, they transferred some of the techniques of the career criminal program to their regular case processing routine.

3. How long has the career criminal program been in existence?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Average no. of months in operation	42	53	41	37	35

As expected, given the initial purposes envisaged for the program, larger jurisdictions have operated career criminal programs longer, on the whole, than have either medium-sized or smaller jurisdictions. The LEAA program was designed originally as an effort to help prosecutors in large cities focus on the most serious cases in their growing case loads. During the first two years of LEAA's program, attention focused almost exclusively on very large jurisdictions, where the program was believed to be most warranted. Gradually, between 1978 and 1981, an increasing number of medium-size and small jurisdictions adopted the prosecutory techniques of the program. In many ways, the big city programs have served as models to smaller jurisdictions in terms of program design, implementation, and operation. The survey responses indicate that large city programs have existed for 18 months longer, on average, than small city programs.

4. How is the program currently funded? By percentage, specifically:

	Total	Population 1	2	3	4
No. of responses	80	15	25	19	21
% federal, average	10%	9%	7%	7%	16%
% state, average	48%	60%	55%	44%	31%
% local, average	43%	31%	38%	49%	53%

The primary goal of programs such as the Career Criminal Program is to provide "seed money" to jurisdictions to demonstrate the need for, and value of, the program. Once programs have been proven to be successful, it is expected that local and state funding will be made available to institutionalize the program. The responses to question 4 indicate that jurisdictions in population groups 1 and 2 are now funded almost exclusively from state and local sources.

Some states (California, New York, Massachusetts, and Connecticut) have passed state legislation providing for statewide career criminal programs. Other jurisdictions, Knox County, Tennessee, for example, have been appropriated state monies to continue their career criminal programs once federal funding expired. Other jurisdictions receive funding from local county boards.

5. Was the program funded in different proportions in the past?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	73%	86%	88%	85%	33%

The responses to this question indicate that except for the smallest jurisdictions most programs have received funding from a number of different sources and in varying proportions. This indicates that these programs have been durable enough to withstand change.

6. What was the percentage funding originally?

	Total	Population 1	2	3	4
No. of responses	60	13	22	18	7
% federal, average	68%	73%	74%	71%	53%
% state, average	21%	22%	19%	15%	29%
% local, average	11%	5%	7%	14%	19%
	100%	100%	100%	100%	100%

As can be seen from the responses to question 6, the two largest population groups received an average of 75 percent federal assistance in implementing their career criminal programs. Those same programs now receive an average of over 90 percent of their funding from state and local sources.

These responses indicate that jurisdictions that received federal funds to implement career criminal programs have been successful in obtaining state and local funding as federal funding diminished. This suggests that the federal investment has paid off. Local funding sources appear to have become convinced of the value of the programs. Moreover, the concept of career criminal prosecution was adopted by several jurisdictions without the benefit of federal funding.

7. Have there been changes in the budget (amount, type) since the program's initiation?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	58%	53%	52%	61%	66%

Consistent with responses to question 5, most respondents reported that their budgets have changed since the program was initiated. Almost all have seen a decrease in funding levels. This is significant because a successful career criminal unit requires a close working relationship among the unit's attorneys. This type of cooperation develops over time. If a special unit's existence is questioned or jeopardized by uncertain funding, a close working relationship is more difficult to establish and the impact of the program may be diminished.

8. At the present time, how many attorneys are assigned to the career criminal unit?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Average number of attorneys	3.8	7	3.8	2.4	2.3

The average number of attorneys in career criminal units in the first and second population groups (5.4 attorneys) is more than twice the number in the third and fourth groups (2.3 attorneys). The number of career criminal attorneys varies considerably within population groups. For example, in the first group, Los Angeles employs 24 career criminal attorneys while Allegheny County, New York, employs only 1 full-time career criminal attorney. These are the extremes, however, and most of the major city programs consist of 1 supervisor and 3-4 senior attorneys.

9. What is the average number of years of experience of attorneys in the D.A.'s office?

	Total	Population 1	2	3	4
No. of responses	77	15	25	18	19
Average years experience	4.3	4.5	4.2	3.6	4.8

Until only recently, working in a prosecutor's office was not a career position, but rather a position held by young attorneys for two or three years before entering private practice. However, in recent years there has been a growth of professionalism in district attorneys' offices. This professionalism is evidenced by the average seniority of deputy district attorneys--for example: 8 years in Los Angeles, San Diego, and Waterbury, Connecticut; 6 years in Houston, Orange County, Sacramento, and New Haven; and 5 years in San Francisco, Hartford, and Milwaukee.

Thus, district attorneys are able to assign increasingly senior prosecutors to special units, such as the career criminal program. As can be seen in the responses to questions 10 and 11 below, the minimum experience of career criminal attorneys approaches the average for the entire office, and the average for the career criminal unit is usually 2-to-3 years more than the office average. The assignment of senior prosecutors to career criminal units is an important aspect of the program. Since CCP prosecutors handle cases vertically, it is crucial that they be familiar with all aspects of prosecution. The greater experience of career criminal

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attorneys helps to ensure that the unit's cases are fully and vigorously prosecuted by experienced attorneys.

10. What is the minimum number of years of experience of CCP unit attorneys?

	Total	Population 1	2	3	4
No. of responses	57	13	25	10	9
Minimum years experience	3.8	4	3.1	4.2	3.8

11. What is the average number of years of experience of attorneys assigned to your career criminal unit?

	Total	Population 1	2	3	4
No. of responses	80	15	25	21	19
Average years experience	7.3	6.5	7.0	8.0	7.5

Note that the average number of years of experience for small jurisdictions is equal to or exceeds that of larger jurisdictions. Two factors help to explain this finding. The first is that one jurisdiction (Monroe County, Michigan) reported that its one career criminal attorney has 35 years of prosecutory experience. When Monroe is not included in the analysis, the average experience for small jurisdictions drops to 6 years. In addition, smaller district attorneys' offices have traditionally seen slower turnover than metropolitan prosecutors' offices. Therefore, to the extent that assignment

to the career criminal unit is desirable and goes to senior attorneys in the office, it is likely that those senior prosecutors would have considerable prosecutory experience.

12. Do you have investigators especially assigned to the career criminal unit?

	Total	Population 1	2	3	4
No. of responses	81	14	25	21	21
Percent yes	65%	92%	72%	61%	42%

13. If YES: How many investigators are on staff at least half time?

	Total	Population 1	2	3	4
No. of responses	53	13	18	13	9
Average no. of investigators	1.7	2.6	1.5	1.6	1.1

One of the perceived strengths of the career criminal program is that prosecutors have immediate access to investigators who can collect additional evidence, interview witnesses, and maintain contact with witnesses. These investigators enable prosecutors to develop their cases fully and to close any "holes" in the case. Almost all of the federally funded programs made provisions in the budget for at least one investigator; many of the smaller jurisdictions, however, could not afford staff investigators. Even in many of the larger jurisdictions, investigators were provided for only

while the program was federally funded and were the first item cut when local funding ended.

14. From what former occupations did your investigators come?

	Total	Population 1	2	3	4
No. of responses	81	14	25	21	21
Former patrol officers	31	11	12	6	2
Police detectives	38	14	13	6	5
Private investigators	1	1	0	0	0
Insurance investigators	1	0	0	1	0
Other	18	8	3	4	3

Over 75 percent of career criminal investigators were previously employed as police officers or detectives. Most career criminal project directors reported that hiring ex-police officers as career criminal investigators helped to establish good working relationships with local police agencies. Typically investigators maintained contacts with police agencies and were able to act in liaison with those agencies to maintain police cooperation and enthusiasm for the program.

15. What other staff work on the career criminal programs?

	Total	Population 1	2	3	4
No. paralegals	23	15	4	2	2
No. clerks	14	5	3	3	3
No. secretaries	73	21	25	17	10
No. liaison	1	0	1	0	0
No. court coordinators	1	1	0	0	0
No. other	26	3	14	4	5

Almost all of the career criminal programs have a secretary specifically assigned to the unit. The larger jurisdictions also assign a paralegal to the unit to assist with research and case development. Many of the paralegals are responsible for searching criminal history files to determine the existence and extent of prior felony arrests and convictions. This type of information is used by project directors in case screening by the unit.

16. Are there other special prosecution units in your office?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	62%	93%	76%	38%	47%

17. If YES: Does your office have any of the following attorney units?

	Total	Population 1	2	3	4
Arson	21	6	9	4	3
Homicide	16	5	6	4	1
Narcotics	20	7	7	4	2
Organized crime	15	5	6	2	2
Economic crime	30	9	10	7	4
Political corruption	8	3	4	0	1
Juvenile	15	6	1	3	5
Diversion	3	2	1	0	0
Fraud	16	4	6	2	4
Rape	12	4	6	2	0
Other	26	13	7	5	1

As expected, most of the large (93%) and medium-size (76%) jurisdictions have special prosecution units other than a career criminal unit. In order of frequency these units are

economic crime, arson, and narcotics. The fact that LEAA has had demonstration programs that address these areas may explain their relative prevalence. These special areas all require a level of expertise that the typical deputy district attorney may not be able to obtain on the job. Therefore, these units allow deputy district attorneys the opportunity to specialize in a particular type of case and to sharpen the skills necessary to prosecute these cases.

It is also notable that for the third and fourth population groups, career criminal is the only special unit in 62 and 53 percent, respectively, of the respondents in those groups. This suggests that district attorneys place a high priority on the existence of a career criminal unit in their office and are willing to depart from normal operating procedures to create this special unit.

18. Are judges assigned specially to hear career criminal cases?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	18	40%	24%	10%	0%

One of the early and persistent goals of the career criminal program has been to expedite case processing. In many large jurisdictions this is accomplished by designating certain judges to hear career criminal cases exclusively. In most of the medium-size and small jurisdictions, cases are not critically backlogged, and the need for special courts does not exist. Thus, special courts exist in only 9.5 percent of the third population group and not at all in the fourth.

Exhibit 2a. DETAILED SURVEY RESPONSES: PROGRAM AND OFFICE CHARACTERISTICS
Group 1, population 1 million or more

QUESTION / JURISDICTION	3. Year Program Started	6. Current Funding	8. Number of Attorneys	11. Average Number Years Experience	13. Number of Investigators	21. Annual Number of Cases	24. Vertical Prosecution
Alameda Co., CA	1978	90% state 10% local	4	8	1	160	✓
Los Angeles Co., CA	1978	65% state 35% local	24	5	1	375	✓
Orange Co., CA	1978	89% state 11% local	5	8	1	209	✓
San Diego Co., CA	1975	58% state 42% local	6	10	1	120	✓
Clearwater Co., FL	1976	100% state	4	4	1		
Middlesex Co., MA	1979	100% state	5	5	1	144	✓
Wayne Co., MI	1975	100% state	7	5.5	1	475	✓
Bronx Co., NY	1973	70% state 30% local	15	5	1	200	✓
Erie Co., NY	1979	100% state	3	6	1	120	✓
New York Co., NY	1975	50% state 50% local	10	4		300	✓
Allegheny Co., PA	1977	100% local	1	7.5			
Philadelphia, PA	1979	66% federal 34% state	8	6	1	175	✓
Dallas Co., TX	1975	20% federal 80% federal	6	6.5	1	725	✓
Harris Co., TX	1975	50% federal 50% local	3	10.5	1	322	✓
Chicago, IL	1977	100% local	9	5	1	666	

Exhibit 2b. DETAILED SURVEY RESPONSES:
PROGRAM AND OFFICE CHARACTERISTICS
Group 2, population 500,000 - 1 million

QUESTION / JURISDICTION	3. Year Program Started	4. Current Funding	8. Number of Attorneys	11. Average Number Years Experience	13. Number of Investigators	21. Annual Number of Cases	24. Vertical Prosecution
Riverside Co., CA	1978	90% state 10% local	4	5.5	2	80	✓
Sacramento Co., CA	1978	90% state 10% local	5	8	3	160	✓
San Francisco Co., CA	1977	60% state 40% local	5	10	2	175	✓
Ventura Co., CA	1976	90% state 10% local	3	7	2	60	✓
Fairfield Co., CT	1979	100% state	2	26	1	38	✓
Hartford Co., CT	1979	100% state	3	3	1	150	✓
New Haven Co., CT	1977	100% state	4	6.5	2	250	✓
Waterbury Co., CT	1979	100% state	2	8	1	50	✓
District of Columbia	1976	100% federal	5	5.5	4	270	
Ft. Lauderdale Co., FL	1978	100% state	3	5		400	
Honolulu Co., HI	1978	100% state	8	4	1	160	✓
Lake Co., IN	1979	100% local	3	6	1	110	✓
Marion Co., IN	1980	85% federal 15% local	8	6	1	88	✓
Jefferson Co., KY	1976	100% state	5	4.5		190	✓
Montgomery Co., MD	1978	50% state 50% local	4.5	5			
Norfolk Co., VA	1979	100% state	4	6		120	✓
Macomb Co., MI	1977	100% local	1	10	1	40	
Monroe Co., NY	1977	100% local	3	5	2	120	✓
Westchester Co., NY	1979	100% local	3	9	1	100	✓
Summit Co., OH	1977	100% local	1	6	1	64	✓
South Dakota	1975	100% state	1	2		40	✓
Shelby Co., TN	1976	75% state 25% local	4	7	2	200	✓
Bexar Co., TX	1977	20% state 80% local	7	6	1	350	
Salt Lake Co., UT	1975	100% local	4	6.5		50	✓
Milwaukee Co., WI	1975	100% local	3	8.5		215	✓

Exhibit 2c. DETAILED SURVEY RESPONSES:
PROGRAM AND OFFICE CHARACTERISTICS
Group 3, population 250,000 - 500,000

QUESTION / JURSIDICTION	3. Year Program Started	4. Current Funding	8. Number of Attorneys	11. Average Number Years Experience	13. Number of Investigators	21. Annual Number of Cases	24. Vertical Prosecution
Little Rock Co., AR	1978		3	11			✓
Fresno Co., CA	1978	90% state 10% local	3	6	2	150	✓
Santa Barbara Co., CA	1979	89% state 11% local	3	9		40	✓
Lake Co., IL	1978	50% federal 50% state	2	5			
Baton Rouge Co., LA	1977		1	26	1	48	✓
Bristol Co., MA	1979	100% state	1	5	2	115	✓
Ingham Co., MI	1977	100% local	2	4.5		45	✓
Washtenaw Co., MI	1977	100% local	2	4.5		106	
Camden Co., NJ	1979	100% local	3	8	3	110	✓
Mercer Co., NJ	1979	100% local	1	5	1	41	✓
Passaic Co., NJ	1978	100% local	2	8.5	3	80	
Albuquerque Co., NM	1975	100% state	3.25	3.25	2	100	
Onandaga Co., NY	1978	100% state	2	8.5	1	35	✓
Orange Co., NJ	1979	100% state	2	5	1	75	✓
Clark Co., NV	1976	100% local	2	14.5	1	150	✓
Mecklenberg Co., NC	1977	100% state	4	5	2	150	✓
Davidson Co.,TN	1979	80% federal 10% state 10% local	3	8	1		✓
Knox Co., TN	1979	100% local	3	8	1	120	✓
Travis Co., TX	1978	100% local	1	4		12	✓
Norfolk, VA	1976	100% state	3.5	10		100	✓
Waukesha Co., WI	1979	100% local	4	10		25	✓

Exhibit 2d. DETAILED SURVEY RESPONSES:
PROGRAM AND OFFICE CHARACTERISTICS
Group 4, population 100,000 - 250,000

QUESTION JURISDICTION	3. Year Program Started	4. Current Funding	8. Number of Attorneys	11. Average Number Years Experience	13. Number of Investigators	21. Annual Number of Cases	24. Vertical Prosecution
Stanislaus Co., CA	1978	100% state	1	8	1	70	✓
Sarasota Co., FL	1979	100% local	1	4	1	130	✓
Ada Co., ID	1976	100% local	1	8	1	125	✓
St. Joseph Co., IN	1980	90% federal 5% state 5% local	2.5	4		120	✓
Vanderburgh Co., IN	1980	90% federal 10% local	3	10	1	75	✓
Black Hawk Co., IA	1978	100% local	1	12		60	✓
Kenton Co., KY	1978	100% state	5			90	✓
Bay Co., MI	1977	100% state	2	5		45	✓
Berrien Co., MI	1977	100% local	6	3		98	✓
Calhoun Co., MI	1977	100% local	2	4	1	90	✓
Monroe Co., MI	1977	100% local	1	35		35	
Saginaw Co., MI	1977	100% local	2	5.5		200	
St. Clair Co., MI	1978	100% local	4			12	
Steuben Co., NY	1978	100% state	1	8		20	
Ulster Co., NY	1978	100% state	2	4		65	✓
Cumberland Co., NC	1978	100% state	2	4		130	✓
Weber Co., UT	1979	100% local	1	10	1	24	✓
Alexandria, VA	1980	100% local	1	2.5	1	110	✓
Portsmouth, VA	1977	100% local	2	5	1	150	✓
Richmond, VA	1978	50% federal 50% state	2	6		60	✓
Virginia Beach, VA	1978	100% federal	5	6	2	150	✓

Exhibit 3a. DETAILED SURVEY RESPONSES: SPECIAL UNITS

Group 1, population 1 million or more

Question 17. Specialized Units

JURISDICTION	Arson	Murder	Narcotics	Organized Crime	Economic Crime	Juvenile	Fraud	Rape
Alameda Co., CA								
Los Angeles Co., CA*	✓	✓	✓	✓	✓	✓	✓	✓
Orange Co., CA*		✓						
San Diego Co., CA*	✓			✓	✓	✓	✓	
Clearwater Co., FL*								
Middlesex Co., MA	✓		✓		✓			
Wayne Co., MI*				✓				
Bronx Co., NY*	✓	✓			✓	✓		
Erie Co., NY*	✓		✓	✓	✓	✓		
New York Co., NY			✓			✓		✓
Allegheny Co., PA		✓	✓					✓
Philadelphia, PA		✓	✓		✓		✓	✓
Dallas Co., TX					✓	✓		
Harris Co., TX				✓	✓			
Chicago, IL*	✓		✓		✓		✓	

*The following offices have additional prosecution units as listed. Los Angeles: political corruption, nursing home abuse, electronic crime, psychiatric, medical/legal, domestic violence, consumer and environmental. Orange County: special assignments; San Diego: political corruption; Clearwater, FL: special prosecution; Wayne County: civil/consumer protection; Bronx: domestic violence; Erie: violent felony; Chicago: gang violence.

Exhibit 3b. DETAILED SURVEY RESPONSES: SPECIAL UNITS
Group 2, population 500,000 - 1 million

Question 17. Specialized Units

JURISDICTION	Arson	Murder	Narcotics	Organized Crime	Economic Crime	Juvenile	Fraud	Rape
Riverside Co., CA	✓	✓						
Sacramento Co., CA		✓	✓	✓	✓	✓	✓	✓
San Francisco Co., CA*	✓	✓	✓	✓	✓			✓
Ventura Co., CA								✓
Fairfield Co., CT	✓							
Hartford Co., CT								
Waterbury Co., CT								
District of Columbia			✓					
Ft. Lauderdale Co., FL		✓		✓	✓		✓	
Honolulu Co., HI								
Lake Co., IN								
Marion Co., IN			✓					✓
Jefferson Co., KY					✓			
Montgomery Co., MD								✓
Norfolk Co., VA		✓		✓	✓			✓
Macomb Co., MI								
Monroe Co., NY*	✓	✓	✓	✓	✓		✓	
Westchester Co., NY	✓		✓		✓		✓	
Summit Co., OH	✓							
South Dakota*					✓			
Shelby Co., TN								
Bexar Co., TX	✓				✓			
Salt Lake Co., UT	✓		✓				✓	
Milwaukee Co., WI*	✓			✓	✓		✓	

*Other prosecution units for the following offices are as listed. San Francisco: special prosecution; D.C.: major crimes; Monroe County: diversion, violent felony offenses; South Dakota: antitrust; Bexar County, TX: special crimes; Salt Lake City: child abuse; Milwaukee: sensitive crimes.

Exhibit 3c. DETAILED SURVEY RESPONSES: SPECIAL UNITS
Group 3, population 250,000 - 500,000

Question 17. Specialized Units

JURISDICTION	Arson	Murder	Narcotics	Organized Crime	Economic Crime	Juvenile	Fraud	Rape
Little Rock Co., AR		✓			✓			
Fresno Co., CA*								
Santa Barbara Co., CA								
Lake Co., IL								
Baton Rouge Co., LA*					✓			
Bristol Co., MA								
Ingham Co., MI								
Washtenaw Co., MI								
Camden Co., NJ	✓	✓	✓	✓			✓	
Mercer Co., NJ*	✓	✓					✓	✓
Passaic Co., NJ		✓	✓	✓	✓	✓		
Albuquerque Co., NM			✓		✓	✓		
Onandaga Co., NY	✓		✓		✓			
Orange Co., NJ								
Clark Co., NV								
Mecklenberg Co., NC								
Davidson Co.,TN*						✓		✓
Knox Co., TN								
Travis Co., TX*					✓			
Norfolk, VA	✓				✓			
Waukesha Co., WI								

*Other prosecution units for the following offices are as listed. Fresno, CA: sexual assault; Baton Rouge, LA: family law cases; Mercer County, NJ: child abuse; Davidson County, TN: child support cases; Travis County, TX: public integrity cases.

Exhibit 3d. DETAILED SURVEY RESPONSES: SPECIAL UNITS
Group 4, population 100,000 - 250,000

Question 17. Specialized Units

JURISDICTION	Arson	Murder	Narcotics	Organized Crime	Economic Crime	Juvenile	Fraud	Rape
Stanislaus Co., CA			✓					
Sarasota Co., FL*	✓	✓	✓	✓	✓	✓		
Ada Co., ID								
St. Joseph Co., IN	✓							
Vanderburgh Co., IN						✓		
Black Hawk Co., IA								
Kenton Co., KY	✓							
Bay Co., MI						✓		
Berrien Co., MI								
Calhoun Co., MI								
Monroe Co., MI								
Saginaw Co., MI								
St. Clair Co., MI								
Steuben Co., NY								
Ulster Co., NY								
Cumberland Co., NC								
Weber Co., UT				✓	✓			
Alexandria, VA						✓		
Portsmouth, VA					✓	✓		
Richmond, VA					✓	✓		
Virginia Beach, VA					✓	✓		

*The Sarasota District Attorney's office has a political corruption unit in addition to the abovementioned units.

Part II

SELECTION CRITERIA AND PROCESS

The second series of questions was designed to elicit information on the types of cases targeted for career criminal prosecution, the processes for case selection, the extent of prosecutory discretion in selecting cases, and the annual case load. General conclusions drawn from these responses indicate that groups 1 and 2 tend to receive more cases than they can prosecute and therefore are more selective in their case screening. On the other hand, smaller jurisdictions often do not have enough cases to keep the career criminal unit busy. In addition, evidence suggests that units funded under the LEAA program are more stable and better organized than programs funded by state and local sources.

Between one-half and three-quarters of the responding jurisdictions reported that there were cases that belonged in the career criminal unit that were handled through normal processing procedures. However, the number of such cases averaged less than 10 percent of all cases prosecuted. The problem appears to be most serious in large jurisdictions where, again, there are more eligible cases than the unit can handle. It is interesting that the average number of cases that do not belong in the CCP unit (question 38) is almost the same as the number of cases missed by the unit (question 39).

Survey Responses*

19. What is the annual case load selected for the career criminal program?

	Total	Population 1	2	3	4
No. of responses	73	13	23	16	21
Average case load	193	306	275	98	95

Most career criminal units have adopted selection criteria that, if applied exactly, would yield a larger case load than is manageable by the unit. Almost all local programs, however, exercise prosecutory discretion to identify those cases that do not, in their estimation, require special treatment. For example, a 60-year old man arrested for assault in a bar fight who happens to have a prior felony conviction from 30 years ago would technically qualify under most selection criteria. However, career criminal prosecutors argue that that offender is not a career criminal and should not be prosecuted as such. Thus, most career criminal selection criteria allow the project director to eliminate those cases that are not appropriate for the program.

The danger in the exercise of this discretion is that it presents at least the appearance of unfairness when some eligible offenders are selected for the program but others are not. Carried to an extreme, and ignoring the exercise of discretion that the courts have authorized the prosecutor, this

*More than one response for each jurisdiction is sometimes possible.

could constitute a violation of equal protection. For example, two jurisdictions responding to the survey indicated that they selected only 6 percent and 10 percent, respectively, of those cases eligible for career criminal prosecution.

Ideally, the selection criteria would be completely objective and yield a manageable case load of violent, repeat offenders. However, a set of selection criteria that is sufficiently sensitive to differences among offenses and offenders and flexible enough to adjust to changing crime patterns does not exist. Therefore, prosecutors are responsible for developing criteria that are relatively objective and then exercising discretion to accept cases that are appropriate for career criminal treatment.

20. Is this number different from the number eventually prosecuted?

	Total	Population 1	2	3	4
No. of responses	77	14	24	18	21
Percent yes	37%	35%	41%	44%	28%

These results suggest that approximately 63 percent of the responding jurisdictions screen out inappropriate cases before filing, and an average of 37 percent of the jurisdictions accept cases on the information available at screening and subsequently reject cases from the unit after filing. These cases are then handled under normal case processing procedures.

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Ideally, career criminal prosecutors have accurate and timely criminal history information available at the time of screening so that repeat offenders can be identified and charged as career criminals. However, since FBI rap sheets are usually not available until 2-4 weeks after charging, prosecutors often must guess whether an offender meets the selection criteria.

21. What is the annual number of cases prosecuted by the career criminal program?

	Total	Population 1	2	3	4
No. of responses	76	13	24	18	21
Average no. of cases	146	268	145	82	88
Rate of prosecution	82%	87%	54%	93%	93%

A fairly high percentage of those cases initially accepted for career criminal prosecution are actually prosecuted in most of the jurisdictions surveyed. With the exception of group 2 jurisdictions, the average rate of prosecution exceeds 85 percent. If two jurisdictions from group 2 are excluded from the analysis (Louisville, Kentucky, and Riverside, California) the average for group 2 falls in line with that for the other jurisdictions, with a 96 percent rate of prosecution.

The findings suggest that large jurisdictions have a greater number of eligible cases than they can actually handle. Thus, a portion of those cases involving repeat offenders arrested and charged with a violent crime are

rejected for career criminal prosecution because there are not sufficient resources to handle those cases. For example, Operation Hardcore (Los Angeles' gang unit) was originally designed to target on murder, aggravated assault, and robbery. However, a heavy case load has forced the unit to become almost exclusively a gang murder prosecution team. Lesser offenses--albeit serious ones, such as aggravated assault and robbery--are routinely rejected by the unit due to lack of resources.

On the other hand, it seems that smaller jurisdictions are able to prosecute almost all eligible cases. Thus, if further budget cutbacks occur, they are more likely to have an adverse impact on larger jurisdictions, which are already straining to handle their case loads with existing resources.

22. Generally, how many days after an arrest are cases selected for the career criminal program?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Days from arrest	5.0	2.1	3.9	7.8	6.3

Larger jurisdictions identify career criminals nearly three times faster than do smaller jurisdictions. The ability to make timely case selections is contingent on:

- The quality of the arrest reports prepared by the arresting officer or detective. Larger jurisdictions usually have access to automated criminal history information for at least state and local offenses. Smaller jurisdictions may have to review case records manually or send to a state repository for criminal history information, thus delaying case selection.

The availability of career criminal investigators to work with police prior to arrest so that complete information is available at the time of arrest. Larger jurisdictions are more likely to have access to investigators, and this may help to explain the speed with which these jurisdictions can review arrest reports and make their case selections. Smaller jurisdictions must often rely on police to do follow-up work before case selection can be made. The ability of police to do this work is contingent on their own case loads and may result in substantial delays.

23. At what stage in the processing is this selection made? (Use earliest stage at which some selection is made.)

	Total	Population 1	2	3	4
No. of responses	86	15	26	21	24
Arrest	32	7	7	8	10
Screening	33	3	14	9	7
Charging	4	1	1	2	0
Complaint	6	1	2	1	2
Arraignment	8	3	2	0	3
Preliminary hearing	3	0	0	1	2

24. Are all career criminal unit cases prosecuted vertically from the selection point forward?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	82%	80%	84%	85%	80%

One of the primary goals of the original career criminal program was to implement vertical prosecution. In 1975 it was the normal practice in most large and medium-size jurisdictions

to prosecute cases horizontally, i.e., a different prosecutor would handle each stage of the case. LEAA program developers sought to impose vertical prosecution whereby a single prosecutor would handle a case from filing to disposition and would assume responsibility and accountability for that case. Although vertical prosecution is more costly than horizontal prosecution, the survey results indicate that even after federal funding expired most of the large and medium-size jurisdictions maintained vertical prosecution. Smaller jurisdictions use vertical prosecution about as much as larger jurisdictions. However, since many of those jurisdictions never adopted horizontal case processing, it is not surprising that the practice is also prevalent in smaller jurisdictions.

25. (For a presentation of components included in each jurisdiction's selection criteria, see Exhibit 4, pages 48-51.)

26. Do you use a point system to weight criteria?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	22%	20%	4%	42%	23%

Boston was the first jurisdiction to use a point system to evaluate career criminal cases. Their system was subsequently adopted by a number of jurisdictions, although it was never an LEAA requirement. A number of medium-size and small

jurisdictions particularly like the point system because it helped them defend themselves against the charge that the selection criteria are too subjective. The point system provides an explicit, objective basis for determining whether a defendant qualifies. Also, smaller jurisdictions tend to use a relatively straightforward point system, whereas larger jurisdictions are inclined to use either a more complex system or none at all.

27. As part of the selection criteria for career criminal cases, does your office target specific offenses?

	Total	Population 1	2	3	4
No. of responses	81	15	24	21	21
Percent yes	70%	93%	66%	71%	57%

Almost all (93%) of the large jurisdictions report that they target on specific offenses, while an average of only 64 percent of the remaining jurisdictions target by type of offense. Larger jurisdictions are more likely to focus on certain offenses because they have other special units in their office to focus on murder, rape, and sexual assaults (see question 17). Small and medium-size offices are less likely to have other specialized units and therefore use their career criminal unit as a "major offense bureau." When this occurs, the career criminal unit handles the major cases in the office regardless of the type of offense.

28. (For a presentation of responses indicating the types of target offenses used by career criminal prosecutors, see Exhibit 4, pages 48-51.)

29. Is there a screening unit within the career criminal program?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	65%	66%	60%	71%	66%

Most of the programs that responded to the survey report that someone in the career criminal unit--usually the program director--screens cases before they are accepted into the unit.

In those jurisdictions that do not have a separate career criminal screening unit, cases are screened through normal channels and then referred to the career criminal unit. Screening deputies usually have a copy of the career criminal unit's selection criteria so they know which cases to refer. Police also usually know the selection criteria and will tell screening deputies that they think a particular case qualifies for career criminal prosecution.

30. What is the average number of years of experience for the person(s) selecting/screening career criminal cases?

	Total	Population 1	2	3	4
No. of responses	75	12	24	21	18
Average years experience	7.3	9.3	7.2	7.1	5.9

Comparing these results with those of question 11 (average experience of career criminal attorneys) shows that the average years of experience for screening deputies exceeds that of the regular career criminal deputy. This suggests that senior deputies (perhaps the project director) are responsible for screening cases. This contrasts sharply with many prosecutors' offices, where the most junior attorneys are assigned to the screening unit. The experience of career criminal screening deputies demonstrates the importance placed on this function by career criminal project directors.

31. Does the attorney(s) in charge of selecting/screening career criminal cases have a choice among cases?

	Total	Population 1	2	3	4
No. of responses	79	15	24	20	20
Percent yes	83%	86%	79%	90%	80%

This question provides another measure of the extent of discretion over case selection exercised by local career criminal programs. Over 80 percent of those programs responding to the survey indicated that screening deputies have a choice of cases for career criminal prosecution.

32. Not based solely on written policy criteria, what factors do you feel have the largest impact on the screening decision? (On a scale of 1-5, where 1 is a very important factor and 5 is a non-important factor, how would you rate the following?)

a. the type of crime
b. the degree of harm to the victim

c. the probability of the case going to trial
d. the quality of the evidence (elapsed time per case from arrest)
e. the nature of the victim (age, relationship to defendant, previous criminal record)
f. the case load for the month
g. defendant's prior record

	Total	Population 1	2	3	4
Crime type	1.6	1.1	1.9	1.9	1.4
Degree of harm	2.3	1.7	2.6	2.6	2.3
Probability of trial	3.9	3.8	4.1	3.9	3.7
Quality of evidence	3.4	2.7	3.2	2.7	3.1
Relationship	3.1	2.7	3.6	2.9	3.3
Case load	4.1	3.8	3.8	4.2	4.7
Prior record	1.1	1.1	1.2	1.0	1.1

There is a remarkable consistency among career criminal prosecutors regarding the importance of these factors in screening cases. Without exception, the prosecutors identified prior record (relative rank 1.1) as the single most important factor influencing the screening decision. The results of the question are consistent with those of question 34 below, for which respondents reported that criminal history information (at least for local offenders) is frequently available.

It seems clear from these results that career criminal prosecutors are most interested in the types of crime committed during the instant offense, combined with the number and type of previous criminal offenses.

Career criminal prosecutors are less interested (in rank order) in the degree of harm to the victim, the quality of the

evidence, the probability of trial, and case-load pressures. That the quality of the evidence was rated as relatively unimportant by career criminal prosecutors is significant because critics of the program have often charged that career criminal units take only "locked cases." These responses indicate that case-load pressures and strength of the evidence are relatively unimportant factors in case selection, although large and medium-size jurisdictions indicated that case-load pressures were slightly more important than did smaller jurisdictions.

33. Do the selection criteria allow for more cases than the unit actually is able to prosecute?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	56%	73%	56%	57%	42%

Consistent with the results of questions 20, 21, and 31, the responses to this question indicate that, particularly in large jurisdictions, the selection criteria yield many more cases than can actually be prosecuted by the career criminal unit. Thus, prosecutors must often reject cases that qualify for the program because they do not have sufficient resources to handle the large number of repeat violent offenders in their jurisdictions.

