



INSLAW
BRIEFING PAPER
INSTITUTE FOR
LAW AND
SOCIAL RESEARCH

Number 8
Revised
August, 1976

**Reasons for
Discretionary
and Other Actions**

PROMIS

PROSECUTOR'S MANAGEMENT
INFORMATION SYSTEM
An Exemplary Project of LEAA

INSTITUTE FOR
LAW AND
SOCIAL RESEARCH
1125 15th Street, N.W.
Washington, D.C. 20005

44757
151474

PROMIS (Prosecutor's Management Information System) is a management information system (computerized or manual) for public prosecution agencies and the courts. Developed under a grant from the United States Department of Justice, Law Enforcement Assistance Administration (LEAA), PROMIS has been in operation in Washington, D.C., since January 1971 and is in various implementation stages in more than 30 other jurisdictions.

LEAA has designated PROMIS an Exemplary Project. Such designation is reserved for criminal justice programs judged outstanding, worthy of national attention, and suitable for adoption by other communities.

The Institute for Law and Social Research (INSLAW) has prepared a series of 21 briefing papers to explain to nontechnical audiences of prosecutors, court administrators, criminal justice planners, and members of the bar the underlying concepts of management and organization inherent in PROMIS. It is expected that these briefings will assist other jurisdictions to evaluate and when appropriate, implement PROMIS in part or in its entirety. The implementation can range from adoption of the concepts of management and organization, to the use of PROMIS forms and paperwork procedures, to the application of the manual or semiautomated version of PROMIS, and, finally, to the installation of the computer software.

Other PROMIS documentation produced by INSLAW under grants from LEAA includes a handbook on *PROMIS For The Nonautomated or Semiautomated Office*, research designs for using PROMIS data bases in statistical studies of criminal justice policies, a six-volume set of computer software documentation, and a 20-minute color documentary of PROMIS (16mm film or video cassette) for nontechnical audiences. The 21 briefings are as follows:

1. Management Overview of PROMIS
2. Case Screening
3. Uniform Case Evaluation and Rating
4. Special Litigation (Major Violators) Unit
5. Witness Notification Unit
6. Paralegals
7. Comprehensive Training
8. Reasons for Discretionary and Other Actions
9. Counting by Crime, Case and Defendant
10. Research Uses of PROMIS Data
11. Uniform Crime Charging Manual
12. Police Prosecution Report
13. Crime Analysis Worksheet
14. Processing and Trial Preparation Worksheet
15. Police Intake Worksheet
16. Standardized Case Jacket
17. Interface with Other CJIS
18. Privacy and Security
19. Analysis of Costs and Benefits
20. Transferability
21. Optional On-Line Inquiry and Data Input Capability

Copyright © Institute for Law and Social Research, 1976.

Reproduction in whole or in part permitted for any purpose of the Law Enforcement Assistance Administration of the U.S. Department of Justice, or any other agency of the United States Government.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the copyright holder.

This project was supported by Contract No. J-LEAA-016-76 awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Copyright privileges reserved by the Institute for Law and Social Research.

JAN 27 1978

PROMIS
BRIEFING SERIES***ACQUISITIONS****8. Reasons for
Discretionary and
Other Actions**

Although the chief prosecutor is accountable for the performance of subordinates and for the overall effectiveness of his office, inadequate information or feedback about internal operations often prevents him from monitoring and evaluating (1) the extent to which assistants adhere to established policy, (2) the effectiveness of policies and guidelines, and (3) the impact on office performance of procedures and practices of individuals in other criminal justice agencies.

Data may be available indicating how many cases were rejected by screening assistants or dismissed by the court, for example. But "how many" information does not go far enough in terms of helping district attorneys frame policy, monitor adherence to it, and evaluate its effectiveness. Knowledge of how many cases were rejected during the screening process over the past month does not disclose whether assistants were following--or departing from--screening criteria established by the district attorney. But this would be evident if screening prosecutors were required to record the reasons for rejections.

Similarly, knowing how many cases were dismissed by the court during a given period is hardly sufficient for evaluating office effectiveness with precision. This could be done if the reasons for the dismissals were recorded and easily retrievable. For example, some dismissals may have been beyond the control of the office: the case became moot due to the death of the defendant, statute of limitations, etc.

Other cases may have been thrown out because of witness-related reasons: witnesses did not appear, could not be located, were reluctant to testify. This might be indicative of inadequate office procedures for handling witnesses. Still other cases may have been dismissed because of an unlawful search and seizure--an example of how an error by the arresting officer can adversely affect prosecutory performance. Such an error might well have been caught earlier at the screening stage.

