RESEARCH APPROACHES TO POLICE-PROSECUTOR COORDINATION: A DISCUSSION PAPER PREPARED FOR THE NATIONAL INSTITUTE OF JUSTICE[1]

by

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November 16, 1981

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A. Background

This paper is submitted in response to the invitation of the National Institute of Justice to participate in conference with other grantees whose work is relevant to the general coordination of police and prosecutors especially regarding matters affecting case processing. The presentation below addresses the questions suggested by NIJ but not in the specific sequence of the NIJ letter.

B. Findings and Recommendations

(1) Justice as a Communication Process

One important "finding" which came out of both of our studies was the realization that at bottom the fundamental task which links police and prosecutors together is information processing. Other writers have long since made the general point that the criminal justice process involves the communication of information and the making of decisions.[2] But, previously no one has attempted a systematic application of basic communications concepts to the investigation, prosecution and adjudication process.

While I don't regard our effort as definitive I believe it did set a sound conceptual foundation that indicates the need for various kinds of additional research including traditional social-legal research as well as the application of technology to the solution of the many information processing problems which

2 See e.g., Blumberg, Criminal Justice, 1967; Gottfredson, M. and D. Gottfredson, Decisionmaking in Criminal Justice, 1980.

continue to reduce the quality of justice being administered.

(2) The Relationship Between Information and Justice

One of our conclusions was that the quality of information in a case is related to the quality of justice done. However, our evidence for this proposition was largely qualitative and logical-intuitive. Initially during the project we attempted to quantify this issue by replicating Rand's study[3] which found a relationship between the average units of information per police report and the pattern of case disposition. The jurisdiction with less information had a pattern of greater "decay" of cases. However, Rand's methodology as published[4] was not replicable and Rand never returned our calls and efforts to get the rest of the procedures needed to replicate their study. Their work deserves to be replicated because it is so central to the question of the value of information. Their original study was based on only two jurisdictions and hence could not control plausible alternative explanations of the differences in the disposition patterns. Another problem with their analysis is that they seem to assume that better information will necessarily affect the pattern of case disposition in a particular way, i.e., with more information fewer cases will fall out. When we considered what would happen if more information were available we concluded that anything

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3 J. Petersilia "An Inquiry Into the Relationship Between Thoroughness of Police Investigation and Case Disposition," Mimeo, 1976.

4 Greenwood, et al. The Criminal Investigation Process, 1977.

could happen. The pattern of disposition might show greater, lesser, or the same rates of drop out. More information may not affect the disposition pattern as such but could affect which cases drop out; and it could affect the degree to which substantive rather than procedural justice was done.

In brief, I am saying that we need to know more about how the quality and quantity of information affects the decision making process. This is a fundamental issue that needs to be clearly understood because so many other things (possible improvements, possible measures of performance, possible quality control indicators, possible technical applications; training programs) assume that improving the quality of information is an important thing to do. We need more clarification of what difference more (or different kinds of) information will make.

(3) Understanding the Value of Discreet Types of Information

There are three distinct concepts which need to be fully conceptualized operationalized and related to each other in the sequence illustrated below:

Concept #1	Concept #2	Concept #3
The quality and quantity of information	The quality of justice (i.e., disposition pattern, type of case disposed; type of justice done e.g., substantive versus procedural; time to disposition; even handedness)	The effectiveness of the system; deterrence; incapacitation; rehabitation

First we need to know more about how information "works" in the criminal justice process. There are three different lines of

inquiry which might be pursued. The first would focus on the significance of discreet items of information such as the presence or absence of a confession or fingerprints, for example. There is a lot of folklore in the courthouse about what kinds of evidence is most persuasive with juries. These beliefs could be put to the test; and on the basis of such research police departments should be encouraged to give greater emphasis to the more persuasive kinds of evidence. This type of research has been done to some extent using statistical analysis of data from case folders. We found that among cases gong to trial the presence of a confession was not significantly related to conviction.[5] However, it would probably be more efficient to pursue this research using simulated juries.

