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✓
THE EFFECTIVENESS OF SELECTIVE PROSECUTION
BY CAREER CRIMINAL PROGRAMS
|

FINAL REPORT
PRELIMINARY DRAFT

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- Dade County State Attorney's Office; Honorable Janet Reno, State's Attorney, Mr. David Gilbert, Supervisor of the Career Criminal Program,
- Knox County Attorney General's Office; Honorable Ed Dossett, Attorney General, Bill Crabtree, Director Career Criminal Unit;
- Monroe County State Attorney's Office; Honorable Howard Relin, State Attorney; Mr. Peter Jacobson, Director Career Criminal Unit;
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- Philadelphia District Attorney's Office; Honorable Edward Rendell; Mr. Randy Williams, Director Career Criminal Unit;
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INTRODUCTION

Selective prosecution is not new to the administration of criminal justice in the United States. Infamous criminal cases have been commonly assigned to more experienced and talented prosecuting attorneys. Defendants charged with homicide, kidnapping, forcible rape, or other serious crimes may regularly be prosecuted with extraordinary intensity.

In some instances, selection is built into the organization of the prosecutor's office. Special units for the prosecution of homicide, felonious sexual assaults, or drug offenses are not uncommon. The separation of these offenses from the larger felony caseload allows cases to be prosecuted by specially trained and experienced staff.[1]

The ability to discriminate between defendants in prosecution has been legally recognized for a number of reasons -- including the selective application of resources, targeting serious offenders to deter others, and granting concessions to obtain testimony. Indeed, the prosecutor's ability to selectively prosecute has been constitutionally denied only when defendants in similar circumstances are treated differently, and there is an invidious basis for the discrimination "such as race, religion, or other arbitrary classification." [2]

The last decade has brought widespread application of selective prosecution to defendants classified as "career criminals." Approximately 100 local jurisdictions in 30 states are currently implementing policies for selective prosecution of career criminals. While these policies are consistent with

the long tradition of selective prosecution, they represent a unique application of the concept.

Career Criminal prosecution departs from other forms of selective prosecution primarily because it focusses on offenders rather than offenses. Selective prosecution has typically focussed on rape, homicide, drug trafficking, "white collar" or economic crime. These types of offenses are amenable to selective treatment because they are particularly heinous in the public eye, require sensitive treatment of victims, require intensive investigation, or pose unique legal or evidentiary problems. These rationale are linked closely to the type of crime, rather than the type of offender.

The fact that career criminals are types of offenders carries strong implications for programs of selective prosecution. Their fundamental rationale is that a certain identifiable group of offenders represent a particular criminal threat to the public because of their persistent and frequent criminal behavior. This application of selection in prosecution is not new. Prosecuting attorneys utilize individual discretion to "throw the book" at particularly dangerous offenders, and prior criminal history is a common trigger. However, these decisions have been ad hoc and individual, an organized policy requires more explicit basis for targeting a specific group of offenders.

RESEARCH ON CAREER CRIMINALITY

The importance of career criminality for crime policy is supported by basic research on patterns of criminal activity. The seminal work on individual

crime rates was produced by Wolfgang, Figlio, and Sellin[3] In their study of delinquency among Philadelphia youths born in 1945. The enduring contribution of that study was the central implication that a small minority of criminal offenders commit a majority of street crime. Existence of a highly active criminal minority has been confirmed in a recent follow-up to the original study. Crime patterns in a youth cohort born in 1948 demonstrate "a dramatic increase in the concentration of offensivity among the few".[4] A total of 18% of male delinquents in the 1945 cohort were chronic offenders (five or more arrests); they accounted for 53% of total youth offenses. In the 1958 cohort, 23% of male delinquents were chronics; they accounted for 61% of total offenses. Chronics in the 1958 cohort committed an even higher percentage of serious index crimes -- 61% of murders, 76% of rapes, 3% of robberies, 65% of aggravated assaults. Wolfgang concludes "the problem chronic, repeat delinquency is restricted to a small group of offenders." [5]