34. Using the scale I am about to read to you, please indicate for us what information is available at the time of career criminal case selection:

almost always or always = 1
about half the time = 2
never or rarely = 3

	Total	Population 1	2	3	4
FBI	2.2	2.5	2.1	2.1	1.9
State criminal history	1.2	1.6	1.0	1.1	1.1
Bail	2.0	2.1	2.1	1.8	2.1
Parole/probation status	1.5	1.6	1.5	1.6	1.3
Other pending cases	1.6	1.4	1.8	1.6	1.5
Employment	2.9	3.0	2.8	2.9	3.0

Most respondents reported that state criminal history information is almost always available. However, information regarding out-of-state offenses, which can be obtained only from the FBI, is available less than half of the time. Since career criminals frequently have records in other states, it is crucial that that information be available on a more timely basis.

Other information--such as other pending cases, parole status, and bail status--is usually available through local automated case tracking systems. Consequently, jurisdictions that have implemented automated case tracking systems, like San Diego and Manhattan, reported that defendant information is almost always available, thus aiding the process of case selection.

35. What additional pieces of information are desirable, but not available? (such as local police information)

The responses to this open-ended question are reflected in textual discussions.

36. Using the same scale as above, are you able to identify chronic juvenile offenders at the time of case selection?

almost always or always = 1
about half the time = 2
never or rarely = 3

	Total	Population 1	2	3	4
No. of responses	81	14	25	21	21
Average	2.4	2.4	2.4	2.5	2.3

Traditionally, juvenile records have not been available to adult system prosecutors. Although several jurisdictions make these records available on an informal basis, the vast majority of those surveyed responded that juvenile records are seldom if ever available. The inability of prosecutors to review juvenile records severely hampers their ability to identify high-volume offenders early enough in their criminal careers to

affect their behavior. Most jurisdictions report that the average age of those prosecuted as career criminals is 27-30 years. Research has shown that the high activity years for most offenders are about 16-21. In order to meet the challenge posed by these offenders prosecutors report that they need ready access to juvenile arrest and disposition reports.

37. Have selection criteria changed since the program started?

	Total	Population 1	2	3	4
No. of responses	79	14	25	20	20
Percent yes	54%	42%	60%	60%	50%

Approximately half of all responding jurisdictions report that they have changed their selection criteria since program implementation. Under LEAA guidelines, jurisdictions were allowed and even encouraged to alter their selection criteria in response to changing crime patterns and case loads. LEAA-funded jurisdictions were required only to submit the reason for the change and calculate the anticipated effect on the program's case load. Given this fact, it is surprising that more jurisdictions did not report changes in their selection criteria.

38. What percentage of cases that are prosecuted under the career criminal program do you believe should not be?

	Total	Population 1	2	3	4
No. of responses	36	6	16	1	4
Percent of cases, average	8.6%	7.3%	5.2%	6.5%	15.5%

The responses to this question indicate that small jurisdictions are more than twice as likely than either large or medium-size jurisdictions to accept cases that are inappropriate for career criminal prosecution. Possible explanations for this include:

- There are not enough legitimate career criminal cases to keep a separate unit busy. Thus, the unit accepts marginal cases for career criminal prosecution.
- Group 4 jurisdictions were too small (under 250,000 population) to have been included in the LEAA Discretionary Program. These jurisdictions were not subject to case-load monitoring by the LEAA program manager and did not receive technical assistance in the development of their selection criteria. Thus, these jurisdictions are less likely to have carefully developed selection criteria.
- In response to question 26 we found that smaller jurisdictions were more likely to use a point system for case selection. The purpose of a point system is to ensure an objective selection process. Rendering prosecutory discretion inappropriate means that more cases are more likely to be accepted into the unit.

39.a. Are there cases that should be prosecuted by your career criminal program that are presently handled through normal processing procedures?

	Total	Population 1	2	3	4
No. of responses	82	15	25	21	21
Percent yes	65%	73%	64%	67%	57%

b. What percentage?

	Total	Population 1	2	3	4
No. of responses	59	14	24	11	10
Percent of cases, average	8.7%	11.9%	4.8%	9.4%	8.8%

Exhibit 4. DETAILED SURVEY RESPONSES:
Questions 25 and 28

(Group 1, population 1 million or over)

	Question 25. Selection Criteria								Question 28. Target Offenses						
JURISDICTION	Current Offense	Pending Charges	Criminal Record	Victim Relationship	Weapon Use	Discretion	Case Strength	Assault	Burglary	Murder	Rape	Robbery	Sex Assault	Arson	Kidnapping
Alameda Co., CA	✓		✓						✓			✓			
Los Angeles Co., CA	✓	✓	✓		✓				✓	✓		✓		✓	
Orange Co., CA*	✓	✓	✓		✓		✓		✓			✓			
San Diego Co., CA	✓		✓	✓	✓	✓	✓		✓			✓			
Clearwater Co., FL	✓	✓	✓												
Middlesex Co., MA	✓	✓	✓	✓	✓	✓	✓	✓				✓			
Wayne Co., MI	✓	✓	✓			✓			✓	✓	✓	✓			
Bronx Co., NY	✓	✓	✓		✓	✓	✓		✓	✓	✓				
Erie Co., NY	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	
New York Co., NY	✓	✓	✓					✓	✓			✓			
Allegheny Co., PA	✓		✓		✓	✓	✓	✓	✓		✓	✓			
Philadelphia, PA	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
Dallas Co., TX	✓	✓	✓	✓	✓	✓				✓	✓	✓	✓		✓
Harris Co., TX	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓			
Chicago, IL	✓		✓	✓			✓	✓	✓	✓	✓	✓	✓		✓

continued

*Orange County includes theft-related offenses (such as auto theft) as a target crime.

Exhibit 4 (continued)
(Group 2, population 500,000 - 1 million)

	Question 25. Selection Criteria								Question 28. Target Offenses						
JURISDICTION	Current Offense	Pending Charges	Criminal Record	Victim Relationship	Weapon Use	Discretion	Case Strength	Assault	Burglary	Murder	Rape	Robbery	Sex Assault	Kidnapping	Arson
Riverside Co., CA*	✓	✓	✓	✓	✓	✓			✓						
Sacramento Co., CA	✓	✓	✓		✓	✓									
San Francisco Co., CA*	✓		✓			✓			✓			✓			
Ventura Co., CA	✓		✓			✓			✓			✓			✓
Fairfield Co., CT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Hartford Co., CT	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		
New Haven Co., CT	✓	✓	✓	✓				✓	✓	✓		✓	✓		
Waterbury Co., CT	✓		✓		✓			✓	✓	✓	✓	✓	✓		
District of Columbia	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Ft. Lauderdale Co., FL	✓	✓	✓	✓	✓	✓									
Honolulu Co., HI	✓	✓	✓			✓									
Lake Co., IN	✓	✓	✓	✓		✓			✓	✓	✓	✓	✓		
Marion Co., IN*	✓	✓	✓	✓	✓	✓				✓		✓	✓	✓	
Jefferson Co., KY		✓	✓	✓	✓		✓								
Montgomery Co., MD	✓		✓					✓		✓	✓	✓		✓	
Norfolk Co., VA	✓	✓	✓	✓	✓			✓	✓			✓			
Macomb Co., MI	✓		✓		✓										
Monroe Co., NY	✓	✓	✓	✓											
Westchester Co., NY	✓		✓		✓			✓	✓	✓		✓			✓
Summit Co., OH	✓		✓	✓			✓		✓		✓	✓	✓		
South Dakota	✓		✓		✓	✓									
Shelby Co., TN	✓	✓	✓												
Bexar Co., TX	✓		✓												
Salt Lake Co., UT	✓	✓	✓			✓						✓			
Milwaukee Co., WI*	✓	✓	✓	✓	✓	✓				✓		✓			

continued

*Additional target crimes for the following offices are as listed: Riverside: receiving stolen property, drug offenses; San Francisco: receiving stolen property, grand theft; Marion: auto theft, aggravated battery; and Milwaukee: multiple non-violent offenses.

Exhibit 4 (continued)
(Group 3, population 250,000 - 500,000)

	Question 25. Selection Criteria								Question 28. Target Offenses							
JURISDICTION	Current Off.	Pending Charges	Crim. Rec.	Victim Relationship	Weapon Use	Discretion	Case Strength	Assault	Burglary	Murder	Rape	Robbery	Sex Aslt.	Drug Offenses	Kidnapping	Arson
Little Rock Co., AR			✓													
Fresno Co., CA*	✓	✓	✓			✓			✓			✓				
Santa Barbara Co., CA	✓		✓		✓	✓	✓	✓	✓			✓				
Lake Co., IL			✓			✓										
Baton Rouge Co., LA	✓	✓	✓	✓	✓	✓	✓									
Bristol Co., MA	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		
Ingham Co., MI	✓	✓	✓			✓	✓		✓	✓	✓	✓			✓	✓
Washtenaw Co., MI	✓	✓	✓	✓	✓					✓	✓	✓	✓			
Camden Co., NJ	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓	✓		✓
Mercer Co., NJ	✓	✓	✓					✓	✓	✓	✓	✓				
Passaic Co., NJ	✓	✓	✓			✓		✓	✓	✓	✓	✓	✓		✓	
Albuquerque Co., NM		✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Onandaga Co., NY	✓	✓	✓	✓	✓	✓	✓									
Orange Co., NJ	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Clark Co., NV	✓	✓	✓	✓	✓	✓	✓									
Mecklenberg Co., NC		✓	✓						✓	✓		✓	✓			
Davidson Co.,TN	✓		✓		✓	✓			✓	✓		✓				
Knox Co., TN		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Travis Co., TX	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓				
Norfolk, VA	✓	✓	✓	✓	✓	✓	✓					✓		✓		
Waukesha Co., WI	✓	✓	✓		✓				✓	✓	✓	✓	✓			

continued

*Fresno, California, includes grand theft as a target crime.

Exhibit 4 (continued)
(Group 4, population 100,000 - 250,000)

	Question 25. Selection Criteria								Question 28. Target Offenses							
JURISDICTION	Current Off.	Pending Charges	Crim. Rec.	Victim Relationship	Weapon Use	Discretion	Case Strength	Assault	Burglary	Murder	Rape	Robbery	Sex Asslt.	Drug Offenses	Kidnapping	Arson
Stanislaus Co., CA	✓	✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓	✓
Sarasota Co., FL	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
Ada Co., ID	✓	✓	✓			✓			✓			✓				
St. Joseph Co., IN*	✓	✓	✓			✓		✓	✓	✓	✓	✓	✓		✓	
Vanderburgh Co., IN	✓									✓	✓	✓				
Black Hawk Co., IA	✓		✓	✓												
Kenton Co., KY	✓	✓	✓													
Bay Co., MI*	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
Berrien Co., MI			✓													
Calhoun Co., MI*	✓	✓	✓					✓	✓	✓	✓	✓	✓	✓	✓	✓
Monroe Co., MI			✓		✓	✓	✓									
Saginaw Co., MI	✓		✓		✓	✓	✓									
St. Clair Co., MI	✓	✓	✓		✓	✓	✓									
Steuben Co., NY	✓		✓		✓			✓		✓	✓		✓	✓		✓
Ulster Co., NY	✓	✓	✓			✓			✓	✓	✓	✓	✓			
Cumberland Co., NC	✓			✓									✓			
Weber Co., UT	✓	✓	✓				✓									
Alexandria, VA*	✓	✓		✓	✓	✓	✓		✓			✓	✓			
Portsmouth, VA	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓				
Richmond, VA	✓		✓		✓		✓			✓	✓	✓				
Virginia Beach, VA	✓	✓	✓	✓	✓	✓										

*St. Joseph County, IN, includes child abuse as a target crime; Bay County, MI, and Calhoun County, MI, include auto theft as a target crime; Alexandria, VA, includes grand larceny as a target offense.

Part III

INTERAGENCY COORDINATION

Questions 40 through 50 focus on interagency coordination, particularly the degree of coordination between federal agents or U.S. Attorneys and the state attorneys or local career criminal unit staff. Generally, the results of the survey show less interagency contact for the programs in small jurisdictions, an overall low level of cooperation and information sharing, and a general lack of follow-through with local police. Overall, there are no significant variations in results based on population group.

40. Do investigators or attorneys in your office (not only those in the career criminal unit) ever have contact and work with federal agents?

	Total	Population 1	2	3	4
No. of respondents	82	15	25	21	21
Percent yes	92%	100%	92%	100%	80%

Although over 90 percent of the 82 respondents indicated that they had contact with federal investigative agencies, most also immediately qualified their response with "not very much."

41. If NO: Why not? (Skip to Q:46)

The responses to this open-ended question are reflected in the textual discussions.

42. If YES: Place a one next to those agencies indicated.

	Total	%	Population 1	2	3	4
a. Customs	16	23.8	6	5	5	0
b. FBI	74	92.5	13	22	21	18
c. DEA	56	70	11	16	16	13
d. ATF	58	72.5	13	18	14	13
e. Postal Inspection	40	50	12	8	12	8
f. IRS	27	33.7	8	8	5	6
g. Other, specify	22	27.5	7	7	5	3

The FBI (92.5%), ATF (72.5%), and DEA (70%) are the agencies with which the CCP units have the most frequent contact. The ATF agents were often cited for their cooperativeness. In contrast, the FBI agents were most often cited as "coming in and getting the information they need," and the relationship was characterized as "a one-way street." The "other" agency most frequently mentioned was Immigration and Naturalization. Several survey respondents expressed the desire to get more information and cooperation from the IRS.

43. Is this contact direct or by referral through a local enforcement agency?

	Total	%	Population 1	2	3	4
a. direct	44	61	7	14	12	11
b. referral	6	8	0	1	2	3
c. both	23	31.9	6	7	6	4

Over 60 percent of the respondents who had contact with federal agents characterized the contact as direct. Less than 10 percent of the respondents replied that contacts were primarily referrals.

44. Who do the federal agents most often contact in the office?

	Total	Population 1	2	3	4
No. of responses	72	14	21	19	18
Anyone	53	10	20	12	11
Career criminal unit	7	3		2	2
Other	12	1	1	5	5

The survey results show that when federal agents do contact state and local prosecutors they tend to talk to anyone in the office and their pattern of contact shows less than 10 percent awareness of the career criminal unit. Other units in state and local prosecutors' offices, such as narcotics or organized crime units, are slightly more likely (16%) to have contact with federal agents than the career criminal unit. Interaction between federal and local prosecutors appears to occur on an ad hoc basis and also appears more dependent on personal association and friendship than on organizational imperative.

This finding has been reinforced by interviews with federal investigative and prosecutory agencies (forthcoming project report). Federal investigators and prosecutors report that they know that a career criminal unit exists in their

jurisdiction but have little knowledge of its function or how it operates.

45. How often does any member of the District Attorney's office have contact with a federal investigative agency?

	Total	Population 1	2	3	4
No. of responses	67	13	17	20	17
Daily	5	2	1	0	2
Weekly	18	3	6	6	3
Monthly	26	2	8	9	7
Occasionally	18	6	2	5	5

Probably the most revealing question, question 45 gives us an estimate of the frequency of contact. Only 7 percent of the local prosecutors' offices that do interact with federal agents do so daily. Two-thirds of the local prosecutors' offices replied that the rate of contact was monthly or even less frequently. This tends to support the comment that the federal and local system operate largely in different worlds. This finding is consistent with other results of the survey showing a mutual unawareness and lack of coordination.

46.a. Do you use any information/reports of the federal investigative agencies?

b. If YES:

Frequently?

Written reports?

	Total	Population 1	2	3	4
No. of yes responses	80	13	25	21	21
Use info/reports	63	13	19	17	14
Frequently	30	5	8	10	7
Written reports	56	12	16	15	13

This question revealed that almost 80 percent of all prosecutors' offices do use FBI rap sheets, federal parole and probation reports, and other investigative reports. However, when asked if they use this information frequently, 63 percent replied that they seldom used these reports. Often prosecutors mentioned the delay in getting reports and the necessity for sending letters. Occasionally, prosecutors mentioned the denial of requests for information.

47. Has the career criminal program issued any guidelines to or conducted any training or briefings for the local police?

	Total	Population 1	2	3	4
No. of responses	80	13	25	21	21
Yes	63	10	20	16	17
No	17	3	5	5	4

In response to this question, most prosecutors stated that much more was done when the program was first implemented. Almost all prosecutors indicated that the program has the support and cooperation of the local police. It is surprising

that 21 percent of the programs do not have, nor ever have had, this level of contact with their local law enforcement agencies.

48. Have these been primarily briefings, guidelines, meetings, or some other means?

	Total	Population 1	2	3	4
No. of responses	63	10	21	15	17
Briefings	40	4	12	12	12
Guidelines	33	5	10	7	11
Meetings	39	9	9	10	11
Other	20	0	7	7	6

Of the career criminal programs that have worked formally with the local police, briefings and meetings were used in two-thirds of the programs as the primary method of contact. Written guidelines were issued in just over half of these programs.

Some programs produce wallet-size cards with the CCP selection criteria printed on them. Arresting officers are encouraged to call CCP prosecutors when a repeat offender is arrested for a target offense. Jurisdictions that have encouraged a close working relationship with police agencies have reported that police are enthusiastic about the program and go out of their way to collect all available evidence and interview all witnesses. This extra involvement helps prosecutors to build better cases and secure convictions.

49. Do you have a system of cross-deputization of prosecutors with the federal system?

	Total	Population 1	2	3	4
No. of responses	78	15	25	21	17
Yes	7	1	3	2	1
No	71	14	22	19	16

The seven cities that indicated they have a system of cross-deputization are Riverside, San Diego, and Orange County (Santa Ana), Calif.; Norfolk, Va.; Evansville, Ind.; New Haven, Conn.; and Rochester, N.Y. In Norfolk, the Commonwealth Attorney is trying to get the career criminal police detective deputized as a U.S. Marshal.

50. Has this improved coordination between federal and non-federal investigators and attorneys?

Of the seven programs that do have a system, five (in San Diego, Santa Ana, New Haven, Norfolk, and Rochester) were very enthusiastic about cross-deputization as a means of improving coordination of prosecution of career criminals. Each mentioned the sharing of information and working cooperatively toward a common goal, and each program believed that this system worked well and was a beneficial experiment.

The Riverside District Attorney's Office has not yet utilized the cross-deputization system. The Evansville, Ind., program staff gave the only negative response to this question; their experiences have varied, depending on the case

or defendant and the Assistant U.S. Attorney involved, but on balance, there has not been sufficient use of the cross-deputization in Evansville.

Part IV. IMPACT AND ATTITUDES

Questions 51 through 54 were designed to assess prosecutors' attitudes toward and evaluation of their own program, examine whether they understood and focused on the program's purpose, and highlight program problems. Finally, question 55 seeks to determine local attitudes on the possibility of a federal career criminal program.

51. Do you believe that the program has:

a. improved conviction rates
b. improved incarceration rates
c. increased attorney time per case
d. decreased case processing time (elapsed time per case from arrest to disposition)
e. allowed more efficient allocation of resources

	Total	%	Population 1	2	3	4
No. of responses	81	100	14	25	21	21
Conviction	72	88.9	11	23	19	19
Incarceration	74	91.4	13	25	19	17
Attorney time	72	88.9	12	24	18	18
Case time	56	69.1	9	18	15	14
Resources	70	86.4	12	24	17	17

More than 86 percent of those surveyed believed the program has improved conviction rates (88.9%), improved incarceration rates (91.4%), and resulted in more efficient allocation of resources (86.4%).

In order to accomplish the goals of increased certainty of conviction and increased time served for serious repeat offenders, 88.9 percent of the respondents answered that more attorney time was spent on these cases. Case processing time also decreased for career criminal cases in 69 percent of the responding jurisdictions. Court rules and backlogs, case complexity, and the likelihood of trial were often cited as reasons why career criminal case processing time had not decreased in the other 31 percent of the reponding programs.

52. Since the inception of the program, do you believe the purpose of the program has changed?

	Total	%	Population 1	2	3	4
No. of responses	78	100	15	25	21	17
Yes	23	29	4	6	6	7

Only 29 percent of the respondents believed the program's purpose had been modified since program initiation. The changes often were in terms of targeting different offenses, narrowing the number of offenses, and using discretion in applying the selection criteria. Usually this was the result of a change of program director or district attorney or the lifting of LEAA-imposed requirements.

In some offices, institution of the program had the effect of changing the entire office to vertical prosecution with the result of closer case management, better case preparation, and increased witness contact. Since the most severe criminals

were being incarcerated, in time some programs were also able to increase their target offenses. Many programs that have changed have become less formalized, dropping vertical prosecution or adding more discretion to the selection process. Programs that have had funding problems, however, have changed by becoming more restrictive and increasing the selection criteria to identify only the most serious threats to the community.

53. What do you believe is the focus of your career criminal program?

    a. specific local crime problems
    b. serious repeat offenders
    c. identification of potential career offenders

			Population			
	Total	%	1	2	3	4
No. of responses	80	100	14	25	20	21
Local crime	24	30	4	7	6	7
Repeat offender	80	100	14	25	20	21
Identify potential	15	18.8	4	4	3	2

All of the respondents identified the focus of the program as the serious repeat offender. For those respondents who identified additional program goals, 30 percent said the program focus was also specific local crime problems, and 19 percent replied that a focus of the program was to identify the potential recidivist.

54. Would you indicate what are the most severe problems facing the career criminal program in your office (interagency cooperation; support staff; funding; case assignment)?

The three major problems facing the state and local programs have involved the courts, corrections agencies, and funding. Court administration and sentencing were frequently mentioned because their effect on the prosecutor is immediate and pronounced. Lenient and discretionary sentencing or failure to exercise sentencing options tended to discourage prosecutors and were cited as contributing to staff turnover. Failure to expedite disposition or grant special handling also were mentioned.

Even the most widely acclaimed career criminal programs admitted to problems with corrections agencies. In certain jurisdictions, the programs are sending more criminals to prison for longer terms, filling prisons at a faster rate than anticipated; in jurisdictions with severe prison crowding, parole officials are releasing career criminals, who are quickly being sentenced again as career criminals. If career criminal programs are to reach their maximum effectiveness, greater cooperation between prosecutors and correctional officials needs to occur. Local prosecutors observed that correctional officials should treat offenders according to the seriousness of their offense and criminal record rather than their institutional behavior.

Several prosecutors stated that the career criminal funding changes have been a problem. Convincing local government officials of program value and the vacuum created by the end of

federal funding typify major funding concerns. Funding uncertainty reportedly has also affected morale.

Police cooperation in identifying career criminals was the next most frequently cited problem. Police failure to screen cases adequately or provide rap sheets are the primary aspects of this problem area.

Other problems mentioned related to management: insufficient staff, the sporadic nature of the case load, and coordination of work with the rest of the office. Another aspect of this problem is that career criminal cases involve the most serious crime and each case must receive individual and careful attention. Work-load pressures in high-volume career criminal units make it difficult for the trial attorney to remain mindful of the significance of all cases. In offices where there are several special prosecution units in addition to the career criminal unit, a serious morale problem can exist for attorneys not assigned to any special prosecution unit. In contrast, in offices where career criminal programs were the only special prosecution unit, preserving its unique identity over time became a problem.

55. And finally, do you believe that it would be beneficial to have a federal career criminal program in your federal district court?

		Population				
	Total	%	1	2	3	4
No. of responses	76	100%	15	23	18	20
Yes	56	73.7%	12	17	16	11

This question, perhaps the most important of all, yielded some interesting insights and prompted some strong responses. In immediate response to the question, nearly 75 percent of the respondents indicated that they thought that some kind of federal effort would be beneficial to deal with cases involving repeat offenders. When given an opportunity to expand on their response, particularly in the in-person interviews, most respondents indicated that they had serious reservations regarding the viability of a federal career criminal program. Many thought that a federal program would be redundant of local programs. Respondents indicated that although they had reservations about a federal career criminal program, it was better than none. Local prosecutors noted that U.S. Attorneys handled fewer and fewer cases each year while local case loads continued to increase. Respondents suggested that federal assistance ought to take the form of continual financial assistance to local career criminal programs and increased access to, and availability of, FBI rap sheets.

The following is a list of the perceived benefits and liabilities of a federal career criminal program.

- The ability of a federal career criminal program to use federal investigative resources was cited as a great asset in targeting crime and prosecuting successfully.
- Several prosecutors mentioned that the existing program has high public visibility, understanding, and support on the local level that should be transferable to a national program.
- The existing program has been successful, especially in terms of increased conviction and incarceration rates. Since the program has proven effective on the local level, it has an increased likelihood of being successful on the federal level.

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- Even if a federal program did not help state and local prosecutors, many prosecutors stated that a career criminal program is definitely the method for dealing with the repeat offender and is essential in helping new attorneys to avoid problems and attend to crucial matters during prosecution of repeat offenders. They believe a federal program would improve federal case processing and follow-through.

- A federal program should be easy to implement because U.S. Attorneys' Offices already have task forces and practice vertical prosecution.

- There is a need to coordinate state/local prosecution with federal prosecution based on maximum impact on career criminals; a federal program would meet this need.

- Certain offenders need focused prosecutive attention. It is good case management to establish case priorities, as the career criminal program on the state and local level has demonstrated.

- The federal government has resources to get criminal records across state lines and to deal more effectively with interstate problems, such as illegal and criminal aliens, interstate auto part fencing, interstate gangs, organized crime, and professional burglars.

Potential Problems and Liabilities

- Identifying federal career criminals.

  Federal criminal code and the Department of Justice define what crimes U.S. Attorneys will prosecute.

  - These may have to be changed to permit greater USAO involvement on the local level.

- The program also has to include stricter federal parole and sentencing for career criminals or there will not be sufficient incentive for the U.S. Attorneys. The U.S. Parole Commission ought to be involved. In essence, the whole system must be coordinated.

This question also produced some negative assessments.

- U.S. Attorneys' Offices are and should remain flexible; a separate unit is not necessary.

- The U.S. Attorney's Office is already exclusive. Creating a federal career criminal program will only make it more elite.

- Many prosecutors argued that the local programs still need federal assistance and funding to combat violent, repeat offenders and street crime. Most street crime is really not within the jurisdiction of the U.S. Attorney's Office.

- The U.S. Attorney's Office has already specialized in or is focusing on certain crimes and has dropped crimes they formerly prosecuted. Having thus defined their mission, institution of a federal career criminal program would be both redundant, since the local programs and prosecutors have filled the vacuum, and also require a shift in policy.

CONCLUSION

Most local prosecutors believe that the federal government should assume a more active role in assisting local and state law enforcement agencies to identify and prosecute career criminal offenders. However, in light of the limited federal jurisdiction for crimes that are typically considered to be local career criminal offenses (robbery, burglary, rape, and aggravated assault), career criminal prosecutors appear less than fully convinced that a federal career criminal program would be an appropriate allocation of federal resources. Responses ranged from outright hostility ("the Department is trying to come in and take credit for a program that we worked hard to develop") to strong endorsement ("we desperately need federal assistance to fight our narcotic and gang problems"). To the extent that a federal career criminal program focused on non-violent offenses (check cases and fraud), local prosecutors thought the program unnecessary. Local prosecutors did not indicate an awareness that most federal offenders have criminal records at the local level, often for violent offenses. Almost all local prosecutors were concerned that there was not enough of a case load to warrant a special federal program.

Prosecutors in small and medium-size jurisdictions, however, were generally supportive of the concept of a federal career criminal program. Although their response was not enthusiastic, they thought that even if the program did not assist local prosecution it probably would not hinder it either.

On the other hand, prosecutors in large cities were unanimous in their belief that the federal government should continue to provide funding to local career criminal units rather than use such funds to create their own program. They expressed concern that a federal program would be redundant of current efforts and would reduce rather than increase local and federal coordination and cooperation. Observing that they already had established programs of proven success, prosecutors in Los Angeles, New York, Philadelphia, Detroit, New Orleans, Chicago, and San Diego argued that it would be less expensive for the Department to provide assistance to their programs than to design and implement a program of questionable utility.

One area of agreement among prosecutors in small, medium-size, and large jurisdictions was that federal agencies (U.S. Attorneys, FBI, DEA, IRS, and Customs) should work more closely with local police and prosecutors to identify and prosecute narcotics traffickers. Almost every jurisdiction recounted parallel federal and local narcotics investigations being jeopardized by the lack of information sharing and coordination between federal and local agencies. Observing that juvenile and adult gangs are responsible for substantial drug trafficking, local prosecutors in major cities called for federal programs such as Operation Hardcore in Los Angeles.

The survey results and prosecutor interviews suggest that the two levels of prosecution--federal and local--operate in different worlds and have few incentives to coordinate their activities. The prosecutors we contacted feared that a federal career criminal program developed independently of local and

state prosecutors would reinforce the status quo rather than increase coordination. Noting that criminal elements are frequently more organized than law enforcement agencies, and that federal investigators often take more information than they give, local prosecutors expressed a keen interest in working with federal agencies to develop innovative programs to combat the increasingly sophisticated violent offender.

Appendixes

SITE VISIT REPORTS

In order to obtain more detailed information regarding local prosecutors' attitudes toward and involvement with federal investigative agencies and prosecutors, project staff visited prosecutors' offices in Chicago, San Diego, Los Angeles, Detroit, The Bronx, and Manhattan. This section of the report contains summaries of the discussions held during those visits.

COOK COUNTY (CHICAGO)

The Cook County-Chicago career criminal program was implemented in 1977 as the Repeat Offender Team (ROT) in the State's Attorney's Office. Concurrent with the program's implementation, judges were assigned especially to hear these career criminal cases in three Repeat Offender Courts (ROC). Currently, the program is more popularly known as the "Rock" program. The program was originally federally funded, but is now entirely funded by Cook County.

Those interviewed thought that the State's Attorney's Office has a good relationship with the U.S. Attorney's Office in Chicago, but a poor relationship with the federal investigative agencies. Currently, six former state's attorneys are serving as AUSAs and one former state's attorney and former AUSA is again a state's attorney. Personal contacts with the U.S. Attorney's Office and personnel interchanges are the basis for the coordination between the two offices. The State's Attorney and the U.S. Attorney, or their first assistants, meet frequently. The two offices have little contact about individual cases, however.

Most of those interviewed saw little direct need or role for a federal career criminal program. The primary benefit of a federal initiative in this area was perceived to be increased communication between the State's Attorney and the U.S.

Attorney to develop strategies for handling classes of offenses, e.g., bank robbery, weapons offenses, and auto theft. However, concern was expressed that a full-scale federal program would not have sufficient business to justify its existence.

One official, on the other hand, thought that the implementation of a federal career criminal program would provide additional opportunities to better address the gang problem in the Chicago area. Observing that there are more than 10,000 gang members in Chicago, this person estimated that 15-20 percent of the gang members were involved in large-scale interstate drug and weapons trafficking. He noted that local police resources are not sufficient to control gang activity. Even though the Chicago Police Department has a special gang squad, the police are unable to match gang mobility as they move between the four states surrounding Illinois. Federal investigative and prosecutory assistance was viewed as a necessity for controlling this type of criminal activity.

Appendix B

WAYNE COUNTY (DETROIT)

The Wayne County-Detroit Career Criminal Program began in August 1975 with a two-year, 90 percent federal funding grant. The PROB unit (Prosecutor's Repeat Offender Bureau) is now 100 percent locally supported. Despite its contribution to reducing violent crime in Detroit by 39 percent since its inception, the unit is faced with the prospect of being radically changed because of the Wayne County and State of Michigan financial crisis and the County Commissioner's lack of fiscal support for the District Attorney's Office.

Attorneys and investigators in the Wayne County District Attorney's Office most often directly contact FBI and Federal Parole Board agents. Some contact with Customs, DEA, ATF, Postal Inspection, and the Immigration and Naturalization Service also occurs. Contact is relatively infrequent, usually involving less than 25 percent of the cases and probably only one contact monthly. In comparison, there is daily contact with and significantly more cooperation from state agencies.

Those interviewed characterized their relationship with the U.S. Attorney's Office as cordial but not close. They reported that meetings between the two offices occur on an ad hoc basis or whenever dictated by a special case.

One area that was cited as requiring greater coordination between local and federal prosecutors was theft and shipment of

automobile parts. These thefts are usually committed by "rings" that obtain parts from warehouses and shipping facilities and then transport them all over the country. Respondents thought a much greater federal involvement in the investigation and prosecution of these rings was needed.

The Wayne County District Attorney's Office increasingly turns weapons cases over to the U.S. Attorney for prosecution, since federal weapons-related sentences are more severe than state sentences. When the feasibility of a federal career criminal program was discussed, the need was expressed for federal targeting of fencing, tax fraud, and narcotics crimes and for resuming the federal role in bank robbery prosecution. Local prosecutors believed that there would be no problem in working out procedural and operational aspects of the program with the local USAO. They also thought that a federal program would provide a structured means for local prosecutors who do not have personal contacts with the U.S. Attorney to contact and utilize federal resources.

Appendix C

LOS ANGELES

The Los Angeles County District Attorney operates two distinct career criminal programs. The first is a countywide program that is managed from the downtown Central Operations building; CCP attorneys are stationed in each of the eight branch offices. The second, Operation Hardcore, located in Central Operations, focuses on violent, ongoing gang activity. Both of the programs were originally funded through the LEAA Discretionary Fund Program and are now funded with state and local resources.

One interviewee suggested that rather than developing a large federal program to deal with a decidedly limited problem (repeat, violent federal offenders), the Department of Justice should designate "zones of conflict" and allocate resources to address specific problems. For example, he cited Miami as an area where local law enforcement agencies, prosecutors, and courts are burdened by federal government policies, or the lack thereof (e.g., regarding Cuban refugees and drug smuggling). The problem of illegal aliens in San Diego and Los Angeles was also cited. A "zone of conflict" program would identify specific problems and create federal/local task forces to deal with those problems. He thought that a federal career criminal program would be too bureaucratic and not responsive enough to either short-term or persistent crime problems.

Another interviewee suggested a local/federal prosecution unit consisting of deputy district attorneys and assistant U.S. attorneys who would work together on a designated case load of narcotics, weapons, conspiracies, street gang offenses, and prison gang offenses. He noted that many of the street gangs operate parallel gangs while in prison. Gang members regularly rotate from the street to prison and can maintain or advance their position in the gang hierarchy while in prison. In addition, he observed, many of these gangs operate across state lines and that traditional law enforcement and prosecution methods are not sufficient to deal with them.

Those interviewed thought that a federal career criminal program that mirrored local programs would be ineffectual, underutilized, and unnecessary.

Appendix D

NEW YORK

Project staff interviewed career criminal staff in the Bronx and Manhattan. The Bronx program was the first career program in the country and served as a model for the development of the LEAA program. The Manhattan program was implemented in 1975 with LEAA funds. Both programs are now partially funded through the New York State Career Criminal Program and local sources.

