NATIONAL EVALUATION PROGRAM

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Number 2

Pre-Trial Screening Projects

Phase 1 Report

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

"A logical place to begin discussion of such improvement [in the criminal justice system] is the prosecutor's office, for it is there that important decisions are made as to which offenders should be prosecuted, what cases should be brought to trial, when plea bargains should be struck and how scarce judicial resources should be allocated."

President Gerald R. Ford
June 19, 1975

NATIONAL EVALUATION PROGRAM
PHASE I REPORT

PRE-TRIAL SCREENING
IN PERSPECTIVE

By

Joan E. Jacoby

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NATIONAL INSTITUTE OF LAW ENFORCEMENT
AND CRIMINAL JUSTICE

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TABLE OF CONTENTS

LIST OF FIGURES

FOREWORD

To add to our knowledge of the criminal justice system, the National Institute is conducting a National Evaluation Program, exploring a number of "topic areas" of national interest.

The initial step in the process is a Phase I study that examines the issues, assesses what is currently known about the subject, and outlines methods for further evaluation at the national and local level. Phase I studies are not meant to be definitive evaluations; rather, they assess what appears to be known about the topic area at present. They offer a sound basis for planning further evaluation and research.

Although Phase I studies are generally short term (approximately six to eight months), they examine many projects and acquire much useful information. To make this information available to state and local decision-makers and others, the National Institute publishes the results of each Phase I study in a summary report.

This report reviews what was learned from the Phase I study of Pre-Trial Screening of Criminal Cases by Prosecutors, conducted under the direction of Ms. Joan Jacoby through a grant to the Bureau of Social Science Research, Washington, D.C.

The key finding: the prosecutor's policy regarding the prosecution and disposition of cases -- however derived and communicated to subordinates -- is directly and measurably related to charging procedures. Without knowledge of the policy, data on dispositions may be misinterpreted. When the policy is known, charging practices become understandable and, on the whole, rather predictable if the policy is applied on a reasonably consistent basis. Despite the importance of a clearly defined charging policy, however, the study found that prosecutors typically pay little heed to developing and articulating charging practices.

The study identifies four distinct charging policies, ranging from one which accepts for prosecution virtually all cases with the required legal elements to another which accepts only those cases which have been judged likely to result in conviction after trial. Other policies include one which emphasizes the defendant's rehabilitation through diversion from the criminal process and another which stresses efficiency, i.e. early disposition of as many cases as possible. These

four policies are not exhaustive, the report notes. In any prosecutor's office, a mixture of policies may be operating for different types of cases.

Using this study as a guide, a prosecutor who articulates charging policy can interpret aggregate dispositional data more coherently and can predict what the data will show. For example, in a system that emphasizes accepting only those cases likely to be won at trial, a high percentage of rejections at the charging level and of guilty pleas to original charges would be expected. When the existence of the legally-required elements of the offense is the chief criterion controlling the charging decision, a low percentage of original rejections and of guilty pleas to original charges can be predicted. The data obtained in this study support these expectations.

The National Institute believes this study can assist prosecutors, particularly those in large, diverse offices, who wish to control wide-ranging disparities in the charging decisions of their assistants. If improved office management in this area is the prosecutor's goal, the development of a charging/screening policy is an important step in that direction.

In addition to this summary, separate reports covering pre-trial screening issues and designs for both a national Phase II evaluation of pre-trial screening and for single project evaluations are available on a loan basis or on microfiche from:

The Evaluation Clearinghouse
National Criminal Justice Reference Service
Law Enforcement Assistance Administration
U.S. Department of Justice
Washington, D. C. 20531

Geoffrey M. Alprin
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PREFACE

It is less than two decades since the realization dawned that basic management principles are applicable to the administration of our criminal justice system. Many concepts flowed from that realization and formal case screening was one of the major tools developed by prosecutors throughout the country to enable them to meet their responsibilities in light of burgeoning criminal dockets.

Case screening has now been recognized as a valuable tool but heretofore the literature on the subject reflected the state of the art: that it is a useful device when employed but difficult to categorize or evaluate because of its amorphous qualities and vague dimensions. Obviously the literature had to begin somewhere and as one who has written on the subject I feel that we fulfilled our obligations by informing the criminal justice community of the existence of such a tool. The material developed by Joan Jacoby and her associates in Phase I of LEAA's development of evaluation techniques offers a major breakthrough in the development and understanding of case screening. If carefully considered, the Jacoby materials will eliminate the attitude which has been expressed so often: that the concept of case screening seems valuable but "we just don't have the time in our office." It can eliminate such thinking because it presents an evaluation methodology for case screening that offers a prosecutor the best insurance that his or her policies are being adhered to by subordinates throughout the office.

The evaluation methodology which is presented in these materials at first seems highly simplistic. This is so because the concepts and techniques represent a natural step in the evaluation of case screening and this realization only unfolds upon careful consideration. The typology presented in Figure 5 and discussed in the accompanying text sets forth a methodology for evaluating screening mechanisms in operation in a given office to determine whether those devices are fulfilling the purposes for which the prosecutor adopted them. Nowhere

does Jacoby or her cohorts seek to dictate a policy to prosecutors, instead they recognize that there are many possible policies from which a prosecutor may choose one or more. Their role was not to evaluate or criticize those policies but to develop measures which would enable a prosecutor to determine whether his or her policies are being serviced. The typology deals with four of the policies and provides tools for measurement at each stage of the criminal process. The expectations set forth in predicting dispositions at each juncture of a criminal case were not arrived at arbitrarily but are based upon serious thinking derived from observations of screening programs and conversations with prosecutors and their assistants in 18 cities.

At a meeting of the advisory board of this project held in Washington on September 22 and 23, 1975, the board was unanimous in its recognition of the import of these findings and its acceptance and advocacy of these techniques. So that no one will think that the board consists primarily of academics, let me assure the readers that the board is comprised predominantly of persons with prosecuting experience who have or had the responsibility for setting policy or for developing screening programs. This board believes that the materials contained in this report are worthy of your very serious consideration.

Lewis R. Katz
Professor of Law
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October, 1975

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Grateful acknowledgment is extended to the many people whose expertise and enthusiasm sustained and supported the Phase I Evaluation of Pre-Trial Screening Programs.

To name just a few of the many --

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I. THE PROSECUTOR: AN INTRODUCTION

The job of today's prosecutor is one which on the surface appears to defy classification or even generalization. Hamilton Burger, of Perry Mason fame, probably contributes over 90 percent of the public's knowledge about prosecutors while performing less than 10 percent of his duties. Part of the confusion about the prosecutor's role results from mixing that work which a prosecutor must perform with that which he chooses to perform. The recent research of the National Center for Prosecution Management (NCPM)[1] showed that the prosecutor and his operation can be most easily analyzed if those areas over which he has control are distinguished from those areas over which he has limited or no control.

The importance of this finding is that it gives foundation to the following inference. If the external environment of a prosecutor's office can be described and those factors affecting his situation identified, then the remaining differences or variations between similarly situated offices will be due primarily to factors under the prosecutor's control. Unfortunately, as other evaluations of the prosecutive function demonstrate, insensitivity to this dichotomy has produced confused judgements about the role of the prosecutor, fuzzy analysis and even unwarranted controversy. Each prosecutor's office must respond to an external environment. Thus to examine prosecutive activity accurately, distinction must be made between what the prosecutor can be held accountable for and what is a forced response to his environment.

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[1] First Annual Report of the National Center for Prosecution Management (1972: Washington, D.C., National Center for Prosecution Management).

The significance of the external environment as it influences both mandatory and discretionary activities of the prosecutor can be illustrated by noting four major areas which affect the activity of the office. The prosecutor can do little about the geographic, demographic or ideological characteristics of the community which he represents. Yet the character of the community determines, bounds and constrains the work and the policy of the prosecutor. Almost all of the approximately 3,400 prosecutors in the United States are locally elected.[2] Over three-quarters represent jurisdictions with populations of less than 100,000. It is easily understood that a rural community hardly presents the same demands for prosecutorial services as an urbanized metropolitan area. Similarly, a blue-collar working class community expects a different law enforcement pattern than an affluent, professional or white-collar community.

Situated between the police and the courts in the processing system, the prosecutor has little control over the amount and type of work sent to his office. State laws and local ordinances define crime, and what crimes are to be referred to his jurisdiction. The volume of crime in the community directly determines the volume of work in the prosecutor's office. Additionally, the quality of the law enforcement activity directly affects the charging process in particular, and the prosecutive function in general. The prosecutor, although a member of the executive branch of government, in fact, works daily within the environment of a judicial system which he cannot change. He is bound by court rules and procedures that force certain responses and to which he must adapt or comply.

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2 All statistics in this paper are from the 1972 National Survey conducted by the National Center for Prosecution Management and reported in the First Annual Report of the National Center for Prosecution Management, pp. 25-58.

Yet crime alone is not necessarily the sum of the prosecutor's work. Other matters compete for his resources and tap his discretionary authority. In 1972, 75 percent of prosecutor offices represented their jurisdiction in civil matters; 93 percent handled non-support cases; 82 percent, juvenile matters; 54 percent, family and domestic relations; 75 percent, consumer protection; 79 percent, environmental protection. Moreover, the prosecutor has limited control over the resources available to his office. Six out of ten offices surveyed in 1972 received 90 percent or more of their funds from the county government. As a locally funded public official, his resources, and too often his policies, are defined by the appropriating policies and priorities of the appropriating agency, usually the County Board of Commissioners. Not only may innovative programs such as victim-witness accommodation units or consumer fraud units be shelved, but even on-going activities often suffer from a budget squeeze, witness the almost 10% budget reduction ordered for the five New York City District Attorneys.

Thus the activities of the prosecutor are strongly influenced by his environment. In fact the National Center for Prosecution Management has shown that the effect of these and other environmental factors is so forceful as to require explicit consideration in the study of the influence of external factors on the activities of the prosecutors. From this perspective, it is important to note that variations in the response to similar environments can be attributed almost solely to variations in prosecutorial policy. After these other external factors are taken into account, prosecutorial policy becomes the single most important factor to be considered in the examination of the activities of prosecutors. The existence of policy and the strategies used to implement it can be identified and measured by observing those areas which are under prosecutorial control. Moreover, a lack of policy, the intentional or unintentional failure to exercise discretionary options, becomes as important in determining the operations of the offices and the outcomes of pre-trial screening as management in terms of a tightly reasoned and broadly publicized policy.

In considering the range of discretion open to the prosecutors in managing the activities of their offices, there appear to be three main areas in which the prosecutors operate with almost total authority. They alone have charging authority, they determine the case assignment in their offices and they make sentence recommendations to judges.

The discretionary power of the prosecutor used in the charging process sets the tone, tenor, quality and quantity of cases moving through the criminal justice system. The prosecutor has the option of rejecting a case, accepting a case at a given seriousness level or diverting a case to other criminal justice systems or other non-criminal programs. The decision made at this point reflects the prosecutor's policy as well as the character of the community and its expectations for law enforcement.

The second area under prosecutor control is case assignment for preparation and trial. The way in which resources are used significantly affects the type and quality of prosecution. Depending upon his resources and policy, work is distributed on a selective basis. For example, it is almost universally expected that the toughest cases will be assigned to the most experienced lawyers. In those situations where operations are conducted with limited resources (e.g., few experienced prosecutors), it is all the more important that policy and priorities be established which rationally distribute the work so as to maximize the opportunities for favorable dispositions.

The third area under prosecutor control is that of sentence recommendation. This post-trial activity occurs when the prosecutor recommends to the judge or the jury what the sentence should be. The recommendation is based upon the prosecutor's knowledge of the defendant, his background, the seriousness of the offense and the risk to the community presented by the defendant. Not all prosecutors use this power. In some instances this is by choice; in others, it is prohibited by the court or legislation. In 1972, 90 percent of the prosecutors

reported the existence of such authority, yet only 44 percent used it consistently (90 percent of the time or more) in felony prosecutions. Where sentence recommendation is used, it can be considered as "coming full circle" in the use of the prosecutor's discretionary power by insuring the consistency of sentencing with charging. Of all the prosecutor's powers, this is the area least examined and most worthy of further research and analysis.

Even though the three areas under prosecution control intertwine and must be examined in relation to one another, this paper focuses on the charging authority of the prosecutor as exercised through pre-trial screening programs.[3] More specifically it examines the perspective needed to evaluate pre-trial screening programs. The remainder of this paper will place the pre-trial screening process in perspective and demonstrate how its effect must be evaluated in terms of prosecutorial policy.

II. PRE-TRIAL SCREENING IN PERSPECTIVE

The existence of pre-trial screening programs depends on three major factors: (1) the degree to which the state constitution, state legislation, courts and the criminal justice system provide an opportunity for case review; (2) the District Attorney's perception of his responsibility in this area; and (3) the District Attorney's policy with regard to the prosecution and disposition of cases.

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[3] Pre-trial screening program is defined as the process whereby a prosecuting attorney examines the facts of a situation presented to him, and then exercises his discretion to determine what further action, if any, should be taken.

The widespread use and acceptance of the word "screening" to describe the intake, review and charging process is an unfortunate one since it implies the more negative connotation of filtering or rejecting rather than reviewing, examination and decision-making. With this distinction in mind the word "screening" will be used in this report but within the context of its broadest definition.

Opportunity for Review

The discretionary authority of the prosecutor is derived from the state constitution and legislation. As they vary, so does the opportunity for exercising this authority. One constitution and legislation may actively support the pre-trial charging authority of the prosecutor by mandating that no warrants be issued in a case unless the facts are reviewed and the charges approved by the prosecuting attorney. Examples of this type of environment exist in the State of Michigan and the State of Florida. At the other extreme, there are states in which the cases are filed by the police directly with the judiciary, usually a committing magistrate or justice of the peace. When cases are processed under these conditions the prosecutor may not be aware of their existence until the day of the preliminary hearing or preliminary examination. Even when the police refer the cases over to the prosecutor, the charging decision may be degraded by a lack of information or poor quality information. Thus the opportunity provided by the state constitutional and legislative environments must be considered before any evaluation is made of the prosecutor in the performance of this review and screening activity. For example, what may seem to be extraordinarily high dismissal rates for armed robbery in Detroit should not be attributed solely to prosecutorial weaknesses. Since consecutive sentencing is not available in that jurisdiction, there is little incentive for prosecutors to further burden the courts by prosecuting the same defendant for other robberies after one conviction has been obtained. Thus the general practice is to dismiss all other pending cases.