If "reason data" were routinely available, the chief prosecutor would be in a much better position to shape and exert positive control

*One of a series of 21 Briefing Papers for PROMIS (Prosecutor's Management Information System), this publication was prepared by the Institute for Law and Social Research (INSLAW), Washington, D.C., under a grant from the Law Enforcement Assistance Administration (LEAA), which has designated PROMIS as an Exemplary Project. Such a designation is reserved for criminal justice programs judged outstanding, worthy of national attention, and suitable for adoption by other communities. Presenting a bird's-eye view of PROMIS capabilities, the Briefing Papers are one facet of INSLAW's LEAA-funded program designed to assist local prosecutors evaluate and, when appropriate, implement PROMIS. In January 1971, the computerized information system was initiated in Washington, D.C., where prosecutors continue to rely upon PROMIS to help them manage more effectively an annual work load involving allegations of 8,500 serious misdemeanors and 7,500 felonies. (A manual version of PROMIS is also available and parallels the capabilities of the computerized system.)



over office effectiveness. In essence, he could exercise his authority in a manner commensurate with his accountability.

THE RANGE OF REASON DATA AVAILABLE FROM PROMIS

As implemented by the prosecutor's office in Washington, D.C., 1/ PROMIS contains an extensive array of reason data pertaining to the following types of action: rejection or modification of the arresting officers' charges by screening prosecutors, continuances, court dismissals, nolle prosequi actions, or dismissals (post-screening) by prosecutors, not guilty dispositions, guilty dispositions, and other final dispositions.

Reason data in these areas are acquired as a by-product of the collection of other information for PROMIS. For example, in addition to other data screening prosecutors record about cases they are reviewing, reasons are noted whenever a charge of the arresting officer is rejected or modified. 2/ In all, there are 58 reasons for rejecting a charge or a case. Reasons may relate to evidence, witnesses, prosecutive merit, due process, jurisdiction, diversion, etc. Examples include the following:

1. Physical evidence of crime unavailable.
2. Testimony and circumstances insufficient to establish a statutory element of the offense.
3. Complaining witness reluctant to prosecute.
4. Essential witness unavailable.
5. Violates letter, not spirit, of the law.
6. Good defense.
7. Unlawful search and seizure.
8. Inadmissible confession.
9. Referral to juvenile court.
10. Narcotics diversion.

Similar reasons may be recorded in explanation of court dismissals, nolle prosequi actions, and dismissals by prosecutors. Reason data pertaining to continuances include these possible entries: continued for mental observation, counsel unavailable (sick, schedule conflict), counsel not prepared, defendant late, court unable to reach case, continued pending other litigation, case severed, court recused.



Reasons related to final dispositions include the following:

1. Not guilty: jury verdict by reason of insanity.
2. Guilty: found guilty of lesser included offense, pled as charged, pled to charge in this case in return for nolle prosequi action in other case.
3. Grand jury: dismissal because case combined with another case.
4. Mistrials: hung jury (not worth rebringing), mistrial by the court sua sponte (not worth rebringing), other mistrial (not worth rebringing).

These and many other reasons are each assigned a special code to facilitate entry of the data in PROMIS. A few of the many possible uses of this information are outlined below.

FEEDBACK ON THE EVENHANDED EXERCISE OF THE CHIEF PROSECUTOR'S DISCRETION

Especially in the large, urban agency, where there may be scores of assistant prosecutors, the chief prosecutor is faced with the problem of assuring that the discretionary authority exercised by subordinates reflects the implementation of his discretion, not that of assistants, who might each reach markedly different decisions when considering a similar set of facts and surrounding circumstances.

What is required is a method by which to hold subordinates accountable for adherence to policy governing discretionary decision-making. Accountability results if the visibility of such decisions is raised to the point where they can be monitored, as when reasons are recorded in explanation of discretionary actions. The National Advisory Commission underscored the same point:

"...the Commission proposes that the visibility of administrative processing of criminal defendants be raised by requiring that rules for such decision-making be formulated, written down, and publicized. In addition, it recommends that the reasons for making particular decisions be articulated and recorded. If this is done, the substance of discretionary decisions and the process by which they are made will become apparent. This will permit an evaluation of the general operation of the administrative process...." 3/ (Emphasis added.)