MANHATTAN

The Manhattan career criminal unit operates with a complement of 10 attorneys. The unit has established a close working relationship with the New York City Police Department. A special squad of police officers is assigned to identify repeat offenders who are arrested. The police then check the defendant's record against the selection criteria of the career criminal unit. If the defendant qualifies, the case is referred to the career criminal unit for prosecution. One interviewee reported that the career criminal unit rarely declines to accept cases referred by the police. Almost 70 percent of all cases handled by the CCP are direct referrals from the police department. The creation of this special squad of police officers has effectively transferred the exercise of case selection discretion from the prosecutor to the police.

Respondents expressed little knowledge of what federal prosecutors do or how their office is structured. The

implementation of a federal program was viewed as meaningless unless federal prosecutors have the "revolving door" problem and lack resources to deal with the problem.

THE BRONX

One interviewee reported that the career criminal unit had little contact with federal investigators or prosecutors with the exception of routine, case-related contacts with the FBI or DEA. Three areas in which federal assistance could be valuable were noted:

- Weapons cases - tracking stolen weapons is difficult at the local level because it frequently involves several jurisdictions with varying policies and procedures. Greater federal involvement in weapons tracking and investigating violations would help to cut through many of the jurisdictional problems.

- Refugee immigration - federal policies have resulted in a substantial influx of Cuban refugees into New York and other areas. Although these refugees have not caused a dramatic increase in crime, they have added to already heavy case loads in the Bronx. The Department of Justice should provide extra resources to local prosecutors to handle these cases.

- Auto theft - the theft and interstate transportation of stolen automobiles is a persistent problem in urban areas such as New York. Tracking stolen autos and breaking theft rings that operate across state lines is almost impossible for local police and prosecutors. The federal government should coordinate the investigation and prosecution of these rings, which often do millions of dollars' worth of crime every year.

In summary, this interviewee sees a role for the federal government in law enforcement that is not currently being filled. Federal assistance, however, should complement and not supplant local efforts.

While in New York, the project staff also interviewed a member of the Narcotics Task Force. This special unit of 42 attorneys is a cooperative venture encompassing the five boroughs of New York. Attorneys from each of the boroughs are detailed to work on the task force. The interviewee observed that federal and local cooperation and coordination are essential, particularly in the area of narcotics enforcement. He noted, however, that the DEA and local police are frequently at odds over tactics and priorities. Further, DEA usually gets involved with a case only if the U.S. Attorney is involved.

The interviewee also observed that drug trafficking is becoming increasingly violent and contract murders are common occurrences. Given that drugs are by nature more than a local problem, he was enthusiastic about the prospect of enhanced federal activity in this area. He believes that a joint task force of federal and local prosecutors is necessary to obtain the day-to-day coordination and maintenance of secrecy that is essential in narcotics prosecution.

Appendix E

SAN DIEGO

The San Diego Major Violator Unit (MVU) was created in 1975 in the District Attorney's Office to identify and prosecute those offenders who "commit robberies regularly and habitually." The MVU was among the first programs funded with LEAA Discretionary funds and was the only original program to focus on just one offense--robbery. In 1979 LEAA designated San Diego's MVU an Exemplary Project and encouraged other jurisdictions to use the project design as a model for career criminal programs.

The MVU currently consists of six attorneys and a data analyst. The attorneys are all experienced prosecutors who have worked in all phases of felony prosecution. The data analyst is responsible for collecting, compiling, and analyzing case processing statistics for the program director, the District Attorney, and the California Career Criminal program.

Those interviewed thought that there was some merit to the concept of a federal career criminal program if the program was narrowly focused on one or two offenses. For example, one official reported that the strength of the MVU was that it focused on one offense (robbery) and did a good job of identifying and prosecuting repeat offenders committing robberies. Several interviewees feared that the federal program would be designed as a "shot-gun" approach and would try to do too much and do "nothing very well." They

13-616 O—83——11

recommended that the program focus on large-scale narcotics, illegal aliens, and youth gangs. Noting that many illegal aliens are forming youth gangs (ages 14-28) to commit violent offenses and distribute drugs, respondents suggested that this problem is serious enough to warrant federal intervention.

San Diego's District Attorney and the U.S. Attorney have developed a system of cross-deputization that reputedly works very well. Although the flexibility exists for prosecutors to use either local or federal courts, the option is seldom used. With the possible exception of cases that involve an insanity defense, the federal prosecutors normally do not use local courts. Two interviewees reported that relations between the District Attorney and U.S. Attorney were currently cordial and mutually supportive. They thought that a program such as the federal career criminal program might be a good idea, if only because it would create more communication between the two offices of prosecution.

Appendix F

SEATTLE

The King County District Attorney implemented a career criminal unit in 1978 to identify and prosecute repeat violent offenders. The unit operated for approximately a year and was then disbanded as a formal unit. In its stead the District Attorney implemented vertical prosecution throughout the office and arranged for cases involving repeat offenders to be given the special attention they required by regular felony trial attorneys. In this manner, the concept of career criminal prosecution was expanded to include the entire office.

One official reported that relations between the District Attorney's Office and the U.S. Attorney's Office have traditionally been positive. Noting that the incumbent and designated U.S. Attorneys were both local prosecutors prior to becoming U.S. Attorney, he thought this created an appreciation for the need for cooperation between the two offices.

The respondent also thought that there was little need for a federal career criminal program in Seattle. The only persistent problem that the local prosecutors would like to see the U.S. Attorney became more active in is the investigation and prosecution of drug smuggling. Being a port city, Seattle is a relatively large drug center for that region of the country. Local prosecutors fear that unless drug activity is dealt with harshly, Seattle will become, in the not too distant future, a major drug center. However, aside from narcotics, King County prosecutors saw no need for a federal investment in a federal career criminal program.

REPORT OF THE SURVEY OF U.S. ATTORNEYS AND FEDERAL INVESTIGATIVE AGENTS

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I. INTRODUCTION

One of the primary objectives of the Federal Career Criminal Program (FCCP) research project is to obtain information from practitioners who would implement or be affected by the establishment of a career criminal program at the federal level. In order to achieve that objective, INSLAW surveyed United States Attorneys, Assistant United States Attorneys, and federal investigative personnel in 29 of the largest federal judicial districts. This report documents those surveys and findings. It has been divided into four sections: (1) a description of the U.S. Attorney Office survey, (2) a description of the federal investigative agency survey, (3) a discussion of similarities and differences in the responses of the two groups, and (4) a discussion of the implications of the survey findings.

II. SURVEY OF U.S. ATTORNEYS

A. THE QUESTIONNAIRE

The first step in the survey of the United States Attorneys' Offices was the design and pilot testing of an interview questionnaire. We decided to rely primarily on open-ended questions for two reasons: first, we wanted to maximize the breadth of information obtained; and second, since we were soliciting thoughts and ideas about a new program, we did not want to inhibit responses with a strictly formatted set of questions that might omit important considerations or reflect unintended biases.

The use of open-ended questions did present several problems during both the interview and analysis phases. First, by their very nature, open-ended questions encouraged responses detailing practical experiences or "war stories." Although these discussions helped to establish rapport and produced some valuable insights, they had a tendency to lengthen the interview. Second, despite the use of probes by the interviewer, interviewees sometimes failed to address the question asked. Third, the analysis could not be laid out in as "neat" and "clean" a fashion as is possible with multiple-choice or objective-question formats. Despite these limitations, we remain convinced of the value of open-ended questioning and, upon completing the interviews and the analysis, believe that richer, more meaningful information was obtained as a result.

A copy of the questionnaire used to interview the U.S. Attorneys is included as Appendix A. It comprises five primary areas of questioning and a sixth section for general conclusions.

The five major sections are:

- Knowledge of Local Career Criminal Programs
- Information Availability
- Suggested Ingredients of a Career Criminal Program at the Federal Level
- Selection Criteria for a Career Criminal Program
- Coordination with Local Prosecutors.

Two questions were asked in our concluding section: (1) How can the Department of Justice effectively support a Federal Career Criminal Program? (2) Do you have any other comments you would like to make concerning a Federal Career Criminal Program? This latter question was designed specifically to provide an opportunity for the respondents to express an opinion about the concept of a career criminal program.

A draft of the interview questionnaire was pretested in the United States Attorneys' Offices in Washington, D.C., and the Southern District of California (San Diego). Several revisions to the instrument were made on the basis of those pilot tests.*

Initially we had planned to use the identical instrument for the second half of the survey--a telephone interview of

*Revisions included the renumbering and rewording of questions that either were not in an order conducive to a logical thought-and-response pattern or were unclear.

attorneys in medium-size U.S. Attorneys' Offices. However, completion of that questionnaire required more time than was considered reasonable for each phone conversation (30 minutes); hence we decided to delete several questions. The telephone survey was begun after most of the interviews had been completed; as a result, we were able to delete approximately eight questions that a preliminary analysis indicated were not critical to the substance of the interview. The revised instrument was pilot tested on the Chief of the Criminal Division for the U.S. Attorney's Office in Maryland (Baltimore). The telephone interview went smoothly and was completed within the time allotted.

B. THE INTERVIEWS

In-person interviews were conducted in U.S. Attorneys' Offices in nine of the larger federal districts: W. Washington (Seattle), E. Michigan (Detroit), N. Illinois (Chicago), E. New York (Brooklyn), S. New York (Manhattan), S. Texas (Houston), S. Florida (Miami), C. California (Los Angeles), N. California (San Francisco). These districts were selected on the basis of their size, the types of cases handled (in terms of offense and offender characteristics), and their geographic location. The principal person interviewed in each of the offices was the head of the criminal division or the supervising attorney for criminal cases. In addition, we sought to interview the heads of any priority prosecution programs in each office or, as appropriate, other senior personnel. Twenty six interviews were completed, roughly three in each jurisdiction.

Time and cost constraints limited the in-person inquiries to the jurisdictions noted above. However, we were able to identify an additional 22 jurisdictions for which we hoped to complete telephone interviews. As was the strategy with the sites for the in-person interviews, the jurisdictions for telephone interviews were selected on the basis of their size, case load, and geographic location. Telephone interviews were completed in 18 jurisdictions, over 80 percent of the sample. The individual interviewed was the chief of the criminal division or the person having supervisory responsibility for the handling of criminal cases.

C. THE RESULTS

The results will be described in a format that parallels the six sections of the instrument outlined above. Significant differences between geographic areas (East v. West) and between interview types (telephone v. in-person) will be noted; otherwise the data will be presented in aggregate fashion across all jurisdictions.

1. Knowledge of Local Career Criminal Programs

Only one-third of the United States Attorneys interviewed had had any involvement with local career criminal programs, though, a higher percentage of attorneys in the smaller (telephone survey) jurisdictions had previous involvement with such a program. The attorneys held a range of opinions about the effectiveness of the programs in controlling crime, as is reflected in Table 1.

TABLE 1. EFFECTIVENESS OF LOCAL CAREER CRIMINAL PROGRAMS IN CONTROLLING CRIME
(n=24)

Extremely effective	2
Quite effective	7
Moderately effective	5
Marginally effective	3
Not effective at all	2
Don't know	5

Assessments of weaknesses in local programs were few and can be grouped into two broad categories. First, there was the suggestion that resources were limited for both attorneys and investigators. A second, frequently cited weakness concerned a perception that career criminal programs too frequently focused on the less serious though repeat offender.

2. Information Availability and Current Priority Prosecution Programs

When asked what types of information concerning an offender's prior criminal activity currently were made available to the office, the U.S. Attorneys were virtually unanimous in identifying three major categories--FBI criminal histories, local (state, county, or city) information, and what they classified as intelligence information, that is reports from investigative agencies that a defendant or suspect was a "known" criminal or was involved in activity of a sort that entailed sophisticated and often long-term illegal activity.

In responding to questions concerning when the information about prior criminal activity was made available to their

offices, a large majority indicated that they had the information when they were asked to make the initial charging decision. However, nine interviewees (20 percent of the sample) replied that at the time of screening they possessed the information in a maximum of 70 percent of their cases. Two of those jurisdictions reported that prior criminal history activity information was available to them at screening in only 10 to 20 percent of the cases.

Although prior record was not mentioned as a factor in selecting cases for any special prosecution units now operating within an office, over 90 percent of the interviewees cited it as a factor in selecting cases that were prosecuted through standard channels. Table 2 reveals, however, that indication of repeat criminal activity on the part of the offender was ranked slightly below strength of the evidence and seriousness of the offense when the attorneys were asked to weigh the importance of all three factors in the charging decision. On a scale from 1 to 10--1 indicating the least important and 10 the most important--seriousness of the offense and strength of the evidence were given virtually identical weights at 8.42 and 8.41, respectively, while criminal activity was placed at 7.34. Several attorneys did indicate, though, that in cases in which the crime was not viewed as especially serious, the offender's criminal history might be a decisive and propelling factor in determining whether the case would be accepted for prosecution.

TABLE 2. WEIGHTING OF FACTORS IN SCREENING DECISION
(n = 37)

	10-Point Scale
Seriousness of Offense	8.42
Strength of Evidence	8.41
Indication of Repeat Criminal Activities	7.34

3. Ingredients of a Federal Career Criminal Program

When asked what the basic objectives of a federal career criminal program should be, the prosecutors responded with an assortment of objectives. As expected, the most frequent answer (by nearly one-half of the interviewees) concerned increasing the number of successful prosecutions and incarcerations of repeat offenders. Other responses included an increase in general deterrence, more effective coordination with local prosecutors, a focus on certain crimes or criminals (e.g., organized crime or bank robberies), an overall reduction in crime, and the increased use of specialized statutes (e.g., the dangerous special offender statute 18 U.S.C. 3575).

The two desirable outcomes most frequently cited by the U.S. Attorneys as possibly resulting from a career criminal program were the successful prosecution of criminally active offenders and the imposition of more severe sentences. The attorneys also thought that creation of the program might lead to more effective coordination with local criminal justice agencies and personnel. Not surprisingly, they also hoped that more resources might be made available, both for their office and for the investigative agencies.

In suggesting the basic features of a federal career criminal program, once again, approximately half of the attorneys favored an emphasis on post-conviction procedures in order to obtain longer sentences. Procedures they suggested might achieve that goal included the use of sentencing memorandums, more mandatory minimum sentencing statutes, more statutes calling for enhanced penalties for repeat offenders, and an increase in statutory maximum sentences.

Many additional features were cited by individual attorneys. These included increasing efforts to detain people while awaiting trial and sentencing, closer monitoring of screening procedures, and more effective cooperation with local investigators and prosecutors. An interesting suggestion put forth by one of the attorneys focused on the collateral consequences of the offender's punishment. He recommended that the Bureau of Prisons and the United States Parole Commission take special steps to ensure the appropriate handling of career criminals, such as confinement at high security institutions where individual movement is restricted and use of prior record as an important factor in the parole decision.

Two of the most frequently cited proposals for structuring a career criminal program within an office were the "flagging" of cases involving repeat offenders and the assignment of cases either to more experienced attorneys in an office or to certain individuals specifically designated to handle career criminal cases. As to the latter method, it should be pointed out that except for four interviewees, we found no support among the attorneys for a career criminal program that would result in

the establishment of a separate unit within the office. In addition, most interviewees did not believe that attorneys handling career criminal cases should be given any special or additional resources to work with or that career criminal cases would require more time than non-career criminal cases. Virtually all of the attorneys were opposed to any program that would disrupt their current office structure or that would cause attorneys to change from the "crime" specialization currently found in most offices to a "criminal" specialization. In other words, the attorneys were against any system that would lead to the creation of a new unit in the office or that would assign cases based on the criminal history of the offender rather than on the nature of the illegal act.

Approximately two-thirds of the attorneys did not believe that federal investigators should be used differently on career criminal program cases. (However, when asked whether federal investigators should use career criminal program targeting criteria to select cases for investigation, nearly 90 percent of the attorneys answered in the affirmative.) The one-third that thought that investigator usage should be different suggested a variety of procedures. These included joint task forces between federal agencies and between federal agencies and local investigators, specialization and reduced case load for investigators handling career criminal cases, more frequent and earlier interaction between investigators and Assistant U.S. Attorneys, and more time devoted to researching information that could be used during the sentencing stage.

Despite optimism that a career criminal program might lead to more successful prosecution and more severe sentences, the attorneys did not favor the use of standardized, objective measures to evaluate the program. One concern raised was that too much emphasis might be placed on "hard" statistics, thus attorneys might be reluctant to take difficult cases and, instead, would focus on "easy" cases so that the performance statistics would look good. A number of the attorneys thought that a more meaningful assessment would result from interviews seeking subjective impressions of those involved in or affected by the program.

4. Selection Criteria

When asked what mechanism should be used to identify cases for special career criminal processing, the attorneys generally supported an approach that would leave the decision to the discretion of the individual Assistant U.S. Attorney, perhaps after a request from a federal investigative agent. Six of the attorneys thought that the mechanism might involve a joint decision between the U.S. Attorney and the investigative agency. About half of the interviewees thought that some guidelines would be useful to assist attorneys in making the decision. However, the attorneys thought that any guidelines should be broadly defined and not be in "scoresheet" format. Only one attorney favored what he called a "point system." Another attorney suggested a "check-list" approach.

In applying the case selection criteria, the attorneys were opposed to any program that required that all cases meeting the

CONTINUED

2 OF 4

criteria be accepted. Moreover, attorneys in the larger jurisdictions (primarily in-person interviews), perhaps believing a significant percentage of their case load might be eligible for career criminal treatment, thought that only some of the cases meeting the criteria should be accepted (see Table 3). Attorneys in the smaller jurisdictions (primarily telephone interviews) also wanted to maintain some discretion in deciding which cases to accept in the program, although they thought that most, as opposed to some, cases that qualify should be selected for the program.

TABLE 3. ACCEPTING CASES MEETING THE SELECTION CRITERIA FOR A FEDERAL CAREER CRIMINAL PROGRAM

	In-Person Interviews n=22	Telephone Interviews n=11
All	9%	18%
Most	32%	73%
Some	59%	9%

The specific items viewed by the attorneys as important in the selection criteria of a prospective career criminal program included "seriousness of the offense" as the most critical. As Table 4 indicates, seriousness of the offense was given a high score weight of 4.37 on a five-point scale (five being most important). Other highly ranked factors included prior federal felony convictions, indication of high volume of criminal activity, prior nonfederal felony convictions, and recency of prior record (within past 5 years). Of interest, there was a noticeable separation between the top five items and those remaining.

TABLE 4. CAREER CRIMINAL PROGRAM SELECTION CRITERIA
n=41

	5-Point Scale
Seriousness of the current offense	4.37
Prior federal felony convictions	4.24
Indication of high volume of criminal activity	4.15
Prior nonfederal felony convictions	4.04
Recency of prior record (within past 5 years)	3.90
Prior felony arrests	2.80
Age of the offender	2.76
Indication of drug use by the offender	2.73
Prior federal misdemeanor convictions	2.50
Juvenile record for an offender under 25 years of age	2.46
Prior nonfederal misdemeanor convictions	2.12
Employment status of the offender	1.98
Prior misdemeanor arrests	1.49

As Table 5(A) indicates, there was overwhelming support for including items in the career criminal program case selection criteria that are statistically related to the likelihood that the offender will commit a future crime. However, as Table 5(B) and 5(C) reveal, that support could be classified as "soft." The attorneys were divided as to whether the statistical factors should be weighted more heavily than items that are not statistically related to recidivism potential and were somewhat opposed to including cases in the program simply on the basis of statistical evidence.

13-616 O—83——12

TABLE 5. ROLE OF STATISTICS IN SELECTION CRITERIA FOR A FEDERAL CAREER CRIMINAL PROGRAM

A. Should the case selection criteria for a Federal Career Criminal Program include items that are statistically related to the likelihood of recidivism (n=31)?

Yes 90%
No 10%

B. Should those items be weighted more heavily than items that are not statistically related to recidivism (n=16)?

Yes 58%
No 42%

C. Should a Federal Career Criminal Program include cases that might not have been included except for the fact that the offender has been statistically identified as being likely to recidivate (n=16)?

Yes 31%
No 59%

5. Coordination with Local Prosecutors

Generally, the U.S. Attorneys indicated that they had good relations with local prosecutors and that they would have little trouble in working out an agreeable set of case screening and referral procedures. The attorneys felt that their offices were in fairly frequent communication with the local prosecutors at least on an individual case-by-case basis. Communications between the offices as to overall case selection policy, however, were usually much more limited, although practices did vary between jurisdictions. Some U.S. Attorneys Offices never communicated with local prosecutors about policy, while others communicated weekly, monthly, quarterly, or semiannually.

6. Conclusion

Final comments from the attorneys were quite varied and will be discussed in more detail in sections III and IV of this report. When specifically asked for their opinion as to what the Department of Justice could do to support a federal career criminal program, most attorneys expressed the need for additional resources. Among other ideas that were cited by more than one attorney were the following: evaluation and training (of attorneys, judges, and parole board members), more effective coordination with local prosecutors and investigative agencies, expedited processing within the Department of Justice for requests relating to a career criminal case, and the designation of one liaison in the Department of Justice who would be the contact person for the District offices. Other noteworthy suggestions put forth by individual attorneys include providing the U.S. Attorney's Offices with more control over investigative agencies, new legislation designed to make the prosecution of habitual and dangerous offenders less cumbersome than under existing statutes, cross-deputization of federal and local prosecutors, a change in Department priorities to reduce the current emphasis on the more sophisticated white collar criminal, and providing more complete criminal history information to the offices in time for the bail hearing.

III. SURVEY OF FEDERAL INVESTIGATIVE AGENCIES

A. THE QUESTIONNAIRE

The design and pilot testing of the questionnaire for federal investigators closely paralleled the process followed for the U.S. Attorneys. Again it was clear that an open-ended question format would provide the richest source of information. A copy of the questionnaire is found in Appendix B.

The questionnaire contained four major sections and a fifth section for general conclusions. The primary sections include:

- Current investigative practices and policies
- Interactions with the U.S. Attorney
- Interactions with Local Prosecutors
- Establishing a Federal Career Criminal Program

The general questioning in the conclusion focused on two main issues: (1) How can the Department of Justice effectively support a federal career criminal program? (2) Do you have any other comments you would like to make concerning a Federal Career Criminal Program?

A first draft of the instrument was completed and pretested in the Washington, D.C., offices of the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, and Firearms. On the basis of the pilot test, a number of minor modifications were made on the questionnaire. Several questions were added as a result of the pilot test, and the informal time limit for each interview was set at 45 minutes.

B. THE INTERVIEWS

Working with the Office of Legal Policy, INSLAW was able to obtain the cooperation of four federal investigative agencies. The agencies interviewed--the Federal Bureau of Investigation, the Secret Service, The Postal Inspection Service, and the Bureau of Alcohol, Tobacco and Firearms--account for the overwhelming majority of cases prosecuted in the federal system. We were unable to arrange interviews with a fifth agency, the Drug Enforcement Administration.

Cost constraints limited the on-site investigative agency surveys to interviews in the seven cities in which in-person interviews also were scheduled with federal prosecutors: Detroit, Chicago, New York, Los Angeles, San Francisco, Houston, and Miami. The person interviewed in each office was typically the special- agent-in-charge or the assistant special-agent-in-charge.

Twenty-six interviews were completed. Representatives of all four agencies were interviewed in each location, except in Miami and Houston (the Postal Inspection Service does not maintain offices in either of those cities).

C. THE RESULTS

Interview results will be described in a format that parallels the five sections of the interview instrument outlined above. Significant differences between geographic areas or between investigative agencies will be noted. Otherwise, the data will be presented in aggregate fashion across all agencies.

1. Current Investigative Practices and Policies

Perhaps the most striking feature of the responses elicited from the questions asked in section 1 was the diversity of answers. For example, when asked to what degree the decision by an agency to initiate an investigation is influenced by the prosecution policies of the U.S. Attorney, answers ranged from considerable to little or no influence (see Table 6).

Table 6. INFLUENCE OF U.S. ATTORNEY POLICIES ON AGENCY DECISION TO INITIATE AN INVESTIGATION

	FBI n=7	Secret Service n=6	PINS n=5	BATF n=7
Considerable	3	3	2	2
Some	3	2	2	4
Little/none	1	1	1	1

When asked whether the prior criminal activity of an alleged offender played an influential role in deciding whether to initiate an investigation, responses were again varied, both between and within agencies. As indicated in Table 7, BATF personnel responded unanimously that prior record was a significant consideration. On the other hand, different offices of the FBI and the Secret Service were divided in their assessment of the value of this information. Less than 50 percent of the agents interviewed took the position that the information significantly influenced the decision to begin an investigation.

Table 7. DOES OFFENDER'S HISTORY OF PRIOR CRIMINAL ACTIVITY INFLUENCE AN AGENCY'S DECISION TO INITIATE AN INVESTIGATION?

	FBI n=7	Secret Service n=7	PINS n=5	BATF n=7
Yes	3	2	4	7
No	2	4	0	0
Depends	2	1	1	0

When asked about the effects of prosecution policies and the prior criminal history of the offender on investigative decisions whether or not to pursue a case, the results were quite similar both between and within agencies. As indicated in Tables 8(A) and 8(B), both factors played an important part in the decision process.

Table 8. PURSUING ONGOING INVESTIGATIONS

A. Is an investigative agency decision to pursue an ongoing investigation influenced by the prosecution policies of the U.S. Attorney? (n=26)

Yes	14
No	4
Depends	8

B. Is an investigative agency decision to pursue an ongoing investigation influenced by the alleged offenders' history of prior criminal activity? (n=25)

Yes	14
No	4
Depends	7

Investigative agencies generally gather the criminal history information on potential offenders as soon as an investigation has identified specific suspects. The agents of all four agencies obtained that information from the FBI, state

and local criminal history information systems, and an individual agency's own intelligence system (which often includes voluminous information from informants and other agents).

2. Interactions with the U.S. Attorney's Office

Methods by which individual investigative agencies interact with a U.S. Attorney's Office concerning a specific investigation varied widelywithin agencies. Some times an agency would not contact the U.S. Attorney's Office until the investigation was virtually completed; on other occasions, the office was notified as soon as a suspect was identified. Early contacts frequently were the result of the investigative agency's need for assistance in the conduct of the investigation, e.g., to convene a grand jury or to request that the court issue a search warrant or authorize use of an electronic surveillance device. Several respondents cited type or seriousness of the offense as a factor in determining when they would contact the U.S. Attorney. For example, counterfeiting and government corruption cases were two offenses many agents believed warranted early referral to a federal prosecutor.

The interactions among investigators and Assistant U.S. Attorneys were direct--the agent who investigates the case often personally presents the facts and evidence to the attorney. It is interesting that when asked what type of information was discussed during a first meeting on a case, most of the agents interviewed did not mention making any explicit reference to prior criminal history of the offender.

All agents readily agreed that prior record was discussed when the question was posed specifically. But it is not clear from our interviews as to whether the follow-up question produced an accurate presentation of the substance of those early interactions.

The agents, though, generally believed that information on the prior criminal activity of a suspect influenced a U.S. Attorney in deciding whether to accept a case for prosecution. As Table 9 indicates, 22 of 26 investigative agents believed that at least in some cases, the information did have an effect. We found in our discussions with the agent that this is especially true if a prior record indicated previous involvement in crimes of a similar nature to the present offense.

Table 9. DOES PRIOR CRIMINAL HISTORY INFORMATION INFLUENCE THE LIKELIHOOD OF THE U.S. ATTORNEY'S ACCEPTING A CASE FOR PROSECUTION
(n=26)

Yes	13
No	4
Depends	9

However, the investigators did not think that criminal history information influenced the seriousness of the charges eventually filed by the U.S. Attorney (see Table 10). Most investigative agents thought that the facts of most cases were fairly straightforward and left little doubt as to charge(s) in the case.

Table 10. DOES CRIMINAL HISTORY INFORMATION INFLUENCE THE SERIOUSNESS OF CHARGES FILED FOR CASES ACCEPTED
(n=25)

Yes	7
No	15
Depends	3

3. Interactions with Local Prosecutors and Investigators

With the exception of the FBI, all of the agencies that participated in the interviews clearly acknowledged the practice of referring some cases to local prosecutors. Only three of the seven FBI officials interviewed stated that their offices referred cases to local prosecutors (see Table 11).

Table 11. DOES INVESTIGATIVE AGENCY REFER CASES TO LOCAL PROSECUTORS

	Secret Service BATF PINS (n=10)	FBI (n=7)
Yes	1	3
No		4
Depends		0

One reason for the difference in referral policies might be traced to the referral procedures. As Table 12 indicates, referrals to local prosecutors from the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, and the Postal Inspection Services were generally made at the initiative of the investigative agency. In contrast, referrals from the FBI appear to be either a joint decision between the FBI and the Office of the U.S. Attorney or made at the initiative of a U.S. Attorney only.

Table 12. WHO INITIATES REFERRAL OF CASES TO LOCAL PROSECUTORS
(n=27)

	Secret Service BATF PINS	FBI
Investigative Agency	11	-
U.S. Attorney's Office	2	3
Joint (Agency and U.S. Attorney)	7	4

Other factors explored in the survey did not produce any clues as to why cases were or were not referred to local prosecutors, except to rule out the impact of a local career criminal program or of an offender's criminal history.

4. Ingredients of a Career Criminal Program at the Federal Level

When asked what they thought the basic objectives of a federal career criminal program should be, the investigative agents gave answers that were quite similar to those given by the U.S. Attorneys. Most of the investigative agents cited at least one of two basic objectives--the apprehension and successful prosecution of career criminals or the imposition of more severe sentences. Several agents thought the focus should be on violent crime; one agent favored a focus on bail decisions as a means to detain repeat offenders. Thus, it is not surprising tnat numerous agents felt desirable outcomes of a career criminal program would include an increase in the number of career offenders incarcerated, a lengthening of sentences, and a crime deterrent effect.

The investigative agents offered a wide range of suggestions when asked to describe the basic features of a career criminal program. Frequently cited responses included "flagging" the case, assignment of cases to experienced or specially selected attorneys, use of a strike force, more interagency cooperation, and the institution of special screening and review procedures. Two investigators favored the creation of a special prosecutive unit to handle career criminal cases.

Agents were divided as to what, if any, effect a career criminal program might have on their office policies and practices. A majority of Secret Service interviewees thought that there would be some impact, perhaps in terms of their devoting additional time to career criminal cases. Other agency interviewees believed it would have little effect, though they speculated that a small shift in investigative priorities might result.

5. Conclusion

Similar to the Assistant U.S. Attorneys interviewed, investigative agents believed the Department of Justice could effectively support a federal career criminal program by providing additional resources, both to the U.S. Attorney and to the investigative agencies. The investigators suggested that other support mechanisms might include staff training, the development of prosecution guidelines, decentralized control, and procedures to minimize paperwork.

One difference between the Assistant U.S. Attorneys and the investigators emerged. Implicit in the comments of most agents--explicit in the comments of a few--was the need for the Department of Justice to show its commitment to any program that it might enact. Although it was not made clear how the Department of Justice could display such a commitment, the underlying need for the commitment was viewed as essential if the program was to be successful.

IV. DISCUSSION

The U.S. Attorneys interviewed for the survey expressed their agreement with the general concept that prosecutors at the federal, state, and local levels ought to be concerned that offenders who commit repeated criminal acts are effectively prosecuted. Indeed, most attorneys thought their offices already were pursuing policies geared to repeat offenders. Although those policies did not include providing the attorneys handling career criminal cases with additional resources (either directly or indirectly) or affording special treatment in career criminal cases, the attorneys indicated that the criminal background of the offender was an important concern when making prosecutive decisions about individual cases.

Of major concern to most attorneys was not the effective prosecution of repeat offenders but an inability to get more severe sentences once such offenders are convicted. Numerous attorneys voiced frustration at the sentences imposed and expressed a hope and optimism that creation of a special program might help to obtain longer sentences. However, despite their agreement with the overall concept, there was little enthusiasm on the part of the attorneys for any program that might alter their present office structure significantly or force them to accept cases viewed as not meriting prosecution (after a review that included an assessment of the prior record of the offender).

The attorneys seemed especially concerned about the latter issue as evidenced by their resistance to any case selection

mechanism that might limit their discretion. They believe that the offender's prior record already plays an important part in the prosecution decision-making process and that any special program designed to focus further attention on the offender's prior record would be duplicative of their current efforts and therefore unnecessary. None of the attorneys interviewed was especially receptive to the prospect that a statistically derived scoring system could be used to improve their ability to identify the most crime-prone offenders.

Although strongly supportive of both the concept and the local programs, the attorneys had serious doubts about the benefits that could be realized from implementation of a federal program. Moreover, many of the attorneys were strong supporters of current policies that focused on crimes (albeit generally nonviolent crimes) rather than on criminals and were opposed to a shift away from what are now well-established goals.

Similarly, while the federal investigative agents interviewed were supportive of the concept of a career criminal program, they saw the program as one that, for the most part, would not significantly alter their current investigative practices and policies given the <u>reactive</u> nature of most investigations. With the possible exception of counterfeiting cases investigated by the Secret Service, most agents either stated or implied that the majority of their investigations were reactive in nature, as a result of a complaint by a victim or a report from intelligence sources. Thus, the prior criminal history activity of the (perhaps unknown) offender was

not a major concern. Yet, the agents recognized that even in a reactive situation discretion can still be exercised. The agents interviewed indicated that prosecutory guidelines established by most U.S. Attorneys' Offices did not play a significant part in their discretion as to whether investigators would pursue a case.

It was also clear from both sets of interviews that, in most districts, U.S. Attorney guidelines implicitly included exceptions to the crime-oriented focus of cases accepted for prosecution. If a repeat offender is caught in what otherwise might not have been a crime warranting federal prosecution, the case is likely to be accepted for prosecution by the U.S. Attorney. The exercise of that discretion, though, is entirely within the prerogative of the U.S. Attorney. Consequently, many investigative agents believe that the policy could be made at least somewhat more objective and explicitly delineated by the U.S. Attorney. Not only would such an expression of policy minimize the amount of time spent on cases for which federal prosecution is not likely, but it would also serve to lessen agent frustration resulting from completed investigations that do not result in prosecution because some unspecified and undefined standard was not met.