Studies of individual crime rates among adult offenders have also demonstrated a subset of career criminals that account for a large portion of total serious crime. Analyses of rearrest data have supported this conclusion,[6] but the most important findings have been produced by the series of Rand Corporation studies based on interviews with offenders incarcerated in state prisons.[7] These studies identify differential rates of self-reported street crime by convicted recidivists, and corroborate the existence of a subset of high rate offenders. When interview findings are combined with other records, a set of factors predicting "high rate" burglars and robbers are identified. Notably, these factors include drug use, juvenile record, and employment factors in addition to prior adult criminal record.[8]

The last decade has produced a significant amount of important research concerning high-rate felony offenders, or career criminals. Whether examining official records of arrest and conviction, or self-reported crime, career criminal research has produced one consistent finding. A small portion of those who commit felony crimes, particularly property crimes such as burglary and robbery, account for a greatly disproportionate number of total crimes. This single dominant finding has tremendous policy implications, and provides the basic empirical justification for targeted prosecution of career criminals.

Beyond this finding, however, career criminal research has produced less consensus, nor has it pointed clear directions for policy decisions in the area. The Chaikens found that a small subgroup of offenders that commit a particular pattern of crimes -- assaulter, robber, dealers -- tend toward extremely high rates of crime. However, most offenders arrested for any one of these crimes will not fit the syndrome, and official records do not contain the information necessary to identify "violent predators." The relation between age and career criminality, particularly in the middle years is not clear. Statistical relations between personal characteristics of offenders and high-rate offenses have been established, but their appropriateness for policy decisions is controversial.

In sum, the existence of a career criminal subgroup has been well established, but less is known about the nature of their careers or the characteristics that distinguish them from other felons. Thus, basic

research into career criminals does not provide clear guidance for the basic decisions regarding case selection, case processing, or sentencing that must be resolved in setting career criminal policies.

CAREER CRIMINAL PROSECUTION: Program Objectives and the Evaluation Record

The documentation of career criminality has been accompanied by public policy initiatives. Since the early 1970's, the selective prosecution of career criminals has represented a persistent theme in crime control policies. The Bronx Major Violators's Bureau was an early and widely publicized local application of the concept. However, career criminal prosecution received its strongest impetus in May of 1975 when the concept attracted the attention and support of the federal government. Noting the increasing base of knowledge about the serious habitual criminal, the Law Enforcement Assistance Administration (LEAA) launched the National Career Criminal Prosecution Program (CCP).

The national level effort provided funding for local and statewide programs establishing special units for career criminal prosecution. Between 1975 and 1981, career criminal units in 128 local jurisdictions received approximately \$30 million in Discretionary Program, Incentive Program, or State Block Grant funds.[9] The CCP has been widely applauded. One observer has called it the "single most beneficial program of the Law Enforcement Assistance Administration." [10]

The CCP Program

The CCP program sought to translate the implications of serious habitual offender research into guidelines that would allow prosecutors in the field to implement specialized units aimed at effectively prosecuting these offenders. The program guidelines encouraged funded local programs to adopt certain operational methods to accomplish these objectives. These included:

- targeting of prosecutorial resources on career criminals and major violators;
- establishing small units staffed by senior level, experienced attorneys;
- developing screening criteria to ensure early identification and expedite case processing;
- reducing the active caseload, thus facilitating more thorough case preparation and continuous case representation;
- developing and implementing case management procedures, including vertical prosecution, no or modified plea bargaining, restrictive use or acceptance of motions, and firmer stance on sentencing.

However, consistent with LEAA's reliance on state and local criminal justice agencies to develop the specifics of crime control programs, local jurisdictions were given great discretion in organizing their projects. In the words of Charles Work, an architect of the national program, "what system they used was up to them."^[11] This emphasis on site variability to reflect jurisdictional constraints and needs was a key component of the national program strategy, and it contributed to the difficulty in assessing the overall utility and effectiveness of the program.

The popularity of the CCP concept is reflected in the relatively high survival rate of these programs once federal funding was terminated. A 1981 survey of local career criminal prosecution units,[12] found that 80% of the programs that had formerly received federal funding were still in operation. In addition, they found approximately forty additional programs that had been established through non-federal funding.