(3) Quantifying Information

The second line of inquiry about the nature of information should be to examine the matter of additivity of information. That is, aside from the importance of certain specific types of information, what effect does increasing the quantity of information have and at what point (if any) does more information become useless or detrimental to better decision-making? And, first of all, under what conditions is it valid to treat information as if it is additive. Inslaw's study indicates that the greater the number of witnesses the more likely a conviction will occur.[6] Rand suggests greater amounts of information will

5 McDonald, et al., Police Prosecutor Relations: Final Report, 1981.

result in different disposition patterns.[7] Our plea bargaining decision simulation found that 50% of the prosecutors felt they only needed 11 items of information or fewer to decide what to do with a case; whereas defense counsel tended to want more information.[8] These studies suggest that information can be thought of quantitatively; that it can be counted up and given a score (such as the average units of information per case). However, further work needs to be done. A methodology for counting the "bits" of information in a case has yet to be developed. Counting the number of witness on the presence or absence of physical evidence in a case as Inslaw did is straight forward, but incomplete. There is far more to be quantified than just those items and the quantification needs to take account of differences in the value of certain items of information. Rand's effort was more complete in its attempt to quantify everything in the case but its procedures are unclear.

Perhaps Mary Knudten's (SERCL) study will advance this whole topic considerably. As a member of her advisory board I saw her plans to apply sophisticated statistical analysis to the case data they are collecting.

(4) The Contextual Nature of Information

The third line of inquiry[9] is based on the work of those

6 B. Forst, et al., What Happens After Arrest? 1977.

7 Petersilia, op. cit.; Greenwood, et al., op. cit.

8 W. McDonald, Plea Bargaining: The Issues and the Practices, forthcoming. See also, W. McDonald, et al., "The Prosecutor's Plea Bargaining Decision," in The
(Footnote continued)

writers who emphasize that information can not be understood in a vacuum.10

It is not enough for the police to report that evidence was recovered or that a witness will testify. The prosecutor needs to know more about the context of the recovery of the evidence and the credibility of the witness. Thus, sheer quantification of items of information won't tell the whole story about the quality of the information.

(5) How Information Relates to Outcomes

Information must ultimately be tied to outcome measures. At least three outcome measures need to be considered: consistency of decision-making; changes, if any, in the pattern of dispositions or, if there is no change in the pattern then a change in the mix of cases dropping out in existing pattern; and the relationship between the pattern dispositions and ultimate measures of effectiveness rack as deterrence or rehabilitation (and some possible surrogates, such as shorter times to disposition).

(6) The Utility of the Information Perspective

NIJ should commit itself to a long-term game plan of

8(continued)
Prosecutor, W. McDonald (ed), 1979.

9 All three lines might be pursued in any one study but I am separating them out for discussion sake.

10 H. Daudistel "Deciding What the Law Means: A Study of Police-Prosecutor Discretion." Ph.D. Diss., Univ. Calif. Santa Barbara, 1976. See other references in McDonald, Police Prosecutor Relations: Final Report, 1981.

research and development focusing adjudication process as a communication process because of the feasibility and potential utility of studying and improving this aspect of the justice system. That game plan should be guided by the recognition that information processing is the fundamental task being performed by police, prosecutors, judges, and juries. Hence, we need to know why that process breaks down; what can be done to improve it; and how we can measure the quality of its performance. At the end of this commitment NIJ should aim to have developed and demonstrated performance measures related to information quality; technological systems for enhancing the quick, complete and accurate transfer of information from original sources to ultimate users; model programs and alternative strategies for organizing the police-prosecutor intake process; and model management practices and technologies, especially more sophisticated feedback mechanisms.