V. CONCLUSION

The United States Attorneys and federal investigative agents were supportive of the goals of a federal career criminal program, but were generally skeptical about the practical implications of implementing such a program. Perhaps the most important finding that can be drawn from the interviews was the general sense of all interviewed that any such program would best be geared not to their offices but to a category of practitioners at least one step later in the criminal justice process. In other words, the U.S. Attorneys thought that the objective of the concept could be best achieved by having the judges impose longer sentences on repeat offenders. The federal investigative agencies also stressed the need for more severe sentences but, in addition, saw more effective prosecution of the cases involving chronic offenders as a way of achieving program objectives. Neither side saw the potential program as something that could easily result in, or that should mandate, fundamental change in the workings of their offices.

Thus, it became quite clear to interviewers that if a program were to be enacted that would affect the structure of U.S. Attorneys' Offices or federal investigative agencies, or change day-to-day procedures, the Department of Justice should be prepared to encounter resistance. This would seem to be especially true if the Department attempts to define the program narrowly. Most of the resistance could be accounted for by two issues: (1) perceived interference from Washington,

13-616 O—83——13

D.C., with field office responsibility (including increased paperwork) and (2) satisfaction with existing policies and procedures, including the belief that those policies are effective in dealing with the repeat offender.

Consequently, several potential pitfalls need to be addressed by the Department of Justice, either before, during, or after the implementation of a priority prosecution program that focuses on the repeat offender.

- Any program will have systemwide ramifications, and as many of those ramifications as possible must be anticipated and addressed. Specifically, a program that encompasses the investigative, adjudicatory, dispositional, and correctional stages of the criminal justice process would appear to have the greatest chance of success. Not only would such a program help insure the effective handling of career criminal offenders from start to finish, but it would also give agencies participating in the program a sense of being part of a team and not being singled out for special treatment.

- A careful and detailed calculation of what adjustments would have to be made in current case loads (or "prison cells") in order to accommodate extra resources or having to spend extra time on career criminal cases.

- The structuring, but not elimination, of discretion in the field as to which offender would qualify as a career criminal. Concise guidelines would be needed from the Department of Justice to permit local jurisdictional variation depending upon district or region crime problems.

- Minimize the amount of additional paperwork that would be required. Although the need for evaluating the program was clearly recognized, a highly visible emphasis on an empirical evaluation could lead to selective prosecution of just those cases that would automatically cause an evaluation to reflect a successful program.

Regardless of their views about a career criminal program, many persons interviewed expressed strong support for educating attorneys, judges, and investigative agents on current statutes available for the prosecution and enhancement of penalties for repeat offenders. A review of existing statutes and the enactment of new ones to facilitate the prosecution of career criminals, along with the Department of Justice policy guidelines for the handling of these offenses, might complement or even replace the need for a specialized program.

TARGETING FEDERAL RESOURCES ON RECIDIVISTS

Final Report of the Federal
Career Criminal Research Project

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TARGETING FEDERAL RESOURCES ON RECIDIVISTS

1. Introduction

The concept of reserving prison and jail space for those offenders who, if released to society, would likely inflict the greatest harm has emerged as a dominant principle of criminal case selection, processing, and sentencing. While deterrence and rehabilitation have considerable theoretical appeal, they have not received systematic empirical support as effective principles for selecting criminal sanctions.[1] The effectiveness of a strategy of selective incapacitation, on the other hand, has both theoretical appeal and empirical validation.[2] The proliferation of "career criminal" programs in local jurisdictions throughout the country reflects the broad appeal of this concept.

The career criminal concept is equally appealing at the federal level. Recognizing this, the Office of Legal Policy of the Department of Justice contracted with INSLAW, Inc., in the summer of 1981, to examine the feasibility of instituting a career criminal-type program at the federal level. Motivated largely by previous findings that some classes of federal offenders commit many more serious crimes than others,[3] the project was designed to examine the extent to which patterns of recidivism among federal offenders are predictable, to assess the attitudes of key criminal justice agents regarding the creation of a federal program that would target on cases involving serious repeat offenders, and to develop a prototype

system for identifying the most crime-prone offenders prior to their subsequent criminal acts. This report presents and discusses the major results of that project. The next section reviews highlights of previous research on selective incapacitation that have relevance to the federal justice system. We then discuss findings from surveys of agents of local career criminal programs, United States Attorney Offices, and federal investigative agencies. Next, we present highlights of an analysis of the predictability of recidivism among federal offenders and describe a tool designed to aid the federal government in prospectively identifying the most crime-prone offenders. We conclude with a set of recommendations for the federal criminal justice system.

2. Previous Research Related to Selective Incapacitation

Common knowledge among police and prosecutors that a small group of offenders account for a disproportionate number of crimes has received substantial empirical validation within the past ten years. In 1972, Marvin Wolfgang and his associates reported that 18 percent of a group of juvenile delinquents in Philadelphia accounted for 52 percent of all the offenses committed by the group.[4] Then in 1976 Kristen Williams, analyzing PROMIS data from Washington, D.C., for 1971-75, found that 7 percent of the 46,000 different defendants arrested accounted for 24 percent of the 73,000 felony and serious misdemeanor cases handled by the prosecutor for that jurisdiction.[5] These findings provided much of the stimulus for the institution of federally sponsored career criminal

programs in jurisdictions throughout the country.[6] More recent findings derived from surveys of prison inmates have further validated the existence of substantial variation in the amount of criminal activity among different offenders.[7]

It is one thing, however, to identify crime-prone offenders retrospectively and another to identify them before they demonstrate their criminal proclivity. Obviously, if they cannot be identified for special case treatment prospectively, then there can be no opportunity to obtain the benefit of a strategy of reserving prison space for the most criminally active offenders.

The emerging evidence indicates that prospective identification of crime-prone offenders, while imperfect, can nonetheless be done with a moderate degree of accuracy in some settings and a high degree in others. More importantly, statistical prediction of criminal and deviant behavior has demonstrated itself with some consistency to surpass the accuracy of subjective prediction by clinicians and other experts.[8] Recent studies have revealed a number of factors in particular to be consistent predictors of recidivism: recent prior criminal record, youthfulness, drug use, and charges of robbery or burglary.[9]

2.1 Predictive Accuracy. The accuracy of these prediction models is not difficult to demonstrate. Williams's model of recidivism, for example, when used to predict the most recidivistic half of the 46,000 defendants in her study, correctly identified in that half 84 percent of the 478

offenders who revealed themselves retrospectively as the most recidivistic 10 percent of the cohort.[10] (A random selection would have identified only 50 percent, on average.) The extent to which recidivism can be predicted among federal offenders, it turns out, is even stronger, as will be described in Section 4.

2.2 Existing Case Selection Strategies. The available evidence on case selection and targeting strategies actually used by prosecutors is not plentiful. In an earlier INSLAW study we analyzed the factors that govern prosecutive case selection and subsequent processing decisions by identifying the case characteristics that best predict the prosecutor's decisions to accept a felony case at screening and then to carry it forward at successive stages of prosecution. Using 1973 data from PROMIS (the Prosecutor's Management Information System) for Washington, D.C., that study found that the cases that proceeded the farthest through the system tended to be those, first, that had the strongest evidence (measured by such factors as number of witnesses, whether physical evidence was collected by the police, and the amount of time that elapsed between the offense and the arrest) and, second, that involved the most serious offenses (measured both by the maximum sentence for the most serious charge indicated by the police or prosecutor and by the Sellin-Wolfgang index, a measure of the amount of harm inflicted on victims by the offense).[11] Cases involving defendants with longer criminal records (measured by number of prior arrests, and controlling for the defendant's

age) were not found to be selected at a higher rate or carried forward to a more advanced stage of prosecution than other cases.

These results, describing an office that had no career criminal program at the time the data were recorded, suggest that the prosecutor might not be inclined to target on the more crime-prone offenders in the absence of such a program. This inference was corroborated in 1977 by evidence produced from a survey of federal prosecutors.[12] While consistent with the deterrence aspect of crime control, the findings of those studies suggest that the prosecutor does not automatically target on cases with the idea of realizing the incapacitative effects associated with the conviction and incarceration of the most criminally active offenders.[13]

More recent research by Eleanor Chelimsky and Judith Dahmann has produced quite different findings: attorney time given to cases that are processed by career criminal units may actually be excessive. In a survey of four jurisdictions, the number of cases accepted per attorney per month for prosecutors assigned to those units was found to be only about one-fourth of that for the other prosecutors in each of the four offices, and the career criminal cases were found to be no more likely to end in conviction.[14] Similar results were obtained in research by William Rhodes. Measuring the number of attorney hours allocated to each felony case in the main office and four branch offices of the Los Angeles County District Attorney, Rhodes found that the amount of attention given to robbery and

burglary cases in the career criminal unit was about five times the amount given to robbery and burglary cases that were processed conventionally, with results in terms of conviction rates that appeared no better.[15]

The accumulated evidence, in short, suggests that too little attention may be given to cases involving chronic offenders in an office with no special targeting program, and too little attention may be given to other cases in offices that do have such programs. It is possible that simply flagging cases involving criminally active offenders to remind the prosecuting attorney that the case warrants special consideration may produce a more balanced, if not more efficient, allocation of resources than the alternative of processing such cases through separate career criminal units.

2.3 Empirically Derived Case Selection Strategies. In their survey of four jurisdictions with career criminal programs, Chelimsky and Dahmann found four entirely different sets of career criminal targeting strategies.[16] While such differences may be attributable to the prospect of recidivism predictors varying from place to place, it is safe to conjecture that the criteria vary primarily due to arbitrariness; few people know what actually predicts recidivism in any particular jurisdiction. Such variation in targeting criteria imposes crime costs on society to the extent that the criteria used do not result in a strategy of targeting on those offenders who are predictably the most crime prone.

In her analysis of selection criteria for career criminal programs, Williams found that the estimated incapacitation effects of empirically derived targeting criteria in fact surpass, by from 10 to 50 percent, those associated with criteria developed by the Law Enforcement Assistance Administration: current case a serious felony and one prior conviction. These estimates were based on a variety of assumptions about the size of the group of cases targeted, the conviction rate increase associated with the program, and the sentence that followed.[17] Similarly, Roth and Wice's model of crime on bail, when used to predict the most recidivistic of a sample of 424 defendants who were required to post cash or surety bond, revealed that the number of persons jailed in that sample could have been reduced from 170 (those who failed to make bond) to 98 (those predicted to be the most recidivistic) without any increase in the expected rate of pretrial rearrest.[18]

These studies suggest that our ability to improve on current patterns of case selection and handling may be substantial. Opportunities to make such improvements at the federal level will be discussed in Sections 4 and 5.

3. Surveys of Criminal Justice Agents

Improvements in case selection and handling procedures are not likely to be effectively implemented by people who do not see them as improvements. An important precondition to the successful implementation of a strategy of selective

incapacitation is an understanding of the perceptions of the agents responsible for carrying out such a strategy. Accordingly, we surveyed federal investigators and prosecutors, as well as prosecutors experienced in the operation of career criminal programs at the local level. In this section we describe the principal results of those surveys.

3.1 Federal Investigators. Four federal investigative agencies that account for the vast majority of cases prosecuted by federal attorneys cooperated in the survey: the Federal Bureau of Investigation, the Secret Service, the Postal Inspection Service, and the Bureau of Alcohol, Tobacco, and Firearms. A total of 26 in-person interviews with agents of these organizations were conducted in seven cities: Chicago, Detroit, Houston, Los Angeles, Miami, New York, and San Francisco. (Federal prosecutors were also interviewed in these sites.) Because the number of interviews ranged from five to seven for the individual agencies, it was not possible to draw reliable inferences about the attitudes of agents of any particular agency; hence we report results for the 26 agents as an aggregate.

The issue of central interest was the extent to which an offender's prior record influences federal investigation and prosecution. Most agents expressed the belief that prior record influences both the decision to investigate and to prosecute (see Exhibit 1). Most agents doubted, on the other hand, that the charges filed by the federal prosecutor are affected by the offender's criminal history.

Exhibit 1.
Survey of Federal Investigators

	Does an offender's history of prior criminal activity influence:		
	Agency's decision to initiate investigation	U.S. Attorney's decision to accept case	Seriousness of charges filed
Yes	16	13	7
No	6	4	15
Depends	4	9	3
No response	0	0	1
N	26	26	26

With respect to the prospect of a more explicit federal career criminal program, most investigative agents seemed positive. They strongly supported the idea of increasing both the incarceration rates and average sentences of recidivists. Specific recommendations included the "flagging" of cases for special attention, assignment of cases to experienced attorneys, and the institution of special screening and review procedures. Only two agents expressed a preference for a special prosecution unit to handle such cases.

3.2 Federal Prosecutors. A total of 26 in-person interviews were conducted in nine federal districts: Central California (Los Angeles), Northern California (San Francisco), Southern Florida (Miami), Northern Illinois (Chicago), Eastern Michigan (Detroit), Eastern New York (Brooklyn), Southern Texas

(Houston), and Western Washington (Seattle). We interviewed from two to four people in each office--typically, the head of the criminal division, the head of a special prosecution unit, and another senior attorney. Additional interviews were conducted in other districts by telephone.

The interview started with a question about the federal attorneys' knowledge of local career criminal programs and views about their effectiveness. Of the 19 attorneys who expressed a view, nine thought the programs were either "quite effective" or "extremely effective," five thought they were "moderately effective," three "marginally effective," and two thought that they were not effective at all.

While the attorneys interviewed acknowledged current federal emphasis on cases involving repeat offenders, they indicated (using a 10-point scale of importance) that the strength of the evidence and the seriousness of the current offense weigh a bit more heavily than prior record in their decisions to accept or decline cases at the screening stage. To the extent that they do consider prior record in their screening decisions, they indicated that they base their assessment of recidivism on at least one of three sources of information: FBI criminal histories, local agency sources, and investigative information that reveals an offender's current activity to have the characteristics of a sophisticated, often long-term operation. Prosecutors in two of the nine jurisdictions indicated that they rarely have prior criminal history records available at screening.

Looking ahead to the prospect of a federal career criminal program, federal prosecutors identified several goals for the program, ranging from increased incarceration rates and sentence terms for repeat offenders to such side benefits as improved coordination with local prosecutors. They indicated that such benefits could be achieved through the flagging of cases involving repeat offenders and increased use of pretrial detention and special sentence enhancement statutes for those cases.

We found surprisingly little support (only four respondents) for the establishment of separate career criminal prosecution units within the office. This lack of support is consistent with the lack of proven effectiveness of such units at the local level, noted in Section 2. It is also consistent with a tendency for the federal prosecutors interviewed to express more interest in the offense than in the offender. Nearly all of the respondents expressed opposition to a program that would either alter their present office structure or that would cause a shift from the current emphasis on crime seriousness to an emphasis on offenders. It is not totally clear whether the federal attorneys' opposition to the creation of career criminal units within U.S. Attorney Offices stems primarily from a belief the career criminal units would not be effective or from a preference in focusing on serious offenses rather than serious offenders. The existence and acceptability of special prosecution units in most of these offices (e.g., to target on narcotics and on organized crime), however, may

suggest that federal prosecutors are not generally opposed to special prosecution units per se, but are opposed primarily to a focus on the offender rather than the offense.

Federal prosecutors appear also to be generally opposed to a set of criteria that would substantially narrow their discretion to select certain types of cases but not others. While about half of the attorneys interviewed thought that some guidelines would be useful to assist prosecutors in identifying the more crime-prone offenders, they also expressed the belief that such guidelines should be broadly defined. Only two attorneys favored point-system or check-list approaches to case selection.

If career criminal guidelines were to be based on the presence of certain factors, the most important factor cited by the sample of federal prosecutors (41 responded to this question) was, ironically, the seriousness of the current offense. Among 13 factors named on a five-point scale of importance, the following noteworthy results were obtained: offense seriousness (#1) received an average score of 4.37; prior federal felony convictions (#2), 4.24; indication of high volume of criminal activity (#3), 4.15; prior nonfederal felony convictions (#4), 4.04; prior felony arrests (#6) 2.80; indication of drug use (#8), 2.73; and prior misdemeanor arrests (#13), 1.49.

While offense seriousness appears to remain the more dominant concern of federal attorneys, they do express support for the inclusion of factors that are statistically related to

recidivism among a set of case selection criteria. Of the 31 prosecutors who responded to the question, "Should the case selection criteria for a federal career criminal program include items that are statistically related to the likelihood of recidivism?", all but three said yes.

Individual respondents also expressed support for ways of dealing with repeat offenders other than with the use of empirically derived case selection criteria: new legislation to facilitate the prosecution of recidivists, cross-deputization of federal and local prosecutors, less emphasis on cases involving the sophisticated white collar offender, and the provision of more complete criminal history information in time for the bail hearing.

For the most part, federal prosecutors feel that their current policies are adequate for dealing with repeat offenders. They expressed the view that substantially larger gains could be realized from tougher sentencing of repeat offenders than from different prosecution strategies or from new prosecution programs that would only duplicate current ones.

3.3 Local Prosecutors. The third major group of practitioners surveyed was prosecutors responsible for local career criminal programs. The purpose of this survey was threefold: to learn the basic features of local efforts to target on repeat offenders, to learn the extent and nature of the interaction of local prosecutors with federal investigators

and prosecutors, and to learn their views on the concept of a career criminal program at the federal level. Representatives over 80 active career criminal programs were interviewed in person or by telephone.

The programs surveyed had been in operation for an average of 42 months at the time of the interview (summer 1981). Most of the local career criminal programs experienced a substantial shift in funding during this period: federal funding, which was largely responsible for the initiation of these programs, fell from 68 percent of total program funds at the start to a level of 10 percent by the summer of 1981; state governments filled much of the void, increasing from 21 to 48 percent of the funding; and local governments assumed the remainder, increasing from 11 to 43 percent of the funding of career criminal programs.

Career criminal programs vary substantially in size, based primarily on the size of the jurisdiction. Los Angeles County, the largest jurisdiction in the study, also has the most attorneys (24) in its career criminal unit. Ada County, Idaho, and Black Hawk County, Iowa, jurisdictions of less than 150,000 residents, each have only one attorney assigned to their units. The average number of attorneys in the 82 units sampled was 3.8.

The career criminal unit attorneys are typically more experienced than other attorneys in the office--they have an average of over seven years of prosecution experience, nearly

18-616 O—83——14

twice that of the others. The minimum amount of prosecution experience in the vast majority of these units is three years.

Recognizing the importance of "case building" in many cases involving repeat offenders, these units usually have experienced investigators added to their staffs of experienced lawyers. About two-thirds of the units have such persons assigned to their staffs; of the 14 units surveyed operating in jurisdictions with over one million residents, 13 have investigators assigned to their staffs, and most of these units have two or more such people. Over 75 percent of all career criminal investigators were previously employed as police officers or detectives. Local career criminal unit staffs often also include paralegal assistants, secretaries, and clerks.

Local career criminal units are not distinctive only for their staffs of experienced lawyers and investigators. They are also characterized by a system known as "vertical prosecution". Rather than being passed "horizontally" from one attorney to another in a production line manner common in urban prosecutors' offices, career criminal cases are typically handled by a single attorney from the screening stage through indictment and on to final case disposition. While this enables each prosecutor to devote more attention to each case handled, it also results in fewer cases processed per attorney than in conventional case processing systems. Whereas felony caseloads typically run in the neighborhood of 100 per attorney in conventional settings, career criminal unit attorneys usually handle fewer than 50 cases per year, and in a number of

offices, including Los Angeles, the Bronx, and Indianapolis, fewer than 20 are processed per career criminal unit attorney annually.

The aspect of career criminal units that one might expect would set these units most clearly apart from conventional prosecution is the case selection process, designed to produce a systematic focus on those offenders most likely to recidivate. While the focus of case selection in local career criminal programs does appear to be on the repeat offender, it is in fact anything but systematic. Fewer than one-fourth of those surveyed use a scoring system to select cases. Most programs use criteria that allow for more cases than the unit can actually prosecute. Over two-thirds target on specific offenses; while prior record is regarded as "very important," crime type and degree of harm to the victim rank close behind among the criteria used to select cases as worthy of "career criminal" prosecution. State criminal history information is usually available to support the systematic selection of cases involving active offenders, as is information about parole or probation status and other pending cases, but information about trial status is available in only half of the jurisdictions, and juvenile records and FBI data on offenses committed in other states are rarely available to local jurisdictions that wish to target resources on repeat offenders.

Because a federal career criminal type program would need information about both federal and nonfederal prior offenses, and hence would have to rely on information sources at the

local level, we surveyed local prosecutors about their coordination with federal agents. Most units (92 percent) do have occasion to contact federal agents. Such contacts are more likely to be monthly, however, than weekly or daily. Agents contacted most frequently are with the FBI, Bureau of Alcohol, Tobacco and Firearms (BATF), and the Drug Enforcement Administration. In response to an open-ended question, the attorneys were inclined to regard BATF agents as especially cooperative; investigators from another federal agency were described primarily as information receivers rather than givers.

The interview closed with some general questions about the overall success of the career criminal program and about the prospect of such a program at the federal level. The persons interviewed expressed a belief that the program locally has been a success overall, especially because incarceration rates increased and because attorneys were given more time to work on each case. While not generally enthusiastic about the concept of a federal career criminal program, nearly three-fourths of those interviewed thought that it would be better to have one in their federal district than not to. Many prosecutors stressed the need for a federal career criminal program to coordinate closely with local efforts to target on repeat offenders; many expressed a concern, based on their previous experiences with federal agents and prosecutors, that federal autnorities would not in fact coordinate sufficiently with local authorities.

4. Recidivism Patterns of Federal Offenders

We turn now to an investigation of the extent to which a program that attempts to reserve federal prison space for the most criminally active offenders could in fact be expected to reduce crime by way of incapacitation.[19] Obviously, there can be no opportunity to incarcerate the most active offenders, except by chance, if we cannot identify them before they commit further crime.

4.1 Retrospective Analysis of Recidivism. To do this, we analyzed a data base describing a six-year follow-up period for 1700 offenders convicted of a cross-section of federal offenses and released from prison or other federal custody in 1970. The data base was constructed from a variety of sources, including presentence investigation reports (to provide detailed information about offenders and their prior records), FBI rap sheets (to provide information about arrests during the follow-up period), local jails and prisons (to provide information about intervals in the follow-up period during which it was not possible for the offenders to commit crimes "on the street"), and the U.S. Parole Commission (to provide additional information about the offenders released from federal prisons).

The analysis of this data base has confirmed earlier findings that previously convicted federal offenders, on the whole, are recidivistic and that some are substantially more recidivistic than others.[20] The 1700 offenders committed an estimated average of 7.8 non-drug offenses per year (or 36 per

year, including drug offenses) on the street; 58 percent, however, were not known to recidivate during the follow-up period, while the others committed an estimated average of 19 non-drug offenses per year. Of those who recidivated, 71 percent did so within two years of their release.

4.2 Predicting Recidivism for Federal Offenders. Looking back on the follow-up period, as we do above, has only limited policy relevance. Of particular significance for a strategy of selective incapacitation is our ability to identify prospectively, or predict, which offenders are the ones most likely to recidivate. To develop such a capability, we constructed a statistical prediction model based on analysis of the data described above. Specifically, we examined the statistical association between the factors that were known about the 1700 offenders at the time of their release from federal custody in 1970 and the likelihood that an offender was rearrested within 60 months after release. This analysis revealed four sets of factors as especially strong predictors of recidivism: prior record (including length of criminal career, number of arrests within the past five years, longest term of incarceration previously served, and number of prior convictions); youthfulness; use of drugs (including heroin use or heavy use of alcohol); and the nature of the current offense (especially violent offenses, property thefts, forgeries, and drug crimes). These findings are consistent with earlier research on recidivism.[21]

We then established the following hypothetical career criminal targeting criterion: Select a case for special handling if the model identifies the offender as being more likely than not to recidivate within 60 months. This criterion identified 200, or 12 percent, of the 1700 offenders as "career criminals".

4.3 Accuracy of Prediction. How accurately does this model identify repeat offenders prospectively? The importance of this question derives primarily from our concern about "false positives", persons identified as recidivistic offenders prospectively but not retrospectively. In fact, the model predicts fairly accurately, with true positives outnumbering false positives by nearly six to one. The vast majority of those identified as career criminals--170 of the 200 (85 percent)--were rearrested during the five-year follow-up period. Ninety nine (49.5 percent) of the 200 were rearrested within 12 months of release, and 138 (69 percent) were rearrested within 24 months. In contrast, only 36 percent of the 1500 offenders not identified as career criminals were rearrested during the five years following release from federal custody. The 200 offenders identified prospectively as recidivists committed an estimated average of 38 non-drug crimes per year, while the other 1500 committed an estimated average of less than four per year.

It is not even necessary to use the full detail of a sophisticated statistical prediction model to produce targeting criteria that accurately identify recidivists. We have developed a simple nine-factor score sheet (Exhibit 2) that

Exhibit 2.
PROPOSED POINT SCORES FOR SELECTING CAREER CRIMINALS

Variable	Points
Heavy use of alcohol	+ 5
Heroin Use	+10
Age at time of instant arrest	
Less than 22	+21
23 - 27	+14
28 - 32	+ 7
33 - 37	0
38 - 42	- 7
43+	-14
Length of criminal career	
0-5 years	0
6-10	1
11-15	2
16-20	3
21+	4
Arrests during last five years	
Crimes of violence	4 per arrest
Crimes against property	3 per arrest
Sale of drugs	4 per arrest
Other offenses	2 per arrest
Longest time served, single term	
1-5 months	4
6-12	9
13-24	18
25-36	27
37-48	36
49+	45
Number probation sentences	1.5 per sentence
Instant offense was crime of violence*	7
Instant offense was crime labeled "other"**	-18

Critical Value to Label an Offender As a Career Criminal: 47 points

*Violent crimes include homicide, assault, robbery, sexual assault and kidnaping.

**Other crimes include military violations, probation, parole, weapons and all others except arson, burglary, larceny, auto theft, fraud, forgery, drug sale or possession, and violent crimes.

produces results closely approximating those of the more elaborate prediction model: as with the exact model, true positives outnumber false positives by six to one, and only 36 percent of the offenders not identified as career criminals were rearrested during the follow-up period.[22] It is important to note that because the population of cases screened by prosecutors is different from the population of offenders that we analyzed to generate this scoring system, a real world application of these weights at the screening stage is likely to be somewhat less accurate than the results obtained here.

Ideally, of course, we would like to be able to predict recidivism perfectly. It is occasionally said that anything short of that ideal standard is unjust, therefore statistical prediction models should not be used. Career criminal targeting is likely to occur, however, in the absence of an empirically derived set of targeting criteria. More false positives are almost certain to result from conventional targeting strategies than from one based on empirically derived criteria, with all of its shortcomings.[23] False positives are not unique to empirically derived targeting criteria, they are common to all career criminal targeting programs; criteria derived from the application of sound statistical procedure reduces the rate of false positives.

5. Policy Implications.

This study confirms the notion that the widening of a strategy of targeting federal resources on cases involving

recidivists offers the potential for substantial crime reduction in both federal and local jurisdictions. The offenders studied committed an estimated average of eight non-drug offenses per year free. The majority, however, were not rearrested; we estimate that the 42 percent who were rearrested committed about twenty non-drug crimes per year. And many, if not most, of these were crimes committed at the local level. We found that one fourth of all persons arrested by federal agents had prior records that included five previous arrests at the local level.[24]

Our ability to separate the recidivists from the nonrecidivists prospectively by using statistically derived criteria appears substantially stronger than doing so by using either a random selection process or conventionally derived criteria. Eighty-five percent of the 200 offenders identified as crime-prone using the statistical model, in fact, were rearrested during the five-year follow-up period, while only 36 percent of the 1500 identified as nonrecidivists were rearrested during that period. Those identified as recidivists committed an estimated ten times as many crimes as the others. Half of those identified as recidivists were rearrested within 12 months of release from federal custody. This statistical identification system can be closely approximated with the use of a simple nine-factor score sheet (see Exhibit 2, p. 21). While the use of such a model to assist in the case selection process for a federal career criminal program does not ensure perfect prediction of recidivism, it does provide an

opportunity to base case selection on the most accurate prediction system available at this time.

The study's surveys of federal prosecutors indicate that the routine use of empirically derived case selection criteria is not likely to be accomplished smoothly unless certain prevailing attitudes are taken into consideration. One is a predominant tendency for federal attorneys currently to focus on elements of the offense rather than information about the offender. Another is resistence to narrowing their exercise of discretion. While federal prosecutors view local programs that target on the most criminally active offenders as generally effective, and while they support the notion of case selection criteria that are statistically related to recidivism, they are opposed to a program that would narrow their discretion to select certain types of cases but not others. The concept of a point system or use of a check list to assist in the case selection and targeting process was not generally regarded as an attractive alternative to current procedure. On the whole, federal prosecutors are comfortable with their current case selection policies.

Like federal prosecutors, the federal investigators and local prosecutors interviewed were supportive of the general concept of a federal career criminal program and somewhat skeptical about various specific aspects of such a program. Federal investigators join with federal prosecutors in favoring a system of flagging cases for special attention over a system of creating a special career criminal unit to handle cases

involving repeat offenders. Local prosecutors expressed concern, based on previous experience, that a federal career criminal program would fail to coordinate adequately with local efforts to target resources on repeat offenders.

The creation of a federal career criminal program should be sensitive to these concerns. It should also include the setting and monitoring of specific objectives: increasing conviction rates in cases involving repeat offenders, increasing pretrial detention rates and trial rates in such cases, and obtaining longer sentences for repeat offenders.

Conviction rates for cases investigated by federal agents can be increased in several ways. First, the U.S. Attorney and the local prosecutors in each federal district should develop a coordinated policy for the prosecution of dual jurisdiction offenses, especially those involving repeat offenders. Dual jurisdiction cases represent a substantial portion of the federal criminal case load; policy relating to those cases should be developed jointly and communicated to federal investigators and local law enforcement officials. Room for improvement in the handling of dual jurisdiction cases appears to be substantial.[25]

Second, cases involving the most crime-prone offenders can now be predicted with a sufficiently high degree of accuracy to warrant the use of statistical prediction to support (not supplant) the exercise of discretion in selecting cases and targeting resources on them. Many cases that are currently declined for prosecution because they are somewhat unattractive

(for example, because of the nature of the offense or a correctable evidentiary problem), may be found worthy of prosecution when the offender's profile of crime proneness is given more systematic attention.

Third, federal investigative agencies could share in the responsibility and accountability for the eventual outcomes of cases. It is not clear that each federal agency provides sufficient inducement for its agents to present cases for prosecution in such a way that brings about the conviction and incarceration of criminally active offenders.[26]

Fourth, opportunities can be exploited by both federal and local prosecutors to increase conviction rates in cases involving the most crime-prone offenders after these cases have been accepted for prosecution. Proper management of witnesses and evidence is crucial to successful prosecution and need not consume lavish prosecution resources. Paralegal staff trained in witness management could make certain that witnesses are given proper information and encouragement about their cases and could assist prosecutors in meeting court events on schedule. They might even outperform the harried attorney in this role. Prosecutors can also see to it that the investigators have obtained and properly processed all of the evidence available to support the successful prosecution of cases involving repeat offenders.

Reducing crime by way of a strategy of selective incapacitation can be achieved in other ways as well, including the areas of pretrial release, plea bargaining, and sentencing.

The prosecutor at either the federal or local level, can serve both the judge and the community by providing to the judge information about an offender's crime proneness to support the determination of the defendant's pretrial status. While the constitutional issues involved in the ongoing pretrial detention debate are not likely to be resolved soon, one dominant practical consideration tends to moot that discussion: Few judges care to read in the newspaper that a defendant they released on bail committed another serious crime. Right or wrong, judges are inclined to find a legitimate reason for locking up the most dangerous defendants; hence they are interested in knowing which ones are in fact the most recidivistic.

Prosecutors can also use information about an offender's crime proneness to increase sentence terms. One way is to take more cases involving chronic offenders to trial rather than offer a sentence or charge concession to induce a guilty plea. Another way is to recommend a longer sentence to the judge for such cases in allocution.

Current procedures for dealing with repeat offenders at the local level--including the use of arbitrary case selection criteria and the career criminal unit as centerpieces--may be largely ceremonial, ineffective, and costly. A federal career criminal program can, instead, exploit simple, unobtrusive procedures such as those described above to effectively incapacitate offenders who are criminally active at both the federal and local levels.

The concept of a federal program that targets resources on cases involving recidivists is not new. J. Edgar Hoover's list of the ten persons most wanted by the FBI exemplifies a long-standing focus on dangerous recidivists by federal criminal justice agents. The public's concern about crime warrants the implementation of such a program among other federal investigative agencies and in the offices of U.S. Attorneys. It is especially important that the institution of a federal career criminal program proceed in an orderly yet expeditious manner, with explicit goals and procedures for ensuring that those goals are achieved.

NOTES

1. Alfred Blumstein, Jacqueline Cohen, and Daniel Nagin, editors, Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington: National Academy of Sciences, 1978); Lee Sechrest, Susan O. White, and Elizabeth D. Brown, editors, The Rehabilitation of Criminal Offenders: Problems and Prospects (Washington: National Academy of Sciences, 1979).

2. Empirical support for a strategy of selective incapacitation is the subject of Section 2 of this report.

3. We have estimated that federal offenders commit an average of ten crimes per year free. INSLAW, Federal Sentencing: Toward a More Explict Policy of Criminal Sanctions (Washington: U.S. Department of Justice, 1981). Further analysis of the data collected in that sentencing study revealed that bank robbers commit an average of about 2 1/2 times as many crimes while free as do other federal offenders. Letter proposal from Brian Forst to Charles Wellford, May 14, 1981.

4. Marvin E. Wolfgang, Robert M. Figlio, and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972), p. 88.

5. These findings appeared in a 1976 working paper by Williams and in a finished version in 1979, The Scope and Prediction of Recidivism (Washington, D.C.: Institute for Law and Social Research), pp. 5-6.

6. Peter W. Greenwood, "Crime Control: Explaining Our Ignorance," Rand Corporation working draft (no. WD-1050), May 1981, p. IV-8.

7. Barbara Boland, Incapacitation as Applied to Federal Offenders (Washington, D.C.: INSLAW, 1980); Mark Peterson, Harriet Stambul, and Suzanne Polich, Doing Crime: A Survey of California Prison Inmates (Washington, D.C.: U.S. Department of Justice, 1980); Joan Petersilia and Peter W. Greenwood, Criminal Careers of Habitual Felons (Washington, D.C.: U.S. Government Printing Office, 1978). (The latter two monographs were originally published by the Rand Corporation.)