Directing its attention to case screening, the Commission advocated that when a case is rejected, "a written statement of the prosecutor's reasons should be prepared and kept on file in the prosecutor's office. Screening practices in a prosecutor's office should be reviewed by the prosecutor himself to assure that the written guidelines are being followed." 4/



Serving to emphasize even further the importance of reason data is the Commission's proposal to give the police or private complainant recourse to the court if a case is rejected by the prosecution. "If the court determines that the decision not to prosecute constituted an abuse of discretion, it should order the prosecutor to pursue formal proceedings." 5/ Obviously, in such a judicial review, records indicating why cases were rejected are critical.

Similarly, the American Bar Association's criminal justice standards recommend that whenever felony criminal charges are dismissed by way of nolle prosequi (or its equivalent), "the prosecutor should make a record of the reasons for the action." 6/

All this, as noted earlier, is well within PROMIS' capability. If, for example, police charges in marijuana cases are consistently rejected during screening or dropped by nolle prosequi actions by certain assistant prosecutors--and if PROMIS reveals the cited reason as "offense of trivial or insignificant nature"--this could trigger the chief prosecutor to check other recorded details of the charges (amount of marijuana involved, criminal record of the suspect, etc.) to determine if these discretionary decisions fell within policy guidelines.

When reason data are available, the chief prosecutor is in a better position to monitor and enforce evenhanded justice. Assume subordinates process two felonious assault cases bearing not only the same legal charge but also having the same case ratings (PROMIS-generated numerical ratings reflecting the gravity of the accused's criminal background and the gravity of the alleged crime). 7/ Through PROMIS, the chief prosecutor notes that one defendant went to trial on a felony while the other was permitted to plea to a misdemeanor charge of carrying a deadly weapon.

Did this application of prosecutive discretion result in evenhanded justice? The answer is greatly facilitated when reason data are available. Such information may show that, in view of the age or remorsefulness of one defendant, an assistant prosecutor decided to accept a plea to a modification of the original charge. The chief prosecutor may or may not agree that the reason cited justifies the assistant's decision, given the gravity of the case. In any event, the information--reason data--is available by which to monitor operations. If the assistant's reason is found inadequate, office policy can be formulated accordingly.

Monitoring discretion to assure evenhanded justice is more than desirable; it has become a major issue and was a fundamental concern of the National Advisory Commission. 8/ The Commission's views reflected, in large part, the opinion of Professor Kenneth Culp Davis, who, after noting that the discretionary power to prosecute or not to prosecute is "the one that stands out above all the others," 9/ sums up the issue this way:

"The strongest need and the greatest promise for improving the quality of justice to individual parties in the entire legal and governmental



system are in the areas where decisions necessarily depend more upon discretion than upon rules and principles and where formal hearings and judicial review are largely irrelevant....

"Probably nine-tenths of the basic question of how to reduce injustice to individual parties in our whole system of law and government is contained in the much narrower question: How can we reduce injustice to individual parties from the exercise of discretionary power?...

"We should reexamine the assumption...that a prosecutor should have uncontrolled discretion [1] to choose one out of six cases to prosecute, without any requirement that the one most deserving of prosecution be chosen, or [2] to trade a lesser charge for a plea of guilty in one case but not in another, with no guiding rules or standards, without disclosing findings or reasons, without any requirement of consistency, without supervision or check....

"The widespread assumption that findings and reasons are suitable only for cases that have gone to hearing is all wrong; findings and reasons are often more important for informal discretionary action." 10/

PROMIS meets this issue head on.

EVALUATING PROSECUTORY EFFECTIVENESS THROUGH REASON DATA

An in-depth PROMIS analysis relating to the performance of the prosecutor's office in Washington, D.C., revealed that of 937 arrests for murder, rape, robbery, burglary, and stranger-to-stranger assault, only about one-third of the closed cases had resulted in convictions either through pleas of guilty or trial. In the absence of additional data, one might conclude that excessive leniency affected office performance--particularly since police charges were totally rejected at the screening stage in 153 cases, and prosecutors had dismissed through nolle prosequi actions 194 other cases.

However, the PROMIS-generated printout of reasons associated with the 153 rejections indicated that 146 pertained to offense and witness problems (see Figure 1). An analysis of nolle prosequi reasons indicated that 54 nolle prosequi actions related to offense problems and 63 pertained to witness difficulties. Far from pinpointing excessive leniency, PROMIS reason data pointed in a different direction--particularly toward witness reluctance. 11/ This finding lent support to the work of a Witness Notification Unit, 12/ established to improve office performance by attacking many of the witness-related problems documented by PROMIS reason data.