(a) Information as a Performance Measure

The utility of these products can not be stressed too much. We currently do not have meaningful performance measures of the fundamental tasks of investigation and prosecution. The measures currently used for (individuals and larger units) are almost meaningless because of the many confounding factors which prevent a clear interpretation of their meaning. Rates of arrest, clearance, rejection, etc. are ambiguous at best as indicators of performance. If you compare individual police officers or individual police departments in terms of "arrest-convictability" (as Inslaw has done) the results are always open to the criticism

that something other than the performance of the individuals or the departments explains the difference in the conviction rates.[11] The criminal justice industry should be subject to the same kind of quality control checks that other industries have. You can walk into any Coca-Cola plant in the world; take a sample of bottles; and test the coke for its purity, sugar content, etc. Those measures should be about the same no matter what the country or the management philosophy of the particular plant. Similar quality checks should be possible in the criminal justice industry. At the moment we don't have any. If we compare arrest rates or acceptance rates across jurisdictions, there are all those confounding variables that can invalidate the comparison. When Inslaw published Brosi's A Cross-City Comparison of Felony Case Proceeding (1979) and the newspapers reported the different patterns of case disposition among the cities, some of the DA's involved argued (probably correctly) that one can not compare across jurisdictions because each jurisdiction had its unique problems and philosophies. So here we are millions of dollars later and ten years after PROMIS and we still can't go into a

11 Inslaw has tried to minimize this criticism by using statistical controls to reduce the influence of such confounding variables. But, this approach has its limitations. It does not convince the police that those variables have been effectively controlled. (I've seen this skepticism at two separate presentations of the Inslaw findings.) It may in fact not have succeeded in doing what it claims to have done. And, it is not something which police managers or prosecutors could readily apply to their cases to do a quick quality control check on the work of individuals or units in their jurisdictions.

jurisdiction and measure its performance against any logical or meaningful standard. This is because we have been looking in the wrong places, and using the wrong measures.

If in contrast we were able to meaningfully and reliably measure the quality and/or quantity of information in a case, it would be possible to take a sample of case files for typical residential burglaries (or some other specific crime), calculate the average information score and compare it with some national standards. Such a strategy would make it possible to set minimum standards for jurisdictions as well as for individuals. And, these standards would be free of the vagaries of local policy differences.

(b) Technological Developments

Assuming that it is important that information be communicated as accurately, legibly, reliably, quickly and comprehensively as possible from police (and other sources) to prosecutors (and other decision makers), there is a lot which could be done in the application of technological solutions to these basic problems. The criminal justice system is still just coming out of the Dark Ages when it comes to adaptations of the rapidly advancing field of communication technology. It is amazing in this day of high technology to see in the field so many examples of cases being improperly disposed of because information did not get to the right person at the right time. Police are still handwriting reports. Prosecutors dismiss cases because case files are illegible. Serious defendants are released pretrial or plea bargained to lenient terms because the

prosecutors were not informed of extensive prior records. Police reports are almost universally decried by prosecutors as inadequate; while police universally dread report writing and frequently do not know what the prosecutor needs in the report.

It was clear from our field work that prosecutors want more thorough police reports. It would seem technology could help. In Minneapolis, Minnesota the police dictate their reports. That was one of the few places where the prosecutors praised the quality of police reports. NIJ might consider funding a cost-benefit-feasibility analysis of such a system because we found some dispute about the value of dictated police reports. The Philadelphia Police Department stopped using dictation on the grounds that they couldn't get typists to work the late night shifts and because typists were being subpoenied to court.[12]

Dictation equipment, of course, is not the only kind of technology to be considered. Lots of other kinds of hardware and shoft-ware should be considered beginning with such seemingly trivial matters as designing the most useful case report format[13] and extending to the larger matters such as computer-assisted-

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12 I personally had doubts about this explanation.

13 Many jurisdictions have designed their own and they vary considerably in detail, structure and durability. Until the advent of PROMIS in D.C. the case file was nothing more than a legal size sheet of paper with a printed format on it. The form was designed by the Internatinal Association of Chiefs of Police! The prosecutor's office was running a 20% missing file rate because the papers were easily lost or stuck in one's pocket.