8. John Monahan, Predicting Violent Behavior: An Assessment of Clinical Techniques (Beverly Hills, California: Sage, 1981); Henry J. Steadman and Joseph Cocozza, "Psychiatry, Dangerousness and the Repetitively Violent Offender," Journal of Criminal Law and Criminology, vol 69 (1978), pp. 226-31; and Paul E. Meehl, Clinical vs. Statistical Prediction (Minneapolis: University of Minnesota Press, 1954).

9. Kristen M. Williams, op. cit. (note 5); Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia (Washington, D.C.: Institute for Law and Social Research, 1980); William M. Rhodes, et al., Developing Criteria for Identifying Career Criminals (Washington, D.C.: INSLAW, 1982).

10. Williams, ibid., p. 27.

11. Brian Forst and Kathleen B. Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," Journal of Legal Studies, vol. 6 (1977), pp. 177-91. The effect of the evidence variable was ten times larger, as measured by the elasticity of the variable, than the effect of crime seriousness (pp. 187-90). The Sellin-Wolfgang index is described in Thorsten Sellin and Marvin E. Wolfgang, The Measurement of Delinquency (Montclair, N.J.: Patterson Smith, 1974).

12. U.S. Department of Justice, Justice Litigation Management (Washington, D.C., 1977), pp. 42-44.

13. We can assume that crime reduction is produced from a strategy of targeting on repeat offenders primarily by way of incapacitation rather than deterrence. In fact, these incapacitive effects may be at least partly offset by lost deterrent effects associated with failure to convict less active offenders whose current offenses are more serious. It is possible, however, that the deterrent effect of a strategy of targeting on repeat offenders may approximate that associated with a strategy of targeting on the most serious current offenses. We know little about the differential crime control effects of sanctions applied to various classes of offenses and offenders, and even less about the decomposition of those effects in terms of deterrence. Limits to this knowledge are discussed in Blumstein, et al., op. cit. (note 1).

14. Eleanor Chelimsky and Judith Dahmann, Career Criminal Program National Evaluation: Final Report (Washington, D.C.: U.S. Department of Justice, 1981), pp. 87, 127.

15. William M. Rhodes, "Investment of Prosecution Resources in Career Criminal Cases," Journal of Criminal Law and Criminology, vol. 71 (1980), pp. 118-23. The study noted that the targeted cases may have been more difficult to prosecute in the first place than the other cases (p. 122).

16. In San Diego, for example, the charges in the current case are critical to selection for career criminal targeting; those charges are irrelevant to the program in New Orleans. Chelimsky and Dahmann, op. cit. (note 14), pp. 63-73. A survey of the selection criteria used in 146

13-616 O—83——15

different career criminal programs in jurisdictions throughout the United States confirms the variety of case selection criteria found by Chelimsky and Dahmann. Institute for Law and Social Research, National Directory of Career Criminal Programs (Washington, D.C.: Department of Justice, 1980).

17. Kristen M. Williams, "Selection Criteria for Career Criminal Programs," Journal of Criminal Law and Criminology, vol. 71 (1980), pp. 89-93.

18. Roth and Wice, op. cit. (note 8), pp. 63-64. They also showed that jail populations could be reduced if the primary goal of pretrial detention were to reduce the rate at which defendants fail to appear in court (pp. 63-64).

19. See note 13.

20. See note 3.

21. See note 9 and accompanying text.

22. Rhodes, et al., op. cit. (note 9).

23. See note 8 and accompanying text.

24. Analysis of a random sample of 9205 persons arrested by federal agents in 1976.

25. Jack Hausner, Barbara Mullin, and Amy Moorer, The Investigation and Prosecution of Concurrent Jurisdiction Offenses (Washinton, D.C.: INSLAW, 1982).

26. Ibid.

DEVELOPING CRITERIA FOR IDENTIFYING CAREER CRIMINALS

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I. INTRODUCTION

A definition of the term "career criminal" depends on the purpose to be served by classifying some offenders as "habitual" or "career" offenders while others are classified as noncareer offenders. The definition in this report was motivated by Attorney General Smith's recent expression of interest in prioritizing the federal processing of active offenders who have extensive records of arrests, convictions, and prior prison sentences, primarily for FBI index crimes.[1]

The logic for giving priority to the processing of career criminal cases stems from two observations: that a small percentage of offenders seems to account for a disproportionate fraction of all arrests (Peterson and Stambul, 1978; Williams, 1979) and that habitual offenders appear to commit many more crimes than those for which they are arrested (Boland, 1980; Blumstein and Cohen, 1979; Collins, 1977). Advocates of career criminal programs assert that targeting prosecution on career criminals enhances both the offender's likelihood of conviction and the length of the prison term that he or she will serve, resulting in a significant reduction in street crime.[2]

This assertion rests on several assumptions, two of which are germane to this report. One is that it is possible to distinguish career criminals from noncareer criminals. A second assumption is that the reduction in crime resulting from incarcerating a career criminal is sufficient to justify the additional expense of his special handling.

In this paper, we address these two assumptions. Using conventional statistical methodology, we develop a formula that can be used to identify offenders with the highest incidence of criminal behavior, as reflected in arrests for serious crimes. Drawing on the research of others, we extend this formula to account for the type and amount of crime associated with the arrests of career offenders. Having assessed the rate at which career criminals are arrested and the rate at which they commit crimes between arrests, we will be in a position to predict the amount and kinds of crime that might be prevented by incarcerating habitual offenders. We then use these predictions to simulate the effect that a career criminal program might have on crime and the federal criminal justice system under alternative assumptions about how the program might operate.

NOTES

1. From a speech by the Honorable William French Smith, Attorney General of the United States, at the dedication of the FBI Forensic Science Research and Training Center, June 16, 1981, FBI Academy, Quantico, Virginia.

This interest in career criminal prosecution does not imply that it should necessarily take precedence over the prosecution of other offenders such as white collar criminals, persons engaged in organized crime and other persons whose offenses are predatory and pernicious, although the offenders themselves may lack extensive criminal histories. Rather, the definition implies that there is a special group of offenders who, based on the frequency of their contact with the criminal justice system, should be an additional target of federal prosecution.

2. There are a few published evaluations of career criminal programs. See "Symposium on the Career Criminal Program," M. Wolfgang, ed., in the Journal of Criminal Law and Criminology 71(2) (summer 1980), especially E. Chelimsky and J. Dahmann, "The Mitre Corporation's National Evaluation of the Career Criminal Program: A Discussion of the Findings"

(pp. 102-106) and J. Phillips and C. Cartwright, "The California Career Criminal Prosecution Program One Year Later" (pp. 107-112). Although the effectiveness of career criminal prosecution is uncertain, findings point toward the need for better selection criteria.

II. GENERAL APPROACH

In order to develop formulas to distinguish career criminals from other offenders, researchers have frequently examined the rearrests of a cohort of known offenders. This examination is often conducted by recording the numbers and types of rearrests occurring between the time when the offender was "released to the street" and the time the observation period ended. Formulas have typically been used to estimate whether an offender will be rearrested (Hoffman and Beck, 1974), the rate of arrests per time at risk (Williams, 1979; Buchner et al., 1980), the seriousness of the charge at rearrest (Williams, 1979; Buchner et al., 1980), and the length of time until rearrest (Barton and Turnbull, 1981; Witte and Schmidt, 1979).* These measures of recidivism are frequently correlated with an offender's instant offense and his criminal history, age, and social background (such as his employment record). Thus, the formulas measure how likely an offender is to recidivate given his past behavior and present status. Offenders most likely to recidivate might be considered to be candidates for a career criminal program.

We have followed this tradition in our analysis. In subsection A, we provide a definition of "recidivism" and explain our approach to its measurement. In subsection B, we discuss the need for recognizing that future crime varies according to seriousness; that is, recidivism has both a quantitative and qualitative dimension. Both dimensions should

*See Appendix B for bibliography.

be considered by a career criminal program. Then, in subsection C, we discuss the consistency with which offenders commit the same type of crime.

A. DEFINITIONS AND MEASUREMENT OF RECIDIVISM

In their review of recidivism studies, Waldo and Griswold (1979) noted that definitions of recidivism consist of nebulous phrases or terms such as "a tendency toward repeat criminal activity" or "habitual behavior." The lack of a universal definition of the term has caused researchers to apply somewhat arbitary definitions, with the result that the measurement of recidivism has varied with respect to the level of contact that an offender has with the criminal justice system, sources of data analyzed, methods of data analysis, kinds of crimes counted (for example, serious crimes only rather than all crimes), and the length of the follow-up period.

In defining recidivism, we must also be clear about the types of offenses for which recidivism is viewed as a priority problem. We limit our discussion and analysis to a certain class of "serious crimes." Specifically, our list of serious offenses consists of arrest for the following: homicide, assault, robbery, burglary, larceny, auto theft, fraud, forgery, rape, drugs, counterfeiting, kidnapping, and weapons. It excludes embezzlement, tax violations, prostitution, pornography, immigration violations, draft dodging, and all other offenses not classifiable as one of those listed above. Thus, we exclude offenses typically called "victimless," as well as minor "white collar" crime and offenses likely to be

"one-time" crimes, such as bank embezzlement. Ideally, we would have excluded drug use while including drug sales. Our data, however, do not always permit making that distinction. In the case of federal data, therefore, we included all drug offenses, taking some reassurance from the fact that federal drug prosecutions typically are not for drug use but for drug dealing.

This definition of serious crime is one that is wholly compatible with the purposes of this paper and of recidivism as we define it, that is, as a rearrest for a serious street type crime. The rate at which an offender is likely to recidivate is the number of arrests for serious crimes that would occur over a hypothetical five-year period following an instant arrest for a federal offense, assuming that the offender (1) is returned to the street in lieu of prosecution; (2) remains free for the entire five-year period; and (3) continues over this time span to violate the law at a uniform rate. Measuring recidivism over a hypothetical time span provides a benchmark from which to assess the reduction in crime resulting from federal prosecution and sentencing.

Unfortunately, this benchmark cannot be measured directly since many arrestees are, in fact, incarcerated for lengthy periods following their federal arrest or conviction. Therefore, we can never really know how many times these offenders would have been arrested had they not been prosecuted. Instead, we must infer these hypothetical rates from available data; regrettably, however, available data are not well suited to this task, as can be illustrated.

Suppose, for example, we were to analyze recidivism during a follow-up period for arrestees whose cases were declined or who were convicted but not sentenced to prison. Although this sample of offenders would be free during the time span with which we are concerned, they constitute a decidedly select sample and their criminal behavior would be unlikely to reflect recidivism among serious offenders.

Then again, suppose we analyzed post-release recidivism among incarcerated offenders. This analysis would not necessarily reveal the hypothetical rate at which these offenders would recidivate if they had been released in lieu of prosecution for the offense that resulted in their confinement. The intervening years in prison undoubtedly affect their recidivistic tendencies, if for no other reason than that they are older when they complete their sentences than they would have been if released at the time of prosecution. Available evidence indicates that individual crime rates tend to reach a peak during an offender's late teens or early twenties, and that criminality tends to decrease thereafter.

Short of an inconceivable situation in which U.S. Attorneys would decline all criminal matters coming to their attention over a significant period, thereby enabling us to track the rearrest history of this cohort, it is necessary to infer rates of recidivism from imperfect data. As this report proceeds, we will have cause to interpret our statistical findings with this imperfection in mind. For now, we will describe our data, their limitations, and how the analysis was conducted.

1. The CCH Data and Analysis

Our first data base consisted of a 20 percent random sample of all federal offenders arrested during 1976. This data base was described by Boland (1980) and will be referred to as the CCH data, since it was derived from the FBI's Computerized Criminal History system.

Our approach to analyzing the CCH data was to examine criminal histories retrospectively. It was assumed that the pattern of the offender's criminal behavior just prior to his federal arrest would approximate his criminal activity just after his federal arrest, given that he was returned to the street rather than being incarcerated. Using the CCH data, we constructed a data base that contains the number of arrests in each year prior to 1976, extending back to 1960. Then, using 1975 as a base, we developed a formula to estimate the probability that an offender would be arrested in 1975 given his history of arrests, convictions, and sentences served prior to 1975. For reasons that are explained shortly, this probability was subsequently converted into a measure of the expected length of time that an offender would be free prior to his first serious rearrest.[1]

Although this first data base was large (N=9,205), it contained no detail about an offender's background other than his criminal record. In addition, a one-year follow-up period (1975) may be too short for a study of recidivism (Hoffman and Stone-Meierhoefer, 1980), and selection of a year that was always one year prior to the federal arrests imposes an obvious

selection bias.[2] Consequently, we also analyzed a second data base--the probation/parole data--that did not have these limitations.

2. The Probation/Parole Data and Analysis

The probation/parole data consisted of a sample of offenders (N=1,708) who were convicted of federal crimes and either released from jail or prison or placed on probation during 1970-71. Approximately half of the sample served prison terms longer than one year and the other half terms less than a year, including probation. The data were compiled from several sources and included a six-year follow-up of each subject. For our own analysis, we used the data for only five of those years. A complete description of the probation/parole data can be found in Buchner et al. (1980, p.8.).

In analyzing these data, we judged an offender to have recidivated if he was arrested for a serious crime during the five-year period that began on the day that he returned to the street. For offenders who were incarcerated, the follow-up period began with their release from prison. For offenders who were sentenced to non-prison alternatives, follow-up began on the day after sentencing.

Using the probation/parole data, we attempted to determine the average length of time that an offender will remain free until he is rearrested for a serious offense. Offenders who, on average, recidivate after the shortest period of time will be judged to be the most highly recidivistic. This definition of recidivism is partly dictated by data limitations and

partly by theoretical concerns that led us to prefer a "survival analysis" approach to analyzing recidivism.[3]

In order to compare findings from the CCH analysis with the probation/parole data, and in order that the analysis of the CCH data would serve these same ends, we converted the findings from the CCH analysis from estimates of the probability of recidivism to estimates of the length of time until recidivism, as noted above.

Once the average length of time before rearrest has been determined for a sample of serious repeat offenders, it becomes possible to estimate the number of times that an offender with given background characteristics will be arrested, on average, over a specified period.[4] Then, having made some additional assumptions about the type and number of offenses committed per arrest, we are able to estimate the number and types of offenses committed, on average, over a specified time by offenders with given backgrounds and criminal histories. This final formulation can be used to judge whether prioritizing the prosecution of career criminals is likely to be worth the cost.

The probation/parole data do not suffer from the same problems as the CCH data but, regrettably, do have their own limitations. We are interested in the recidivistic behavior of offenders at the time that their cases are under review by the U.S. Attorney. However, recidivism among parolees may not be characteristic of that behavior. For one thing, their post-release behavior is undoubtedly influenced for better or for worse by their prison and parole supervision experience, as

well as by aging, as noted above. For another, attributes such as prior criminal history and employment stability, which might be associated with an offender's recidivism immediately following his arrest, may have little or no bearing on his post-release recidivism four to six years in the future. As we will see, these limitations of the probation/parolee data have important implications for this analysis.

3. Additional Issues in Measuring Recidivism

Waldo and Griswold recommend that in the absence of accurate self-report data FBI statistics be used to provide a standard data base for recidivism measurement. Our data conform to this recommendation.

Unfortunately, the use of FBI statistics, which provide data about arrests and incarcerations, is not a panacea. For one thing, it is necessary to identify which data--arrests, convictions or incarcerations--provide the most accurate reflection of recidivism. If recidivism is judged on the basis of arrest information, it is possible that individuals who did not actually commit crimes, but who were nonetheless arrested, will be included in the analysis. If, on the other hand, the sample consists only of individuals who were convicted or sentenced to prison, the analysis will likely exclude many individuals who actually committed crimes but managed to avoid processing beyond the point of arrest.

There seems to be no definitive resolution of the question of whether arrests, convictions or incarcerations should be used as the basis for recidivism studies. In the present

analysis, only those offenders who were convicted of federal crimes are included in the probation/parole data base; persons arrested for serious federal crimes are included in the CCH data. We considered an incidence of recidivism to have occurred with a rearrest, regardless of whether that arrest led to conviction.

There is also concern that criminal records tend to be flawed by jurisdictional specificity. For example, Blumstein and Larson (1971) note that records kept at the federal level are likely to exclude "local arrests for minor offenses below the threshold of reporting" to a federal agency.

We do not know all the systematic biases that may be present in our data base. We concur with Blumstein and Larson that minor offenses are underreported, however. Consequently, our analysis is limited to examining criminal records for major street type crimes, a limitation that seems in keeping with the intent of a career criminal program.

In addition, FBI statistics report largely on adult arrests and convictions, but it is likely that the careers of most sampled individuals actually commence with juvenile processing. Although the absence of juvenile record information for the large group of individuals who are one-time juvenile offenders is obviously not crucial to the study of recidivism, information about the smaller group of juvenile repeaters may be particularly important when exploring the corollary issues of crime patterning and crime seriousness. Furthermore, as Blumstein and Larson note, the first arrest is crucial to

calculating both the number of crimes that constitute individual criminal careers and the length of the careers.

Lack of information about juvenile arrest records is a potentially serious problem; earlier studies have demonstrated that past record is a strong predictor of recidivism. Because of this problem, we made two adjustments in our analysis. First, we excluded from our data offenders who were less than 20 years old at the time of their federal arrest. While there may be youthful career criminals (Greenwood et al., 1978), statistical analysis cannot be expected to identify them given the limitations of juvenile arrest data.[5] Second, the contextual meaning of a past record may differ with an offender's age, since criminal history information tends to become more accurate (as well as lengthier) as the offender matures. For this and other reasons,[6] we conducted separate analyses on subsets of age groups, using appropriate statistical techniques to determine whether subsets of offenders should be treated as distinct.

Finally, FBI statistics provide only the barest information about an offender and his or her arrest. Key among missing data is information about the seriousness of the offense that goes beyond a generic classification of the crime (robbery, burglary, and so on).

The fact that FBI records contain so little information about crime seriousness other than charge is a potentially important omission that might affect our analysis. It is important to discuss the problems introduced by this omission.

To do so, we will provide an overview of how other researchers have measured seriousness and how these measures have been used in recidivism studies.

B. MEASURES OF THE SERIOUSNESS OF RECIDIVISM

As annoying as repeat instances of less serious criminal behavior--public intoxication, petty larceny, prostitution--are to criminal justice officials, it is unlikely that these instances compare in social significance to instances of serious offenses like robbery, burglary, and rape. Recognizing this difference in the seriousness of offenses, some studies of recidivism have attempted to build statistical models, or offense seriousness scales, that take into account the harm that recidivism causes rather than the simple fact that an offender is rearrested.

The Sellin-Wolfgang Index (1964) is probably the best known of the offense seriousness scales. Composed of numerous offense-descriptive elements such as the degree of bodily harm inflicted on victims and the value of property stolen, the scale is offered as a detailed measure of offense seriousness that allows a unique score to be attributed to a specific crime.

Proponents of the index argue that it is a cross-cultural measure of seriousness (Rossi et al., 1974; Akman et al., 1966) and that it affords a more universal assessment of crime seriousness than evaluations that depend solely on crime categorization (Wellford and Wiatrowski, 1975). Nevertheless, other authors have questioned the index's universality (Lesieur and Lehman, 1975), its superiority to the unscaled arrest

13-616 O—83——16

statistics (Blumstein, 1974; Hindelang, 1974), and its claim of additivity (Wagner and Pease, 1978).

Despite the criticisms, the scale remains prominent and has been utilized by some researchers to determine the seriousness of recidivism. For example, Wolfgang et al. (1972) used the Sellin-Wolfgang Index to measure the seriousness of offenses committed by repeat juvenile offenders. Williams (1979) used the index to measure the seriousness of recidivism among adult felons and misdemeanants in the District of Columbia.

Other researchers have developed recidivism seriousness scales. Moberg and Ericson (1972) used both the California Offense Scale and the Sellin-Wolfgang Index as models for developing a weighted recidivism measure that they feel has universal applicability and circumvents the problems associated with making cross-jurisdictional comparisons of violations of criminal statutes.

In a Canadian replication of the Moberg and Ericson Scale, Gendreau and Leipciger (1979) note that although a large number of their sampled offenders recidivated, only a small proportion committed serious crimes, where seriousness was defined in terms of extended prison confinement for the commission of the offense. The same kind of finding is noted by Cormier (1981) in a more recent replication of the Moberg and Ericson Scale. Buchner et al. (1980) took a somewhat different approach to providing seriousness scores. She and her colleagues reported that predictors of recidivism depended on the weights given to future crimes.

The obvious advantage to scaling an offender's recidivist behavior is that the process helps determine the seriousness of the threat an offender poses to society. There is little question that a prediction instrument that estimates whether an offender would commit future crimes of a given level of seriousness would be preferable to an instrument that indicates only that the offender is likely to recidivate.

Despite the advantage of this refinement, we have not used seriousness scales in the present analysis. One reason for this decision is pragmatic: the FBI rap sheet data do not provide detail beyond the arrest charge that can be used to compute seriousness. A second reason is lack of a theoretical basis for predicting crime seriousness.[7] A third reason is that we doubt that an attempt to predict seriousness would be successful. We reached this conclusion after examining a "switching matrix," that is, a matrix that summarizes the type of future crime that an offender is likely to commit given the offense for which he was convicted in the past. We discuss this research next.

C. PATTERNS OF CRIME REPETITION

Efforts to predict the severity of crimes committed by recidivists are impeded by the fact that most offenders fail to specialize in one type of crime. Although law enforcement agencies and researchers have devoted much thought to typing criminals according to general categories of criminal behavior, Gibbons (1975) acknowledges that there is little empirical evidence to support the claim that offenders fall neatly into

distinct groups. Hence, the burglar who always commits burglaries, or at least property crimes, may be atypical and the offender who commits an occasional burglary among other crimes more commonplace. This inability to classify offenders greatly reduces our ability to predict the seriousness of rearrests; that is, those offenders who do recidivate seem to commit a variety of offenses in an almost random pattern or, at best, show a mild tendency to repeat crimes of the same general nature.

Those few investigators who have attempted to examine the crime patterns of repeat offenders offer studies with fairly consistent results. For example, Wolfgang, Figlio, and Sellin (1972) report the following with respect to the types of future crimes repeat juvenile offenders are most likely to commit:

> The typical offender is most likely to commit a nonindex offense next, regardless of what he did in the past. If he does not commit a nonindex offense type next, he is most likely to desist from further delinquency....With the exception of the moderate tendency to repeat the same type of offense, this pattern obtains regardless of the type of previous offense (p.189).

Interestingly, the authors note that the type of future offense a youth commits is not even contingent on the number of offenses he has already committed. That is, frequent offending does not necessarily denote serious offending, nor does offense seriousness necessarily increase over time. Furthermore, Figlio (1981) has demonstrated how quickly even the modest amount of patterning in recidivistic behavior disappears over time.

Similarly, Blumstein and Larson (1969) failed to find a strong tendency for offenders to consistently commit the same types of offenses. Except for findings that gamblers and prostitutes tend to be rearrested for the same crime, Williams (1979) found that adult offenders do not specialize in particular offenses.

Two recent articles by Reid and Doyan (1981) report somewhat different findings with respect to crime patterning. One article demonstrates that criminals can be grouped according to homogenous offense types where at least 50 percent of the offenses that an offender commits are of a certain type. The authors show in the other study that the degree to which criminal behavior is patterned as well as the nature of the patterning varies significantly between male and female and black and white offenders.

Our own findings, using automated federal rap sheet data, show only a mild tendency for federal offenders to specialize in any given type of criminal behavior. We uncovered virtually no patterns using narrow categories such as robbery, burglary, and assault to define the offender's initial and subsequent offense; patterns were more pronounced when using the broad groups property, violent, drug, and other.

Using rap sheet data for 9,205 offenders, we selected those who had at least two arrests prior to their instant federal arrest. This group contained 3,417 offenders and was used as the "panel" for conducting a "crime-switching" analysis. For each offender, we examined rap sheet data to identify the two

Table II.1
MOST RECENT ARREST TYPE TABULATED BY SECOND MOST RECENT ARREST TYPE FOR OFFENDERS HAVING AT LEAST TWO ARRESTS
General Crime Categories
(Calculated for 3,417 offenders)

Subsequent Arrest	Baseline Arrest			
	Violent	Property	Drugs	Other
Violent	31.2%	16.0%	13.1%	17.4%
Property	33.9%	54.6%	30.9%	31.8%
Drugs	11.7%	9.9%	37.5%	12.9%
Other	23.2%	19.5%	18.5%	37.9%
Total	100.0%	100.0%	100.0%	100.0%
Number	669	1397	475	876

Violent includes homicide, assault, robbery, sexual assault, and kidnapping.
Property includes arson, burglary, larceny, auto theft, fraud, and forgery.
Drugs includes both possession and sale.
Other includes military, probation, parole, weapons, and all others.

most recent arrests prior to the instant federal arrest. Table II.1 presents the tabulations, grouped by major offense categories.

Each row shows the most recent arrest of each group of offenders; columns identify the prior arrest. We see that those previously arrested for each offense type are most strongly represented in the most recent offense category. Reading horizontally, we also see that offenders previously arrested for violent crime are about twice as likely to be rearrested for violent crime as those previously committing property, drug, or other offenses (31.2% as opposed to 16.0%, 13.1%, and 17.4%, respectively). Similarly, those previously

arrested for property offenses are more likely to be rearrested for property offenses than are those who previously were arrested for other offenses. Even so, mild tendencies are strongly mitigated by the high incidence of crime switching and may be overstated because of peculiarities in the CCH data.[8]

We can view the crime switching matrix from a different perspective, which changes the focus from the relationship between the instant and subsequent offense to the relationship between the instant offense and any future crime. Assuming a simple Markov process,[9] we can estimate the probability that any future arrest is of a specific type. Given that the instant arrest was for a violent crime, and given a series of subsequent rearrests, the probability that the first rearrest is for a violent crime equals .31, the probability that the second rearrest is for a violent crime equals .21, and the probability that the third rearrest is for a violent offense equals .19. Given that the instant arrest was for a property crime, the probability that future rearrests are for crimes of violence equals .16, .18, and .19 for the first, second, and third rearrest, respectively. Obviously, these probabilities converge after the first rearrest and this convergence implies that, over the long run, we cannot be very sure about the nature of an offender's future crimes given the nature of his present or instant offense. To further illustrate this point, the probability that the first, second, and third rearrests are for property crimes, given that the instant arrest was for a crime of violence, equals .34, .40, and .41, respectively. If

the instant offense was for a property offense, the corresponding probabilities are .55, .44, and .42; the covergence over time is again evident. Knowing that the offenders' current offense was for a property crime or a violent crime tells us very little about whether he will be committing property crimes as opposed to crimes of violence in the long run. These findings lead us to believe that the most relevant research problem is to identify people who are the most likely to be rearrested, without identifying the nature of these rearrests beyond the fact that they were for serious matters.

Another point to remember is that numerous minor offenses also occur, many for which arrests are not made and others for which FBI data are incomplete. We can only guess what impact the inclusion of these unobserved offenses would have on our analysis. One can imagine, however, the large number of petty property crimes, simple and aggravated assaults, and drug abuse incidents that might well enhance or detract from the detected patterns.

While switching among these groups occurs, we gain some additional information by choosing to treat offenders as members of particular groups. Subsequent analyses reveal that separate estimations of recidivism for different kinds of "instant offenses" were statistically different from one another. Further, the more specific crime-switching matrix in the appendix (Table A.2) allows us to be a bit more precise about the distribution of new arrests.

Even so, we continue to be cautious about these kinds of analyses. Even broadly defined, consistent with the Reid and Doyan results, very few of the offenders in this study could be classified as "specialists" using the "50 percent" guideline. Indeed, it would be quite risky to unalterably classify a given offender into one of the four crime groups based only on one offense. On the aggregate level, however, predicting the distribution of offenses committed by a large number of offenders is a bit more reliable. The results here indicate that we would be correct more often by using the crime switching matrix to predict the nature of the offender's next offense than by pure chance, even if only slightly more often.

The rest of our analysis takes advantage of this mild tendency for federal offenders to repeat within the categories of property offenses, crimes against persons, drug offenses, and other offenses. We have calculated a composite future offense for offenders in each of these groups. For example, if an offender's instant arrest is for robbery, the probability that his next arrest will be for robbery may equal .15. The probability that his next arrest will be for burglary may be .10, and so on for other types of crimes.

NOTES

1. This conversion is straightforward. Let P equal the probability that an offender will be arrested during his first year at risk; let P(1-P) equal the probability that he is arrested during the second year given that he is not arrested during the first, and so on. Assume that P remains constant over time. Assume also that, if an arrest occurs, it occurs on average at the end of month 6. Then the expected value of the length of time that the offender will be free until his first arrest equals an infinite series with a solution 6+12(1-P)/P.

2. We repeated the analysis using a two-year follow-up period. This replication did not yield results that were substantively different, so the one-year follow-up period is probably representative.

3. For a discussion of this approach, see Barton and Turnbull (1981) and Witte and Schmidt (1979).

4. As we will note later, such calculations require the adoption of additional assumptions, such as the assumption that offenders continue to be arrested at the yearly rate of 12/L, where L equals the time until first arrest. Thus the calculations are not straightforward.

5. The problem with estimating the prediction equation for youthful offenders is that their prior arrests are often unreported, and the extent of this underreporting decreases with the offender's age because adult records are more likely to be reported than are juvenile records. If we ignored this bias in the reporting of juvenile records and fit a regression anyway, the variable "age" would stand in for the missing arrests. It was to avoid this specification problem that we did not analyze recidivism for offenders who were less than 20 years old. Moreover, the proportion of offenders in their teens is much smaller at the federal level than at the state or local level, so their elimination here does not pose a serious practical problem.

6. Blumstein and Cohen (1979) have presented evidence that different structural models describe the criminal behavior of offenders from different age cohorts. If true, statistical analysis would require separate analyses by cohort.

7. Seriousness is a societal judgment of a criminal act, not necessarily a factor that motivates an offender. For instance, shooting a victim during a $25 robbery is more serious than a burglary that nets $200. An offender who is motivated primarily by pecuniary gain would choose the latter offense, regardless of how he felt about injury to his victim.

(This does not hold for many juvenile gang and pathological offenders, who are motivated partly by money gain.)

8. In a personal communication, Jaqueline Cohen has pointed out that a second arrest sometimes follows an initial arrest for the same crime when, for instance, prosecutors must refile a criminal case due to technical deficiencies in the original filing. These data peculiarities would cause consistency of arrests to be somewhat overstated.

9. See Figlio (1981) for assumptions that underlie these calculations.

III. PREDICTING RECIDIVISM -

During the past 50 years, researchers have attempted to develop methods of effectively predicting recidivism. These efforts have used a host of techniques and have identified numerous variables such as age, drug use, prior arrest and conviction history, and employment status as predictors. Findings have sometimes been incorporated into public policy; for instance, the U.S. Parole Commission guidelines are partly based on statistical analysis of recidivism among federal parolees.

A review of past studies reveals that recidivism prediction is imprecise. It is possible to identify factors, such as past criminal records, that are correlated with recidivism; that is, offenders with long records are more likely to commit new offenses than are offenders with short records. The problem is that the number of offenders who have a high recidivistic potential, but who nevertheless fail to commit new offenses, is often quite high. In statistical jargon, prediction may lead to "false positives", that is, offenders who were expected to recidivate but who actually were not rearrested.

In a recent article, Monahan (1978) reviewed a host of efforts at predicting from a group of offenders which ones are likely to be violent recidivists. In all cases, the percentage of false positives, those offenders who were considered to be dangerous but who nevertheless did not--during several years of observations--recidivate as predicted, is disturbing. Of

those predicted to be dangerous, between 54 and 99 percent were false positives.

Monahan's findings are sobering, and we should pause before using prediction equations to select habitual offenders (also see Wilkins, 1980). However, predicting future crimes in general may be more accurate than predicting crimes of violence per se. Indeed, Williams (1980) argued that the use of empirically based prediction equations can improve the selection of defendants to be subjected to special prosecution. In this regard, it is worth noting Monahan's additional findings that predictions based on statistical analysis are an improvement over "clinical" decision making (also see Meehl, 1954). In selecting career criminals, a prosecutor is likely to do a more accurate job if he complements his intuition with the use of statistical findings.

A. STATISTICAL TOOLS

The most sophisticated studies of recidivism have employed multivariate tools of analysis, especially regression analysis. Regression analysis has great appeal because it allows the researcher to examine the impact that a single variable, such as past record, has on recidivism, holding constant the impact of other variables.

As an illustration, a researcher might be interested in answering the question of whether recidivism increases with the number of prior arrests for serious crimes. In answering this question, it is useful to control for the fact that some offenders have drug histories while others do not. Otherwise,

offenders with lengthy records may also frequently have drug histories, and any correlation between "arrests" and "future crimes" may be a result of the fact that the drug history alone accounts for future criminal activity. Multivariate analysis helps to avoid such spurious interpretations.

Using the CCH data, we employed a multivariate tool to estimate the probability of rearrest. The general form of the resulting formula can be written:

$$P = G(X1 \ldots Xm)$$

where P is the probability that an offender will commit a crime in a given year and G indicates that this probability is a function of X1 through Xm, with X1 through Xm representing variables describing the offender's past criminal history.

We also adopted a multivariate tool to predict the length of time that an offender will be free prior to rearrest for a serious offense. This tool was used on the probation/parole data. The general form of the resulting formula can be written:

$$L = F(X1, X2 \ldots\ldots Xn)$$

where L is the average length of time until recidivism, F denotes that L is a function of X1 through Xn, and X1 through Xn are variables that describe the offender and his offense. Typical descriptive variables that entered into the analysis included the offenders' criminal records, their drug histories, and background variables such as age, employment, marital status, and living arrangements.

Once these equations are determined, it is possible to say that, on average, offenders with characteristics X1 through Xn will recidivate after L months. Some offenders with these characteristics will, of course, recidivate after a shorter time and some after a longer time or not at all. But as a group, offenders with characteristics X1 through Xn recidivate on average after L months from the date of release.

Given this prediction, it is possible to estimate the number of times per year an offender with characteristics X1 through Xn would be arrested if he were free to commit crimes. If the offender averages an arrest every L months, then over the course of a year we would expect him to be arrested 12/L times. Of course, this estimate holds only while the offender is "at risk," that is, not incarcerated, and the estimates are only averages. The estimates do, however, provide at least a rough idea of recidivism, provided we do not attempt to extend them to specific subgroups of offenders or too far into the future.[1]

Our goal is to assess the number and types of crimes committed by these habitual offenders. The recidivism analysis does not reveal crime rates, since it is limited to rearrests, so we have to make use of other information in order to draw inferences about future crime.