While most jurisdictions have a grand jury, the use of the grand jury varies. In the East, the common practice is to process all felonies and even some indictable misdemeanors through a grand jury. As one moves westward, the use of the grand jury for felony processing diminishes while the practice of filing by information increases. Because the grand jury is potentially useful as a screening device,

the existence, degree and type of its use must be examined in any evaluation effort.

It is also significant to note that the NCPM research identified a number of external variables affecting the prosecutor's operation primarily in relation to his charging function. Among these are the number of police agencies reporting to the prosecutor, the availability and timing of standardized police report forms, the existence and use of a grand jury and the type of defense counsel.

Perception of Charging Responsibility

In addition to the external environment within which the prosecutor must operate, the second important factor affecting pre-trial screening programs is the district attorney's perception of his charging responsibility. The perception ranges on a continuum from total abdication all the way up to an acceptance of responsibilities that results in the prosecutor becoming a policy maker for the community. The prosecutors who abdicate their responsibility usually do so with the following rationales which may be applied with various combinations or permutations.

In one situation, prosecutors may view themselves as an arm of the law enforcement agency. They rely upon the police work and accept police charges without question. This situation tends to arise when the distinction between a law enforcement officer's decision to arrest based on probable cause and the prosecutor's decision to charge based on the sufficiency of evidence or proof is not clearly understood.[4] An extreme example of this could be found in the recent past in Chicago (Cook County), Illinois where the police were charging, presenting the case to the magistrate and the prosecutor was permitted to change the

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[4] Brian A. Grosman, The Prosecutor: An Inquiry into the Exercise of Discretion (Toronto: University of Toronto Press, 1969), pp. 20-23.

charge only with police approval. The remnants of a similar system still exists in some areas of Massachusetts where in the lower, misdemeanor courts, the police actually prosecute cases and are called police-prosecutors.

A prosecutor can minimize his charging responsibility if he views himself as an arm of the court. Although a member of the executive branch of government, this identity is often lost in his daily workings with the judiciary. With a judicial perspective, he tends to rely on court hearings to make decisions for him, either setting the charge or rejecting the case. The most prevalent method is to use the probable cause hearing as a determinant of evidentiary sufficiency rather than of probable cause. In the same vein, a prosecutor may use his grand jury to reject cases which need to be dismissed but have such community sentiment or media attention that he is unwilling to accept the personal responsibility or the political consequences of such an act.

As the prosecutor recognizes and accepts his responsibility for charging, he tends to move from the abdication end of the continuum through various degrees of acceptance of responsibility. As he perceives his charging responsibility to interpret the law in light of community interest and professional standards, he begins to use his discretionary power. The first indication of its use can be seen when the charging decision is allowed to vary with the circumstances of the case. For example, the first offender possessing a small amount of marijuana may not be prosecuted; the little old lady caught shoplifting $5.00 worth of food may not be charged; the experienced criminal involved in a repeated series of personal injury offenses would be charged at the highest level. The prosecutor, interpreting the law and placing the charges, is discharging his official duties. As he perceives his job to be one of an interpreter of the law, he must assume the responsibility for his decisions or those to whom he delegates his authority. It is at this point that an evaluation of charging decisions resulting from pre-trial screening programs is first possible and necessary.

Finally, at the other end of the continuum, the charging responsibility may be used as a mechanism to make policy for the community. This is possible only because the prosecutor has an independent base of power derived from his elected status. As a locally elected official he can gather together the resources of the community and use them to change or establish community policy. Be it with regard to the prosecution of marijuana cases or Sunday blue laws, the establishment of diversion programs, the organization of a consumer fraud project, or community drug abuse education, his role as policy maker is evident.

Prosecution Policy

No matter where the prosecutor is located on the continuum, he operates with a policy (usually one for which he was elected) and implements the policy by various strategies. The policy of the District Attorney may vary as the characteristics of the approximately 3,400 prosecutors vary. However, some generalized classifications can be delineated based on experience and observation. Ideally, the prosecutor's policy should be transmitted to the charging assistants who uniformly and consistently apply it at the charging level. In practice, quite the opposite may be true. The examples presented below are therefore discussed as ideals or models. It should be emphasized that the four policy types presented here are neither exhaustive nor mutually exclusive. We are quite sure that other policies exist which result in different treatment modes and disposition patterns. We have also observed that in some offices a mix of these policies exists. For the purpose of this presentation, however, the policy types have been abstracted and presented as pure types. Aberrations which may occur in reality are noted but not emphasized.

Legal Sufficiency Policy

Some prosecutors believe that if any case is legally sufficient, if the elements of the case are present, then it is their responsibility to charge and prosecute. For example, in a breaking and entering case, if there was evidence of forcible entry, that is, if the entry was without the permission of the owner and if the person arrested was found to have in his possession items belonging to the victim, the case would be prosecuted because it was legally sufficient. The elements of the case are present. However, what may on the surface seem to be a prosecutable crime, may indeed be lost because of constitutional questions, for example, an illegal search and seizure. Implementing this policy at the charging level requires only an examination for legal defects. If the basis for a charge is not legally sufficient, either additional investigation could be ordered or the case would be rejected. The legally sufficient policy is most prevalent in the lower, misdemeanor courts. Here cases are routinely and quickly examined for obvious defects prior to court appearance. This is usually the extent of screening that a case receives. While this policy is applied to cases before the lower, misdemeanor courts, it is not apt to be used in the higher, felony courts. The value of this observation is that it demonstrates that two or more policies may coexist in a single prosecutor's office. (See Figure 1)

System Efficiency Policy

Another prevalent policy can be labelled "system efficiency". It aims for the speedy and early disposition of cases by any means possible. Time to disposition and the place in the court process where disposition occurs are measures of success in addition to favorable dispositions. Under this policy, the breaking and entering case would be rejected because heavy emphasis is placed on screening as a way of minimizing workload and the search and seizure issue would have been spotted. If there were no search and seizure issue, the case would have been accepted, charged as a felony and the defendant would be

FIGURE 1

LEGAL SUFFICIENCY POLICY
EXPECTED FREQUENCY OF DISPOSITIONS

POLICY: IF THE ELEMENTS OF THE CASE ARE PRESENT, ACCEPT FOR PROSECUTION.

Disposition Universe (Numeric Base for Rates)	Disposition	Frequency
Cases Presented	Reject for Prosecution Accept for Prosecution Divert--Non CJS Refer--Other CJS	Low High Not Predictable High
Cases Accepted	Dismiss at Preliminary Hearing Bound Over Plea to Reduced Charge Plea as Charged	High Minimize Maximize Low
Cases Bound Over	No True Bill (Grand Jury Only)	High
Trials	Guilty--Trial Acquittal--Trial Dismissed--Trial (Insufficient Evidence)	High Low High

allowed to plead at the committing magistrate hearing to a reduced charge of unlawful trespassing or larceny (both misdemeanors). This policy usually emerges when the court is overloaded and heavily backlogged and the resources of the prosecutor extremely limited.

Under these conditions heavy emphasis is placed on pre-trial screening in addition to the use of any other method of case disposal which can be found. The prosecutor, himself, may be an active searcher for additional avenues of case disposition. Cases will be examined in terms of their ability to be plea bargained (to achieve this overcharging may occur). Extensive use will be made of community resources, other agency resources and diversion programs so that cases may be kept out of the criminal justice system. Charges will be broken down for handling in the lower courts, if possible, or modified and referred to another court with a different jurisdiction (e.g., a county court case referred to municipal court). The full utilization of the court's resources and the charging authority will be made to dispose of the case as soon as possible. Particular emphasis will be placed on the disposal of the case prior to a bindover to the higher court or grand jury. (See Figure 2)

Defendant Rehabilitation Policy

A third approach based on a policy of rehabilitating the defendant utilizes some of the elements of the early and speedy disposition policy but should not be confused with it. In this situation, the prosecutor believes that the most effective treatment for the majority of defendants who pass through his office is any alternative treatment other than processing through the criminal justice system and more particularly, through the correctional system. He believes that any treatment other than this is better for the vast majority of defendants. To cite our breaking and entering case again,

FIGURE 2

SYSTEM EFFICIENCY POLICY
EXPECTED FREQUENCY OF DISPOSITIONS

POLICY: DISPOSE OF CASES AS QUICKLY AS POSSIBLE, BY ANY MEANS POSSIBLE

Disposition Universe (Numeric Base for Rates)	Disposition	Frequency
Cases Presented	Reject for Prosecution Accept for Prosecution Divert--Non CJS Refer--Other CJS	Not Predictable Not Predictable Maximize Maximize
Cases Accepted	Dismiss at Preliminary Hearing Bound Over Plea to Reduced Charge Plea as Charged	Low Minimize Maximize Low
Cases Bound Over	No True Bill (Grand Jury Only)	Not Predictable
Trials	Guilty--Trial Acquittal--Trial Dismissed--Trial (Insufficient Evidence)	High Low Low

if the defendant were a first offender or had a drug problem and restitution was made to the victim, he might very well be placed in a pretrial diversion program or if none available, and with the court's concurrence, he could receive a sentence of probation without verdict. The charging and prosecution decision depends primarily on the circumstances of the defendant and secondarily on the offense which he was alleged to have committed. Thus the goal is the early diversion of many defendants from the criminal justice system coupled with serious prosecution of cases allowed into the system. It is logical to expect vigorous prosecution of this latter category especially if the defendant's history includes prior convictions with no evidence of rehabilitation. Offices using this policy tend to rely heavily upon the resources in the community as well as in the criminal justice system to move eligible defendants out of the judicial and correctional systems. A close cooperation with the court often ensues, particularly in using the sentence recommendation power of the prosecutor to ensure consistency in the recommended treatment plan for the defendant. (See Figure 3)

Trial Sufficiency Policy

The fourth policy in common use is that of trial sufficiency. This policy states that a case will be accepted only if the prosecutor is willing to have it judged on its merits and expects a conviction. Under these circumstances, the prosecutor views his prosecutorial responsibility very stringently but not without leniency. If a decision was made to charge the defendant of our hypothetical breaking and entering case, and again if the constitutional question of the search was overcome, the defendant would be charged with the felony and a conviction expected at this level. Under this policy once the charge is set, it is difficult to change. To implement this policy, good police reporting is required since the initial charging stage closes out most options. It also requires alternatives to prosecution since

FIGURE 3

DEFENDANT REHABILITATION POLICY
EXPECTED FREQUENCY OF DISPOSITIONS

POLICY: DIVERT, SINCE THE VAST MAJORITY OF DEFENDANTS CANNOT BENEFIT FROM CRIMINAL JUSTICE PROCESSING.

Disposition Universe (Numeric Base for Rates)	Disposition	Frequency
Cases Presented	Reject for Prosecution Accept for Prosecution Divert--Non CJS Refer--Other CJS	Not Predictable Minimize Maximize High
Cases Accepted	Dismiss at Preliminary Hearing Bound Over Plea to Reduced Charge Plea as Charged	Low High Not Predictable Not Predictable
Cases Bound Over	No True Bill (Grand Jury Only)	Low
Trials	Guilty--Trial Acquittal--Trial Dismissed--Trial (Insufficient Evidence)	High Low Low

not all cases will be prosecuted. Most importantly, it requires court capacity since each case accepted is expected to go to trial. Finally, this policy, as compared to the others, mandates the tightest management control in the office to ensure that the initial charge is both proper and, once made, not modified or changed. (See Figure 4)

Summary

The examples of various types of prosecutorial policy discussed above show how each policy tends to lead toward different types of charging decisions and how each has different effects on other dispositions. While other policies could probably be isolated, the examples described above are sufficient to show the importance of considering the broader ramifications of pre-trial screening. The simplistic view of pre-trial screening as merely an alternative form of disposition, one for weeding out poorly made or legally insufficient cases, results in a tendency to evaluate pre-trial screening solely in terms of system economies. In our view, the major weakness of current discussions of screening programs and their value is that the discussions focus on the operation of trial screening programs per se and do not consider the role of pre-trial screening as a means for implementing policy or the effects of pre-trial screening on other elements in the criminal justice system.

FIGURE 4

TRIAL SUFFICIENCY POLICY
EXPECTED FREQUENCY OF DISPOSITIONS

POLICY: IF A CASE IS ACCEPTED FOR PROSECUTION, IT WILL BE CHARGED AT A LEVEL CAPABLE OF SUSTAINING A CONVICTION, OR A PLEA TO CHARGE.

Disposition Universe (Numeric Base for Rates	Disposition	Frequency
Cases Presented	Reject for Prosecution Accept for Prosecution Divert--Non CJS Refer--Other CJS	High Low Not Predictable Not Predictable
Cases Accepted	Dismiss at Preliminary Hearing Bound Over Plea to Reduced Charge Plea as Charged	Minimize High Minimize High
Cases Bound Over	No True Bill (Grand Jury Only)	Low
Trials	Guilty--Trial Acquittal--Trial Dismissed--Trial (Insufficient Evidence)	Maximize Low Minimize

A CHARGING TYPOLOGY

It seems promising at this point to develop models of charging systems which exemplify various types of prosecutorial policies, demonstrate the various goals which are consistent with each policy, and predict the expected outcomes for each policy and goal. We believe one of the benefits of the resultant typology to be the demonstration that appropriate evaluation of pre-trial screening programs demands consideration of prosecutorial policy, simply because different policies appear to produce different dispositional patterns. Unless policy is taken into account, it is impossible to determine from dispositional data whether or not pre-trial screening is an effective instrument for attaining the prosecutor's goals. The following section discusses the four prosecutorial policies and compares the goals and their relationship to other dispositions.

Figure 5, below, shows goals and predicted outcomes for each of the four policies previously discussed. The goals are shown in terms of outcomes which should be maximized (Mx in the figure) or minimized (Mn) for each policy. Because of the interrelatedness of the prosecutorial process, once these goals are established other outcomes may be expected to occur with predictable regularity. Some dispositions are expected to occur with high frequency (H in the figure) others with low frequency (L) while the likelihood of other outcomes appears to be independent of the policy and goals in some instances (shown as N in the figure).