PROMIS and OBTS have improved the file systems but these systems aren't everywhere.

case-intake techniques; greater use of interactive computer systems; and the development of model systems for linking information sources.

A project in Philadelphia worth following is the audio-visual-telecopier linkage between the police and the prosecutor's officer. It was not hooked up when we were there and may not have gotten the funds to hook up since. But in theory it seemed like a good solution to an increasing critical problem. The police can't afford to send officers to the prosecutor's office for case review. So the review was to be done over the audio-visual-telecopier system. There were technical problems which needed to be worked out. Assuming they could be solved and the system paid for itself in saved personnel costs and the information transmitted was what the prosecutor needed, then the project would have wide applicability.

I have already described the kind of computer-assisted case evaluation technology which I believe should be developed for use in the intake process.[14] An LEAA project in Nashville-Davidson, Tennessee helped convince me of the feasibility of developing an interactive computer program which would guide the police through a case evaluation. In Nashville-Davidson the prosecutor has trained typists with only high school education to "debrief" police officers with a services of interrogatories prepared by the prosecutor. These typists prepare the police report by interviewing the police and typing up the answers in the format

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14 See Police Prosecutor Relations: Final Report.

needed by the prosecutor.[15]

If high school typists can be programmed to interact with the police and take a report, a computer can be made to do so as well. If this were possible, the initial case review could be done simultaneously with the writing of the report plus there would be none of the costs associated with traveling to the prosecutor's for the review. The police would write their reports by interacting with a terminal in their police stations.

Other model uses of the computer should be developed especially programs which would do such things as rapidly identifying serious or habitual offenders as they enter the system;[16] linking the case preparation input data in each case to a modus operandi--crime pattern search to see if the instant offender fits any known patterns of criminal activity or descriptions of wanted persons; linking cases to police intelligence data which would provide prosecutors with additional information about the defendant's seriousness beyond information about prior record; interactive input into PROMIS and OBTS type

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15 We didn't visit the site. So I don't know if the project is good as it sounded over the phone. But it may be a model worth replicating.

16 In several places (e.g., N.Y.; Dallas; Bristol Co, Mass.) this is important to the success of the prosecutor's program of special handling for these offenders; and yet, they have not computerized this problem. In New York City the police and one of the D.A.'s agreed to establish a "special treatment" list of offenders. But, it ended up with thousands of people on it and eventually wasn't used because the police had to sort through it manually each time they brought in a case.

data bases rather than through current batch processing.

(7) Gaps In Knowledge About Police and Prosecutor Interaction Warranting High Research Priority

(a) The Initial Screening Process

Notwithstanding our own work and that of Jacoby and others the initial screening process continues to remain poorly documented and understood.[17] There are numerous aspects of this critical part of the overall screening process that need further clarification.

National commissions generally agree that cases must be screened out at the initial charging decision and this decision should be made by the prosecutor. But, our non-probability sample of jurisdictions over 100,000 population the prosecutor does not control the initial charging decision in a substantial proportion of jurisdictions there is no post-initial-charging-but-early prosecutorial screening. Thus the police dominate the initial charging decision in these places. What significance does this have for bail; for overcharging; for formal charging; for speedy trial; for follow-up investigation; for the possibility of implementing the recommended early screening programs? Answering these questions would require field work in a sample of jurisdictions.

(b) Understanding Rejected and Reduced Cases

The high rates of case rejection and reduction by prosecutors raises questions about the nature and the quality of the

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17 See our discussion of this inadequacy in Police Prosecutor Relations: Final Report.

cases being brought by the police to the prosecutor's office on the one hand, and the propriety of the prosecutors' decisions on the other PROMIS-type data have given us a general profile of reasons why cases drop out of the system but the reliability and validity of this part of the PROMIS data are problematic. For instance, the meaning of the "witness non-cooperation" reason is still not clear. The Cannavale analysis raised new questions which can only be answered definitively by a prospective study in which an independent observer follows cases through the rejection process and determines what lies behind the "uncooperative witness" category (as well as other categories). Perhaps Feeney's study will tell us more about the real reasons behind case rejection.