First, the crime-switching matrix tabulations presented earlier in this report (Table II.1) provide information about the types of offenses for which an offender will be rearrested, given that he is rearrested. From a more detailed form of this

table, we can calculate the conditional probability that if an offender is rearrested it will be for a specific crime. For example, if the probability of being arrested next for a burglary is .15 and is .10 for a robbery and so on, then of 100 future arrests, about 15 would be for a burglary and 10 would be for a robbery. Using the crime-switching matrix, we can assess not only the future incidence of crimes, but also the types of offenses.

Still missing from our analysis is an estimate of the number of offenses that are committed per arrest. If we had this figure, we would be able to provide at least a rough measure of the number of crimes committed by career criminals.

Blumstein and Cohen (1979), Boland (1980), and Peterson et al. (1978) provide estimates of crime rates per arrest that are specific to the type of offense for which an offender is arrested. Blumstein and Cohen's estimates were derived from aggregate data on arrests and reported crimes, adjusting for reporting rates, the number of arrestees per arrest, and so on. Boland's estimates were derived from interviews with incarcerated federal offenders and from federal rap sheets. The estimates provided by Peterson were derived from self-reports by California offenders. As Boland notes, the estimates were remarkably similar even though they were derived from different data bases and were computed using different methodologies. The comparability of these findings causes us to attach considerable credibility to the results. Table III.1. shows these crime rates per arrest.

Table III.1
ESTIMATED ARREST RATES BY OFFENSE TYPE
FREQUENCY OF ARREST FOR OFFENSES COMMITTED

Offense	Arrests Per 100 Offenses
Homicide/Assault	11.1
Rape/Kidnapping	11.1
Robbery	6.9
Arson	3.8
Burglary	4.9
Larceny	2.6
Auto Theft	4.7
Forgery	3.8
Fraud	3.8
Drugs	0.2
Probation	3.8
Weapons	5.6
Other	3.8

Using the estimates of crime rates per arrest, it is possible to estimate the amount of crime that is being committed by persons who are labeled "career criminals" or "habitual offenders." These figures are reported in the body of this report.

B. ACCURACY OF THE ESTIMATES

Before presenting the results of our calculations, we want to distinguish our findings on two levels, micro and macro. On a micro level, the findings are used to assess how many rearrests will occur for a specific offender, what types of crimes these arrests will be for, and the number and type of offenses committed by this offender. On a macro level, we attempt to assess--for a group of offenders with common characteristics--how many rearrests will occur, the types of crimes that these arrests will be for, and the number of offenses that these offenders will actually commit.

13-616 O—83——17

It is important to make these micro and macro distinctions. The macro-level assessments may be the most important for judging the effectiveness of a career criminal program. At this macro level, we can provide an assessment of the number and types of crimes that can be prevented by a career criminal program. While the estimates of crime reduction will not be precise, they will obviously be better than none at all and will likely be accurate to within an order of magnitude.

Concerns are different for the micro-level analysis, a point that brings us back to the problem identified by Monahan, that is, that there could be a fair number of false positives. Standards other than crime reduction and cost come into play in judging how accurate a prediction instrument must be to satisfy concerns with distributional equity (Underwood, 1979, and von Hirsch, 1972) and go well beyond the scope of this study. We will take special care, however, to convey the accuracy of our predictions with illustrations in the sections that follow.

NOTES

1. Eventually offenders will cease committing crimes, for reasons that are not well understood. Projecting arrest rates too far into the future would ignore the fact that offenders drop out of the pool of active criminals. On this point, see Blumstein and Cohen (1979).

IV. FINDINGS

Using the techniques described in the technical appendix, we attempted to determine the relationship between known elements of offenders' backgrounds (personal and criminal) and the likelihood that those offenders would commit future crimes.

This exercise in predicting criminal behavior was problematic. We can only guess about the amount of crime that a particular offender commits by looking at the number of times he has been caught or arrested and then make some assumptions about his probability of being caught. There are, of course, difficulties with this method, but in the absence of perfect self-reporting it represents the best approach we have for obtaining crime estimates. Even so, for the moment we will assume nothing about the probability of being caught and will treat only the number and type of past arrests as a barometer of past criminal activity and only future arrests as indicators of recidivism.[1] For reasons discussed earlier, no attempt was made to scale these arrests to reflect the seriousness of illegal behavior.

In this analysis, we used two different techniques to predict recidivism; each technique was applied to a data base for which it was best suited. First, we estimated the probability that an offender with characteristics X1 through Xm would be arrested during a year that he was "on the street." Second, we estimated the length of time that an offender with characteristics X1 through Xn would be on the street until his

first arrest. Findings are summarized in the following two sections; a technical appendix provides analytical detail.

A. ESTIMATES OF THE PROBABILITY OF REARREST

We employed the first technique to develop an index of the likelihood that an offender would recidivate within a one-year period. This index was seen to be a function of the offender's behavior in the period immediately prior to this one-year observation period. Using CCH data for 9,205 offenders, we estimated the relationship between rearrest (as a dependent variable) and prior arrest and correctional time served (as explanatory variables). Age, sex, and race were also considered as explanatory variables, but sex and race were not significant predictors and were dropped from the analysis reported here.

This analysis was intended to develop a formula by which prior arrests, which resulted in various charges and occurred at different points in time, could be summarized in a single index. We felt that it was important to build a summary index using the CCH files, since it was impractical for statistical reasons to use a large number of past record variables in the analyses on the smaller probation/parole data base. We then used this estimated relationship from the large sample of CCH offenders to calculate an index of the probability of rearrest for the offenders in the probation/parole records.

In developing this index, we were especially interested in answering four questions: (1) Should the type of prior arrest matter when predicting recidivism, and if so, how much weight

should be given to different types of offenses? (2) Should arrests be discounted according to how far in the past they occurred, and if so, by what amount? (3) Should past correctional treatment be taken into account when predicting recidivism; if yes, how much weight should be given to this factor? (4) How does age matter when analyzing recidivism?

This analysis led to the following findings:

- Past arrests are positively correlated with the probability that an offender will recidivate within a one-year observation period.
  - There is a monotonic decrease over a five-year period in the usefulness of prior arrests as predictors of recidivism. For example, an arrest that occurred in 1981 increases the likelihood of recidivism during 1982 by .08, but an arrest that occurred in 1976 increases the probability by about .01, while an arrest earlier than 1976 has an insignificant impact on the likelihood of recidivism.
  - Violent crimes and drug offenses are about equally useful in predicting future arrests, with arrests for crimes against property being slightly less useful. "Other crimes" are less useful as predictors. With regard to an arrest in 1981, the probability of an arrest in 1982 increases by .08 for a crime of violence. For other types of offenses, the increases in the probability are as follows: property .07; drugs .08; and other offenses .03.
- Offenders who served prior prison terms were more likely to recidivate. The probability of recidivism increases with the total length of those prior terms. The significance of prior prison terms as predictors did not seem to diminish over time. The probability of being rearrested increases by about .002 per month of time served.
- The likelihood of recidivism decreases with age; that is, older offenders are less likely to recidivate than are younger offenders. Holding other factors constant, offenders who are 40 years old have a probability of recidivating that is about .08 lower than offenders who are 20 years old.
- The interpretation given to prior criminal records, and the subsequent relationship between criminal records and

- recidivism, appears to depend on the offender's age at the time of the instant arrest, although the effect does not seem to be great or systematic.

The exact magnitude of these effects is reported in the technical appendix.

B. PREDICTORS OF THE LENGTH OF TIME FREE PRIOR TO REARREST

The second technique estimated the length of time required for a rearrest to occur once the offender is returned to the street. That is, given their release from federal custody, we examined offenders' major arrest records during the subsequent five years. We looked at the relationship between prior record (as measured by the "index" described above and prior incarcerations), offender characteristics, and the offense for which the federal sentence had been imposed.

As we conducted the analysis, we examined a number of factors found by other researchers to be related to recidivism. Those factors considered were: sex; race; age; marital status; employment status; post-release living arrangements; military dishonorable discharges (if any); previous use of aliases; the number of times the offender had been sentenced to probation; whether the offender had ever had probation revoked; mental health institutionalization; use of alcohol, soft drugs, and hard drugs; whether the current offense included the use of a gun, assault, or accomplices; the dollar value of the crime; the age of the defendant at his first arrest, conviction, sentencing, and incarceration (as applicable); the longest sentence ever served by the defendant; the number of times the offender had been incarcerated; and the

number of times the offender had been convicted for each of 16 types of crime. Information was also retained on the current offense type (22 crime categories).

Initial tests showed that a number of factors were correlated with recidivism. However, many effects appeared to be spurious. For example, in very simple tests marital status and employment were correlated with recidivism. Those factors are also related to the offender's age. When controlling for age, the measured effects attributed to marital status and employment became nonsystematic or insignificant. Thus, we used statistical findings and our judgment to choose a parsimonious set of predictor variables. These included the following: "Index" (as estimated in the analysis described in the previous section); the longest prison sentence served; number of previous nonprison sentences; heavy use of alcohol; use of soft drugs; use of heroin; age at first arrest; time between first arrest and the instant federal arrest, coded zero if the instant arrest was the first arrest; and post-release living arrangements.

Tests were performed in which the data were alternately grouped by age and instant offense. The reason for these tests was to determine whether we needed to develop recidivism prediction instruments that were age- and offense-specific. Because of the finding of age specificity in the earlier analysis and the finding that offenders show some tendency to specialize within broad generic offense types, these tests seemed essential.

Age groupings did not yield significantly different results. We concluded, therefore, that age-specific formulas need not be developed. Testing for structural differences across crime types, we found that the four general crime categories identified in the crime-switching exercise did yield significantly different formulas for recidivism, although the differences appeared to be modest. Because these latter differences were slight, we decided to fit a regression equation that included the nine variables listed above, as well as individual variables denoting that the instant offense was a property, violent, drug, or "other" offense. In the rest of this paper, attention is focused on this final regression equation.

A summary follows of these findings (which are reported in more detail in the technical appendix):

- On average, offenders who live alone are rearrested somewhat sooner than offenders who live with others. Living alone increases the probability of rearrest within 5 years by about .04.

- Use of drugs other than heroin has no significant effect on the amount of time to recidivism. In contrast, offenders with a history of heroin use have a tendency to recidivate sooner than those who do not. Of the recidivists (i.e., those offenders who had been arrested prior to the expiration of 60 months), 21 percent used heroin, compared with 9 percent of the nonrecidivists (i.e., no rearrests prior to the end of 60 months). There is some evidence that heavy use of alcohol is an indicator of future crime. In total, 39 percent of the recidivists used alcohol heavily, compared with 31 percent of the nonrecidivists.

- Those offenders whose first arrest occurred at an early age are more likely to recidivate than those whose criminal activity began later. The average starting age for a recidivist was 20; for a nonrecidivist, it was 25.

- Controlling for the age at first arrest, the length of the criminal's career shows a correlation with recidivism--the longer the period of active criminality, the longer it appears to take for the offender to recidivate. However, this finding is deceptive and does not imply that offenders with short careers are more criminally active than offenders with long careers. Given a group of offenders with the same starting age, the longer the activity, the greater the present age of the offender; it has been shown previously, and is supported here, that recidivism decreases with age. A different formulation of the prediction equation shows that, holding constant the offender's current age, offenders with long careers recidivate somewhat sooner. In fact, at the time of the instant (not the follow-up) federal arrest, a recidivist had been engaged in crime for 11 years, on average; a nonrecidivist had a prior record extending an average of about 9 years.

- Offenders who previously served long sentences for any single offense tend to be more recidivistic than those without long prison sentences on their records. Counting offenders with no prior prison terms in the calculations, recidivists had served prior sentences of 14 months, on average, and nonrecidivists only 3 months.

- On average, recidivism increases with the number of nonprison sentences. Recidivists had served an average of 3 prior nonprison sentences, compared with an average of 1.8 prior nonprison terms for nonrecidivists.

- Holding constant all other factors, the nature of the federal offense does not seem to influence the length of time until rearrest, unless the federal offense was classified as "other," in which case the offenders lasted an average of 18 additional months without a rearrest.

- The index of prior record was a statistically significant predictor of recidivism. On average, recidivists had values of the index equal to .25, while nonrecidivists had the index values equal to .19. Still, the effect of the index was not as strong as might have been anticipated from the results of the prior analysis.

We must address two questions: (1) Why was a variable as theoretically important as the prior record index only marginally significant when we used the probation/parole data, in contrast to the conclusions drawn using the CCH data?

(2) Does this finding of marginal significance imply that prior arrests should be ignored by a career criminal program or, rather, that factors other than prior arrests should be emphasized?

Regarding the first question, there are two explanations, other than the irrelevance of prior arrests to future criminal conduct, that may account for these findings. The first explanation is statistical. The variable "index" is highly correlated with other explanatory variables (multicollinearity).[3] What this means is that the profile of an offender who is likely to recidivate frequently reveals most of the negative attributes that seem to contribute toward predicting recidivism. Typically, he has a history of recent arrests for serious crimes, has served prior prison sentences, and uses heroin. Because all these negative attributes occur simultaneously for many recidivists, it is difficult to distinguish the importance of any one attribute. This may in part explain why "index" seems to have somewhat less importance than might be anticipated based on our earlier analysis.

While the first explanation is statistical, a second explanation is theoretical. Recall our earlier findings, based on CCH data, that the effect of a prior arrest diminished sharply over time. Our present data, the probation/parole data, include many offenders whose criminal careers are dated; the last time they were on the street may have been several

years ago. It is difficult to adjust the index variable to take this lag into account.[4]

To illustrate, a prosecutor has information about an offender's criminal behavior over periods T1 through T5 and wants to predict criminal behavior over, say, a five-year period between T6 and T10. Our data, however, typically describe criminal behavior over the time periods T9 through T13 (assuming three-year prison terms). Therefore, we cannot use the probation/parole data to precisely measure the relationship of greatest interest to a prosecutor; this restriction on the statistical analysis, in conjunction with the problem introduced by multicollinearity, may account for the small relationship between index and recidivism.

This answer to the question "Why was the prior record index only marginally significant in the analysis?" causes us to answer the second question, "Should prior arrests records be deemphasized in selecting career criminals?", in the negative. On the contrary, the strong finding based on analysis of the CCH data leads us to recommend that prior arrest records, or alternatively conviction histories, be an integral ingredient of any selection strategy, and the results from the CCH analysis provide some insight into "how much" a past record should matter. The marginal effect here is more indicative of problems inherent in the data. When applied to a data set with fewer problems, i.e., CCH, the effect is much stronger.

NOTES

1. There does exist here an opportunity to effectively increase or decrease the relative importance of an individual's criminal record by assuming certain multipliers. For instance, for every robbery for which an arrest is made, assume that 2 actually occurred; 5 larcenies for each larceny arrest, etc. The problem with applying those weights, however, is that they arbitrarily attribute variation to individuals that properly belong to groups. The correct approach is to divide offender subject populations into crime groups in order that group differences may be taken into account.

2. Let A1 equal the age at first arrest and A2 the age at the instant arrest; then the length of the criminal career equals A2-A1. The regression results show that the length of time until rearrest equals +1.11A1 + 0.88(A2-A1). By rearranging terms, we can rewrite the expression as -.23(A2-A1) +1.11A2. In this latter formulation, it appears that the length of the criminal career increases the rate of recidivism, but only when the offender's present age is held constant. Note that it is possible to write the results as +.23A1 +.88A2, which says that holding constant the offender's current age, offenders who started their criminal careers earlier in life are more likely to recidivate. Holding constant the starting age, the older the offender the less likely he is to recidivate.

3. According to statistical theory (Johnson, 1973, pp. 159-168), multicollinearity reduces the likelihood that the index variable will be found to be statistically significant.

4. We attempted to fit the model for probationers alone, but this subset of offenders has very little variation in the variable "index" due to prevailing practices of sentencing offenders with prior criminal records to prison (Rhodes and Conly, 1981). We also employed interaction terms, but these terms could not overcome the basic problem that, for much of our sample, there are prolonged periods immediately prior to the follow-up period during which offenders are unable to demonstrate whether they have modified their tendency toward committing crimes. There appears to be no good way of overcoming this lack of information using the present data base.

V. EXTENDING AND APPLYING THE RESULTS: A SIMULATION EXERCISE

To this point, we have provided equations that predict the length of time between arrests for serious crimes. By making some additional assumptions, we can extend these findings to predict future crime. These assumptions are explicated and the extensions made in this section.

To begin, we extend the prediction equations to account for the number of arrests that occur over a five-year period. This extension requires two assumptions: that offenders will continue to offend at a constant rate over this period and that they will not be incarcerated. To the extent that these assumptions are violated, our calculations misstate the number of future arrests. We do not expect these biases to be great, however, as few arrests result in long prison sentences and the rate of offending is unlikely to decrease greatly over a five-year period.[1] Moreover, we are considering the amounts of crime committed over a hypothetical five-year period only as a bench-mark, not necessarily as an empirical reality. Having made these assumptions, we can write the expected number of arrests over a five-year period as A = 60/L, where L (the expected length of time until recidivism) equals F(X1...Xn). Next, a switching matrix can be used to anticipate the types of charges for which these arrests would be made, presuming that the switching matrix remains invariant over time (statistical tests revealed no great changes). Let Pij represent the probability that, if an instant arrest was for crime type i,

the first follow-up offense would be for crime type j. The probability that the second follow-up offense would be for crime type k is Pij times Pjk, and so on.[2]

The above calculations provide a measure of the expected number of arrests, by offense type, that are anticipated for offenders with characteristics Xl through Xn. Finally, to convert these arrests into offenses, we assume that the number of offenses per arrest remains constant over the five-year period and that these arrest rates are equal to those that were provided in Table III.1.[3]

The results of these calculations can be used to estimate the amount of crime committed by an offender with background characteristics Xl...Xn.[4] We make these calculations next and use them in proposing selection criteria for a career criminal program.

A. DECISION RULES FOR SELECTING CAREER CRIMINALS

The statistical results reported above provide mathematical formulas that predict recidivism, based on factors known about an offender at the time that his case is reviewed, at the time it is prosecuted, and at sentencing. If U.S. Attorney policy is at least partly predicated on the objective of reducing street crime, the formulas provide some guidance in selecting offenders for special handling at the points of screening, case preparation, and allocution.

However, in their present form the mathematical formulations are not very useful. For one thing, they are complicated and difficult to compute. For another, they

fail to provide a clear cutoff point that distinguishes a career criminal from a nonhabitual offender. Finally, recall that these data are not ideally suited to answering the question at hand; we propose to adjust our inferences accordingly.

In order to overcome these problems, we provide in this section some heuristic or demonstration guidelines, that are consistent with the statistical analysis. Guidelines that are actually adopted may differ from these heuristic guidelines in three ways. First, the guidelines might be modified in order to label more or fewer federal offenders as "habitual" than are so labeled by these demonstration standards. Second, it may suit policy purposes to modify the selection criteria, even though predictive accuracy may, thereby, be somewhat reduced. Third, guidelines may vary across U.S. Attorney offices in order to take into account differences in needs and resources. We return to these modifications later. In the following section, and later in this report,[5] we estimate the impact that the guidelines might have on the prosecution and control of street crime. The purpose of this exercise is not so much to provide actual guidelines as it is to suggest a simulation procedure by which the statistical analysis might lend itself to guideline development and assessment by policy makers.

We proceed in the following fashion: First, a career criminal is identified as an offender whose past record indicates that he belongs to a group of offenders who, on average, would be expected to recidivate within 40 months; that

CONTINUED

3 OF 4

is, the probability is at least .50 that the offender will recidivate within 40 months. According to our statistical analysis, the probability is .85 that an offender so identified will be rearrested at least once within the five year period. Choice of this 40-month period is arbitrary, and a policy maker may want to substitute his own criteria. Once this criteria is specified, the question is: What attributes must an offender possess to cause us to predict his recidivism as at least 50 percent likely within 40 months?

Drawing on the findings reported in the appendix, we assigned "points" to each aspect of an offender's background that pointed toward his recidivism. These points approximate the weights that were determined from the statistical analysis, but they are simplified to facilitate manual computations. Once an offender accumulates a sufficient number of points, he is identified as a career criminal, since we predict that he will recidivate within 40 months.

The proposed point scale is provided in Table V.1. Note that 47 points are needed to predict that an offender will probably recidivate within 40 months. To illustrate the use of this scale, suppose a 28-year-old offender is arrested for robbery. During the last five years he has had two other arrests, both for burglary. He has served a prior two-year sentence and, in addition, has received two earlier probation sentences. He tested positive for heroin, although there was no known history of alcohol abuse. His first known arrest was at age 20.

Table V.1
PROPOSED POINT SCORES FOR SELECTING CAREER CRIMINALS

Variable	Points
Heavy use of alcohol	+ 5
Heroin Use	+10
Age at time of instant arrest	
Less than 22	+21
23 - 27	+14
28 - 32	+ 7
33 - 37	0
38 - 42	- 7
43+	-14
Length of criminal career	
0-5 years	0
6-10	1
11-15	2
16-20	3
21+	4
Arrests during last five years	
Crimes of violence	4 per arrest
Crimes against property	3 per arrest
Sale of drugs	4 per arrest
Other offenses	2 per arrest
Longest time served, single term	
1-5 months	4
6-12	9
13-24	18
25-36	27
37-48	36
49+	45
Number probation sentences	1.5 per sentence
Instant offense was crime of violence*	7
Instant offense was crime labeled "other"**	-18

47 points:
Critical Value to Label an Offender
As a Career Criminal

*Violent crimes include homicide, assault, robbery, sexual assault and kidnapping.

**Other crimes include military violations, probation, parole, weapons and all others except arson, burglary, larceny, auto theft, fraud, forgery, drug sales or possession, and violent crimes.

13-616 O—83——18

This offender receives 10 points for the use of heroin. Due to his age, he receives an additional 7 points, and because his criminal career spans 8 years, an extra point. His two prior arrests for burglary and his instant arrest for robbery yield 10 more points. We add 7 more points because the instance offense was violent. Two years served in prison are worth 18 points; two prior probation terms net an additional 3.

This hypothetical offender has a total point score of 10 + 7 + 1 +10 + 7 + 18 + 3 = 56. He would qualify for a career criminal program, since his score exceeds the critical value.

B. USING ARREST RECORDS vs. CONVICTION HISTORIES

The proposed point scores for selecting career criminals may be problematic because it used past arrests as a criterion, whether or not these past arrests resulted in convictions. Although prosecutors frequently consider prior arrests during case screening, this practice may be objectionable in the view of some critics. Furthermore, it may be inappropriate to extend to written declination policies and legislation the broad discretionary powers generally granted to prosecutors in selecting cases for prosecution. Criteria for selecting career criminals that rely on convictions rather than arrests are in order, despite the fact that they may produce a higher rate of errors when selecting habitual offenders.

Unfortunately, the data available to this study did not provide accurate conviction histories; thus, it was impossible to directly predict the relationship between past convictions and future crime. We propose an ad hoc procedure for

converting the weights provided by Table V.1 into corresponding weights that pertain to convictions instead of arrests.

According to a recent study by Brosi (1979), conviction probabilities for felony and gross misdemeanor arrests ranged between 21 and 62 percent in five courts. These figures do not include convictions following case referrals for non-felony charges. If we assume for purposes of illustration that approximately 1 of every 2 arrests for serious matters results in a conviction, we might double the scores assigned to "arrests during the last five years" and count only arrests that result in convictions when selecting career criminals. Thereby, a past conviction for a crime of violence would be "worth" 8 points, a past conviction for a property crime would be "worth" 6 points, and so on. A total of 47 points would still label an offender as being habitual.

Brosi's findings reveal considerable variation in the rates at which arrests lead to convictions. Consequently, it seems reasonable that the points assigned to convictions would also vary across U.S. Attorney Offices. It might also be anticipated that conviction rates would vary by generic offense types; if so, the points assigned to convictions could be adjusted to take into account these additional variations. Our intent is not to actually provide these calculations, but simply to indicate that they can be made and that the proposed point score need not be dismissed simply because it was derived from arrest rather than conviction histories.

We repeat, this conversion from a point scale based on arrests to a point scale based on convictions is ad hoc, but we do not anticipate that it will greatly change the accuracy of the prediction equation. This conclusion follows from an assumed close correspondence between arrests and convictions, so that inflating the weights simply recognizes this correspondence and makes appropriate modifications for the differences in accounting units.

C. IMPACT OF THE PROTOTYPICAL DECISION RULES

As was stated earlier, the success of a career criminal program hinges on fulfillment of at least two conditions. First, it must be possible to distinguish career criminals from nonhabitual offenders. Second, career criminals thus distinguished must commit a sufficient number of crimes to make their special handling worthwhile. In this section, we attempt to judge whether the selection criteria proposed above identify a group of offenders who seem to account for a disproportionate amount of crime.

In making this judgment, we examined the probation/parole data and separated the offenders in those data into two groups. The first group consisted of offenders who satisfied the proposed selection criteria and the second group of those who did not. Having made these groupings, we used the statistical results to assess the number of crimes that the two groups would commit if they were allowed to remain on the street for five years following their federal arrests.

We conducted this exercise twice. In order to simplify the selection criteria, we developed rules that only approximately identify offenders who would recidivate within 40 months. It is, of course, possible to select a group of recidivists using an exact rule, based entirely on the statistical findings. Contrasting the results of applying the approximate selection criteria against the exact rule aids in judging how good an approximation is provided by the above selection criteria. Thus, we present both estimates in Tables V.2 and V.3.

Out of 1,708 offenders who were included in the probation/parole data base, the selection rules identified 200 offenders as career criminals by exact rule and 191 offenders by approximate rule.

For how much crime are career criminals and noncareer criminals responsible? Using the formula for measuring recidivism, noncareer criminals were estimated to commit an average of 19 (20 by approximate rule) serious non-drug related offenses over a five-year period. By comparison, career criminals seem to engage in much more crime. The average number of serious offenses committed over a five-year period is 895 (892 by approximate rule), of which 703 are drug related and 192 are non-drug related. It appears that the above rules distinguish between career and nonhabitual offenders and that the former group is responsible for many more offenses than the latter group.

We have made some estimates of the types of crime that career criminals would commit if they were to remain in the

Table V.2. SELECTION OF CAREER CRIMINALS BY EXACT RULE

	Non-Targeted Offenders		Targeted Offenders		All Offenders	
	Projected	Rate	Projected	Rate	Projected	Rate
Violent	1207.229	0.801	1854.237	9.271	3061.456	1.792
Person	130.861	0.087	179.085	0.895	309.947	0.181
Robbery	1001.475	0.664	1580.542	7.903	2582.024	1.512
Arson	838.343	0.556	1232.696	6.163	2071.038	1.213
Burglary	2434.904	1.615	3568.642	17.843	6003.560	3.515
Larceny	10437.833	6.922	13634.698	68.173	24072.402	14.094
Auto Theft	1663.596	1.103	1753.702	8.769	3417.283	2.001
Forgery	1800.614	1.194	1778.295	8.891	3578.911	2.095
Fraud	1377.583	0.914	1902.825	9.514	3280.402	1.921
Drugs	98305.352	65.189	140676.625	703.383	238981.844	139.919
Probation	2327.431	1.543	2710.411	13.552	5037.843	2.950
Weapons	604.782	0.401	1103.549	5.518	1708.327	1.000
Other	5117.538	3.394	6970.413	34.852	12087.962	7.077
Total	127246.117	84.381	178943.266	894.716	306186.250	179.266
Number	1508.		200.		1708.	
Percent Recidivating:						
Between Years 0-1	14.523		49.500		18.618	
Between Years 1-2	9.615		19.500		10.773	
Between Years 2-3	6.167		10.500		6.674	
Between Years 3-4	3.183		5.500		3.454	
Between Years 4-5	2.387		0.000		2.108	
No during follow-up	64.125		15.000		58.372	

Notes: Projected offense rates were derived from the prediction equations. Percent recidivating were the actual percent of offenders recidivating in the sample.

Table V.3. SELECTION OF CAREER CRIMINALS BY APPROXIMATE RULE

	Non-Targeted Offenders		Targeted Offenders		All Offenders	
	Projected	Rate	Projected	Rate	Projected	Rate
Violent	1282.232	0.845	1779.234	9.315	3061.456	1.792
Person	137.367	0.091	172.579	0.904	309.947	0.181
Robbery	1052.985	0.694	1529.031	8.005	2582.024	1.512
Arson	888.038	0.585	1183.001	6.194	2071.038	1.213
Burglary	2577.871	1.699	3425.677	17.935	6003.560	3.515
Larceny	11023.861	7.267	13040.663	68.318	24072.402	14.094
Auto Theft	1754.566	1.157	1662.731	8.705	3417.283	2.001
Forgery	1883.387	1.242	1695.522	8.877	3578.911	2.095
Fraud	1458.681	0.962	1821.728	9.538	3280.402	1.921
Drugs	105126.727	69.299	133855.359	700.813	238981.844	139.919
Probation	2452.632	1.617	2585.209	13.535	5037.843	2.950
Weapons	651.147	0.429	1057.184	5.535	1708.327	1.000
Other	5425.807	3.577	6662.147	34.880	12087.962	7.077
Total	135713.797	89.462	170475.984	892.544	306186.250	179.266
Number	1517.		191.		1708.	
Percent Recidivating:						
Between Years 0-1	14.766		49.215		18.618	
Between Years 1-2	9.427		21.466		10.773	
Between Years 2-3	6.262		9.948		6.674	
Between Years 3-4	3.230		5.236		3.454	
Between Years 4-5	2.373		0.000		2.108	
Not During Follow-up	63.942		14.136		58.372	

Notes: Projected offense rates were derived from the prediction equations. Percent recidivating were the actual percent of offenders recidivating in the sample.

community for a five-year period. Although our estimates are crude, they indicate that on average a career criminal is responsible for the following crimes: violent crime, including homicide and aggravated assaults (9); other crimes against persons including rape (1); robbery (8); arson (6); burglary (18); larceny (68); auto theft (9); forgery (9); fraud (10); drugs (703); probation/parole violation (14); weapons (6); and other (34).

Of course the above breakdown represents a composite picture; no one offender is likely to commit all these types of offenses. Additionally, we had no good multiplier for arson, so the estimate for arson is suspect, as is the estimate for probation/parole violations, an arrest type that actually represents many different types of offenses. Despite these limitations, the estimates appear reasonable given prior research findings about the rate at which criminals commit crimes.[6]

Another way to state these estimates is that the 200 career criminals in our sample would, if they were to remain on the street for five years, commit 179,000 crimes, including the following: 1,854 violent crimes, 179 other crimes against persons, 1,581 robberies, 1,232 arsons, 3,569 burglaries, 13,635 larcenies, 1,754 auto thefts, 1,779 forgeries, 1,903 frauds, 140,677 drug violations, 1,104 weapon violations, and 8,885 other offenses, including probation and parole violations.

It is worth repeating the caveat that these estimates are unlikely to be highly accurate. Nevertheless, even if they are considered to be rough estimates, they seem to lead to two

conclusions: guidelines can be developed to distinguish career criminals from other offenders for whom crime is more occasional and sporadic; and the number of serious crimes committed by career criminals would seem to justify their special handling.

Earlier in this report, we identified a concern with false positives: persons who were predicted to recidivate but who did not. Using the above decision-making rules, how frequently would we err in selecting as career criminals offenders who did not, in fact, recidivate?

The rules seem to do a good job in avoiding false positives. When the exact rule was applied, only 15 percent of the career criminals failed to be arrested for a serious crime over the five-year follow-up period. Almost half were rearrested by the end of the first year, another 20 percent were rearrested by the end of the second year, and 11 percent more were rearrested by the end of the third year. In contrast, two of every three non-career criminals avoided arrest over the entire five-year period. Of those noncareer criminals who were rearrested, 40 percent were arrested during the first year, another 27 percent in the second year, and 32 percent during the next three years.

Statistical theory causes us to believe that the above figures somewhat overstate the formula's predictive ability due to "shrinkage" (Kerlinger and Pedheuzer, 1973), but we do not anticipate the bias to be so great as to invalidate an important conclusion: The selection criteria proposed above

sometimes err in identifying offenders who will recidivate, but the risk of false positives does not appear to be so great as to discredit the attempt to label a subset of offenders as habitual, or career, criminals.

NOTES

1. In an analysis of the length of criminal careers, Michael Green, in a doctoral dissertation ("The Incapacitative Effect of Imprisonment Policies on Crime, "Carnegie-Mellon University, April 1977, unpublished), reported a good fit for exponentially distributed career lengths with means of about 12 years. This finding implies that two out of three active offenders will still be active 5 years in the future. (Reported by Blumstein and Cohen, 1979, p. 563.)

2. In terms of matrix algebra, let A1 represent a vector of the expected number of arrests for offense types a1 through an, let P represent a crime switching matrix and let A0 represent a vector with one element equal to 1 to represent the instant offense, and with all of the other elements set equal to zero. Then A1 = P*A0, where * denotes multiplication. Similarly, A2 = P*P*A0 =P**2*A0, where ** denotes exponentiation. By extension, An = P**n*A0. For a discussion of Markov chains used in this context, see Figlio (1981).

3. Let R represent a vector of offense rates per arrest and let O1 represent a vector of offenses associated with the first arrest. Then O1 = R*A1 = R*P*A0. Likewise, On = R*An = R*P**n*A0.

4. A problem arises concerning how to deal with partial time periods. To illustrate, if the offender recidivates after 40 months, over a 60-month period the expected value of the number of arrests equals 60/40 = 1.5. To deal with this fractional year, we set total arrests equal to A1 + .5*A2.

5. See the simulation studies, this chapter and Chapter VI.

6. Using interviews with 52 incarcerated federal offenders who were convicted of street crimes, Boland (1980) concluded that federal offenders commit about 19 serious crimes per year "on the street." Younger offenders seem to commit somewhat more and older offenders somewhat fewer. This figure implies approximately 100 crimes over a five-year period, which is fewer than we predicted would be committed by career criminals, but more than we estimate would be committed by noncareer offenders. Of course, Boland's interviewees were not as select a group as were our career criminals, so her figures are consistent with ours.