The reader is cautioned to recognize that the frequencies listed as high or low do not have numerical values at this time. They are instead high or low relative to the universe specified for each disposition. It is expected that the designation of what is high or low relative to the universe will be defined by each individual prosecutor's office. Whether numbers can be generated that have nationwide applicability is yet to be determined.

FIGURE 5

EXPECTED FREQUENCY OF SELECTED DISPOSITIONS AS A FUNCTION OF POLICY

Disposition Universe (Numeric Base for Rates)	Dispositions	Policies											
		Legal Sufficiency		System Efficiency		Defendant Rehabilitation		Trial Sufficiency	
Cases Presented	1. Reject for Prosecution	L		N		N		H	
	2. Accept for Prosecution	H		N		Mn		L	
	3. Divert--Non CJS	N		Mx		Mx		N	
	4. Refer--Other CJS	H		Mx		H		N	
Cases Accepted	5. Dismiss at Preliminary Hearing	H		L		L		Mn	
	6. Bound Over	Mn		Mn		H		H	
	7. Plea to Reduced Charge	Mx		Mx		N		Mn	
	8. Plea as Charged	L		L		N		H	
Cases Bound Over	9. No True Bill (GJ Only)	H		N		L		L	
Trials	10. Guilty--Trial	H		H		H		Mx	
	11. Acquittal--Trial	L		L		L		L	
	12. Dismissed--Trial (Insuff. Evid.)	H		L		L		Mn	

EXPECTED OUTCOMES
H - High frequency
L - Low frequency
N - Not predictable

KEY

GOALS
Mx - Maximize this disposition
Mn - Minimize this disposition

If one reads across the row for any particular disposition in Figure 5, it is obvious that the expected dispositional values may change drastically depending on the policy being used. For example, the number of cases dismissed at preliminary hearing or a probable cause hearing is expected to be high under the legal sufficiency policy. Because cases receive only routine screening for obvious defects, other more serious defects may not be noticed until this point in processing is reached. Use of this policy also suggests that the courts are relied upon to function as the determinant of legal sufficiency rather than the prosecutor. On the other hand, the low dismissal rate expected for the system efficiency policy and the defendant rehabilitation policy may be traced to the fact that relatively few cases are being processed through a preliminary hearing under the system efficiency policy since the tendency is to first screen, then "break it down and plead it", thereby producing fewer cases at this level. Those cases that do survive are probably better prepared since they are likely to be nonpleadable. The same pattern occurs for the defendent rehabilitation policy but for different reasons. Namely, all the lesser defendants (cases) have been handled by other means, with the remaining cases being the most serious defendants who are vigorously prosecuted. Finally, the trial sufficiency policy which anticipates trial and conviction mandates that dismissals be minimized since, if one occurs, it is a direct reflection on the quality of the intake division's decision and points up errors on their part.

A special note should be made of dispositions by dismissal, not all of which may be adverse measures of prosecutorial performance. As already cited, a dismissal of other pending cases may be sought after a conviction has been obtained on another case.[5] In other instances,

[5] In some jurisdictions a nolle prosequi may be used in lieu of or in conjunction with this disposition. For purposes of this discussion, this type of disposition will be called a dismissal.

the case may be dismissed because the complaining witness refused to prosecute, the police officer failed to show, or the defendant was placed in a medical or health treatment facility. The dismissals that should be used to evaluate the performance of the prosecutor are those which reflect an insufficient case or lack of adequate preparation. Thus, generally, they can be classified as 'dismissed-insufficient evidence'. One would expect this to be a relatively high outcome under the legal sufficiency policy, since only cursory examination is given to a case, and relatively low under the system efficiency and defendant rehabilitation policies since both seek other forms of dispositions. Probably of all dispositions recorded, a purified dismissal rate (that which attributes responsibility to the proper participant in the system) is the most sensitive in evaluating prosecutor performance and the most accurate in measuring the effect of the charging policy.

Not only does a comparison among policies affirm that prosecutorial performance varies with regard to the policy of the office, but also that the policy must be determined before performance can be evaluated within an office. If one reads down any column in Figure 5, one sees that the expected distribution of outcomes can be made consistent with the policy. For example, the trial sufficiency policy, that of ensuring that the charge is correct and the case convictable, logically should result in a high rejection rate at intake, an indeterminate number of referrals to other criminal justice systems (for example, a municipal court), a minimizing of dismissals both at the probable cause hearing and at the trial level, a high frequency of bind-overs since the goal is to try the case, a minimizing of plea bargains, high rates of pleas to the original charge and correspondingly a maximizing of convictions.

Under the system efficiency policy (the earliest and speediest disposition of cases) an evaluator would measure success or failure in terms of the number of persons diverted from the criminal justice system,

the number of cases referred to other court systems, the number of cases disposed of by a plea bargain and the number of cases bound over (the latter should be minimal). Collection of time in process statistics and the court phase at which disposition occurs is also essential to the evaluation of this policy.

The typology thus permits the examination of prosecutorial performance within a rational and logical system. Since the relative frequency and pattern of dispositions are expected to vary according to the policies being pursued by prosecutors, evaluation of pre-trial screening should take those policies into account. While the pattern of dispositions is expected to vary across policies, once policy is taken into account the pattern of dispositions is expected to be reasonably regular and interpretable as prosecutors strive to maximize desirable outcomes or dispositions and minimize undesirable dispositions of their cases.[6]

STRATEGIES TO IMPLEMENT POLICY

Just as we have seen that certain policies force certain outcomes, so too can an insight be gleaned from an examination of the strategies available to implement policy. Unfortunately a typology of strategies is not yet as clearly elaborated as that in the policy area. However, if strategies are viewed as choices among options available to accomplish certain tasks, at least three are immediately obvious. The previous exposition showed the expected distribution of outcomes in terms of policy. This section will discuss plea negotiation, discovery and diversion as strategies available to the prosecutor and explore how he chooses to use them to attain his policy objectives.

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6 It is at this point, of course, that our proposed evaluation design departs most markedly from other proposed designs. Here we see the clear need for data on a broader run of dispositions and outcomes as well as information of the policies actually being used by prosecutors.

Plea Negotiation

One of the most important strategies used by prosecutors in disposing of cases is that of plea negotiation or plea bargaining. Its use or prohibition is so controversial and has generated such volatile discussion, that its role as a strategy to implement policy has been ignored. The abolition of plea bargaining by 1978 was incorporated into the National Advisory Commission on Criminal Justice Standards and Goals.[7] It generated so much discussion, controversy and argument that this issue dominated all other criminal justice issues at the national conference called to promulgate these standards. Whether a plea to a reduced charge as a result of plea bargaining is an acceptable form of case disposition should not be argued in the abstract. Plea negotiation should be examined in light of its ability to implement the policy of the office. While it is recognized that not all plea negotiations result in a disposition called "plea to reduced charge", it appears, at this point in time, that the most accurate indicator of this activity and one that is most likely to be collected by the prosecutor is this disposition.

The use of plea negotiation is consistent with both the legal sufficiency and system efficiency policies. With little preparation and review time, the assistants working under a legal sufficiency system will tend to accept pleas to reduced charges as a means of either correcting a charging mistake or minimizing the time required for more substantive case preparation. Under the early and speedy disposition policy of system efficiency, it is essential that this be the primary means of disposing of cases because it is the fastest and least costly conclusion. If the defendant rehabilitation policy is in effect, it is difficult to predict whether plea bargaining will be used because it is not an expected outcome of the policy. Whether the more serious cases

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7 National Advisory Commission on Criminal Justice Standards and Goals: Courts Standard 3.1, Abolition of Plea Negotiation, p. 46.

are allowed to plead to a reduced charge is both a function of court capacity as well as prosecutorial policy. Finally, under the trial sufficiency policy, it is entirely consistent that plea bargaining be minimized since the initial premise for selection of a case for prosecution is that it be properly charged and capable of being sustained in a trial situation and expected to produce a conviction. Hence to permit plea bargaining would be to contradict the policy.

Where plea bargaining is prohibited, it is not only essential that the control be tight as in New Orleans, but also that the cooperation of the court be obtained. In Detroit, the prosecutor's "No Reduced Plea" policy works because once the plea discussions have been concluded without resolution and the case jacket stamped 'NRP', the judges honor the strategy and will not accept a plea to reduced charge at the time of trial.[8]

Discovery

The implementation of discovery is a procedure whereby the prosecutor opens his case file to the defense counsel, showing him the evidence and the strength of the case. Where discovery does not exist, the defense counsel is usually limited to that information which has been filed in the court (usually the accusatory instrument) and that which he may glean from his client or from witnesses suggested by the client. In many instances, the defense counsel may not even

8 While the purist may argue that there would be no necessity for plea bargaining if court capacity were available, the realist would note that even under the calm conditions of the small town in a rural area, plea bargaining occurs--sometimes as an informal diversion program ("if you keep out of trouble and don't come back again, I'll let you plead to a reduced charge")--sometimes as a rehabilitative device and sometimes as a form of charity by not subjecting the defendant to public embarrassment.

see a copy of the arrest report until it is entered as evidence, nor may he know in advance the witnesses for the State.[9]

The most commonly expressed opposition to the use of discovery is based on the prosecutor's fear that by exposing his case to defense scrutiny, he may jeopardize his chances of winning. Indeed this fear may be well justified if the review and charging process is non-existent or weak. Whether this is a function of the resources and/or experience of the police department (which may produce less well-made cases), or a result of prosecutorial policy would have to be determined before an evaluation of its use as a strategy could be ascertained.

Ideally, we would expect use of discovery to vary according to the policy being followed by the prosecutor. Under what we have termed the legal-sufficiency model, discovery is not likely to be used, precisely because that policy tends to result in processing less well-made cases. On the other hand, it has been observed that use of discovery results in a high rate of disposition by pleas--either to the original or a reduced charge. Thus we would expect that the use of discovery as a strategy would frequent both the system efficiency model and the trial sufficiency model. At this point, use of discovery under a policy of defendant rehabilitation is not predictable since the outcomes produced by discovery, namely pleas, are not necessarily relevant to the outcomes sought under this policy. It may be used, however, to assure the diversion of a defendant to a proper treatment program.

9 See Brian A. Grosman The Prosecutor, op. cit., for an excellent discussion on abolishing this practice and the merits of implementing discovery.

Diversion

Diversion is the final strategy available to the prosecutor in the implementation of his policy which will be discussed here. Diversion has been previously identified as a disposition. But like plea negotiating, it can be viewed as a strategy which results in a type of disposition called by the same name. Diversion in its general use as a strategy should be distinguished by its referral points. A case may be diverted from the criminal justice system to alternative treatment programs. For example, the drug abuser to TASC, or the first offender to an employment program. Another form of "diversion" occurs when the case is diverted from one part of the criminal justice system to another. This we have called "referred" to distinguish it from the treatment function cited above.

To divert a case from the criminal justice system to another system through educational or training programs, or medical treatment programs is a strategy which is used consistently by all policies. Yet the reasons vary. Under a legal sufficiency model, the universe of defendants diverted will tend to be those arrested for misdemeanors, hence more likely to be first offenders and thus most eligible for non-criminal justice diversion. The system efficiency model would make extensive use of all available diversion programs or facilities as a means of disposing of cases and reducing work load. The defendant rehabilitation policy views diversion as a treatment option. The trial sufficiency model does not necessarily need a diversionary exit; since its decisions are essentially binary in nature, either go or no go, the use of diversion is more a matter of individual preference.

When cases are referred to another criminal justice system (notably another lower court or court with concurrent jurisdiction), the reasons for this decision may be due to one or more of the following factors: (1) the police charges may not be accurate reflections of the prosecution charges (this is particularly true if

police tend to overcharge); (2) referral to another court is a technique to reduce workload; (3) because the lower court usually has jurisdiction over minor offenses, it is used as part of a plea bargain; and (4) because lesser charges mean lesser sentences, it is used as an alternative form of diversion.

Figure 6 summarizes the strategies likely to be employed by an office to implement the office policy. Since the ultimate goal of the prosecutive function is case disposition, how the case is disposed of by using these strategies is reflexive of the policy of the office and the choices which are available and consistent with the policy. Proper evaluation of pre-trial screening should focus on the impact of the policies and strategies on the criminal justice system and measure the congruence between office policies and actual case dispositions. Without this perspective the evaluation of this part of the prosecutive process loses meaning.

RESOURCE ALLOCATION CONCEPTS

No matter what policy is being implemented, work has to be distributed in a rational manner if the desired outcomes are to be attained. Many resource allocation options which theoretically could be available to the prosecutor in actuality may be precluded by the external environment. For example, it would be difficult to organize an office around a trial team concept (wherein one or two assistants handle a case all the way from charging, through trial to disposition), without a court processing system geared to support it. Successful trial teams flourish when cases are assigned by the clerk of the court to a specific judge or a specific courtroom or when the prosecutor controls the docket.

Most prosecutive resource allocation plans are primarily responses to the external environment. From an evaluation focus, one must account for resource allocation responses due to the characteristics of police, defense and courts before a critique of any plan can be initiated. But critiques are possible. After the exogenous factors

FIGURE 6

EXPECTED USE OF STRATEGIES TO IMPLEMENT POLICY

Policy	Strategies			
	Discovery	Plea Negotiation	Diversion	
			Refer Other CJS	Divert Non CJS
Legal Sufficiency	Not Predictable	Yes	Yes	Yes
System Efficiency	Yes	Yes	Yes	Yes
Defendant Rehabilitation	Yes; to expedite treatment	Not Predictable	Yes	Yes
Trial Sufficiency	Yes; to insure adjudication	No	Yes	Not Predictable

have been identified and their constraints determined, one should evaluate the resource allocation patterns with respect to their consistency with the policy and priorities of the prosecutor. Just as varying policies affect dispositions through the implementation of strategies, so too are there rational responses to support the goals of the office in terms of resource allocation.