(c) Measuring Case Strength

The PROMIS data also do not tell us about the quality of arrests being made. When Graham and Letwin observed the charging process in Los Angeles, they thought that many of the rejections may have been due to questionable arrest decisions and recommended that research be done to determine whether the police were arresting on less than probable cause.[18] I think the issue is even broader than that.[19] We need a means of measuring by

18 Graham and Letwin, "The Preliminary Hearing in Los Angeles," 18 UCLA Law Review 635 (1971).

19 Although I agree with their suggestion and think it would be worthwhile to try to get at this issue either by having experienced legal experts pride with the police and second guess their arrest decisions or by some other method.

some standarized method the level of probable cause (case strength) used in a jurisdiction. Otherwise there is no way of knowing whether a prosecutor's office which claims to be using a case acceptance standard which is higher than probable cause is in fact doing so. Given the critical importance of the screening (charging) decision it is a serious weakness in our current research capability that we have no better way of determining the standard of case acceptability in a jurisdiction than by asking for the opinions of local participants or examining official policy statements. These sources can be misleading or of little help. I have asked for charging standards in many jurisdictions and have always wondered whether the answers I got really meant anything in terms of real differences among jurisdictions in the likelihood that a case would be accepted.

I believe the most feasible way of developing measures of case strength is through the use of simulation methodology such as our plea bargaining decision simulation, Jocaby's standard case set, or other related methods of scaling and rating cases. Jacoby reported that measuring case strength was the most complicated part of her simulation efforts.[20] But that should not mean that we give up. In England Baldwin and McConnville have been trying to measure case strength by submitting 1,000 cases to legal experts and asking for their judgments about the importance of certain items of information to the success of the case.[21]

20 Jacoby, Prosecutorial Decisionmaking, 1980.

(d) Explaining Changes in the Chief Prosecutor's Role Definition

First, Jacoby[22] then we[23] concluded that chief prosecutors differ in their role definitions (particularly their willingness to assume the role of system manager) and that this is a key determinant of the nature of the case screening in a jurisdiction. As you travel the country, it is striking to see these differences in role definition. Some chief prosecutors like Connick in New Orleans are out there screening all kinds of cases. They believe in screening like a religion. Others are slowly realizing that they should perform this function, and others have yet to see the light.

Although the general trend is for more chief prosecutors to realize the importance of assuming the screening function, there are still many who have not defined this as their office's responsibility; or they are willing to do certain kinds of screening (screen out certain categories of cases, e.g., gambling with fewer than 100 "slips") but not other kind of screening, e.g., screening based on judgments of case strength.

It would be useful to know what accounts for the differences in the role definitions of prosecutors and, hence, what explains the glacial rate of change in the prosecutor's willingness to accept the key role which commentators since the 1920's have been

21 Unpublish paper obtained through personal communication.

22 Jacoby, The Presecutor's Charging Policies, 1978.

23 McDonald, et al. Police Prosecution Relations Report, 1980.

recommending he or she accept. Perhaps this process could be sped up if we understood it better.

I am not sure how this research might be done other than through interviews with current and former chief prosecutors who have or have not defined their role as system manager. An alternative approach would be a statistical analysis of a sample of jurisdictions with the prosecutor's role definition the dependent variable to be explained.