Reasons recorded in explanation of continuances can also serve to improve office effectiveness. If, for example, defense counsel repeatedly



requests continuances because of heavy trial schedule, this will be documented by PROMIS reason data. Knowing this, the prosecution could object and bring the prior continuances to the attention of the judge, who may not only deny further delay, which might discourage witnesses and cloud memories, but also alert counsel to this American Bar Association criminal justice standard: "A lawyer should not accept more employment than he can discharge within the spirit of the constitutional mandate for speedy trial and the limits of his capacity to give each client effective representation. It is unprofessional conduct to accept employment for the purpose of delaying trial." 13/

Recording of reasons for discretionary and other actions can also spotlight how practices and procedures of personnel outside the prosecutor's office adversely influence office effectiveness. For example, there are 13 reason codes available for use in cases where evidentiary deficiencies in police performance lead to case rejection by the screening prosecutor or to a subsequent nolle prosequi action or court dismissal: three types of unlawful search and seizure, scientific analysis unavailable and scientific analysis insufficient, no probable cause for arrest, inadmissible confession or statement by defendant, procedural delay, police officer failure to appear at trial or unavailable or missing, insufficient physical evidence to prove offense charged, no identification of defendant in a lineup, and insufficient nexus between the defendant and the crime. By periodically determining the frequency with which these reasons are cited by assistants, the chief prosecutor can provide invaluable feedback 14/ to police agencies, feedback that may lead to better trained police, more quality arrests, and more cases ultimately brought to trial.

These same data may also suggest improvements in existing law. Case-rejection reasons indicating certain search and seizure problems, for example, may be symptomatic of unduly restrictive provisions in an exclusionary rule. By calling upon the legislature to enact appropriate revisions, the chief prosecutor not only seeks to eliminate overly restrictive barriers affecting office performance but also endeavors to conform to the American Bar Association standard relating to a prosecutor's duty to improve the law: "When inadequacies or injustices in the substantive or procedural law come to his attention, he should stimulate efforts for remedial action." 15/

Finally, in Washington, D.C., PROMIS reason data relating to witness problems triggered a major witness cooperation study, which revealed that witnesses were concerned about intimidation and threats which might result from disclosure of their names and addresses. This information proved valuable in discussions about proposed changes in court rules on discovery, an area with obvious implications for prosecutory effectiveness.



OFFENSE PROBLEMS	MURDER	RAPE	ROBBERY	BURGLARY	ASSAULTS	TOTAL
EVIDENCE INSUFFICIENT	0	5	4	4	2	15
ELEMENT OF OFFENSE MISSING	0	6	6	10	8	30
GOOD DEFENSE	0	1	3	0	3	7
LACK OF PROSECUTIVE MERIT	0	3	2	1	13	19
DEFEN REMORS/MAKE RESTIT	0	0	0	1	0	1
VIOLATE LETTER NOT SPIRIT	0	0	0	0	2	2
WITNESS PROBLEMS						
CW SIGNS OFF	0	1	13	6	9	29
CW NO SHOW	0	4	5	1	18	28
CW WON'T COME TO SCREENING	0	0	0	0	4	4
WITNESS INCONSISTENT	0	4	6	0	1	11
WITNESS STORY GARBLED	0	0	0	0	0	0
CW REFUSE PROSECUTE	0	0	0	0	0	0

FIGURE 1
 PROMIS STATISTICAL STUDY:
 OFFENSE/WITNESS REASONS WHY CASES WERE REJECTED DURING SCREENING



IN CONCLUSION...

Because of PROMIS' wide array of reason data, chief prosecutors possess a modern management tool by which to monitor, enforce, and improve the discretionary authority delegated to subordinates, the evenhanded application of justice, and overall office effectiveness. District attorneys are no longer limited to information about what occurred; they can now conveniently probe why it happened.



FOOTNOTES

1/In the District of Columbia, the U.S. Attorney serves as the local prosecutor. About 75 lawyers are assigned to the D.C. Superior Court (equivalent to a state court of general jurisdiction), where prosecution of local "street crime" cases is conducted. About 16,000 allegations of such crimes are considered for prosecution annually.

2/For a discussion on case screening, see Briefing No. 2.

3/National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington: Government Printing Office, 1973), p. 3.

4/Ibid., p. 24.

5/Ibid.

6/American Bar Association Project on Standards for Criminal Justice, The Prosecution Function and the Defense Function (Chicago: American Bar Association, 1971), p. 110.

7/For additional details on how PROMIS rates cases, see Briefing No. 3, Uniform Case Evaluation and Rating.

8/For example, see National Advisory Commission, op. cit., p. 3.