Similarly, drawing on interviews with a sample of 49 incarcerated offenders in California prisons, Petersilia et al. (1978) reported that incarcerated California offenders committed about 20 crimes per year on the street. Again, these offenders were not necessarily career criminals, and thus they would be expected to commit somewhat fewer offenses. In a larger study, Peterson et al. (1978) interviewed 624 California inmates and reported that "high rate" offenders committed on a

yearly basis an average of 9 robberies, 22 cons, 28 burglaries, 9 forgeries, 7 car thefts, 229 drug sales, 5 aggravated assaults, 11 other assaults, 3 attempted murders, and 3 rapes. These crime numbers are higher than we estimate for our group of career criminals, but Peterson had the luxury of selecting the "high rate" offenders retrospectively, a procedure more likely than our statistical procedure to identify the most serious recidivists.

VI. ESTIMATING THE NUMBER OF CAREER CRIMINALS: A SIMULATION EXERCISE

It is difficult to arrive at estimates of the number of habitual offenders who might be handled by a federal career criminal program. First, available data do not afford a direct enumeration. Second, there is no universally accepted definition of the term "career criminal"; the definition proposed in this report is tentative. Third, we can only speculate about the effect that a career criminal program might have on declinations. Nevertheless it is possible to provide estimates, given alternative assumptions about federal prosecution. We developed a simulation model that allowed alternative assumptions to be built into estimates of career criminal prosecution. This model is available "on line" at INSLAW. Results from the model are discussed in this section.

As stated above, available data do not lend themselves to enumerating career criminals. What is needed is a sample of federal defendants that provides, on a case-by-case basis, information about those variables included in the selection criteria. Such data do not exist.

In lieu of direct measurement, it was necessary to estimate the population of career criminals inferentially. To draw these inferences, we relied on two distinct data bases. The first data base consisted of approximately 600 presentence investigation reports for each of five federal offenses: homicide, bank robbery, forgery, mail fraud and drug sales. Since the PSIs provided all the information that was required

by the prediction equation, and because we felt that these PSIs were representative of these five offense types throughout the federal district courts, we were able to estimate the proportion of convicted offenders who are also career criminals. Multiplying these proportions by the total number of defendants who were convicted of homicide, bank robbery and so on provided estimates of the total number of convicted habitual offenders for each of these five offense types.

Unfortunately, the PSIs were available for only these five street crimes. In order to estimate the number of habitual offenders for other crimes, we noted that the parole data were a representative sample of federal offenders who were convicted of street crimes and sentenced to prison terms in excess of one year.* Likewise, the probation data were representative of convicted federal offenders who were sentenced to terms of one year or less, including probation and split sentences. Knowing the proportion of career criminals within each group made it possible to infer the number of career criminals in the population of convicted federal defendants.

Using the parole data, we calculated for each of 9 offense types (exclusive of the offense types for which we had PSIs) the proportions of offenders who qualified as career criminals. Multiplying these proportions by the actual number of people sentenced to prison for terms in excess of one year

*A warning is in order: the sample was dated, as these offenders were released in 1970-71 and thus entered prison during an earlier time.

provided estimates of the number of career criminals sentenced to lengthy prison terms during a single year.[1]

In the same way, we used the probation data to determine the proportion of these latter offenders--for each of the 9 offenses--who would be designated as habitual. These proportions were then multiplied by the total number of offenders sentenced to terms of not more than one year, providing estimates of the number of habitual offenders in this latter group.

Since the above calculations included only convicted offenders, the estimates were adjusted by dividing them by the probability of conviction, again on an offense-by-offense basis. After inspecting data from the Administrative Office of the U.S. Courts, we found that defendants with extensive prior conviction histories were more likely to be convicted than were other defendants. Thus, we calculated separate conviction probabilities for defendants who had served prior terms in excess of one year and defendants who served terms of less than one year, including probation, and no prior sentences. The former probabilities were applied to career criminals; the latter probabilities were applied to nonhabitual offenders.

Dividing the estimated number of convicted career criminals by the probability of conviction yields an estimate of the number of career criminals prosecuted in the federal district courts. These computations yielded an estimate of over 1,700 career criminals per year using fiscal '80 figures for the U.S. Courts.

Before accepting this figure as an accurate reflection of the number of career criminals who might be processed by the U.S. Attorneys, note that the number of federal prosecutions for street-type offenses has decreased by 30-40 percent since 1975. This decrease has been attributed to policy changes within the Department of Justice rather than to a reduction in the number of federal offenders. If we assume a reversal of this policy, at least for habitual offenders, the number of career criminals might increase. We cannot, however, be very sure of this increase because the overall 30-40 percent decrease in criminal cases may not include a proportionate number of cases of habitual offenders. The decrease in filings was probably greatest for less serious crimes and for offenders with trivial or nonexistent prior criminal histories. Therefore, our calculations are provided merely to illustrate the use of the simulation model.

Estimating the number of career criminals by assuming that case filings for habitual offenders increases by 50% yields an estimate of around 2,600 federal career criminals. This figure may underestimate the number of offenders who would be prosecuted under a federal career criminal program. Federal investigatory agencies may anticipate the types of cases that U.S. Attorneys accept (Hausner et al., 1981; Eisenstein, 1979). Although U.S. Attorneys often take an offender's criminal history into account when considering prosecution (Hausner et al., 1981; U.S. Dept. of Justice, 1979), no explicit attention is given to identifying and prosecuting

career offenders. Were these offenders to be targeted, and that policy articulated to federal and local investigatory agencies, the number of offenders who are prosecuted as career offenders could expand beyond the above estimates.

It is possible to estimate the costs, in terms of assistant U.S. attorneys, required to process this case volume. In order to make this assessment, we draw on "case weights" developed in an earlier study [Rhodes and Hausner, 1981]. These case weights provide the average number of attorney hours required to process each case type, according to the method of disposition, and adjust for office overhead. Our calculations indicate that during 1980 the prosecution of street type offenses required approximately 706 attorneys per year, of whom approximately 89 were involved with career criminal prosecution. To put these figures into perspective, during 1980 there were approximately 1,729 full-time U.S. Attorneys, assistant U.S. Attorneys and paralegals employed across the country. Consequently, 41 percent of this manpower was spent prosecuting street type offenders; 5 percent was devoted to handling the cases of career criminals.

Assume a 50 percent increase in the number of career criminal prosecutions. Such an increase might arise from modifications of declination policies designed to prioritize career criminal cases. Or such an increase could result from an expanded federal jurisdiction over habitual offenders. What would be the consequences in terms of attorney needs?

13-616 O—83——19

Obviously, if prosecution increased by 50 percent, the required attorney input would increase proportionally. This requires a 2.5 percent increase in the number of assistant U.S. Attorneys. Although recent budget constraints probably preclude any additional attorney inputs, these figures do provide reasonable estimates of the following: (a) the amount by which other types of cases should be cut back or (b) the reduction that might occur overall in the expenditure made on other types of cases.

The processing of career criminals might be more selective than we have assumed. Suppose, for instance, that only the number of habitual offenders who were charged with robbery or burglary were increased. A doubling of the number of career criminal robbers and burglars would require 9 additional attorneys. A tripling would necessitate 18 additional lawyers, and so on.

We also thought that it was reasonable to anticipate that, by prioritizing the processing of career criminal cases and enhancing the sentences administered to serious offenders, disposition patterns might be modified for the cases of habitual offenders. We note that career criminals already go to trial more frequently than their nonhabitual counterparts. How would attorney resource needs change if these trial rates increased?

Suppose trial rates were to increase by 50 percent while prosecutions were increased by 50 percent. According to our estimates, this change would require 49 attorneys beyond current manpower allotments.

Again, the fact that a career criminal program might increase the number of attorneys who are assigned to the cases of habitual offenders does not necessarily mean that the number of assistant U.S. Attorneys need be expanded, nor does this report imply that such an expansion would be desirable. Instead, our intention is to provide some reasonable estimates of manpower needs that must be derived from (a) increasing the number of attorneys, (b) redirecting attorneys toward cases that have a higher priority in the federal system, (c) reducing the amount of attorney effort that is expended, on average, on criminal and civil cases, or (d) some combination of the above. The correct combination depends on the perceived benefits of a career criminal program, the relative perceived benefits from other applications of attorney time, and overall resource constraints applicable to the U.S. Attorneys. Additionally, it is reasonable to suppose that the selection criteria will vary across U.S. Attorney Offices, thereby being tailored to local priorities and constraints.

NOTES

1. The source of these data was the fiscal year 1980 Annual Report of the Administrative Office of the United States Courts. These figures do not include offenders convicted in state courts.

VII. SENTENCING CAREER CRIMINALS: A SIMULATION EXERCISE

It is difficult to estimate the number of career criminals and the associated costs and benefits resulting from career criminal prosecution. The requisite data are unavailable to provide accurate estimates of the number of habitual offenders who are at present handled in federal district court. Nor do we have a good sense of how the prosecution of serious offenders might be enhanced by special targeting.

We are on firmer ground when estimating the policy implications of enhancing the sentences imposed on habitual offenders. From a study of sentencing in federal district court, we can accurately predict the length of time served, given existing sentencing practices, for offenders who were convicted of any of the following offense types: bank robbery, forgery, drug sales, homicide, and mail fraud. These predictions take into account the offender's criminal history, the magnitude of his crime, aspects of his processing (such as conviction by guilty plea rather than trial) and his social background (such as his employment). Note that the estimates are for time served, rather than sentence imposed. This fact is of importance given our concern with the offender's incapacitation, rather than his sentence per se.

Knowing the length of time that the offender serves, we can estimate the number of crimes committed by an offender over a hypothetical five-year period. This estimate is derived from the statistical analysis reported in this paper. For present

purposes, we are interested only in estimating the number of crimes over the period of time that the offender is actually "at risk." The time at risk equals five years minus the length of time served.

Having completed this calculation for every offender in a crime type sample (such as the forgery sample), we can aggregate the total amount of crime that this sample of offenders would be expected to commit over the five year period. The purpose of this calculation is to allow us to estimate the comparable amount of crime that would be committed by all offenders if sentencing and parole practices were modified to enhance the time served by habitual offenders.

In order to draw this comparison, we developed a simulation model that allows the user to specify the definition of a career criminal and the length of time that an offender so defined is expected to serve (see appendix A, section G). This enhanced sentence is in the form of a mandatory minimum, which is also assumed to be the actual time served, with one exception. If estimated time served is in excess of the mandatory minimum, the offender is actually expected to serve the predicted sentence.

The utility of the simulation is twofold. First, it provides an estimate of crime prevention attributed to imposing mandatory prison terms on career criminals. Second, it provides an estimate of the amount of additional prison time, in the aggregate, served as a consequence.

Although the offender samples are not random, they are representative of the population of convicted offenders.

Therefore, in order to extend these findings to the entire federal system, it is necessary to multiply the crime estimates and prison time estimates by the ratio of total offenders convicted of a given crime type to the size of the sample. Representative calculations are provided below; the simulation model itself is described in the appendix, and is available on-line at INSLAW.

We use the sentencing of forgers as the first illustration. If the 611 people who were included in the forgery sample were at liberty for five years following their federal convictions, they would commit an estimated 46 thousand serious crimes, not counting drug offenses. In fact, just about half of all forgers serve some prison time and this period of incapacitation (an average of 7.5 months per offender) reduces crime to about 35 thousand offenses. This decrease of 11 thousand serious crimes is "purchased" at a price of 382 years of jail and prison.

Defining a career criminal as a convicted offender who would likely recidivate within 40 months if released from federal custody, 148 of the 611 forgers would be labeled "habitual." Imposing a mandatory five-year prison term on habitual offenders would nearly triple the incapacitation effect of punishment, from 11,000 crimes prevented to 26,000 crimes prevented. Time spent in prison would increase correspondingly, from 382 to 949 years.

To convert these numbers into national figures, we note that 1,939 offenders were convicted of forgery during fiscal

year 1980 (U.S. District Courts). This figure is 3.17 times the sample size, so we multiplied the crime and prison numbers by 3.17. According to the resulting calculations, serious crimes would be reduced by 83 thousand while prison time would be increased by 18 hundred years, or almost 4 years per habitual offender.

The imposition of a mandatory minimum five-year sentence for career criminals has a smaller impact on crime for the other four offense types. There are two reasons for this finding.

First, robbery and homicide are seen as being so serious that most offenders already serve lengthy prison terms. For these two offenses, people with serious prior records routinely serve at least five years, leaving little room for a mandatory minimum sentence to work.

According to our calculations, the 1,262 robbers convicted in 1980 would serve an average term of 4.7 years each and a group total of 5,918 years in federal prison. In the aggregate, the incapacitation of robbers reduced crime by 94 percent, from 156 thousand to 10 thousand crimes. Imposition of a mandatory minimum prison term reduces crime modestly, by about 4 thousand serious crimes, and increases prison time slightly by 145 years (about 4 months per career criminal).

Similar results were derived for homicide. A total of 108 people were convicted of homicide during 1980, resulting in about 489 years of prison time, or an average of 4.5 years per offender. Prison sentences are expected to reduce crime by about 88 percent, from about 6 thousand to about 7 hundred. A

mandatory minimum term of five years, to be imposed on habitual offenders, would further reduce crime and increase prison time by a negligible amount.

A second reason why a mandatory minimum sentence has a lesser impact when applied to offenders other than forgers is that these other groups contain, proportionally, fewer career criminals. In our sample of 417 people convicted of mail fraud, only 38 were identified as habitual offenders. On average, prison terms equaled 7.4 months, and given 981 federal convictions, mail fraud offenders account for 605 years of prison time. As a result of incapacitation, crime falls by 18 percent--from 28 thousand to 23 thousand.

Even though few mail fraud offenders were deemed habitual, the effect of a mandatory minimum term is not trivial. The mandatory term increases prison time by an average of 4.4 years per convicted career criminal and by 393 years nationally. The result is a reduction in crime by about 95 hundred offenses.

We also found that very few (42) of 628 drug violators were career criminals. Nevertheless a mandatory prison term decreased the amount of crime significantly. A total of 4,749 offenders were convicted under provisions of the Drug Prevention and Control Act during 1980. Without incarceration, we estimate that these offenders would commit nearly 143 thousand serious crimes exclusive of drug related offenses. A drug conviction results, on average, in a 1.4-year prison term and thus results in about 6,800 prison years. The effect of this incapacitation reduces crime to 86 thousand offenses. By

imposing a mandatory minimum prison term on habitual offenders, crimes would fall to about 42 thousand offenses, while prison use increases by 745 years (approximately 2 years per career criminal).

In summarizing the above figures, we wish to make several points:

1. By focusing attention on career criminals, with the result that they receive longer sentences, crime can be significantly reduced.

2. The crime reduction would be accompanied by an increased use of prison time unless the time served by nonhabitual offenders was proportionately reduced. This reduction may be appropriate, especially for offenders who appear very unlikely to recidivate.

3. A career criminal program that concentrated on offenders who were convicted of only the most serious offenses, such as homicide and robbery, would have the least impact on crime. This conclusion follows because these offenders already serve lengthy prison terms. Sentencing enhancements would have very little effect on real time served. Instead, sentencing enhancements are most effective when applied to offenders whose criminal history seems to reveal extensive involvement with crime, but whose present offense is likely to result in a prison term of less than five years.

4. Finally, we note that, as a rule, people who were convicted of drug offenses during the late 1970's were found significantly less likely to be career criminals than people who were convicted in the late 1960's and early 1970. We assume that this finding is a consequence of a shift in federal policy toward prosecuting large-scale drug dealers who have modest criminal records at the expense of not prosecuting small-scale dealers who have extensive records. This example illustrates why it is so difficult to predict the number of career criminals who could be prosecuted. If declination standards return to 1970 form, at least for habitual offenders, mandatory minimum sentences for drug offenders could have an impact that is much greater than is indicated by the above simulations. Likewise, it seems reasonable to anticipate that, as the prosecution of career criminals expands, the return from a mandatory minimum sentencing rule could have a more significant impact on crime than our estimates indicate.

APPENDIXES

TECHNICAL PROCEDURE FOR ESTIMATING RECIDIVISM

The basic problem was using a limited data set to determine empirical correlates of recidivism. These empirical correlates could then be translated into policy statements.

A. DESCRIPTION OF THE DATA

There were three sources of data. The largest of these was the FBI's Computerized Criminal History (CCH) files. These are the data that are used by federal, state, and local agencies to produce "rap sheets" for arrestees. Ideally, they contain all pertinent information about each arrest--when, what for, and the case outcome, along with the age, sex, and race of the offender. These data were used to construct an arrest time series for 9,205 offenders.

The other two data sets were somewhat smaller, but contained more extensive information. Both were coded from presentence investigation records as part of federally funded research projects. The first data base pertained to parolees released after serving terms in excess of one year; the second pertained to probationers who were released after serving sentences of not more than one year in jail and included straight probationers. CCH information was obtained for all of the probation subjects and for most of the parole subjects (see below for exceptions). Both the parole and probation data contain, in addition to the appended CCH data, information on an "instant" federal arrest--the one that puts the subject into the data base--as well as data on arrests and imprisonment from a six-year follow-up period and voluminous information about

the offender. The task was to make use of this large amount of data to develop a model that accurately predicted whether the offender would commit offenses during the follow-up period.

B. COMPUTING AN INDEX OF PRIOR RECORD

The analysis proceeded in stages. To begin with, the parole and probation data bases represent too small a sample to make full statistical use of all of the prior arrest and personal information. However, the CCH information appended to these data were essentially identical in character to the much larger but more limited (i.e., containing fewer variables) CCH file. Therefore, we used the CCH file to construct an index of recidivistic tendency based solely on age and prior record. The resulting parameters were then applied to the CCH information available in the parole-probation data base to construct an instrument variable called "index." Below we describe the estimation of index, and then the use of the index in the larger problem.

1. Estimating Time Served

The analysis required, among other things, an estimate of the amount of time each individual was incarcerated during each year prior to the instant federal arrest. As an exdogenous right-hand variable, time in prison mitigates the offender's opportunity to commit crime and get arrested. Therefore, it was important to have a measure of time served. Since time served was available only for a limited sample of sentences, it had to be estimated, and these estimates were used in place of actual time-served figures.

The two data sets, (a) parole data with CCH data appended and (b) probation data with CCH appended, were merged and separated into two data bases. These were distinguished by:

(c) maximum sentence 0, and maximum sentence 12,

(d) maximum sentence = 0 or maximum sentence 12.

Using data base (c), we estimated the following regressions for every sentence where both time served and sentence length were known:

$$TS = .20898 + .67334\ (MAX)$$

$$s.e. = (.034)$$

$$R\text{-}SQD = .6764$$

where TS = time served and MAX = maximum sentence.

Using data base (d) we estimated that

$$TS = 9.75 + .30(MAX) + 34.07(L) + 8.79(D) - .0004(MAXSQD)$$

$$s.e. = (.018)\quad (4.018)\quad (1.670)\quad (0.001)$$

$$R\text{-}SQD = .2999$$

where L = 1 for a life sentence, D = 1 when MAX = 0 or the sentence is indeterminate, and MAX = 0 if L = 1 or D = 1 and MAXSQD = MAX x MAX.

A bias exists in the above data base. Basically, the kinds of information provided by the probation and parole data sets are comparable. However, for a subset of the parole data, namely those offenders having fewer than six arrests in the follow-up period, and not having served at least 30 days in jail during the follow-up period, the rap sheet data were not obtained. Consequently, the data base excludes the "less active" offenders from the parole data. This bias has an

impact on the estimation discussed at the end of this section, but should not be problematic here. Since we are dealing only with the instant offense and prior offenses rather than follow-up period arrests, there is no a priori reason to expect that time served for the instant arrest will differ among offenders having different prospective future criminal activity. The exclusion does not have an effect later on, however, and is discussed more fully below.

2. Estimating Case Processing Time

Once we knew the length of time served, we needed to know when the sentence began. The CCH file does not, as a rule, indicate when a criminal case is terminated (the point where we assumed that a sentence commenced), although the arrest data is routinely recorded. Thus, we searched for an estimate of case length for cases ending in conviction, and ultimately for an estimate of the case termination date derived by adding the case length estimate to the arrest data. Using CCH data containing 13,050 observations, we attempted to use multivariate analysis to estimate the amount of time required to go from arrest to disposition, but the data lacked sufficient exogenous factors to explain disposition time. The nature of the disposition itself, in fact, was usually blank. Therefore, for cases in which the arrest and/or disposition data were absent, the median (the data were highly skewed) disposition time for the offense class was used as an estimate of disposition time.

The following classes and median times were used:

Military offenses (desertion, draft evasion)	144 days
Homicide and aggravated assault	87 days
Sexual assault and crimes against person	115 days
Robbery	109 days
Arson	100 days
Burglary	95 days
stolen property offenses	76 days
Automobile theft	66 days
Forgery	95 days
Fraud	87 days
Drug offenses (possession and sale)	129 days
Probation, bail, and parole violations	49 days
Weapons violations	93 days
All others	76 days

Using the above estimates, time served (always estimated) and disposition time (sometimes estimated) were combined to estimate release dates, asserting the date of disposition as the date on which incarceration began. For each month of each year, we used this information to decide whether the offender was in or out of prison. Thus, for each offender, we produced a data element between 0 and 12 indicating the numer of months that the offender spent in prison each year.

3. Estimating Index Parameters

Using the time-served estimates, we next constructed a data base using FBI rap sheet data. Using a 20 percent sample of offenders arrested for a federal offense in 1976, we used an arrest in 1975 as a dependent variable. Independent variables were the number of arrests for specific offenses during each year from 1961 to 1974, the number of months spent in prison during each period (allowing arrests beginning in 1955 to be used in the estimation of time served, and not basing any 1975 prison time on 1975 arrests), and age, sex, and race.

The dependent variable, arrest in 1975, initially was available as the number of specific offenses (14 types) for which arrests occurred during 1975. Grouping arrests by these 14 offenses, however, left several groups with too few observations for estimation and compounded estimation problems. Consequently, we did not attempt to differentiate rearrests by type, except to limit rearrests to serious street crimes.

The first regression specification used the total number of offenses committed during 1975 as a dependent variable. The overall R-Square was high; however, criminal activity in 1975 could be severely restricted for defendants imprisoned for offenses committed early in 1975, biasing downward the observations for subjects with high recidivistic potential by introducing a serious specification error into the model. So we reformulated the independent variable as whether the subject recidivated at all in 1975--0 for no, 1 for yes. Tests using this formulation presented considerably fewer estimation problems.

Using the binary instance of arrest/no arrest in 1975, we used ordinary least squares regression to develop an explanatory structure. Given our application of the results, the robustness of OLS regression in this context, and the ease of using existing computer software, we chose not to use theoretically superior estimation techniques such as probit or logit. Initial tests showed that neither sex nor race were systematically correlated with recidivism--in multivariate

tests and in isolation. Age, however, showed a relatively high correlation and had a number of implications for further estimations.

Age appeared to have a complex interaction with other independent factors, as well as with recidivism. Dividing the population along age lines revealed a statistically significant difference in parameters for the right-hand variables. An F-test confirmed structural differences across the age groups, although given the large sample size, we were not convinced that the substantive meaning of this finding was great.

4. Choosing a Lag Structure

Far and away the most consistent predictor of criminal activity in time t is the occurence of an arrest at time t-1. Of less value, but still relevant in decreasing proportions, are arrests occurring in periods t-2, t-3, t-4, and so on. Simple correlations between the number of crimes in each t-nth period and the instance of an arrest in period t showed a downward-sloping curve from t-1 to t-6, with little consistent correlation beyond t-6 (testing t-1 to t-14).

There were some weak additional effects from earlier time points. These effects, more cumulative in nature, were formulated as the sum of past crimes more than six years old:

$$t-7 + t-8 + \ldots + t-14.$$

No systematic correlation seemed to exist between prison time served (for the same series of lags) and the dependent variable. Introduced as a control, prison in t-1 theoretically

13-616 O—83——20

explains why an individual with high recidivistic potential does or does not get arrested in t-1 (i.e., being in prison precludes rearrest). In tests, however, no discernible lag was identified, perhaps because time served could only be estimated.

Using the lag structure identified above for crime, we tested the extent to which the effects could be described by a polynomial, using an Almon lag scheme. As a first approximation, we tested a 3-degree polynomial. Here, each degree of the equation represents a linear combination of weighted lagged observations of the right-hand variable. Rather than describing the relationship with n-lagged coefficients, the Almon scheme attempts to mathematically describe the effects of past periods by approximating their curvilinear structure, using m+1 coefficients, where m is the degree of the polynomial. Simply, where n=3 and m=3, we start with

$$Y = a + b1(Ct-1) + b2(Ct-2) + b3(Ct-3) + e,$$

which becomes

$$Y = a + d1(A0) + d2(A1) + d3(A2) + d4(A3) + e$$

where A0 = (Ct-1) + (Ct-2) + (Ct-3)
A1 = 1*(Ct-1) + 2*(Ct-2) + 3*(Ct-3)
A2 = 1*(Ct-1) + 4*(Ct-2) + 9*(Ct-3)
A3 = 1*(Ct-1) + 8*(Ct-2) + 27*(Ct-3)

where Y is the dependent variable, b1 - b3 are the estimated coefficients from the untransformed factor C for time t-1 through t-3, the d's are the coefficients for each degree of the polynomial, and the A's are the linear combinations of the degree-weighted lagged C's.

We tested this formulation several ways, first performing the Almon transformation on both crime and prison. Prison was not significant beyond a simple linear combination (A0).

Crime, however, was significant both in the linear and first degrees. The second and third degrees were insignificant. The most consistent results were obtained using the following general specification:

$$Y = a + b1(AGE) + b2(Pt) + b3(PSUM1) + b4(PSUM2) + b5(A0) + b6(A1) + b7(CSUM) + e$$

where:

Y = 1 if any arrests occurred during 1975, otherwise 0
AGE = the offender's age at the time of arrest
Pt = Months in prison in 1975
PSUM1 = Months in prison 1969-1974
PSUM2 = Months in prison 1961-1969
A0 = Number of arrests in 1969-1974
A1 = Number of arrests in 1969-1974, summed as C(1974) + 2C(1973) + 3C(1972) + 4C(1971) + 5C(1970)+ 6C(1969)
CSUM = Number of arrests in 1971-1969.

This specification was used for each of six age groupings, 20-25, 26-30, 31-35, 36-40, 41-50, and 51+. Because they do not have adult criminal histories and juvenile histories are unavailable in the CCH data, we excluded offenders 19 and under from the analysis, since it would have been virtually impossible to separate the true effects of age and prior record for this group.

Finally, after an empirical examination of crime switching (discussed subsequently), we divided the right-hand arrest variables into four general offense categories--violent, property, drug, and other. In general, the offenders in the data base show considerable degrees of crime switching, i.e. offenders do not tend to specialize; however, there was some consistency within these four general categories.

In subsequent analysis, we classified right-hand arrest variables by the four major offense groupings and performed Almon transformations for the offense histories within each crime category. This specification was (with betas omitted for simplicity):

Y =F(AGE, PT, PSUM1, PSUM2, AV1, AV2, AP1, AP2, AD1, AD2, AO1, AO2, CSUMV, CSUMP, CSUMD, CSUMO),

where the variables are as specified above, and V, P, D, and O indicate violent, property, drug, and other arrests, respectively. The results of those estimations are shown in Tables A.1a through A.1g.

Table A.1a. All Ages

Variable		Coefficient	Standard Error	T	P (2-tail)
Intercept 0.26558					
AGE	1	-0.00380	0.000	-8.947	-0.000
PT	3	-0.00374	0.003	-1.095	0.273
PSUM1	4	0.00148	0.001	2.765	0.006
PSUM2	5	0.00240	0.001	4.481	-0.000
CSUMV	6	0.00137	0.009	0.153	0.879
CSUMP	7	0.00788	0.004	1.997	0.046
CSUMD	8	-0.00994	0.009	-1.121	0.262
CSUMO	9	0.00909	0.005	1.934	0.053
AV0	10	0.09113	0.018	5.199	-0.000
AV1	11	-0.01423	0.005	-3.101	0.002
AP0	12	0.06978	0.007	9.328	-0.000
AP1	13	-0.01022	0.002	-4.807	-0.000
AD0	14	0.09134	0.011	8.007	-0.000
AD1	15	-0.01625	0.003	-4.986	-0.000
AO0	16	0.04847	0.010	4.908	-0.000
AO1	17	-0.00746	0.003	-2.853	0.004
MULTIPLE R-SQUARE 0.1086					

Table A.1b. Age 21-25 Years

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT 0.36442					
AGE	1	-0.00795	0.005	-1.622	0.105
PT	3	0.00069	0.006	0.108	0.914
PSUM1	4	0.00205	0.001	1.508	0.132
PSUM2	5	-0.00488	0.017	-0.294	0.768
CSUMV	6	-0.04399	0.071	-0.623	0.533
CSUMP	7	0.03074	0.044	0.691	0.489
CSUMD	8	0.10819	0.139	0.780	0.436
CSUMO	9	0.10023	0.044	2.280	0.023
AV0	10	0.11066	0.031	3.581	0.000
AV1	11	-0.02279	0.009	-2.418	0.016
AP0	12	0.06961	0.015	4.683	0.000
AP1	13	-0.01122	0.005	-2.302	0.021
AD0	14	0.04176	0.023	1.845	0.065
AD1	15	0.00317	0.007	0.454	0.650
AO0	16	0.03950	0.019	2.091	0.037
AO1	17	-0.00443	0.005	-0.809	0.418
MULTIPLE R-SQUARE 0.0893					

Table A.1c. Age 26-30 Years

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT 0.39911					
AGE	1	-0.00890	0.007	-1.259	0.208
PT	3	-0.01318	0.007	-1.997	0.046
PSUM1	4	0.00387	0.001	3.905	0.000
PSUM2	5	0.00705	0.002	4.164	0.000
CSUMV	6	-0.00016	0.017	-0.009	0.993
CSUMP	7	-0.00747	0.009	-0.838	0.402
CSUMD	8	-0.04762	0.022	-2.122	0.034
CSUMO	9	0.01348	0.012	1.153	0.249
AV0	10	0.12361	0.035	3.517	0.000
AV1	11	-0.02333	0.009	-2.592	0.010
AP0	12	0.07578	0.014	5.414	-0.000
AP1	13	-0.01144	0.004	-2.959	0.003
AD0	14	0.09985	0.020	5.116	0.000
AD1	15	-0.01880	0.005	-3.479	0.001
AO0	16	0.02949	0.021	1.413	0.158
AO1	17	-0.00294	0.006	-0.522	0.602
MULTIPLE R-SQUARE 0.1468					

TABLE A.1d. Age 31-35 Years

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT		-0.31366			
AGE	1	0.01367	0.008	1.617	0.106
PT	3	-0.00886	0.008	-1.062	0.289
PSUM1	4	0.00188	0.001	1.450	0.147
PSUM2	5	0.00166	0.001	1.439	0.150
CSUMV	6	0.00625	0.017	0.377	0.706
CSUMP	7	0.01073	0.009	1.246	0.213
CSUMD	8	0.01444	0.021	0.693	0.489
CSUMO	9	0.00899	0.010	0.907	0.365
AV0	10	0.05345	0.052	1.034	0.302
AV1	11	-0.00896	0.012	-0.741	0.459
AP0	12	0.08253	0.019	4.332	0.000
AP1	13	-0.01384	0.005	-2.716	0.007
AD0	14	0.14552	0.029	5.105	-0.000
AD1	15	-0.03185	0.008	-4.226	0.000
AO0	16	0.07216	0.025	2.934	0.003
AO1	17	-0.01141	0.006	-1.787	0.074
MULTIPLE R-SQUARE		0.1440			

TABLE A.1e. Age 36-40 Years

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT		-0.16992			
AGE	1	0.00685	0.009	0.723	0.470
PT	3	0.00567	0.012	0.462	0.644
PSUM1	4	-0.00260	0.001	-1.753	0.080
PSUM2	5	0.00419	0.001	3.631	0.000
CSUMV	6	-0.01128	0.021	-0.538	0.591
CSUMP	7	0.00868	0.009	0.943	0.346
CSUMD	8	-0.03721	0.023	-1.633	0.103
CSUMO	9	0.01936	0.010	2.003	0.046
AV0	10	0.12076	0.057	2.113	0.035
AV1	11	-0.01487	0.015	-0.998	0.318
AP0	12	0.00530	0.025	0.208	0.835
AP1	13	0.00631	0.006	0.983	0.326
AD0	14	0.08227	0.046	1.784	0.075
AD1	15	-0.01661	0.013	-1.264	0.207
AO0	16	0.08378	0.032	2.639	0.008
AO1	17	-0.01535	0.008	-1.951	0.051
MULTIPLE R-SQUARE		0.1650			

Table A.1f. Age 41-50 Years

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT		0.16531			
AGE	1	-0.00140	0.004	-0.333	0.740
PT	3	-0.02303	0.011	-2.116	0.035
PSUM1	4	0.00078	0.001	0.601	0.548
PSUM2	5	0.00211	0.001	2.405	0.016
CSUMV	6	-0.01387	0.021	-0.661	0.509
CSUMP	7	0.02856	0.007	4.030	0.000
CSUMD	8	0.00453	0.012	0.372	0.710
CSUMO	9	-0.00536	0.010	-0.545	0.586
AV0	10	-0.11039	0.066	-1.670	0.095
AV1	11	0.04112	0.015	2.680	0.008
AP0	12	0.04573	0.026	1.763	0.078
AP1	13	-0.00659	0.007	-0.952	0.341
AD0	14	0.04671	0.039	1.202	0.230
AD1	15	-0.01448	0.012	-1.259	0.208
AO0	16	0.06315	0.026	2.447	0.015
AO1	17	-0.01270	0.006	-2.016	0.044
MULTIPLE R-SQUARE		0.1194			

Table A.1g. Age 51 Years and Older

Variable		Coefficient	Standard Error	T	P (2-tail)
INTERCEPT		0.09474			
AGE	1	-0.00031	0.003	-0.116	0.908
PT	3	0.01959	0.017	1.151	0.250
PSUM1	4	-0.00198	0.002	-0.970	0.333
PSUM2	5	0.00356	0.002	2.343	0.020
CSUMV	6	0.05083	0.030	1.676	0.094
CSUMP	7	0.00054	0.011	0.049	0.961
CSUMD	8	0.01402	0.043	0.329	0.742
CSUMO	9	0.01491	0.011	1.368	0.172
AV0	10	0.05781	0.135	0.428	0.669
AV1	11	-0.02126	0.031	-0.688	0.492
AP0	12	0.09549	0.040	2.386	0.017
AP1	13	-0.01688	0.012	-1.452	0.147
AD0	14	0.03223	0.128	0.253	0.801
AD1	15	0.00627	0.034	0.183	0.855
AO0	16	0.06271	0.043	1.443	0.150
__1	17	-0.01980	0.011	-1.760	0.079
MULTIPLE R-SQUARE		0.1078			

C. A CRIME SWITCHING MATRIX

We had two reasons for developing a crime-switching matrix. First, as mentioned above, we were interested in classifying offenses to facilitate the regression analysis. Second, as will be explained later, we employed a crime-switching matrix and a Markov chain approach to predict the nature of future crime. The crime-switching matrix is shown in Table A.2. Shown horizontally are the crime categories of the previous arrests for 3,417 offenders with at least two prior arrests. This was the panel population for the crime-switching analysis. Each vertical column shows the present arrest of each group of offenders. From this we see that of those previously arrested for robbery, 13.6% were rearrested for violent (assault or homicide) offenses, 17.6% for robbery, 12.2% for burglary, and 18.1% for larceny. This shows that offenders arrested for robbery, then, do not exclusively recidivate with robbery. Similarly, 8.3% of those previously arrested for burglary were rearrested for robbery, 12.5% were rearrested for assault or homicide, 18.4% for larceny, and 21.4% for burglary.