(e) Value Differences Between Police and Prosecutors

One of the reasons for the personal conflict as well as the organizational antagonisms between police and prosecutors seems to be a profound difference in value preferences of police and prosecutors. We did not test this directly but came to this conclusion after piecing together the available literature. The only study which dealt with this issue precisely was Clark's work.[24] He found wide differences between police, prosecutors, and the general public in their moral judgments of certain hypothetical situations of moral content. The police were consistently closer to the public than were prosecutors. But, the study was based on small samples from a few Illinois towns. Other studies suggest that differences extend to a variety of other issues, but unlike Clark's methodology these other studies did not have police and prosecutors respond to the same moral situations. (Hence, the analysis is less rigorous and

24 J. P. Clark "Isolation of the Police: Comparision of the British and American Situations," in R. Quinney (ed.) Crime and Justice in Society, 1969.

persuasive.)

We did present police and prosecutors with the same hypothetical case and asked how they would dispose of it. But our samples were small and our hypothetical case was limited to one case, which--as one reviewer pointed out--limits our generalizability.

A study which presented a larger selection of moral and case dispositional choices to larger and more nationally representative samples of police and prosecutors would provide a more reliable determination of whether police and prosecutors are as far out of agreement on fundamental value choices as they appear.

(f) Screening By Police

Some national commentators including the chief architect of the Uniform Arrest Act have recommended that the police should be authorized to release suspects after arrest rather than detain them for a prosecutorial review if it is clear that the case is not strong enough to pass that review. Many states authorize the police to exercise such release power but few departments use it. But, in light of the enormous amount of case attrition at initial screening as well as dwindling criminal justice dollars we may be coming to the point where the police may have to assume a post-arrest screening role. Thus, it would be useful to examine how well this works in those jurisdictions which use it. Detroit is a good candidate site. The police there release 55% of the robberies themselves (even though the prosecutor's office reviews all cases within 6 to 12 hours from arrest).

(g) Bargaining by the Police for Pleas, Confessions and Other Actions

I hesitate saying anything about additional research relating to plea bargaining. (I can hear the yelps already.) But, one area which was touched upon but not clearly settled in our research is the police role in negotiating with defendants. The courts are beginning to rule that just as the prosecutor must keep any promises he makes, the police must fulfill their promises to defendants. In our small samples of 15 defendants in the Police Prosecutor Relations study and 60 defendants in the Plea Bargaining study we were unable to get anything like a representative picture of the extent to which police bargain with defendants; what their tactics are; what promises are made; which ones are kept; how these bargains affect the defendant's decision to plea guilty; and whether these negotiations are done with the approval of the prosecutor.

(8) Noteworthy Programs of Police-Prosecutor Coordination

(a) Detroit Police-Prosecutor Planning Council

Several communities have "law enforcement coordinating councils" which are basically nothing more than monthly luncheon meetings of local police chiefs and the chief prosecutor. These are useful but not exactly what Freed had in mind in recommending a coordinating council.[25] But, in Detroit, the Police Department and the Recorder's Court Division of the Wayne County prosecutor's office have established a bimonthly meeting of second-in-

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25 D. Freed "The Non System of Criminal Justice" in Law and Order Reconsidered, National Commission on the Causes and Prevention of Violence, 1969.

command executives of the two agencies. They handle a lot of the small but important differences which arise between the two agencies. It is a model which could be documented easily and displayed to other jurisdictions.

(b) New Orleans Police Review of Probable Case Outcome

In many cities the police just complain about the high rate of case rejection, dismissal and plea negotiation. In New Orleans, they decided to do something else. They review all cases before sending them to the prosecutor and they make note of the disposition they think the case should get. Later they compare this to what actually happened. They have found that they are in about 90% agreement with the prosecutor on the disposition actually given the cases.

This is really something of a breakthrough because much of the police grumbling about the prosecutor and the courts seems to be due to misinformation and false expectations. They are constantly upset by what prosecutors do with cases because they have never taken the time to develop a realistic sense of what to expect in cases. Before this new program, the New Orleans Police Department had gotten very upset with the high drop out rate. They had demanded a show down with the prosecutor; and the local press carried reports that the police "refused to believe they were wrong in 60% of the cases" (i.e., the ones rejected by the DA).