This section will briefly examine some of the ways the resources in the office can be distributed to ensure consistency with policy. It will focus on only those areas which are under the prosecutor's control--charging, case assignment and trial preparation, and sentence recommendation--even though the importance of external factors is recognized. The purpose of this presentation is to show that even the allocation of resources and the distribution of work in the office will tend to vary with the operative priorities. Figure 7 summarizes these distributions with regard to the above three areas and the policy model.

While the timing and completeness of police reporting is essential to the charging process, equally important are the qualifications of the person making the charging decision. Figure 7 shows that the experience level of the charging assistant may vary according to the policy of the office. For example, if the policy of the office is to examine cases only for legal sufficiency, as is the common practice in misdemeanor courts, then it is not necessary to use the most experienced assistant. Third year law students are capable of examining a case for the elements, with minimal review of their decisions by junior assistants.

On the other hand, the system efficiency policy requires that the charging decision be made with respect to a speedy and early disposition. Thus the charging assistant should have enough trial experience to know what is negotiable and enough system experience to know what can be diverted elsewhere (either to another court or other non-criminal justice programs) and what should be tried. There is little need for internal review of his charging decisions since the case is either

FIGURE 7

EXPECTED PATTERNS OF RESOURCE ALLOCATIONS BY TYPE OF POLICY

Policy	Resource Allocation Needs			
	Charging		Case Preparation for Trial	Sentence Recommendation
	Minimum Qualifications For Charging	Personnel Needed to Review Charges	Trial Experience Necessary	Personnel Needed for Sentence Recommendations
Legal Sufficiency	Paralegal; 3rd Year Law Students; New Assistants	Yes	Minimal	None
System Efficiency	Trial and Criminal Justice System Experience	Not Necessary	Minimal	None, unless basis for plea bargain
Defendant Rehabilitation	Trial and Social Work Background	Not Necessary	Moderate	Yes, to ensure consistency with treatment
Trial Sufficiency	Extensive Trial Experience	Yes	Extensive	Yes, to ensure consistency with charge

sent elsewhere or the charge is expected to be changed. Satisfaction is guaranteed as long as speedy dispositions are occurring. Final evaluative review should focus on the disposition of those cases which were processed through various steps in the system.

Similarly, the defendant rehabilitation policy requires minimal review of the charging decision since the goal is to divert the treatable defendant from the system and to prosecute the recidivist who would not be eligible for diversion. Here, however, the experience of the charging assistant must not only be trial-extensive but broadened by some type of social work sensitivity. The delicate decisions of who to prosecute and who to divert offer potentially dangerous situations to an elected prosecutor. A defendant released to a community treatment program must, in theory, represent a certain level of risk. The prosecutor must feel confident that his decision-maker is competent, experienced and ideologically attuned to his philosophy. Since the operators of the diversion programs can accept or reject the referral, the need for a review function in the prosecutor's office is minimized.

Finally, the trial sufficiency policy requires the utilization of the most experienced trial lawyers to make the charging decision. With this policy, once the decision is made to prosecute, the strategy is set; the case will go to trial and a conviction is expected. Under minimal conditions, the charging decision will be made by an experienced assistant; under optimal conditions it will also be subjected to another experienced review thereby minimizing the chances of something being overlooked at the initial step.

Not only will the allocation of personnel to the charging and review process vary according to policy, but so too will the assignment of personnel for preparing and trying the case. The legal-sufficiency and system-efficiency policies both move the cases after charging to assistants who first attempt to strike a bargain, and if failing this, prepare the case or transfer this task to other assistants. Since the goal is to minimize trials, it is not necessary that the assistants

have extensive trial experience. Under these conditions, it is interesting to question whether the character of the resources in the office (namely young, inexperienced assistants with high employment turnover rates) creates a policy which accommodates to this environment or whether the policy is the factor which supports this environment.

The defendant rehabilitation policy can sustain a mixture in personnel. Inexperienced assistants may handle misdemeanor court and perhaps monitor the diversion programs, if programs are under prosecutor control. Since the cases accepted for prosecution should tend to be the more serious ones dealing with repeat offenders, assignment for case preparation and trial would be given to the more experienced assistants. A similar strategy would apply to the trial sufficiency policy.

With regard to the prosecutor's authority to make recommendations at sentencing, office resources would, at the most, be only minimally employed under the legal sufficiency and system efficiency concepts since so few cases are expected to be disposed of by trial and since the majority will be disposed of by plea negotiations.[10] For the defendant rehabilitation and trial-sufficiency policies it would be expected that sentence recommendation would be used extensively since, for the former, it would ensure the consistency of treatment with the needs of the defendant and, for the latter, ensure the consistency of the charge with its expected punishment.

Although this discussion merely summarizes, in the briefest form, various patterns of work distribution, it does suggest the validity of evaluating resource allocation patterns in light of the

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10 A major exception to this statement occurs when the prosecutor bargains for a sentence, not a charge. Under these circumstances, he would make extensive use of this power.

policy and priorities of the office. Consistency with goals is obviously the critical factor. Just as it makes little sense to assign third year law students at intake to determine whether a case can be bargained, so too it is just as unreasonable to use experienced lawyers to determine that the elements are present. Since the critical impact of policy on dispositions, strategies and resource allocation has been discussed, now what is needed is a method of determining the congruence between policy and its application.

DETERMINING THE CONGRUENCE BETWEEN POLICY AND APPLICATION

One of the major problems facing a prosecutor is ensuring that his policy is being applied at the charging level, and is being applied uniformly by all assistants. The symptomatic indicator of a breakdown in the uniform application of policy is the existence of "assistant shopping". Under these circumstances, the police seek out those assistants whose philosophy is similar to theirs to review and approve their arrest charge. For example, an assistant who personally is revolted by homosexuals would be the likely target for the police officer who has arrested a man for solicitation. An assistant who is known to be "tough" on white collar crime would be sought out by detectives who have arrested embezzlers.[11]

The existence of the phenomenom of assistant shopping is symptomatic of lack of congruence between policy and application. Further analysis is required to locate the source of the divergence. One such source is in the manner by which prosecutorial policies are

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11 Individual differences will never be eliminated in the offices of prosecutors, but such variation can and should be controlled so that improper bias does not enter the system, and so that each defendant is assured of having his case examined on at least the same set of objective factors which are consistently applied to all cases.

promulgated and communicated to the prosecutors' staffs. Another likely source of departure from policy lies in the staffing structure of the office, while another lies in the administrative procedures adopted by the prosecutors for review of dispositions of completed cases. As a causal variable underlying all three potential sources of disruption, size of office seems to be potent. In the next few paragraphs, we turn to further consideration of these areas likely to foster departure from prosecutorial policy; as we do, we shall comment on what we perceive to be the effect of size or scale of operation in each area.

The means by which policy is promulgated and communicated to staff members is fundamental to implementation of that policy and in the processing of cases. It is obviously fundamental to understanding the variance in congruence between policy and case disposition. At the same time, size of office is also a prime explanatory variable, contributing much to creating the potential for departures from policy. As such, in assaying departures from policy, size of office must be systematically considered.

For example, about one-third of the prosecutors' offices in the United States at the present time are staffed by a single professional. In 1972, almost three-quarters of the offices employed three or fewer assistants. In these offices the prosecutor may see little need to think through a consistent prosecutorial policy, much less codify and promulgate it for the benefit of his assistants. In these offices much is left to casual communication as the staff work shoulder-to-shoulder with the prosecutor. As the size of office grows, the need for clear enunciation of policy and checks to see that it is actually being implemented become more obvious. As the organization becomes more complex, policy-making not only may be delegated to someone other than the district attorney, but also transmitted through more formal vehicles such as policy manuals (very difficult to create and update), staff memoranda (usually reactive) and staff meetings (where the policy

is more often transmitted by a discussion of an individual case than raised as an issue in itself).

At the same time, in large offices it is entirely possible that if poor communication exists between the policy maker and the policy implementers (the charging assistants), a policy making sub-level may exist within the office unknown to the prosecutor. With little effective communication from the top, the charging assistants through their daily contact with each other may establish and maintain the charging policy. Under more complex organizational situations, the typical pattern is for the prosecutor to delegate authority to the first assistant, the top lawyer responsible for the operations of the entire office. He, in turn, delegates criminal prosecution authority to the chief of the criminal division who, in turn, delegates charging authority to the chief of intake. As the layers of delegation increase and as the opportunities for direct communication with the policy makers decrease, it is clear that the probability of uniform application of charging policy is minimized. Concomitantly, the opportunity for abuse of power is enhanced.

It is not enough for a prosecutor in a large office to say "I trust my assistants" and assume because of this statement that his policy is being uniformly implemented. What is needed is a technique for determining what the policy of the prosecutor is and then for monitoring the uniform application of this policy. One technique to partially satisfy this need is by prosecutor review of cases handled by the assistants. In smaller offices, such as Montgomery County, this type of policy assurance is conducted on all felony cases and those misdemeanors which are marginal in nature. Each Tuesday and Thursday, the senior assistants review all the cases presented by the staff for charging decisions, and once a week all the cases are presented by the senior assistants to the State's Attorney. No better way could be found to ensure the uniform application of policy. Unfortunately, the volume of work in larger offices precludes use of this technique

except on a sample basis. Cases could be sampled, randomly or at systematic intervals, to produce a representative set adequate for sound appraisal of application of prosecutorial policy yet small enough for economical review by the senior staff.

This brief discussion of some likely sources of departure from prosecutorial policy and some means by which such departures might be averted has direct implications for evaluation of pre-trial screening programs. In evaluation each of these areas will require exploration. Prior to that exploration, however, it will be necessary to determine the disposition the prosecutor would wish to have made of each case under review. Fortunately, the means for making such a determination are already at hand.

Since 1968, LEAA has supported research and development of case evaluation techniques which weight cases in terms of the gravity of the offense, the seriousness of the defendant's criminal history and the evidentiary strength of the case. They serve to translate the prosecutor's policies and priorities into clear and specific guidelines for use by all office personnel. The numerical scores derived from this type of system are designed to be indicative of the way in which the prosecutor himself would order each case in terms of its importance for prosecution if he could review each one personally. As a result, a staff member processing a case--an assistant, and investigator or a clerk--can make an assessment in line with the prosecutor's policy by using these systems.

Case evaluation systems were originally developed by the District of Columbia Government's Office of Crime Analysis[12] for the U.S. Attorney's office. They are incorporated in the computerized system

12 Final Report: Project TRACE, Joan Jacoby, Director (1972: Washington, D.C., Office of Crime Analysis, Government of the District of Columbia).

known as PROMIS[13] which is presently being implemented in approximately 22 prosecutors' offices throughout the country. Since the development of PROMIS, the evaluation systems have been modified and refined. The most current version exists in the Bronx District Attorney's Office supporting the Major Offense Bureau's activity.[14]

Case evaluation systems are based on the adaption of the scaling techniques developed by Sellin and Wolfgang[15] and by Don Gottfredson.[16] The Sellin and Wolfgang scales measure the seriousness of the offense primariiy in terms of the amount of personal injury or property loss sustained. Gottfredson's Base Expectation scales are directed to predicting recidivism from California correctional institutions. These scales have been modified to measure the seriousness of the defendant's prior criminal behavior. This scale weights the amount, character and density of previous arrests and the mobility of the defendant. In addition, new scales were recently derived for the Bronx District Attorney to gauge the evidentiary strength of the case.[17]

13 System Overview and Report Format for PROMIS (Prosecutor's Management Information System): A Computer Based System for the District of Columbia, Joan Jacoby, Director (1971: Washington, D.C., Office of Crime Analysis, Government of the District of Columbia).

14 Mario Merola, "The Major Offense Bureau: A Blueprint for Effective Prosecution of Career Criminals," The Prosecutor, 11:1, July, 1975.

15 Thorsten Sellin and Marvin Wolfgang, The Measurement of Delinquency (1964: New York, John Wiley and Son).

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

17 Joan E. Jacoby, "Case Evaluation: Quantifying Prosecutorial Policy," Judicature, 58:10, May, 1975.

Figure 8 shows the form used by the District Attorney's office in the Bronx to rate the cases coming into the system according to his policy. The items with numbers are those factors which were found to be statistically significant for the prosecutor's policy; the numbers themselves are the weights derived from a multiple regression analysis.[18] The form itself was designed so that a clerk could fill in the information, and sum the weights to determine the case score. All cases with scores higher than a predetermined cut off point are referred to the Major Offense Bureau for review.

The advantage of these types of case evaluation systems lies in their inherent objectivity. Since each case presented for prosecution review is scored on the basis of the same factors, the evaluation is uniform and consistent. Objectivity is also achieved because the factors used for the evaluation are statistically derived (quantifiable) and require only minimal subjective interpretation.

Since the priority ranking is a reflection of policy and can be applied to the case at intake, it not only measures the seriousness of the case for prosecution but it permits the analysis of uniformity of charging. In addition, it offers a means of comparing the expected outcome of the case with the actual outcome relative to the policy of the prosecutor. For example, one would expect that a case scoring high on the urgency scale should result in a disposition favorable to the prosecutor (conviction) and even receive a longer sentence or harsher punishment than a case scoring low on the scale. Where deviations occur in the actual outcome as compared to the expected, this technique provides a means of identifying such results. However, it does not pinpoint the reasons for the discrepancies in outcomes. This

18 Report to the Bronx District Attorney on The Case Evaluation System, Joan E. Jacoby, Director (1974: Washington, D.C., National Center for Prosecution Management).