9/Kenneth Culp Davis, Discretionary Justice: A Preliminary Inquiry (Chicago: University of Illinois Press, 1973), p. 188.

10/Ibid., pp. 216, 225, 227.

11/Among the other PROMIS-generated explanations for the seemingly small number of convictions are the following: 143 cases had not yet reached trial; 67 cases were rejected by the grand jury; 70 were dismissed by the court.

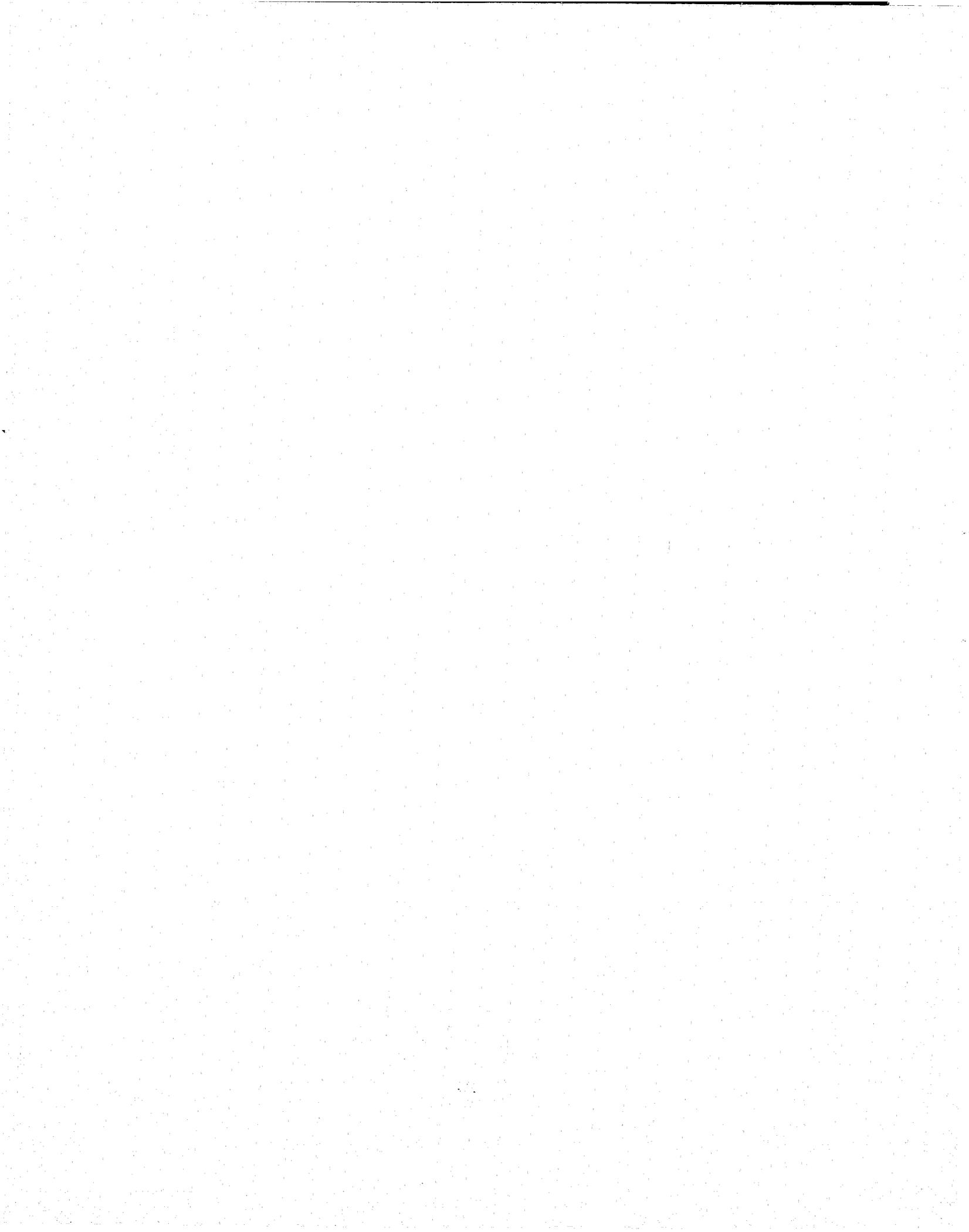
12/See Briefing No. 5, Witness Notification Unit.

13/American Bar Association Project, op. cit., pp. 178-179.

14/ Such feedback is in accord with standards advocated by the National Advisory Commission, op. cit., p. 247 and American Bar Association Project, op. cit., p. 67.

15/The American Bar Association Project, op. cit. p. 47.





END