CCP Evaluation: Implication for Research

The National Career Criminal Program also left a substantial legacy of research evaluating the effectiveness of local units. In a 1981 report to the LEAA Courts Division, Springer and Phillips summarized the findings of 15 evaluation studies encompassing 38 local career criminal units. The overall evaluation record supported a conclusion that CCP units had a positive effect on the prosecution of career criminals. Programs generally minimized pre-trial release of career criminal defendants, they reduced acquittal and dismissal rates, produced substantial improvements in convictions to the top charge filed in a case, and generally resulted in more frequent and longer state prison sentences. Most importantly, the evaluation data indicated that the cumulative effect of discrete improvements in conviction rates, incarceration rates, and sentence length produced substantial increases in total years of incarceration -- the best indicator of incapacitation effects.

While the overall findings of these evaluations indicate positive results in terms of discrete indicators of prosecutorial performance, the evaluation record is incomplete.

1. Few of the early evaluations of LEAA-funded programs included detailed process analysis. There were virtually no attempts to specifically link internal program policies to program result. Existing research provides little insight into why units are more or less effective. This gap in the research record is particularly important given the local diversity in program implementation.
2. Many of the studies point to the importance of jurisdiction context for constraining prosecutors or creating opportunities for them to be effective. However, none of the existing evaluations systematically examine the impact of context on program performance.
3. Most of the studies exhibited one or more methodological weaknesses including: inadequate or no control groups, minimal data gathering and analysis regarding external processes, limited periods of program performance reviewed and inadequate documentation of study procedures.

Need for Additional Research

The CCP paved the way for selective prosecution of career criminals, but it has left many unanswered questions. The CCP encouraged a package of case processing procedures including vertical prosecution, reduced caseloads, no or limited plea bargaining, and increased investigation. However, evaluations of the program did little to analyze the contribution of these internal procedures to unit effectiveness. We know little about specifically why the units were more or less effective,[13] or how the program has been adapted to differing local conditions. Little is known about the results of different selection criteria in local programs. Indeed, observers have noted that "most career criminal units are missing an opportunity to achieve maximum benefits from specialized targeting"[14] because they rely primarily on prior adult felonies in identifying defendants for selective prosecution. The continuing development of selective prosecution policies in local

jurisdictions provides an opportunity to re-examine the impact and effectiveness of selective prosecution of career criminals as it has been operationalized in local programs.

At the federal level, prosecution of the career criminal has remained a priority policy concern. In its Phase I Report (1981), the Attorney General's Task Force on Violent Crime recommended that:

The Attorney General should direct the National Institute of Justice and other branches of the Department of Justice to conduct research and development on federal and state career criminal programs.

Given this policy emphasis and the current diversity in the practice of selective prosecution of career criminals, The National Institute of Justice is interested in a comparative study of career criminal prosecution units that will examine differences in their practices and evaluate the impact, if any, of these differences. A study solicitation for research in this area was released in the summer of 1982, and Evaluation, Management, and Training Associates, (EMT) Inc. and the University City Science Center (UCSC), Inc., were awarded a contract to conduct this study the following year.

STUDY FOCUS

The research objective of the EMT/UCSC project is to describe and compare local programs so that those factors that have contributed to successful selective prosecution may be identified. The ultimate goal is to produce information and recommendations that will be of use to local prosecutors for program improvement or program replication in new settings. In particular, the research design must be consistent with the following:

1. The major purpose of the study is to identify specific case management or other factors that maximize the effectiveness of selective prosecution efforts.
2. The research should identify and assess the reasons for "substantial differences" among selective prosecution in different jurisdictions.
3. The research should identify and assess the effects of different selection criteria in career criminal programs.
4. The research should identify differing case processing practices in the jurisdictions (e.g., charging decisions, investigation) and assess their impact on prosecutorial effectiveness.
5. The research should describe and assess the effects of differing relations between law enforcement and selective prosecution programs.
6. The research should describe and assess methods of improving information in selectively prosecuted cases (e.g., accessing criminal histories, identification of other "open" cases for a defendant).
7. The research should compare jurisdictions on a variety of quantifiable case processing measures (e.g., conviction rate, top charge conviction rate, sentence length).