FIGURE 8 BRONX CASE EVALUATION FORM

A. NATURE OF CASE

	check if applicable	pts.
VICTIM		
one or more persons	☐	2.0
VICTIM INJURY		
received minor injury	☐	2.4
treated and released	☐	3.0
hospitalized	☐	4.2
INTIMIDATION		
one or more persons	☐	1.3
WEAPON		
defendant armed	☐	7.4
defendant fired shot or carried gun, or carried explosives	☐	15.7
STOLEN PROPERTY		
any value	☐	7.5
PRIOR RELATIONSHIP		
victim and defendant - same family	☐	−2.8
ARREST		
at scene	☐	4.6
within 24 hours	☐	2.9
EVIDENCE		
admission or statement	☐	1.4
additional witnesses	☐	3.1
IDENTIFICATION		
line-up	☐	3.3
TOTAL CASE SCORE	____	

B. NATURE OF DEFENDANT

FELONY CONVICTIONS		
one	☐	9.7
more than one	☐	18.7
MISDEMEANOR CONVICTIONS		
one	☐	3.6
more than one	☐	8.3
PRIOR ARRESTS - SAME CHARGE		
one	☐	4.5
more than	☐	7.2
PRIOR ARRESTS		
one	☐	2.2
more than one	☐	4.2
PRIOR ARREST-WEAPONS TOP CHARGE		
more than one	☐	6.4
STATUS WHEN ARRESTED		
state parole	☐	7.1
wanted	☐	4.2
TOTAL DEFENDANT SCORE	____	

C. REFER TO M.O.B. IF ANY OF THE FOLLOWING CONDITIONS APPLY:
(check those applicable-offense is most serious charge)

- ☐ FORCIBLE SEXUAL OFFENSES BETWEEN UNRELATED PARTIES
- ☐ ARSON WITH SUBSTANTIAL DAMAGE OR HIGH POTENTIAL FOR INJURY
- ☐ CHILD ABUSE, CHILD SEVEN OR UNDER
- ☐ MULTIPLE ROBBERIES OR BURGLARIES

D. SUMMARY INFORMATION

NO. OF VICTIMS ____
- ☐ received minor injury
- ☐ treated and hospitalized
- ☐ hospitalized and/or permanent injury
- ☐ law officer
- ☐ attempted murder of officer

WEAPON
- ☐ gun
- ☐ knife
- ☐ bomb or explosive
- ☐ other ____

BURGLARY
- ☐ night-time
- ☐ evidence of forcible entry
- ☐ Church, School, Public Bldg.
- ☐ no. of premises burglarized

VALUE OF STOLEN PROPERTY	recovered	not
☐ under $250	☐	☐
☐ $250 to $1499	☐	☐
☐ $1500 to $25,000	☐	☐
☐ over $25,000	☐	☐

PRIOR RELATIONSHIP
- ☐ other family
- ☐ neighbor
- ☐ friend
- ☐ acquaintance
- ☐ other

IDENTIFICATION
- ☐ photograph
- ☐ on or nearby scene
- ☐ other
- ☐ no. of persons making I.D. ____
- ☐ time delay of I.D. ____

SUPPORTING EVIDENCE
- ☐ crime observed by police officer
- ☐ fingerprints recovered

E. DISTRICT ATTORNEY'S EVALUATION ____
TOTAL SCORE ____
RANKING CLERK ____
A.D.A. NOTICED yes☐ no☐
ACTION BY A.D.A.:
- ☐ accepted ☐ furthered
- ☐ rejected ☐ referred to M.O.B.

reasons: ____

BCDA FORM 63 9/74

responsibility rests with either the policy managers of the office or the evaluators of the program.

To truly evaluate the charging function as a reflection of policy and its impact on the criminal justice system, dispositions must be weighted relative to urgency for prosecution and assessed in terms of relative preferential outcomes.

The value of a ranking system is that it can be coupled with actual dispositions to provide a technique for evaluating the success of a policy and its implementation. An example of how this can be done is shown in Figure 9. This figure shows how twelve cases would be weighted using a case evaluation system which reflects a prosecutor's priorities for prosecution. They are ranked in order from a low of 1 to a high of 12. The outcome of each case has been examined by the prosecutor and assessed as either a "most preferred" disposition (+1) or a least preferred disposition (-1).[19]

Multiplying the priority rank by the assessment of the outcome produces a weighted disposition score. When compared to the maximum range of dispositions a relative achievement score can be obtained. In this case a weighted disposition score of 61 was divided by the maximum score possible (all successes) to achieve a relative success rate of 61/78 or 78.2%. If the traditional method of obtaining a conviction rate is used, namely using unweighted results, the success rate would be 8 out of 12 cases or 66.7%. The weakness of the unweighted system is that it does not show dispositions in terms of priority. Hence it leaves an evaluator unable to state whether dispositions are occurring in line with the priorities of the office.

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19 Degree of preference theoretically should not be thought of as a dichotomy. Rather the relative preferred disposition should be allowed to vary along a continuum. Dichotomization is used here to simplify the technique and illustrate the principles.

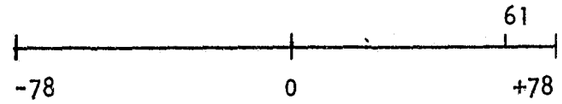
Figure 9

Example of Cases Weighted by Urgency and Disposition

Case Number	Prosecutor Priority Ranking (Low = 1)	Disposition Most Pref. = +1 Least Pref. = -1	Weighted Disposition	Maximum Weighted Disposition Possible
1	4	-1	-4	4
2	7	+1	7	7
3	2	-1	-2	2
4	5	+1	5	5
5	12	+1	12	12
6	11	+1	11	11
7	9	+1	9	9
8	8	-1	-8	8
9	1	+1	1	1
10	3	+1	-3	3
11	10	+1	10	10
12	6	+1	6	6
			+61	78
			-17	
			+44	

Weighted Dispositions

Most preferred rate: 61/78 = 78.2%
Least preferred rate: -17/78 = 21.8%



Unweighted Disposition

Most preferred rate: 8/12 = 66.7%
Least preferred rate: 4/12 = 33.3%

By weighting dispositions in terms of their priority for prosecution, a new dimension is added to the evaluation of the impact of the charging decision on the criminal justice system.

EVALUATION REQUIREMENTS

While it is apparent that systematic knowledge of the operation of prosecutors' offices is empirically just a few steps removed from infancy, results of the analysis of the observational data from the on-site visits do provide the basis for establishing an evaluation design. As proposed here, the design would have two distinct outputs. The first would be an individual evaluation of screening programs in the prosecutor's office. The second would be data necessary to refine and extend the charging policy typology presented in this paper. The uses of the individual evaluations are obvious. The evaluation design which we are proposing would enable prosecutors to determine whether the actual case dispositions in their offices are occurring in the pattern desired; and whether the most serious cases are receiving the most preferable dispositions; i.e. the highest conviction rates and the most severe sentencing. Refinement and validation of the charging typology have similar practical benefits. Data from a wide range of prosecutors' offices would establish the systemic consequences of differences in policy and would thus be of considerable value for planning and resource allocation not only on the local but also at the state level.

Three evaluation instruments are required: (1) a decision flow chart; (2) a standard set of cases to be used for comparative studies and typology verification. These will be evaluated separately by the prosecutor and each of his charging assistants; and (3) a case control sheet showing rankings, the routing and facts of actual cases, their ultimate disposition, and the reason for dispositions when necessary.

The results of ranking the standard set of cases will be used to generate weights for a case evaluation system for each prosecutor. The data provided by the case control sheet will support the evaluation of actual outcomes in terms of the policy goals of each prosecutor.

Evaluation designs for individual pre-trial screening projects which are noted more for their diversity than similarity are feasible if they can operate independent of organization and external structure. By focusing on decision-making theory and the decision functions in the office, problems inherent in structural or organizational variation can be evaded and evaluation made possible. The adoption of an evaluation design keyed to decision points is also a practical one since the charging decision represents the first and most important use of the prosecutor's discretionary power. In order to identify the decision points within an office, a decision flow chart (see figure 10) should be prepared prior to any other work. Briefly, the decision flow chart describes the loci of decisions throughout the prosecutive system, identifies the decision-makers and participants in the decision, describes the sets of information upon which the decision is made, identifies the choices available to the decision-maker and provides a basis for establishing the frequency of selection of dispositions. The decision flow chart is the evaluator's most important tool. It provides a visual image of the entire screening and disposition process in the office and a conceptual framework against which the actual data on case dispositions can be interpreted.

Figure 10 presents a flow chart illustration of a conceptual approach which we recommend for use at the individual project level. While the flow chart presented here is based on the New Orleans Parish judicial system, it exemplifies the principles which can be used to evaluate pre-trial screening projects in any office.

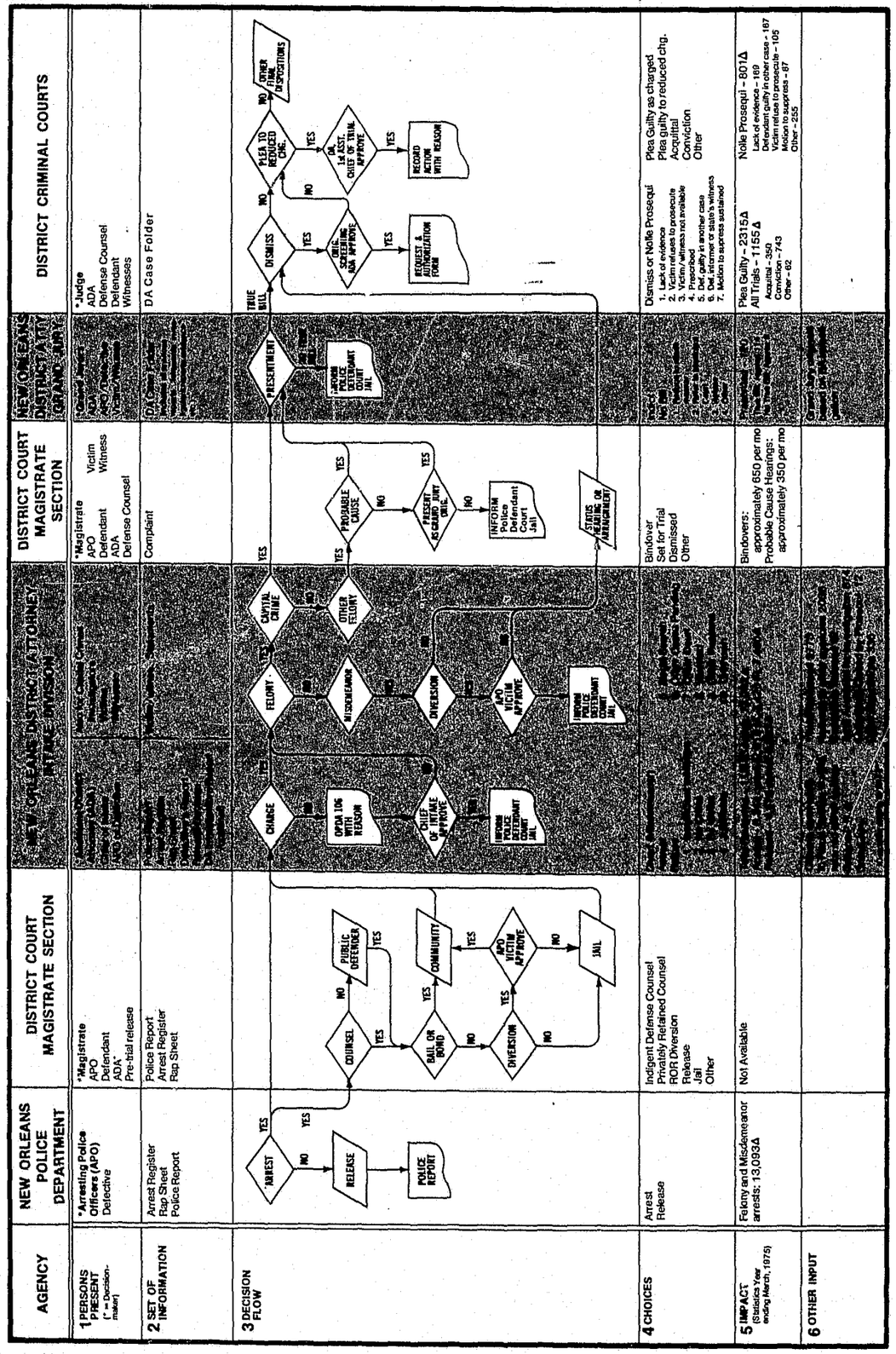


Figure 10 SAMPLE PRE-TRIAL SCREEN

The columns are agency identifiers and represent the various phases through which a case may flow, from the law enforcement intake level through the prosecutive and judicial sections. It can be seen, for example, that the Magistrate section of the District Court actually comes in contact twice with the defendant (see columns 2 and 4). Thus the agency identifiers quickly portray the nature of the criminal justice system in a particular jurisdiction.

The rows represent the significant factors for establishing an evaluation design based on decision-making theory. The first row identifies the participants at each decision-making process step; while the asterisk identifies who is the decision-maker or, the primary decision-maker, since sometimes the decision is subject to review. It is as important to identify who the participants are at a decision point as it is to record the set of information upon which the decision is made. Since the information requirements differ among processing steps, differential personnel resource patterns are created.

The second row identifies the narrative set of information which is available for each of the decision-making steps. Under normal circumstances, as the case proceeds through the processing system, more and more information becomes available. The detective reports come in; the rap sheet is received from the FBI; additional evidence such as chemist, narcotics and coroners reports may be available as the case progresses over time.

The third row of the flow chart identifies the decisions made in each of the various processing steps. It is not essential that the decision flow chart be created in great detail, noting minor or special exceptions to a process. It is merely necessary that the flow identify where decisions normally occur, who is making them and what the consquences are. Particular emphasis should be placed on identifying

the factors which control or monitor the decision flow. Whenever decisions are reviewed and/or approved, these control points should be identified as well as any resulting notifications to other agencies.

The fourth row shows the choices available to the decision-maker at each step in the process. These choices may vary among offices; they may also emerge at different points in the case flow process in different systems. Since our approach to evaluating pre-trial screening projects is focused on decisions, then the decisions must be measured relative to the universe of choices available to the decision-maker. Empirical data on the frequency with which each of the decision options is exercised at each step in the process will be derived from the information on the individual case control sheets. The identification of the decision points and the choices available at each process step establishes the foundation for a case evaluation reporting system. As cases flow through the pre-trial screening program, the data on the decisions made or options exercised would accumulate. The pattern of dispositions viewed in the context of earlier decisions as well as the structural constraints or facilitation in other areas would then become the basis for refining the typology of prosecutorial policies and dispositions. At the same time, the accumulated data from each project form the basis for determining whether the pre-trial screening project is supportive of the prosecutor's policies or is subversive of them. Here it is important to note that the data sought include not only the actual dispositions made of cases at a process step but also the reasons for that disposition. The need for reasons is fundamental to the analysis, simply because it is often the reason behind the disposition itself which illuminates the operation of the process. For example, knowledge that a case has been dismissed is not sufficient for an understanding of the operation of pre-trial screening. Dismissal of a case because the defendant is convicted in another case

is an acceptable disposition for the prosecutor; dismissal for insufficient evidence is indicative of inadequate case evaluation.