A similar program in other jurisdictions might reduce misunderstandings.

(c) Telephone Availability of Prosecutors to Police: Baltimore County, Md.

One of the big complaints by both police and prosecutors is the lack of communication and coordination between them. One small step to overcome this is for the prosecutor to make his staff available 24 hours-a-day-7-days-a-week to the police. Several jurisdictions have taken this step but it does not always result in success. Baltimore County seems to have made it work.

(d) Prosecutor Response to Crime/Arrest Scenes

In addition to being available by telephone, the prosecutor's offices in some cities send a prosecutor to the scene of certain crimes, arrests, or police shootings. In Rochester, N.Y., there are separate prosecutors assigned to respond to each of the five sections of the city which the police department has established. These prosecutors get to know the police in their sectors and the police seem to appreciate the legal advice as well as the goodwill.

In Chicago, a special branch of the Felony, Review Unit of the State's Attorney's Office "rolls out" to the scenes of all murders, police shootings and certain other crimes. They also go to the police station and take any confessions to ensure that the confessions will be credible and legal.

In the Bronx the prosecutor's office does not "roll out" to crime/arrest scenes but does do all the taking of confessions. Their procedure for taking confessions is even more elaborate than Chicago's. The Bronx DA requires the confession be on videotape or it will not be used. The DA says that because of the Knapp Commission's publicity of corruption among the police

the juries, they won't believe any confession not videotaped.

(e) Enhancing Police Report Writing

The overwhelming complaint of prosecutors is that police reports are too skimpy and inadequate. An LEAA project in the Nashville-Davidson Police Department seems to have found a way to greatly improve the quality of Police reports. It uses "para-legals" and high school typists to take police reports from police and ensure that much of the information that wouldn't have been there gets recorded.

In the Bronx, the Vera Institute of Justice has operated a "case enhancement" project wherein a police unit at the police station reviews the police reports and enhances them before they are sent to the prosecutors. Vera may have already documented the effectiveness of this project.

(f) Controlling Police Follow-Up Investigation

A ubiquitous prosecutor's complaint is that once the police get the prosecutor to accept a case it is difficult to get them to do any more investigation in it. The best procedure for controlling this problem exists in D.C. where at the completion of the case review the prosecutor has the police officer in charge fill out and sign a statement which lists all of the additional investigation he must do before a certain date. A copy of this form is kept in the prosecutor's file so the officer is held accountable if the work is not done.

(g) Prosecutorial Take Over of the Initial Charing Process

As already mentioned, some prosecutors have still not taken

over the initial charging function in their jurisdictions, even though some of them realize they should. For them it might be useful to learn how other prosecutors have made this move.

In Madison County, Ill. the prosecutor just announced he was taking over. In Philadelphia, Pa., the prosecutor went to the state legislature and got a law passed which facilitated his take over. In Monroe County (Rochester), N.Y., the DA would like to take it over but he is moving slowly to avoid alienating the police. He has inaugurated a citizen's dispute center as an initial step towards eventual take over. He says the DA in Westchester County, N.Y., took 11 years of careful politicking with the police to let his office take over the initial charging function.

(h) Police and Prosecutorial Training in Each Other's Functions

In Dade County (Miami), Fla., the Chief prosecutor has been riding with the police. In Orange County, Fla., the Winter Park Police Department details its homicide detectives to the prosecutor's office to observe trials and trial preparations in homicides.

(9) Transferability of Our Research Findings

The most immediate product transferable to practitioners would be a model check list of issues which local police and prosecutor agencies need to develop agreements about (such as who's responsibility it is to conduct line-up; who is in charge to the police detailed to the prosecutor's office; etc.). We did not develope such a list but discussed the need for one and

identified many issues which would be included on it.

We never did have time to package our plea bargaining game for training purposes. But, it still could be done. Recall that the prosecutors and defense counsel who used it thought it would be a useful teaching device.