While offenders tend to reappear in the same categories, this reappearance is not large enough to warrant labeling them as "career robbers" or "career burglars." This is especially evident in the categories of forgery and fraud, both of which are more likely to predict rearrest for larceny than for forgery or fraud, respectively. Thus, using specific categories of past offenses to predict the types of offenses likely to be committed in the future is not very reliable. On

average, an offender has only a 24 percent chance that, if he recidivates, he will commit the same crime. Naturally, this percentage would be even smaller if we were to consider the probability that three or four consecutive arrests would all be for the same specific offense.

However, grouping by the more general offense types of violent, property, drug, and other crimes, while still not perfect, increases the likelihood that recidivism will occur within the same crime group. On average, offenders arrested for an offense in one general crime category have a 43 percent chance of being rearrested for a similar offense. This rate varies from 31.2 percent for violent arrests to 54.6 percent for property arrests. Clearly then, if crime-specific grouping is warranted, the more general groupings are preferable to the specific.

Table A.2. CRIME-SWITCHING MATRIX

SECOND MOST RECENT ARREST TYPE TABULATED
BY MOST RECENT ARREST TYPE FOR OFFENDERS HAVING
AT LEAST TWO ARRESTS
(Calculated for 3417 offenders)

	Offense for Previous Arrest												
Present Arrest	Vio.	Per.	Rob.	Ars.	Bur.	Lar.	Aut.	For.	Frd.	Drm.	Prb.	Wpn.	Other
Violent	22.2%	12.8%	13.6%	15.3%	12.5%	8.1%	9.2%	9.6%	4.9%	9.3%	12.0%	15.0%	9.0%
Person	1.0%	12.8%	1.4%	2.0%	0.9%	0.8%	2.3%	0.0%	0.0%	0.2%	0.0%	2.0%	1.9%
Robbery	7.0%	8.5%	17.6%	1.0%	8.3%	6.2%	3.8%	2.1%	3.5%	3.6%	4.7%	7.0%	5.7%
Arson	2.0%	2.1%	2.3%	16.3%	1.5%	1.9%	3.1%	2.1%	5.6%	0.8%	0.7%	1.0%	4.5%
Burglary	7.5%	8.5%	12.2%	7.1%	21.4%	10.5%	9.9%	6.4%	2.1%	7.6%	8.7%	9.0%	6.2%
Larceny	15.5%	6.4%	18.1%	17.3%	18.4%	29.5%	19.1%	20.2%	24.3%	17.1%	12.7%	9.0%	14.9%
Auto Theft	4.0%	2.1%	0.5%	5.1%	4.2%	3.9%	13.7%	7.4%	4.9%	1.5%	6.0%	3.0%	1.4%
Forgery	2.5%	0.0%	2.3%	4.1%	3.9%	4.6%	6.1%	9.6%	6.2%	1.9%	1.3%	0.0%	3.5%
Fraud	1.5%	8.5%	1.8%	3.1%	2.1%	4.9%	3.1%	5.3%	20.1%	2.1%	5.3%	4.0%	1.7%
Drugs	11.5%	12.8%	11.8%	8.2%	10.1%	11.3%	6.1%	9.6%	8.3%	37.5%	15.3%	17.0%	12.0%
Probation	5.2%	6.4%	4.1%	2.0%	2.7%	5.7%	6.9%	10.6%	4.9%	4.8%	12.0%	6.0%	4.9%
Weapons	6.0%	2.1%	3.6%	3.1%	3.3%	3.0%	0.8%	1.1%	2.1%	3.2%	3.3%	9.0%	3.5%
Other	14.2%	17.0%	10.9%	15.3%	10.7%	9.4%	14.5%	16.0%	12.5%	9.7%	17.3%	18.0%	29.1%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total offenses	401.	47.	221.	98.	337.	593.	131.	94.	144.	475.	150.	100.	577.

Violent offenses include homicide and assault.
Person crimes include rape, other sexual assault, and other crimes against persons other than assault and homicide.
Probation includes violations of probation and parole conditions.

Looking at table A.3, we see that those arrested previously for each offense category are most strongly represented in the subsequent offense category. Reading horizonally, people arrested for violent crime are twice as likely to be rearrested for violent crime as those previously committing property, drug, or other offenses (31.2% as opposed to 16.0, 13.1, and 17.4%, respectively). Similarly, people arrested for property offenses are significantly more likely to be rearrested for property offenses than are those who were previously arrested for other types of offenses.

Table A.3
MOST RECENT ARREST TYPE TABULATED BY SECOND MOST RECENT ARREST TYPE FOR OFFENDERS HAVING AT LEAST TWO ARRESTS
General Crime Categories
(Calculated for 3,417 offenders)

Subsequent Arrest	Base Line Arrest			
	Violent	Property	Drugs	Other
Violent	31.2%	16.0%	13.1%	17.4%
Property	33.9%	54.6%	30.9%	31.8%
Drugs	11.7%	9 9%	37.5%	12.9%
Other	23.2%	19.5%	18.5%	37.9%
Total	100.0%	100.0%	100.0%	100.0%
Number	669	1397	475	876

Violent includes homicide, assault, robbery, sexual assault, and kidnapping.
Property includes arson, burglary, larceny, auto theft, fraud, and forgery.
Drugs includes both possession and sale.
Other includes military, probation, parole, weapons, and all others.

D. ESTIMATING THE LENGTH OF TIME UNTIL RECIDIVISM

The previous regression results were used to estimate an "index of prior record" for offenders. Using the PSI and parole data bases, we used the above coefficients to calculate an indicator of the extent to which each offender's prior record (including the instant offense) would predict the occurrence of a future arrest.

Addressing the probation and parole data bases, we extracted the necessary elements for implementing the calculation of the "index," as well as other factors. These other factors included: sex; race; age; marital status; employment status; post-release living arrangements; military dishonorable discharges (if any); previous use of aliases; the number of times the offender had been sentenced to probation; whether the offender had ever had probation revoked; mental institutionalization; use of alcohol, soft drugs, or hard drugs; whether the current offense had included the use of a gun, assault, or accomplices; the dollar value of the crime; the age of the defendant at his first arrest, conviction, sentencing, and incarceration (as applicable); the longest sentence served by the defendant; the number of times the offender had been incarcerated; and the number of times the offender had been convicted for each of 16 types of crime. Information was also retained on the current offense type (22 crime categories).

We noted above that we had used extensive prior-record information on 9,205 offenders to estimate parameters for an index of recidivistic potential based only on prior record.

This procedure was employed because the number of observations was considerably more extensive than with the more descriptive but smaller PSI and parole data sets (N=1,706). We also noted above a certain problem with the parole data base, namely, that the rap sheet data is missing for a biased subsample of offenders--i.e., those who had fewer than five arrests during the follow-up period and who had not spent at least 30 days in jail. As a result of this exclusion, a large portion of the parole data base did not contain very detailed information on prior record, but we could not simply exclude those cases without introducing a serious selectivity bias into the sample. Fortunately, a certain amount of summary data about criminal behavior was available even for this group. Using this summary information for all of the cases (probation and parole), a factor analysis was performed to identify underlying factors related to prior record. Next, for the subset for which rap sheet data were available, we regressed the calculated index variable on the underlying factors derived from the factor analysis (R^2=.66). We then applied the calculated coefficients on the factors for those cases for which the variable "index" could not be calculated from CCH data. In the final series of analyses, we used this estimate of index in cases where index was not estimable from CCH data.

Using the probation and parole data bases, we constructed a combined data base that consisted of prior record information, offender characteristics (enumerated above), federal offense information, and information about the offenders' arrests during a five-year follow-up period. While the original data

provided information about a six-year follow-up period, not all offenders were followed for this entire time. Available computer software would not allow variable length follow-up periods, so rather than exclude observations from the analysis, we choose to truncate the follow-up period.

Using the follow-up information, we constructed a variable that was defined as the number of months after release that the subject was free prior to being rearrested for a serious offense. If the subject was not rearrested, then the value of this variable was 60, the length of the follow-up period. There is an obvious problem in this formulation. Because it is impracticable for follow-up periods to be indefinite, one must make a somewhat arbitrary decision about when to truncate it. In the group assigned "60" as a measurement, there are really three distinct groups that the data do not allow us to distinguish.

One group would be those who actually were arrested during month 60. A second group comprises those who actually did recidivate, but who did so after month 60. The third group consists of those who did not recidivate. The censored nature of the data presents analytical difficulties (Tobin, 1958; Ameniya, 1973). If we use linear least squares, the cumulative effect would be to bias downward whatever coefficients are estimated and to make it more difficult to identify effects. Tobit analysis, suggested by Tobin (1958) is a procedure for dealing with such censored dependent variables, and it was employed here.

We conducted a likelihood ratio test of the four unrestricted regressions (property, violent, drugs, and other) against a

restricted regression with dummy variables added to represent violent, drug, and other instant arrests. The likelihood statistic was significant at p .10 but not at p .05. We concluded that this did not represent a difference of enough magnitude to require using four separate regressions in the rest of the analysis. Additionally, the sample size was small for all but property offenses, causing us to doubt the accuracy of the parameter estimates for violence, drugs, and "other". Consequently, in the rest of the appendix (as in the main text), we will focus on the restricted regression with dummy variables when referring to the "regression results."

Using least squares regression analysis, we first ran a series of simple tests involving the use of larger regressions to determine likely variables for inclusion in the tobit analysis. Many factors, like marital status and employment, were not found to be systematically correlated with recidivism time. After considerable testing, we found what we believed to be a "core" set of factors, most of which related specifically to the offender's criminal activity rather than to his socioeconomic background. Those factors are shown in the table. For ease of presentation, in Table A.4 we show only a table of the coefficients and whether they were significant at the p=.05 level.

Table A.4. RECIDIVISM AS A FUNCTION OF OFFENDER CHARACTERISTICS AND PRIOR RECORD

Coefficient	Maximum Likelihood Coefficients				
	Property	Violent	Drugs	Other	All
1 Constant	58.62*	36.61*	44.04*	139.08*	65.07
2 Lvng Arngmt	-1.58*	-1.52	-1.09	-3.58*	-1.55*
3 Alcohol	-9.41*	-1.46	-8.93*	+0.47	-4.97*
4 Heroin	-8.19*	-34.23*	-5.70	-75.59*	-9.83*
5 1st Arrest	+1.21*	+2.11*	+1.32*	-0.02	+1.11*
6 Longest Snt	-0.65*	-1.53*	-0.71*	-1.63*	-0.78*
7 No-prob Snt	-1.06	-3.32*	-1.90*	-2.73	-1.47*
8 Prison Rcrd	-59.12*	-3.45	-77.62*	-134.57*	-61.02*
9 Other Drugs	-5.57	-16.50	+1.04	+3.62	-2.09
10 Active Yrs	+0.82*	+1.77*	+0.93*	+0.53	+0.88*
11 Violent Off					+6.75
12 Drug Off					-1.14
13 Other Off					+17.53*

*Indicates significant at or below p=.05

Alcohol, heroin, and other drugs were binary, where "1" indicates that the offender has a history of use/abuse.
Violent includes homicide, assault, robbery, sexual assault, robbery, and kidnapping.
Property includes arson, burglary, larceny, auto fraud, and forgery.
Drugs includes both possession and sale.
Other includes military, probation, parole, weapons and all others.

E. USING THE ESTIMATES--COMPARATIVE SIMULATIONS

A major advantage of multivariate analysis is that it permits interpretation of the effects of one variable while holding all other variables constant. A disadvantage is that it becomes difficult to view the overall implications of a set of parameters without "plugging in" a set of values that typify the data to be used. This can be overcome by designing a computer simulation model to execute the mathematics so that the implications of a particular "scenario" can be seen quickly.

Using the tobit analysis coefficients, we designed a simulation model that allows us to determine the recidivistic potential of a particular group of offenders and the reduction in crime that might occur if those offenders were incarcerated.

First, we used the tobit coefficients to estimate the length of time to recidivism. We take this figure to be the interval of recidivism. Consequently, rearrest within 6 months would indicate arrest at approximately 6-month intervals during the 60-month follow-up period. We use this calculation to indicate that the offender would, if not incapacitated, be arrested 10 times during the follow-up period.

Next, we used the detailed crime-switching matrix to distribute the number of arrests over the categories. Thus, for those whose instant offense was robbery, we used the crime-switching matrix to determine the probabilities that the next arrest would be for robbery, drugs, etc. This distribution was used as the starting point for the next arrest, and so on following a Markov scheme. The final multiplication was adjusted for fractional offenses. If the rearrest frequency was calculated as 4.58, then the product in the fifth multiplication was multiplied by .58 to obtain the correct fraction.

As pointed out earlier, we note that these data are for arrests, not offenses. Consequently, to obtain estimates of the actual amount of crime, one needs to know the amount of crime that takes place in order to produce one arrest--i.e., the reciprocal of the probability of arrest. Other

13-616 O—83——21

researchers, as cited in the text, have provided estimates of the probability of arrest for specific types of offenses. We used the reciprocal of each probability as a multiplier for the number of arrests for each type of offense.

Next, we divided the data base into groups. We used the simulation to tell us the number of crimes per individual that would be committed during a five-year period if the offender were unrestrained. We looked at a number of comparisons: heroin addicts versus non-heroin addicts; individuals with two or more prior arrests vs. one or none; long previous sentences vs. short previous sentences. Results are reported in the text.

F. SIMULATING THE POPULATION OF OFFENDERS

In order to estimate the likely impact of a career criminal program on crime, offenders and the federal criminal justice system, we developed a simulation model to provide some impact estimates predicated on alternative assumptions about the federal justice process. The primary purpose of this simulation was to estimate the number of career criminals and the cost of processing these habitual offenders, where this cost was limited to required Assistant U.S. Attorneys.

The model requires an assumption to be made about the proportion of convicted federal offenders who are habitual. For present purposes, we defined as habitual any offender who is expected to recidivate within 40 months and who has been convicted of a street crime. We drew on presentence investigation reports to estimate the proportion of career criminals among convicted violent offenders, robbers, forgers,

drug sellers and people convicted of fraud. For the other offenses--crimes against persons, arson, burglary, larceny, auto theft, weapons and other--we used the probation/parole data to draw these estimates. Since these latter data oversampled people serving prison terms, separate estimates were provided for offenders sentenced to terms in excess of one year (prison) and those sentenced to terms of less than one year, including probation. It was unnecessary to make this distinction for the PSI data. The following table provides estimates of the percent of career criminals in each group:

PROPORTION OF OFFENDERS THAT ARE CLASSIFIED AS CAREER CRIMINALS, BY INSTANT OFFENSE AND BY DATA SOURCE

OFFENSE	PROBATION	PAROLE
Violent	13.00%	13.00%
Person	1.00%	1.00%
Robbery	35.00%	35.00%
Arson	1.00%	1.00%
Burglary	9.30%	9.30%
Larceny	2.84%	13.39%
Auto Tft	6.35%	23.31%
Forgery	24.00%	24.00%
Fraud	9.00%	9.00%
Drugs	7.00%	7.00%
Probation	1.00%	1.00%
Weapons	2.56%	2.56%
Other	0.53%	0.53%

Next we had to determine the number of defendants who were convicted of each offense in federal district court. These data came from the Annual Report of the Director of the Administrative Office of the United States Courts, 1980. Because our estimate of the percent of career offenders in a crime type was contingent on the sentence given, separate figures for convicted offenders were derived for persons

sentenced to terms in excess of one year and those sentenced more leniently. The number of convicted offenders within an offense type was then multiplied by the estimated percent of career criminals in the relevant group.

Then, in order to know the total number of defendants prosecuted in district court, it was necessary to know conviction rates for career criminals and noncareer criminals. These data came from the 1978 termination tape of the Administrative Office of the U.S. Courts (the latest tape at our disposal). Since the termination tape does not explicitly identify a career criminal, we assumed that the conviction rate for an habitual offender would be approximated by the conviction rate of offenders who had served prior prison sentences in excess of one year. Conviction rates for other offenders were approximated by the rates for offenders who had not previously served terms in excess of one year. The former group was convicted at a much higher rate.

In order to determine the number of career criminal and other offenders who were prosecuted in district court, we divided the number of convictions by the conviction rates, yielding estimates that are reported on the next page.

TOTAL NUMBER OF CASES FILED IN FEDERAL DISTRICT COURT

OFFENSE	CAREER CRIMINAL	NON-CAREER	ALL
Violent	70.	694.	764.
Person	2.	249.	251.
Robbery	440.	1,106.	1,545.
Arson	0.	7.	7.
Burglary	12.	168.	181.
Larceny	224.	3,979.	4,203.
Auto Tft	68.	539.	607.
Forgery	469.	1,911.	2,380.
Fraud	88.	1,208.	1,296.
Drugs	337.	6,222.	6,959.
Probtion	0.	0.	0.
Weapons	22.	1,248.	1,270.
Other	0.	45.	45.
TOTAL	1,733.	17,776.	19,508.

Using the disposition rates to determine estimates for the number of dismissals, guilty pleas and trials, we were able to estimate the number of each type of disposition for career criminals and nonhabitual offenders, respectively. Then, using estimates of the amount of attorney time required to process criminal cases according to case type and disposition [Rhodes and Hausner, 1981], we were able to estimate the number of attorneys required to handle career criminal and non-career criminal cases, at least for street-type offenses. These figures are reported in the text.

The simulation model accommodates two alternative scenerios. First, it is possible to increase the number of career criminal cases by a given percentage. This percentage can vary across the offense types allowing, for example, the user to increase the number of career criminal robbers by 50 percent, the number of burglars by 10 percent, and so on. Second, the simulation allows the user to increase the ratio of

trials to guilty pleas in anticipation of fewer plea bargains for habitual offenders. Again, this change can be simulated on an offense by offense basis. Results of various alternatives are discussed in the text.

G. SIMULATING THE SENTENCING OF OFFENDERS

The simulation program developed under this contract provides the possibility of examining the effects of mandatory sentencing on both the number of crimes that would be committed by offenders within a five-year period and the total amount of prison time that would be served by those offenders.

Currently the simulation is designed to work with input data from five offense types: forgery, mail fraud, bank robbery, homicide, and narcotics. In addition, the simulation returns information on 13 possible future offense types: violent crime (including homicide), crimes against persons, robbery (including bank robbery), larceny, auto theft, forgery, fraud (including mail fraud), drugs, probation violations, weapons offenses, and other crimes.

For each input crime type the program has access to a data set that contains information on a sample of offenders convicted of that offense. Using this information we were able to predict the amount of time that the offender will be free before committing another offense, the number of offenses (for each of the thirteen crime types) that the offender is likely to commit while free, and the amount of incarceration time that the offender will serve for the convicting offense.

Thus the simulation program has the possibility of determining, within a given period (which we have set at five years), the amount of time that the defendant will be incarcerated, the amount of time "at risk" (following incarceration), and the number of crimes that the offender is likely to commit during that risk period. By manipulating the period of incarceration and thus the time "at risk," the program can produce crime and sentence length predictions that can be compared with the results being achieved under present sentencing patterns.

There are several possible methods of specifying how an offender will be targeted for a mandatory prison sentence. The method used in the simulation is based on the predicted amount of time until recidivism. The program estimates the amount of time that will be served by each offender, as well as the length of time from release to recidivism and the number and types of crime that will be committed on average during the period at large. A mandatory sentence (which can be stipulated by the user) for offenders who are likely to recidivate within a certain time will result in less time at large and fewer crimes.

For example, the user can specify that offenders who are likely to recidivate within a two-year period following their release will be targeted for a mandatory prison term of five years. With this specification targeted offenders who would have served less than five years will now serve a five-year term of incarceration, and the number of crimes that they would have committed during their "risk" period will be eliminated.

The comparison between the current system of sentencing and the user-specified sentencing guidelines is then made, and the results are presented in a series of tables.

There are other possible criteria for specifying career criminals. One such possibility would be to target on defenders who have a certain number of prior convictions for certain crimes. The simulation currently has the capability of accommodating such a specification. It would be possible to construct more complicated selection criteria that would encompass both prior convictions and predicted time until recidivism (although at present the program does not accommodate such criteria).

Whatever the selection criterion, the simulation calculates the total amount of prison time served by a sample of convicted offenders and the total amount of crime committed by offenders while free of penal restraint.

Using forgery as an example, the simulation was run using 9,999 months as the cutoff point for career criminals and zero months for the mandatory incarceration time, thus producing a baseline. With these criteria every offender in the data base would be classified as a career criminal and would serve no time at all. Comparing the resulting figures with those derived using contemporary sentencing practices shows the number and types of crimes prevented by current sentencing patterns. Excluding drug offenses, the simulation showed a total of 46,462 crimes (an average of 76 for each of the 611 offenders in the data base over the five-year period) without

incarceration and 35,173 (an average of 58 per offender) under prevailing sentencing patterns. (See Tables A.5-A.9 for the results of this run for all offense types.)

The simulation was then run on the same group of forgers. The cutoff point for length of time until recidivism was set at 40 months, and the mandatory sentence was set at 60 months. In other words, offenders who were likely to recidivate within 40 months from the date of release were given a five-year prison sentence; thus, they had no time "at risk."

This simulation run identified 148 career criminals and returned a total of 8,842 crimes (exclusive of drug offenses), or an average of 14 per defendant. The amount of time served increased from 4,578 months under current sentencing procedures to 11,393 months under the hypothetical career criminal program.

The career criminal criteria produced an overall decrease in non-drug crime of 26,331 offenses, or 75 percent. The range varied from 68% for forgery to 84% for crimes against persons. The amount of time served showed an increase of 6,815 months, or 149 percent. (See Tables A.10-A.14 for the results of this run for all offense types.)

One cost of the career criminal program is the additional amount of prison times served; a benefit is the decrease in crime. It is possible to maximize this trade-off by specifying different criteria for determining and sentencing career criminals until an appropriate balance is achieved or by decreasing the incarceration rate for lesser offenses to allow prison space for career criminals.

To illustrate the former approach, consider the following examples:

If we concentrate on forgers who are likely to recidivate within one year's time, and if we set their mandatory sentence at five years in prison, then the simulation predicts an overall reduction in non-drug crime of 62% and an increase in prison time of 42% for 44 career criminals. (See Table A.15) If, however, we concentrate on forgers who are likely to recidivate within two years' time and sentence them to five years in prison, we arrive at an overall reduction in non-drug crime of 68% and an increase in prison time of 81% for 83 offenders (see Table A.16). The number of career criminals and the number of months served has increased by 28 percent, but the number of non-drug crimes committed has decreased by only 16 percent. If we then increase the period of recidivism to three years and set the prison sentence at five years, we identify 90 career criminals and estimate a 73% reduction in crime and an 127% increase in the number of months served (see Table A.17). These figures reflect an increase over our original estimates of 191% in the number of career criminals and a 61% increase in the amount of time served, and a decrease in crime of 29%.

Such scenarios offer the possibility of making prosecution and sentencing decisions that take into account the existence of a fixed amount of prosecution and prison resources and the fact that career criminal prosecutions claim a larger proportionate share of those resources. On the basis of the

examples given above, a policy maker might decide to prosecute as career criminals those who are likely to recidivate within a year's time rather than those who are likely to recidivate after that time. Such a decision would be based on the knowledge that only half the number of defendants would have to be prosecuted as career criminals but that almost the same amount of reduction in crime would be achieved.

A similar evaluation could be performed for the other offense categories, and the collective results could be composed into one prosecution or sentencing policy.

Table A.5

Forgery

Number of months before recidivism: 9999
Mandatory sentence: 0
Number of career criminals: 611

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	1659.	2205.	-32.94
Persons	133.	180.	-35.30
Robbery	1307.	1756.	-34.31
Arson	1105.	1466.	-32.67
Burglary	3015.	4020.	-33.30
Larceny	12331.	16309.	-32.26
Auto Theft	1555.	2025.	-30.26
Forgery	1996.	2587.	-29.61
Fraud	1761.	2312.	-31.27
Drugs	117649.	157142.	-33.57
Probation	2820.	3684.	-30.64
Weapons	919.	1234.	-34.30
Other	6571.	8683.	-32.15
Total	152822.	203604.	-33.23
Non-drug	35173.	46462.	-32.10
Sentence	4576.	0.	-100.00

Table A.6

Robbery

Number of months before recidivism: 9999
Mandatory sentence: 0
Number of career criminals: 655

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	275.	4255.	-1445.23
Persons	27.	411.	-1429.90
Robbery	349.	4519.	-1194.97
Arson	161.	2645.	-1541.92
Burglary	531.	8078.	-1421.44
Larceny	1769.	28865.	-1513.43
Auto Theft	139.	2673.	-1821.32
Forgery	201.	3434.	-1607.74
Fraud	198.	3516.	-1677.27
Drugs	17745.	296604.	-1571.69
Probation	326.	5505.	-1579.95
Weapons	161.	2556.	-1485.24
Other	879.	14761.	-1579.48
Total	22761.	377823.	-1558.51
Non-drug	5036.	81219.	-1512.00
Sentence	36859.	0.	-100.00

Table A.7

Drugs

Number of months before recidivism: 9999
Mandatory sentence: 0
Number of career criminals: 626

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	583.	965.	-65.04
Persons	47.	78.	-66.80
Robbery	488.	808.	-65.63
Arson	330.	550.	-66.72
Burglary	1096.	1814.	-65.49
Larceny	4193.	6940.	-65.53
Auto Theft	398.	656.	-65.86
Forgery	481.	798.	-65.88
Fraud	511.	847.	-65.82
Drugs	56331.	93320.	-65.66
Probation	820.	1358.	-65.59
Weapons	368.	608.	-65.41
Other	2066.	3460.	-65.87
Total	67729.	112203.	-65.67
Non-drug	11398.	18883.	-65.68
Sentence	10803.	0.	-100.00

Table A.8

Fraud

Number of months before recidivism: 9999
Mandatory sentence: 0
Number of career criminals: 417

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	390.	475.	-21.58
Persons	33.	40.	-21.35
Robbery	348.	423.	-21.76
Arson	423.	513.	-21.32
Burglary	690.	838.	-21.48
Larceny	3616.	4391.	-21.45
Auto Theft	398.	488.	-21.27
Forgery	515.	625.	-21.39
Fraud	903.	1103.	-22.22
Drugs	29556.	35975.	-21.72
Probation	652.	794.	-21.32
Weapons	248.	302.	-21.72
Other	1690.	2052.	-21.47
Total	39461.	48012.	-21.67
Non-drug	9905.	12037.	-21.52
Sentence	3067.	0.	-100.00

Table A.9

Violent Crime

Number of months before recidivism: 9999
Mandatory sentence: 0
Number of career criminals: 492

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	205.	1544.	-654.45
Persons	16.	126.	-703.58
Robbery	148.	1183.	-699.01
Arson	96.	818.	-747.73
Burglary	282.	2361.	-737.39
Larceny	1047.	8854.	-745.67
Auto Theft	122.	988.	-712.31
Forgery	125.	1077.	-761.98
Fraud	116.	1056.	-812.75
Drugs	10879.	92504.	-750.33
Probation	220.	1805.	-721.77
Weapons	120.	917.	-661.79
Other	600.	4880.	-713.93
Total	13974.	118111.	-745.23
Non-drug	3095.	25607.	-727.32
Sentence	26737.	0.	-100.00

Table A.10

Forgery

Number of months before recidivism: 40
Mandatory sentence: 60
Number of career criminals: 148

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	1659.	378.	77.22
Persons	133.	21.	83.96
Robbery	1307.	247.	81.09
Arson	1105.	259.	76.57
Burglary	3015.	656.	78.26
Larceny	12331.	3041.	75.34
Auto Theft	1555.	471.	69.71
Forgery	1996.	645.	67.70
Fraud	1761.	483.	72.58
Drugs	117649.	24748.	78.96
Probation	2820.	826.	70.71
Weapons	919.	174.	81.09
Other	6571.	1641.	75.03
Total	152822.	33590.	78.02
Non-drug	35173.	8842.	74.86
Sentence	4578.	11393.	148.86

13-616 O—83——22

Table A.11

Robbery

Number of months before recidivism: 40
Mandatory sentence: 60
Number of career criminals: 227

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	275.	133.	51.53
Persons	27.	13.	50.97
Robbery	349.	200.	42.72
Arson	161.	73.	54.80
Burglary	531.	262.	50.70
Larceny	1789.	825.	53.88
Auto Theft	139.	49.	64.58
Forgery	201.	86.	57.12
Fraud	198.	80.	59.51
Drugs	17743.	7828.	55.88
Probation	328.	144.	56.15
Weapons	161.	76.	52.94
Other	879.	385.	56.15
Total	22781.	10155.	55.42
Non-drug	5038.	2327.	53.81
Sentence	36859.	37760.	2.44

Table A.12

Drugs

Number of months before recidivism: 40
Mandatory sentence: 60
Number of career criminals: 42

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	583.	284.	51.17
Persons	47.	20.	57.07
Robbery	488.	232.	52.38
Arson	330.	145.	56.08
Burglary	1096.	538.	50.94
Larceny	4193.	2075.	50.51
Auto Theft	396.	183.	53.72
Forgery	481.	226.	52.96
Fraud	511.	241.	52.74
Drugs	56331.	31001.	44.97
Probation	820.	404.	50.74
Weapons	366.	183.	50.32
Other	2086.	994.	52.37
Total	67729.	36526.	46.07
Non-drug	11398.	5525.	51.52
Sentence	10803.	11985.	10.95

Table A.13

Fraud

Number of months before recidivism: 40
Mandatory sentence: 60
Number of career criminals: 38

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	390.	216.	44.54
Persons	33.	18.	46.17
Robbery	348.	193.	44.61
Arson	423.	264.	37.56
Burglary	690.	378.	45.29
Larceny	3616.	2157.	40.35
Auto Theft	398.	241.	39.43
Forgery	515.	316.	38.67
Fraud	903.	577.	36.07
Drugs	29556.	16395.	44.53
Probation	652.	383.	41.24
Weapons	248.	138.	44.30
Other	1690.	980.	42.01
Total	39461.	22255.	43.60
Non-drug	9905.	5061.	40.84
Sentence	3067.	4758.	55.12

Table A.14

Violent Crime

Number of months before recidivism: 40
Mandatory sentence: 60
Number of career criminals: 62

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	205.	171.	16.52
Persons	16.	13.	17.28
Robbery	148.	123.	17.26
Arson	96.	79.	18.20
Burglary	282.	231.	17.97
Larceny	1047.	856.	18.17
Auto Theft	122.	100.	17.54
Forgery	125.	102.	18.49
Fraud	116.	93.	19.43
Drugs	10879.	8894.	18.24
Probation	220.	181.	17.69
Weapons	120.	100.	16.61
Other	600.	494.	17.53
Total	13974.	11436.	18.14
Non-drug	3095.	2544.	17.81
Sentence	26737.	27036.	1.12

Table A.15

Forgery

Number of months before recidivism: 12
Mandatory sentence: 60
Number of career criminals: 44

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	1659.	567.	65.83
Persons	133.	32.	76.13
Robbery	1307.	370.	71.74
Arson	1105.	367.	64.94
Burglary	3015.	982.	67.43
Larceny	12331.	4561.	63.01
Auto Theft	1555.	708.	54.49
Forgery	1996.	974.	51.21
Fraud	1761.	724.	58.87
Drugs	117649.	37089.	68.47
Probation	2820.	1243.	55.92
Weapons	919.	259.	71.77
Other	6571.	2460.	62.55
Total	152822.	50357.	67.05
Non-drug	35173.	13268.	62.28
Sentence	4578.	6481.	41.56

Table A.16

Forgery

Number of months before recidivism: 24
Mandatory sentence: 60
Number of career criminals: 83

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	1659.	470.	71.68
Persons	133.	25.	80.98
Robbery	1307.	301.	76.99
Arson	1105.	321.	70.92
Burglary	3015.	811.	73.12
Larceny	12331.	3804.	69.15
Auto Theft	1555.	599.	61.49
Forgery	1996.	828.	58.53
Fraud	1761.	609.	65.44
Drugs	117649.	30539.	74.04
Probation	2820.	1050.	62.76
Weapons	919.	211.	77.03
Other	6571.	2054.	68.74
Total	152822.	41622.	72.76
Non-drug	35173.	11083.	68.49
Sentence	4578.	8269.	80.63

Table A.17

Forgery

Number of months before recidivism: 36
Mandatory sentence: 60
Number of career criminals: 128

Offense Type	Present Program	Career Criminal Program	Percent Change
Violent	1659.	401.	75.80
Persons	133.	22.	83.37
Robbery	1307.	260.	80.13
Arson	1105.	275.	75.14
Burglary	3015.	694.	76.97
Larceny	12331.	3241.	73.72
Auto Theft	1555.	506.	67.45
Forgery	1996.	697.	65.10
Fraud	1761.	517.	70.66
Drugs	117649.	26192.	77.74
Probation	2820.	888.	68.52
Weapons	919.	182.	80.15
Other	6571.	1749.	73.38
Total	152822.	35625.	76.69
Non-drug	35173.	9433.	73.18
Sentence	4578.	10409.	127.37

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Mr. HUGHES. OK. Well, thank you. I really appreciate your testimony. You have been most helpful. Both statements were excellent. Thank you. We appreciate it.

The hearing stands adjourned.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned, to reconvene upon the call of the Chair.]

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END