The fifth row, called "impact" identifies the areas where data should be collected to permit a proper evaluation of the system. It also demonstrates the unfortunate fact that the categories used for disposition reporting in most prosecutors' offices and judicial systems today are too broad. It is not enough to know the number of cases disposed of by a plea of guilty. It is also necessary to know at which stage the plea was accepted (for example, at the committing magistrate level, very early in the system, or at the first day of trial after the case had languished in the system for a period of time). Dispositions should be counted, reasons reflecting accountability should be captured, and the stage at which the disposition occurred should be identified. The value of this part of the flow chart lies in its ability to identify data gaps as well as needs.

The final row in the flow chart, labelled "other input," records other workloads in the office in order to proportionate that part of the prosecutor's work resulting from the referral of cases from law enforcement agencies to the rest of his responsibilities. For example, in the prosecutor's office illustrated here, there is a citizen complaint unit which reviewed nearly 3,000 complaints in one year. The impact of this additional workload must be considered in context. In some instances, depending upon the need, additional flow charts for these collateral processes may be developed.

In order to evaluate a pre-trial screening project one must also measure: (1) the extent to which the prosecutor's policy is transmitted to the charging assistants; (2) the degree to which the charging decision is uniformly and consistently applied in line with the policy; and (3) the impact of the decision (or policy) on the criminal justice system. Although case evaluation systems are being

used in many offices, no uniform evaluation system or procedure for developing such a system has been implemented. We propose that a case evaluation system similar to that used in the Bronx be developed for the general evaluation of pre-trial screening. To develop an evaluation system, each prosecutor and/or his assistants would be asked to evaluate dossiers on a standard set of cases (ranging in number from 100 to 200 and representing a large range of criminal activity) in terms of the seriousness of the offense, the "badness" of the defendant, and the strength of the evidence. These evaluations will be translated into an "urgency for prosecution" or priority score for each case. Comparison of the scores assigned by assistants to the scores assigned by the prosecutor provides unambiguous evidence of the degree of within office consistency in the appraisal of cases. At the same time, the evaluators will be asked to assess a range of dispositions in terms of their acceptability for each case.

Through the use of multivariate statistical techniques, weights will be derived for each of the significant elements affecting prosecutorial priority. These weights will then be incorporated into a case evaluation form which the prosecutor's staff use to make uniform and objective appraisals of actual cases. Using the case evaluation form on a run of actual cases will produce the data needed to evaluate the operation and impact of the pre-trial screening project in each office. Case outcomes can be compared to the prosecutor's policy and to the priority scores assigned to the cases. The appropriateness and the timeliness of dispositions can also be used as evaluation criteria.

The same data used for the evaluation of the offices of individual prosecutors (namely, the appraisals of the standard set of cases and the case control forms for a run of actual cases) will be used to refine and extend the charging typology. In its present

form that typology is an intuitive abstraction from the observations made during the on-site visits. While we have been able to fit each office into one of the policy models, this merely establishes the presumptive validity of the typology. Additional empirical data is needed to test for other policy models and to locate dispositional patterns that are at this time not known to us. Patterned deviations from expected and desired dispositions will provide the data for refinement of the charging typology and for extending our understanding of the dynamics of this aspect of the criminal justice system. Refinement and validation of the typology are believed to be of considerable practical value insofar as we have been able to note reciprocal effects between the activities of the prosecutor's office and other elements of the criminal justice system. In particular, the divergent outcomes apparent under each of the four charging policies discussed in the present typology have quite different implications not only for the judicial system but also for the allocation of fiscal resources and personnel.

III. PRE-TRIAL SCREENING PROGRAMS--AN ASSESSMENT

This section deals with an assessment of pre-trial screening programs as derived from the literature, the on-site visits and the subject matter knowledge of the author. It presents the reader with a summary and general assessment of the current operation of pre-trial screening in prosecutors' offices and the impact of pre-trial screening programs on the justice system. The assessment points up both the diversity of current screening programs throughout the United States and notes areas for further work and research. Emphasis is also given to those areas which need to be examined and further supported in order to perform evaluation of pre-trial screening programs.

The Range of Pre-Trial Screening Programs

It is obvious from the literature, other documented reports, and the results of these on-site visits to 18 different offices that there is much variety in the type and quality of pre-trial screening activities in prosecutors' offices. The offices examined for this assessment ranged from those with limited or no formal programs (Boston, Rhode Island, Jersey City and New Haven), to those with varying degrees of case examination (Syracuse, Miami, Salt Lake City, San Diego and West Palm Beach), to those with a stratified screening program (as in the Bronx and Washington, D. C.) where case evaluation systems permit selective prosecution of certain serious cases, to integrated systems (Detroit, New Orleans, Kansas City, Milwaukee, Montgomery County (Maryland)), and finally to the diagnostic review provided by Boulder, Colorado.

Each of the offices responded differently in establishing an intake and review function. Staffing in the unit ranged from the rotation of the newest assistants into screening on a daily basis to the permanent assignment of the most experienced trial lawyers. The

set of information upon which the decision was based also varied from jurisdiction to jurisdiction, as did the participants in the decision. Some offices gave only cursory review to the case before it was presented to a grand jury (such as in Rhode Island where police reports were presented to the Grand Jury Assistant Attorney General), while other offices such as Kansas City worked closely with the police to ensure that the case was sufficient before it came over for charging. Milwaukee provided the most extensive review of the facts of the case, hearing what all participants in the crime had to say before making a charging decision. In Syracuse, the charging decision rests primarily on one person alone; in the Bronx, San Diego and other larger offices, the decision authority is spread among many assistants, sometimes with a review mechanism, sometimes without.

The choices available to the prosecutor also varied in availability and in location in the process. In Kansas City, three diversion program coordinators were operating within the physical office space of the prosecutor, thereby expediting the decision of whether to divert at the earliest possible stage. In Montgomery County and Jersey City, on the other hand, diversion programs are limited to first offender misdemeanants and referral occurs later in the system. In offices where diversion programs are not available to meet the needs of some of the defendants, the prosecutors have responded by alternative forms of disposition, be this by the use of a "stet" file or by sentences such as "probation without verdict" or "probation prior to judgement". With regard to the basic choices, accepting or rejecting the case, it seemed that the impact of these decisions depended primarily on the quality of the police investigation, the prosecutor's perception of his charging responsibility and the workload in the courts. What was obvious in all the offices was

that the effect of these variables precluded the establishment of a standard or a limit above or below which rejection rates should occur.

It was clear to the investigators that in those offices in which the prosecutors were appointed rather than elected, such as New Jersey and Connecticut, the ability of the prosecutor to move into a policy making role was severely limited. They were able to move to a position of interpreting the law in light of the circumstances of the case, but, by far, the locally elected official seemed more confident and stronger in asserting his independence in the charging process. This certainly is an area which based on these insights is worthy of further research and study.

The policy of the prosecutor, colored by his perception of his charging responsibility, appears to be the primary factor influencing the type of pre-trial screening programs. In fact, the typology presented in the first section actually was derived from the on-site visits. The consequences of such a typology and the impact of policy on dispositions is supported by the varying uses of strategy and resource allocation patterns to achieve desired outcomes. It is evident that this area must have additional and comprehensive research. One cannot be parochial in evaluating pre-trial screening programs. There is no single standard program, yet at the same time, there is not such a jumble of them that they cannot be systematized and made explainable. The variety of pre-trial screening programs which operate today throughout the United States can be placed within a rational framework which not only permits their individual evaluation but sets the foundation for a national evaluation of the impact and effectiveness of different prosecutorial policies on our criminal justice system.

The Economies of Pre-Trial Screening Programs

For all the variety of screening programs that exist throughout the United States, it is a fact, in terms of the experience of others, our experience and from the limited data available, that the institution of a screening program in a prosecutor's office makes a vast difference in his ability to adequately provide proper prosecutorial services to the state and to protect the public.

The American Bar Association, the National Advisory Commission on Criminal Justice Standards and Goals and the other national commissions addressing themselves to this program, all support the use of pre-trial screening as a means of providing economies to the system. The exposition of the economies to be derived from instituting pre-trial screening programs has been the major selling point for these programs. Prosecutor screening saves time and money. "When weak cases and cases which don't warrant prosecution are removed from the docket, it eliminates the need for judges and other court personnel to devote time to them. In this, as in any other profession, time saved is money saved. When civilian witnesses and police officers are not required to appear, it not only translates into savings on witnesses and police overtime, but allows civilians and police alike to use their time in more productive ways. . . ."[20]

There are quantifiable economies resulting from implementing pre-trial screening programs, be they in terms of rejecting insufficient cases, savings in court hearings, or reductions in case backlog, police overtime, witness fees, and other system support personnel.

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[20] David Rossman and Jan Hoffman, Intake Screening: A Proposal for Massachusetts District Attorneys, Center for Criminal Justice, Boston University, 1975.

What is clear is that those offices that are not screening cases prior to filing are suffering from the effects of dumping garbage into the criminal justice system. Indictments may be pending for over a year, the courts are backlogged, and the prosecutor may be forced into the potentially dangerous position of having cases dismissed because of lack of speedy trial, of having to dispose of cases with cheap plea bargains, or of losing cases because they were so old that witnesses disappeared or their testimony became obscured.

It was not deemed the task of this assessment to measure the economies derived from implementing pre-trial screening programs. Their justification has been well documented and supported by numerous studies. Rather, to complete the mandate of Phase I evaluation we felt it essential to devote some of our resources to the exploration of the actual workings of pre-trial screening programs in terms of their mutual effects with other elements of the criminal justice system.

The Effectiveness of Pre-Trial Screening Programs

A distinction should be made between the economies gained from the institution of pre-trial screening programs as discussed in the previous section and the effect of a screening program once it is implemented. Since the charging decision sets a course of action in the prosecutor's office once it is made, the impact of this decision should be measured. In order to set up a measurement model one must consider the following questions. First, what is the policy of the prosecutor with regard to prosecution and the expected disposition of cases? In other words, what cases does he consider most urgent for prosecution? Second, is his policy being transferred to the charging assistants? Third, if more than one assistant is making the charging decision, are the decisions being made uniformly among assistants? And fourth, given the implementation of the policy,

what effect does it have on the prosecutor's office, the criminal justice system and society?

It was clear from our field visits that screening in terms of effectiveness has rarely been considered. The economies were usually the justifications used for such programs. Little attention had been given to the problems of policy transfer, uniformity of charging and ultimate impact on the system. More common was the statement "I trust my assistants". As a result, in many instances assistant shopping was the practice, a clear indication of the absence of controls to ensure uniformity in charging decisions. Whether this practice is due to the prosecutor's lack of sensitivity to the need for uniformity or whether he truly does "trust" his assistant, the ABA clearly states the "ultimate goals of prosecution . . . [are] the fair, efficient and effective administration of criminal justice."[21] It could be that this situation has arisen because the tools to aid the prosecutor in this area are not widely known or used. Where case evaluation systems are used (such as in the U.S. Attorney's Office in Washington, D. C. and the Major Offense Bureau in the Bronx), it was the feeling that they fostered consistency since each case was weighed by the same set of objective factors in the ranking process. We feel that the case evaluation systems should be used purposely as a means of measuring both the congruence of the prosecutor's policy with that of the assistants as well as the uniformity of charging decisions among assistants. However, we also recognize that unless the office was organizationally responsive to this need, even with such a desire or technique, the chances of promoting uniformity and congruence with policy are minimal.

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[21] American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function (approved draft) (New York: American Bar Association, 1971).

One fact must be noted. The problems associated with policy transfer and uniformity of charging decisions are those of the large office. When the prosecutor's office is small, the daily and constant communication between all assistants and the prosecutor ensures that this is an area of minimal concern. Such an example could be found in Montgomery County where the 15 assistants work in almost a familial atmosphere. There the charging responsibility rests with two assistants who review all cases with the prosecutor weekly. It is only when the office must structure itself in more complex ways that these issues are critical to measuring the impact of policy and the effect of the charging decision.

The effectiveness of pre-trial screening, of course, depends upon a proper allocation of resources to the screening unit as well as throughout the rest of the office. A potential problem, but one not observed in this investigation, is when policy, strategies and resource allocation patterns are in conflict. For example, if the objective is to insure speedy dispositions, the intake unit should not be manned by inexperienced third-year law students nor should plea bargaining be prohibited. In Boulder, where diversion was the primary goal, the intake unit was staffed by persons knowledgeable of the resources of the community and who believed in the stated goals of the prosecutor. The strategy and resource allocation tables (Figures 6 and 7) presented in the previous sections point up the fact that these responses are rational in light of policy. Yet, since they provide only the briefest of insights, they should be submitted to further and more detailed examination, both to verify the accuracy of the logic that produced them and to revise them as necessary.

Finally, consideration must be given to the issue of identifying the effect of a policy on the criminal justice system in addition to the management of a prosecutor's office. The prosecution policy of an

office may very well set priorities for the law enforcement agencies. Obviously, if marijuana possession under an ounce is not going to be prosecuted, the police will not make many arrests for this offense. The prosecution criteria also impact on the court's ability to handle cases and finally on the characteristics and quantity of defendants in detention systems. The extent to which policy impacts on other components must be determined if planning is to have meaning or analysis power. Few prosecutors view the effect of their screening policy in this light. This again is partly because of tradition and partly because of a lack of tools. One of the advantages of the case evaluation system is that it indicates the disposition of cases by urgency for prosecution. The cases referred to the Major Offense Bureau in the Bronx (the more serious cases) have startlingly different disposition rates in terms of pleas and convictions than those that proceed through normal processing. Thus, the impact of a particular policy toward a particular group of cases is measurable.

In considering the consequences of screening programs, one can measure the amount of efficiency introduced by such programs, but it is practically impossible beforehand to determine the full range of effects once a screening program has been instituted. It is clearly in these broader ramifications that an evaluation of the impact of pre-trial screening is of greatest importance.