Several of the programs mentioned in item 8 above appear to be ready for immediate transfer.

(10) Promising Ideas Not Covered

(a) Limiting the Number of Arrests

One way of reducing the case volume would be to get the police to limit the number of certain types of arrests. This choice should be made in consultation with the prosecutor's office. It would in effect be a pre-arrest screening.

(b) Delaying Arrests

In some places (e.g., Dallas, Tx.), the prosecutor's office has tried to get the police to delay the timing of arrests in order to forestall the beginning of the speedy trial clock. I don't know how this is being done or how many crimes are involved. But, it sound worth an inquiry.

(c) Other Ideas

In the opening sections of this paper I've already outlined several ideas which I believe are worth testing including the audio-visual-telecopier linkage between police and prosecutors and the computer-assisted-interactive case evaluation technology.

In addition, I would recommend the development of computerized training games for police and prosecutors which would simulate problems in investigation and prosecution of cases. The

general format would be like the games developed to teach medical diagnosis. The player would make decisions and receive a score for how well he had done compared to some standard.

Assuming police stations and court houses are going to be even more fully computerized in the future these games could be available to the police through terminals in the courthouses. While waiting to be called as witnesses, the police could be sitting at one of these training terminals learning between investigative techniques. Also, the training of prosecutors could be a little more systematic than the on the job training they now get--although it would still be on the job and available when the prosecutor was free.

(11) Weaknesses/Strengthens of Our Research

The major weakness of our police prosecutor relations study was that it relied primarily on semi-structured interviews and short visits to a large number of jurisdictions. This prevented us from getting large samples of opinions and experiences. Our mandate required that we take the wide view rather than the deep view. Consequently we covered a lot of issues but none in-depth. Our data are primarily qualitative.

On the other hand, the strength of the design we followed is that we heard the same issues and complaints in so many different settings that it seemed clear the issues and complaints were not unique local problems but fundamental problems. Looking for the common denominator in 16 different field sites forced us to a higher level of abstraction than we might have reached. It forced us to see that problems in communication and information

processing was the common underlying element in many disparate and otherwise disconnected complaints.

(12) Relationship of Our Work to Others

This answer is elaborated on at length in our report. Depending upon which part of our study you refer to, it either supports, modifies or challenges the work of others. Generally, we confirm the lack of coordination and cooperation between these two agencies; the antagonism over plea bargaining and charging; the complaint about inadequate police investigation; and the police desire for more imput into disposition decision-making. We show that some of the police complaint about prosecutors seems to be miscast.

Our inquiries into why some police officers have high arrest-conviction rates partially support but, partially challenge Inslaw's position. Some respondents explained it on the basis of real differences in skills and persistence among police officers. But other respondents felt there was also a substantial artificial effect at work making the officers with the high conviction rates get higher and the ones with low rates get lower. Supervisors said they assign their good cases to their good detectives and their losers to newcomers and less delight old-timers.

We disagreed with Jacoby's analyses of the compatibility of her prosecution polices and James O. Wilson's police "styles."

We agreed generally with McIntyre's analysis of problems in the police-prosecutor relationship.

We sorted the numerous conflicting statements about whether

police and prosecutors have the same or conflicting goals.

We disagreed with the views of those commissions and groups that believe the police and prosecutors should have philosophical and policy unity.

We showed that the recommendations of the ABA and other commissions regarding having the initial charging function controlled by the prosecutor were unrealistic and many jurisdictions unless electronic hookups can be arranged to reduce the prohibitive costs of having the police bring every case to the prosecutor's office in the county seat for case review.

We showed that the literature extolling the value of confessions to successful prosecution was greatly exaggerated; and that overcharging by the police was more a matter of not knowing the technical precision of the law as well as a desire to have a felony arrest then a unrestrainted piling on of charges with an eye toward plea bargaining.

END