Implementation Considerations

It has been the experience and observation of this effort that too often pre-trial screening programs are installed in an office for one purpose: to reject legally-insufficient cases before they enter the system and cause undue work. As a result, prosecutors rarely consider the system impact of a pre-trial screening program as it exercises its

role as the initiator of a given policy with direct, traceable consequences. With the too common view that pre-trial screening functions as a garbage disposal, it is logical that many offices view this task as merely an additional duty requiring additional support. Within a narrow project definition, this may be operationally efficient. Within a broader policy program context, it fails to establish safeguards to ensure that charging is consistent with office policy.

In order to implement a pre-trial screening program which will effectively transmit the policy of the prosecutor throughout the office, attention must be paid to the following areas. We believe that the implementation of pre-trial screening programs must be set clearly within the context of what it hopes to achieve beyond intake review and that these dispositional objectives should be explicitly articulated. Too often they are glossed over and presented as a means of "improving the efficiency of the system". To achieve this, it is essential that pre-trial screening programs be defined in terms of the prosecutors' preferences toward the disposition of cases rather than the intake of cases. This view is not impractical. The implementation of screening programs in terms of the broader goal of preferred disposition rather than intake efficiency was readily evident in the prosecutors' offices in Montgomery County, New Orleans, Kansas City, Boulder, Milwaukee, Detroit, and West Palm Beach to name a few. In each, although the goals differed among them, the charging decisions were made with an eye to the disposition of the case and the office staffing and strategies supported the decisions. In the offices where the screening programs were well integrated into the office, not merely an appendage, concern over accountability was evident and authority was delegated accordingly.

An important area too often overlooked in the implementation of pre-trial screening programs is that of planning for change. Whether this be a change in policy or a program change as a result of some justice system change, the charging function and its impact must

not be implemented without a planning period. We were fortunate to have this area called to our attention during the course of this investigation by our visits to two offices, the Attorney General's office in Rhode Island and the Prosecutor's office in Seattle. Rhode Island is in the process of changing from processing most cases through a grand jury indictment to filing cases by information via a probable cause hearing. This is a major system change. In order to ease the impact, a day long seminar was held at a local college attended by approximately 350 people representing all components of the criminal justice system: police, prosecutors, defense lawyers, judges, probation and correctional personnel. Lectures, workshops and seminars focused on the various aspects of filing by information. With this type of planning, change can be introduced with as small amount of disruption as possible. Also, during this investigation, Seattle chose to move from a case approval or charging system that was based on a "catch-as-catch-can" deputy system to that of a formal filing system staffed by four experienced deputies working two month shifts in the unit. The institution of this particular unit was done with planning which recognized the need for the development of guidelines and other proper management procedures.

Evaluation of Pre-Trial Screening Programs

At the present time, evaluation of pre-trial screening programs is conducted mostly in terms of the economies to the criminal justice system. Nor are these economies to ever be underestimated. If however, this was the only way that the evaluation was to be conducted, there would be little need to raise the evaluation effort above the individual project level. The aggregation of the total savings of all projects to a national level would have little meaning, much less any significant impact on policy except to provide another measurement area for the proponents of productivity theory.

The results of this Phase I investigation and the development of the typology of charging policies have, however, drastically changed the above, and present a clear and mandatory case for a national assessment. If the various policies can be isolated and their effects on the criminal justice system and society measured, then the implications for evaluation are obvious. Since the policies present different strategies, staffing patterns, and dispositions, they become valuable tools for planning and budgeting. Not only can the impact of policy be measured, but one should be able to predict expected outcomes. The impact of these policies are not just on the criminal justice system but on the community as well. For the first time it appears that a rationale does exist for assessing such screening programs.

IV. PRE-TRIAL SCREENING PROGRAMS--OBSERVATIONS AND CONCLUSIONS

The following summarizes the major observations and conclusions produced by this study. While derived from our field observations, these conclusions are put forth tentatively, recognizing that further evidence is necessary before they can be considered to be firmly established.

The policy of the chief prosecutor plays a key role both in describing pre-trial screening programs and in understanding their impact.

The policy of the chief prosecutor specifies his goals and his charging procedures. Policy is derived from attitudes and beliefs about such concepts as charging responsibility, preferred dispositions, community sentiment and his role relative to improving the justice system. Knowledge of a prosecutor's policy is essential to the interpretation of dispositional data which reflects what he is trying to do. This study identified at least four pure or abstract policies which produce varying patterns of expected dispositions. Without a knowledge of the operative policy, any interpretation of dispositions would be meaningless. Once the policies were identified, the different uses of strategies under the prosecutor's control, such as plea negotiation, diversion and discovery, became understandable. Also explainable by the policy typology were the patterns of resource allocation which varied according to the operative policy. The fact that policy is the crucial element in understanding and analyzing the prosecutive charging function is documented for the first time by this study. While the typology is not necessarily complete, and the expected outcomes must be verified, the implications of this finding focus on describing prosecutors relative to their policy, clarifying management techniques by which a prosecutor's office is run and lending meaning to the effectiveness of a policy in terms of dispositions.

The policy of the prosecutor toward charging and expected dispositions is rarely articulated, constrained by the external environment, often based on tradition, and varies widely among jurisdictions.

Prosecutorial policy plays the key role in analyzing a prosecutorial system, yet it is difficult to assess. With our present evaluative tools, the identification of policies operating in an office is first deduced from examination of disposition statistics and then verified by seeing whether the organizational structure and decision-making functions support the deduction. With the refinement of case evaluation techniques, which assume a high correlation between policy and priority, it is expected that quantifiable measures will be available to assess the operative policies.

Even though there are a number of prosecutorial policies, the implementation of a specific one is limited by the external environment, be it the community's values, the type of crime, the quality of law enforcement work and reports, the size and composition of the judicial system or the characteristics of the defense bar. Under optimal criminal justice system conditions, the prosecutor is free to select any charging policy. Generally, the options are more limited. For example, a policy which rarely permits a change in a charge after it is filed and advocates a no plea bargaining position cannot function well with inadequate police reports or in an overloaded court system.

In more cases than not, the policy of the office is inherited by the newly-elected prosecutor and justified as a traditional way of doing the work. This may be due to the external situation which permits no other choice, to a lack of knowledge on the part of the prosecutor that other ways exist, or to the preference of the incoming prosecutor. Departures from traditional policy tend to occur also as a result of positions taken during electoral campaigns or as a result of changes in state constitutions or judicial systems.

A wide range of variation among jurisdictions was observed. This seemed to be partly attributable to the economic, social and political characteristics of the community. As locally elected officials, prosecutors reflect these characteristics in their policy approach. We expected to find a wide range of policy types regarding criminal prosecution. This was confirmed by the on-site visits, and is demonstrated in the policy typology.

The transmittal of policy to assistants generally is by verbal communication, usually through staff meetings. When written communication is used, the most prevalent means is by memo, the least by policy manuals.

The traditional method of policy dissemination via policy manuals is rarely used by prosecutors' offices. This is probably due to the fact that the manuals are difficult to develop and even more difficult to update. As a result, even when they do exist, they are rarely read except by the incoming assistant. By far, the most prevalent method of written communication is the memorandum which is usually reactive to a specific circumstance. In this sense then, policy is transmitted by a negative exception reporting system. It appears that most of the office policy is transmitted by verbal communication. It is expected that the degree of uniformity of policy in an office can be indicated by the frequency of staff meetings. These meetings, other than informal daily communications, probably constitute the primary methods of policy transmittal. Because policy plays such a crucial role in the review and charging function, attempts should be made to use statistical techniques such as case evaluation systems to quantify and measure the degree of uniformity in transmitting policy.

Factors other than state constitution and legislation appear to have greater impact on pre-trial screening programs and procedures.

Several criteria were taken into consideration in selecting prosecutors' offices for the on-site visits. The primary purpose of the selection was to incorporate as much diversity as possible into the examination of pre-trial screening programs. Among the variables were geographic distribution, state constitution and legislation environments, jurisdictional characteristics and office size. States were selected for this study to include those which presented favorable environments for review and charging decisions by requiring prosecutorial approval prior to filing in the court (e.g., Michigan, Florida) as contrasted to those states with environments not particularly supportive of this function (e.g., New Jersey, Rhode Island, Massachusetts).

In two States, Florida and New York, two offices within each State were selected, one large and one relatively smaller. The pre-trial screening programs in both sets of offices, each operating under the same sets of constitutional and legislative requirements were then compared. Their procedures varied significantly. Thus our expectation that constitutional and legislative constraints might tend to produce similar pre-trial screening programs was not fulfilled. On the basis of this extremely small set of observations, it appears rather that the differences observed between the two sets of offices are due to factors other than constitution and legislation. The extent and degree to which the state environment produces commonality in pre-trial screening programs is worthy of further exploration.

Variations in prosecutors' perceptions of their role affect the development and purpose of pre-trial screening programs.

Prosecutors' perceptions of their role in the conduct of their work varies considerably and ranges over a continuum which can be discussed at three different points. At one extreme, the prosecutor views himself as an agent of another component of the criminal justice system (either as an arm of the law enforcement agency or the court). With this perception he relinquishes his charging authority to the other sector in the criminal justice system with which he identifies. For example, the prosecutor may simply accept all cases as charged by the police believing that the work of the police is complete and sufficient for filing with the court. On the other hand, the prosecutor may pass his charging function to the courts, allowing committing magistrates or other judicial officers to decide whether the case is legally sufficient or set the level of the charge. With this perception, pre-trial screening programs rarely exist and if they do, it is as "token" programs, not integrated into the prosecutorial process.

The second role perception is that of an interpreter of laws. In this instance the prosecutor exercises discretion in making decisions by interpreting the law to meet the circumstances of the crime in light of other factors, be they personal policy or a reflection of community values. This type of role perception calls for screening programs to ensure that the interpretive decisions are uniformly and consistently applied. Usually the pre-trial screening program focuses on the rejection of certain cases because they do not meet minimum standards rather than the acceptance/prosecution choices. For example, rejection standards may be no prosecution for shoplifting when item value is less than $2.50, marijuana possession under a gram, bad checks less than $25.00, sexual acts between consenting adults, etc.

The third role perception is that of the prosecutor as policy maker. Derived primarily from the fact that he has an independent base of power given to him by the electorate, his power as a policy maker may have substantial impact on the criminal justice system and society. For example if a prosecutor's policy is based on the assumption that present methods of incarceration only reinforce negative types of behavior, he would first seek alternative treatments for offenders before moving to prosecution. On the other hand, in an attempt to make the criminal justice system most effective he may choose to focus his prosecutorial talent on the most serious cases thereby insuring that criminals feel the full weight of the justice system. As a policy maker, it is vitally important that his policy be uniformly applied so that its impact not only on the criminal justice system but on society as well can be evaluated. Thus, as the prosecutor's role perception moves from that of an arm of the police or court to the interpreter of laws to that of policy maker, his need for pre-trial screening programs increases and the purpose for the program changes.

<u>As an office grows in size, the type of organization used may support or hinder a pre-trial screening program</u>.

The size of an office and the types of organization used to administer an office may significantly impact on the operation and effectiveness of a pre-trial screening program. Where an office is small (less than 15-20 assistants), the screening of cases in terms of the charging decision, office policy and impact tends to be uniform because of informal, daily communication patterns. As an office increases in size it must respond with an increasingly complex organizational structure. This structure may support or hinder the pre-trial screening program and hence should be examined for impact. In many offices, special divisions, sections or branches have been established to handle crime-specific problems. These may include,

for example, divisions handling homicides, narcotics, robbery, organized crime, rackets, etc. Often the chiefs of these sections screen cases (i.e. decide upon the charge), while an intake unit, if it does exist, acts as a sorter and transmitter of cases to the appropriate division. Under these conditions, where the charging authority may be diffused among several division heads rather than centralized under one person's control, the necessity for policy control and accountability becomes all the more essential.

Many offices use young and relatively inexperienced assistants to man the intake and charging unit. This practice may well be legitimate, if the unit reviews cases for the presence of the elements. If sufficiency for trial, or potential for negotiation or rehabilitation are the dispositional goals, then the use of these assistants is inappropriate. Additionally, where the charging function has not been well integrated into the office's organization, and case screening is not functioning as an effective tool for carrying out prosecutorial policy or insuring uniformity and consistency in charging, the degree to which assistants are rotated into the screening unit is an indicator of this potential problem. The amount of rotation of assignments among assistants attached to the screening unit is also an indicator of the degree of integration of the screening function into the office's organization. Short term assignments, under all policies except legal sufficiency, seem to indicate a low regard for the effectiveness of pre-trial screening. To be sure, an element of change is necessary to preserve job satisfaction and many offices permit screening assistants to carry a limited trial load. However, as the rotation of assistants increases up to a daily level, the control for uniformity and consistency of the pre-trial screening function diminishes.

The primary purpose of pre-trial screening is to ensure uniform and consistent charging decisions. Yet, too often, the authority to make decisions is delegated, without accountability and with few controls. As a result, evaluation of charging decisions is hampered.

The decision-making structure of the office of the prosecutor generally does not conform to the traditional bureaucratic model which relies on hierarchical organization permitting deviation from approved procedures only with the permission of some higher authority. In the prosecutor's office, the decision-making authority is usually dispersed among the members of the legal staff without administrative control. As a result, the charging decision of the intake and review section is often changed or modified by trial assistants. While case review at the trial stage is mandatory because of evidentiary changes over time, both the initial decision to accept or reject a case for prosecution, and the trial decision to dismiss or modify are generally made independent of each other and independent of bureaucratic controls. Failure of prosecutors to delegate authority for particular decisions within a bureaucratic model allows each actor in the prosecution of a case to act autonomously. The result of such procedures may foster charging decision variations, which are later modified by trial decisions. When this occurs, the effectiveness of the pre-trial screening program as measured by dispositions cannot be determined. It would be impossible, for example, to know whether a trial assistant is dismissing cases because the screening section is not charging properly, because the trial assistant is negligent in his case preparation, or because changes in evidentiary strength over time force modification of the original charge.

The institution of a bureaucratic model need not supplant or conflict with the existing collegial system. Vertical review and control structures can be established while still permitting the interaction of peers in the decision-making process. A well-integrated system of accountability in the processing system should maximize uniformity in prosecution and set the environment for measuring the impact of decisions as well as policy.

The existing literature on pre-trial screening provides excellent analyses of the dimensions of the prosecutor's discretionary authority. This knowledge should be used as a foundation to develop new material analyzing the discretionary power in a operational perspective and in terms of system impact.

In examining some of the literature on pre-trial screening we found valuable discussions on the dynamics of discretionary power, the operation of screening programs in specific localities, and the effects of pre-trial screening on other components of the criminal justice system, and conversely, the impact of other sectors of the system on pre-trial screening. Most descriptions of pre-trial screening have attempted to generalize the screening process and to discuss discretionary elements involved, but none of the sources examined the dynamics of the process, nor offered an analysis of the process as it functions in the real world. For example, the observation that intake and review culminates in a decision to charge or not charge a suspect with commission of a crime, and the parallel observation that this decision involves discretionary behavior on the part of the prosecutor or his assistants demand further exploration of the areas open to the exercise of prosecutorial discretion, the range of choices available to the prosecutor in making his charging decision, and the way in which prosecutorial discretion is differentially exercised given client type and community atmosphere.

The available literature offers excellent material on the prosecutor's discretionary power. This should be used as a foundation for the further elaboration of this power within an operational perspective and in terms of system impact.

The Phase I evaluation effort could not have been conducted without on-site visits.

The value of on-site visits to the successful conduct of the Phase I evaluation task cannot be overstated. Most of the observations and conclusions reported here were derived from these visits. Only by observing the office as a whole did the relationship between screening and other processes become apparent and a pre-trial screening perspective develop. Essential also to this activity was the diversity of the sites selected for study. The 18 offices selected for this study are not necessarily representative of the approximately 3,400 prosecutors' offices. They were selected according to the following criteria. The population served exceeded 100,000, so that the office was large enough to support a formal pre-trial screening program. Geographical representation was sought, so that the impact of state constitutions and legislation could be observed. Two States (Florida and Michigan) were included because their legislation supported the prosecutor's review and charging function. Two offices within the same State were selected in two instances (Bronx and Syracuse, New York, and Miami and West Palm Beach, Florida) to look for commonalities within the same state environment. States with different prosecutorial systems were selected: an attorney general State (Rhode Island) and States with appointed prosecutors (New Jersey and Connecticut). Offices were selected with known degrees of pre-trial screening, from none to extensive. Two offices were selected because they were using case evaluation systems (Washington, D. C. and Bronx, New York). Finally sites were selected according to their varying use of grand juries since the ability of the grand jury to serve as a screening device was to be noted. Because the sites were purposely selected to provide exposure to as broad a range of operations as possible, quantification of the observations is not appropriate. But without such exposure, the findings of this report or any other similar in nature would suffer from the attacks of "parochialism".

At the present time, prosecutorial policy can be identified only by on-site visits. However, empirical techniques are available to measure policy preferences but need further testing, refinement, and validation.

The importance of identifying prosecutorial policy before evaluating a pre-trial screening process has been demonstrated. In this Phase I evaluation the identification of the operative policy was derived from on-site interviews with the prosecutor, his staff and other related criminal justice agency personnel. Clearly, this field approach is costly, time-consuming and not always feasible. Nor does it provide an objective and consistent base against which one may validate the findings. Thus, alternative procedures are indicated.

Two information systems may provide such a base. They are the case evaluation systems which indicate the priority assigned for the prosecution of various kinds of cases, and disposition reporting systems which measure actual outcomes against dispositions preferred. Case evaluation systems exist in many offices, but they have not been used for the specific purpose proposed here. Dispositional reporting is too often incomplete or not specific enough for identification of policy. Since these two procedures are still in a developmental stage, further testing, refinement and validation is mandatory. Once completed, it is expected that their utilization in identifying policy types in lieu of on-site visits can be enjoyed with less cost and more analytical benefits. Additionally, the implications for other uses of these procedures should be examined and identified. Clearly their potential as a foundation for comparative analyses is present.

Adequate evaluation of pre-trial screening requires empirically based description and analysis of the prosecutorial process and its impact on the justice system in addition to measures of efficiency and economy.

Most justifications for pre-trial screening programs have been based on the issue of efficiency. They have dealt with the efficient allocation of resources within the office, savings of time and money in preparing cases, the reduction of unnecessary witness fees and police

overtime and the weeding out of cases of no prosecutorial merit. The economies of pre-trial screening programs are demonstrable and significant. They can be measured easily as an office moves from no screening to the institution of screening. Yet once an office has instituted a pre-trial screening program, it is necessary that the effects of this program on the prosecutorial process and the justice system be analyzed. In this respect, the program must be examined carefully for other benefits, such as aiding the implementation of the prosecutor's policy or making prosecution a more effective process. If the policies presented in abstract form in the typology can be empirically verified, then the foundation for the evaluation of their effectiveness can be established. To achieve this it is necessary that all evaluations must now begin to look at pre-trial screening programs not only in terms of first order economic benefits, but also in terms of the ability of intake and review to result in a more effective system of prosecution.

Evaluation of pre-trial screening requires the presence of objective observers fully aware of the elements which determine the ways prosecutors will choose to process cases.

Two methods of evaluation appear available for use in an examination of pre-trial screening. The first would be self-evaluation or diagnosis of the prosecutor's office by the local prosecutor and his staff. The second would be evaluation by outside observers. Self evaluation, though feasible, presents severe problems with objectivity, ability and bias. Evaluation by outside observers, though not foolproof, appears to allow for a higher degree of objectivity in this topic area. This is particularly important as one examines the decision-making process for improvement and even more important if the impact of a policy on other components of the criminal justice system is to be measured. The impact of other elements upon the

prosecutor is also an important consideration in an evaluation of pre-trial screening programs. Certainly the community standards, the quality of law enforcement, the type of judicial system, for example, must be included in the variables weighed in the evaluation effort. This by necessity requires skilled analysts equipped not only with special evaluation tools but also knowledgeable about the criminal justice world.

The data presently collected by prosecutors with regard to workload and disposition of defendants do not satisfy pre-trial screening program evaluation needs.

Prosecutors generally are concerned with the size of their caseload and their outcomes as a means to either measure their success or to support a budget request. As a result, data presently collected do not satisfy the evaluation requirements of pre-trial screening programs. The effectiveness of pre-trial screening should be measured by (1) uniform charging decisions consistent with policy and (2) the impact of these decisions on the justice system. Case evaluation systems provide not only a technique to measure uniformity, but also a means of measuring whether the most important cases are receiving the most preferential dispositions. The major weaknesses of present dispositional reporting is that it (1) does not identify the processing step at which the disposition occurred (intake, committing magistrate, probable cause hearing, grand jury, arraignment, pre-trial conference or trial), so that the focus of prosecutorial activity can be weighed, and (2) many dispositions are not adequately specified by reason or responsibility. Using an obvious example to illustrate this statement, one cannot evaluate the worth of a dismissal unless the reason is known. A dismissal because the police officer did not show or a witness died is an action beyond the prosecutor's control. A dismissal because of insufficient evidence or lack of probable cause directly reflects on either the quality of the

intake charging decision or the case preparation by the trial assistant. Until dispositional data are purified so as to better assign accountability and reflect success or failure of the charging decision, the presently collected information generally will not permit a comprehensive evaluation of the pre-trial screening process.

V. IMPLICATIONS FOR NATIONAL POLICY

Improved methods in the delivery of legal services to the defendant through increased funding of public defender agencies, the impact of Argersinger, and increased system efficiency causes a mutual escalation of workload on the part of the prosecutor as well as the court. The response to this escalation, in part, may be to increase staff at additional public expense. Or, more probably, it will force the prosecutor to become more selective in accepting cases for prosecution. As such, the demands for effective and efficient pre-trial screening units should increase.

As states examine the possibility of abolishing plea bargaining, as has occurred in Alaska, or as individual prosecutors' offices move to this stance, success can only be fostered if court capacity is increased to meet trial needs and screening for proper charging is considered one of the most important decisions to be made in the office.

As each of the above factors place increased pressure on the use of screening programs, other benefits accrue. When more intensive scrutiny occurs, the probability of prosecuting the innocent defendant diminishes. The public should fear not the tough prosecutor but the sloppy one.

It is important that the impact of policy be measured in terms of impact on other criminal justice agencies, particularly corrections. Depending on the charging policy, the future quantity and characteristics of the correctional population can be anticipated. Where treatment programs are used, prosecutorial policy may well indicate the needs and requirements of such activity. Thus the impact of policy on dispositions can be turned into a highly effective planning and management tool.

For the first time, a foundation can be laid which will examine the effect of prosecutorial policy on not just the criminal justice system but society as well. With policy appearing to show such a direct impact on dispositions, and with the statistical tools available, the impact as an attempted plan for the solution of societal problems confronted by the criminal justice system can be tested.

On a higher conceptual level, a base line can now be established which permits a broader examination of discretion, its limits, scope and impact. The basic issue of prosecutorial discretion, particularly as it relates to screening and plea bargaining, can be examined with an eye to the ever present potential for abuse. This examination can have far ranging implications on our justice system.

APPENDIX

SUMMARY OF CHARACTERISTICS OF PARTICIPATING OFFICES

This table presents a compilation of basic data characteristics of each office participating in the Phase I evaluation. While much of the information is based upon estimates, all has been verified with each listed office prior to publication. However, the reader is cautioned that variations in (1) legal definitions of crime, (2) court systems, (3) how cases are counted, (4) criminal jurisdictions, (5) prosecutorial policy, and (6) constitutional and legislative environments preclude comparative analyses. The data presented is descriptive of individual offices only. It does not provide a basis for comparative analysis among offices and should not be used for that purpose.

	Population	Size of Jurisdiction (square miles)	Number of Assistants	Number of Branch Offices	Length of D.A. Term	Jurisdiction Other Than Criminal (a)	Trial de Novo Exist?	Preliminary Hearing (b)	Grand Jury (c)	Speedy Trial Rules?	Number of Law Enforcement Agencies	Average Number of Days for Police Reports (d)	Review Charges (e)	Felony Caseload (f)	Written Policy (g)	Statistical Reporting System	Estimated Number of Members of Bar	Public Defender Agency?	Estimated % Defended by Public Defender
Washington, D. C.	756,510	61.4	77 (j)	0	Indefinite	No	No	Yes	100%	No	6	1-5	Yes	8500	Yes	Yes	20,000	Yes	20%
Montgomery County	650,000	495	18	2	4	Yes	Yes	Yes	100%	Yes	3	7	Yes	1500	Yes	Yes	700	Yes	50%
New Orleans	600,000	197	60	0	6	Yes	No	Yes	4%	No	4	3-10	Yes	5900	Yes	Yes	2400	Yes	60%
Kansas City	654,558	603	38	1	4	Yes	Yes	Yes	14%	No	17	1	Yes	3000	No	Yes	N.A.,	Yes	15%
Seattle	1,375,000	2128	66	0	4	Yes	Yes	Yes	0%	Yes	36	(k) 1-3	Yes	150	Yes	Yes	2000	Yes	50%
Boulder	150,000	748	11	1	4	Yes	No	Yes	2%	Yes	5	1	Yes	400	No	No	125	Yes	80%
Syracuse	485,000	794	22	0	3	No	No	Yes	90%	Yes	20	1-30	Yes	600	Yes	Yes	800	Yes	0% (l)
Bronx	1,500,000	44	151	0	4	No	Yes	Yes	18%	Yes	3	1	Yes	22,000	Yes	Yes	N.A.	Yes	80%
Rhode Island (h)	950,000	2400	24	0	2	Yes	Yes	Yes	80% (m)	Yes	44	2-14	No	2000	No	Yes	1400	Yes	50%
Jersey City	600,000	47	35	1	5	No	Yes	Yes	95%	Yes	15	8-14	No	2100	Yes	Yes	1200	Yes	90%
Milwaukee	1,050,000	237	51	0	2	Yes	No	Yes	1%	Yes	22	1	Yes	3200	Yes	Yes	2500	Yes	45%
Wayne County	2,666,000	605	122	5	4	Yes	Yes	Yes	1%	Yes	44	1	Yes	17,000	Yes	Yes	5205	Yes	25%
West Palm Beach	500,000	2023	28	2	4	Yes	No	Yes	1%	Yes	37	1-3	Yes	3000	Yes	No	750	Yes	75%
Miami	1,400,000	2042	82	4	4	Yes	No	Yes	N.A.	Yes	26	1	Yes	15,000	Yes	Yes	3500	Yes	55%
Boston (i)	721,829	56	63	7	4	Yes	Yes	Yes	100%	Yes	6	60	No	N.A.	No	No	N.A.	Yes	50%
New Haven	185,000	20	10	0	4	Yes	No	Yes	1%	Yes	14	1-14	No	N.A.	Yes	Yes	800	Yes	50%
San Diego	1,500,000	4000	109	2	4	Yes	No	Yes	2%	Yes	19	1-2	Yes	N.A.	Yes	Yes	2500	Yes	25%
Salt Lake City	550,000	764	37	2	4	Yes	Yes	Yes	0%	No	9	2	Yes	2000	Yes	Yes	1200	Yes	77%

FOOTNOTES FOR SELECTED CHARACTERISTICS OF PARTICIPATING PROSECUTORS' OFFICES

a. May include, for example, civil, juvenile, family and domestic relations, etc.

b. Does the defendant have an automatic right to a preliminary hearing?

c. What percent of cases are presented to the grand jury?

d. Where a range appears this may be due to variations among law enforcement agencies' reporting systems within a jurisdiction or a result of differing lengths of time required for reporting different types of crime.

e. Does the prosecutor review charges before filing with court?

f. Figures rounded to the nearest 100. Based on 1974 data.

g. Is there written policy either in the form of manuals or memoranda?

h. Office of the Attorney General.

i. There are two separate prosecutorial systems in New Haven. Some data represent the combination of the two, e.g., number of assistants.

j. Authorized number of assistants.

k. Initial reports by 3:00 P.M. next court day; full reports from 36-72 hours after arrest for routine cases.

l. Public defender only for misdemeanors.

m. Effective September, 1975, most felonies will be filed by information.

END