The selective prosecution of career criminals is a public policy that has gained significant attention from policy makers and the research community. Studies of criminal recidivism have provided a basic rationale for treating a subgroup of felons selectively. The national career criminal program has paved the way for widespread local application of the policy, and revealed unanswered questions concerning the application of the concept in local jurisdictions.

AUDIENCE AND ORGANIZATION FOR THIS REPORT

This report is intended for a variety of readers. While prosecutors and policy makers are the two primary audiences, the research community's interests in this topic are given consideration. Accordingly, the report provides comparative information useful to prosecutors for initiating, maintaining or modifying their own efforts to effectively prosecute career criminals. In addition, the report should be useful to state, local or federal policy makers interested in developing policies concerning career criminals. To a lesser extent the needs of the research community are also addressed in this study. Specifically, the study contributes additional information on career criminal offenders and their interactions with the criminal justice system.

The report is organized in three major parts. Part I, following this Introduction, serves as the foundation for the subsequent sections of the report. It consists of three major sections. Section 1 provides an overview on career criminal policy and program development. Based on a national telephone survey of current programs, this section profiles current career criminal program operations, policies and procedures.

The second chapter in Part I describes the study design, the selection of sites, data collection procedures, and data sources. It includes a brief review of past evaluation efforts that have implications for the current study design.

The final chapter in Part 1 profiles the seven programs selected to participate in the study. The origin, development and structure of each career criminal program is presented within the context of the overall prosecutor's office organization and resources.

Part II, Study Findings, consists of three major sections. Section 4, Case Selection, describes the case selection procedure used to identify and select career criminal cases for prosecution in the seven programs. Information on the career criminal defendant, their prior involvement with the criminal justice system, and their current offense are presented.

Sections 5 and 6, Case Management and Processing, describe the policies and procedures that governed the prosecution of the career criminal cases from intake to final case disposition.

Section 7, Case Outcomes, presents information on the disposition of the cases. Strength of conviction is examined by several factors, including top charge convictions, use of enhancement, consecutive sentences, and number and length of state prison terms.

Part 3, Summary and Conclusions, examines the various strategies employed by local prosecutors to effectively prosecute career criminals; key issues in CCP program implementation and replication are summarized.

The study provides new information relevant to selective prosecution of career criminals in a variety of areas:

- Scope of Current Efforts. In 1983, career criminal programs were operating in 30 states and close to 100 localities. Many of these programs are modest in size -- more than one-third (39.4%) prosecute fewer than 100 cases per year; more than half (55%) are staffed by two or fewer full time attorneys.

- Selection Criteria. Burglary and robbery are the most frequently targeted crimes in career criminal programs. Each of these crimes is specifically targeted in approximately three-fourths of existing programs. Individual programs may (a) emphasize personal or property crime; (b) target criminal histories of varying severity; (c) allow varying degrees of discretion in case selection; and (d) make selection decisions centralized or decentralized. This study emphasizes that selection criteria does not simply define career criminals for the program, they fundamentally affect the case management practices and results of career criminal prosecutions.
- Career Criminals and Career Criminal Cases. The nature of career criminality varies according to jurisdiction selection criteria. In Philadelphia and Cook County (Chicago), for example, approximately two-thirds of career criminal cases involve use of weapons, many times resulting in injury or death to victims. More than half of the defendants in these programs have been convicted of at least three prior felonies. Other programs prosecute less violent crimes and accept defendants with less extensive criminal histories.
- Program Organization. Career criminal programs are organized in three primary patterns. **Bifurcated** programs treat career criminals selectively in the prosecutor's office, but they are not treated selectively elsewhere in the criminal justice system. **Coordinated** programs selectively target career criminals in more than one criminal justice agency, e.g., courts, prosecution, and public defense. **Integrated** programs have case handling guidelines for career criminal prosecution, but do not separate them organizationally. The designs have strong implications for program stability and procedures.
- Case Management. Programs utilize strategies of case prosecution (e.g., indictment procedures, plea negotiations) uniquely designed to suit the nature of the local justice system. Strategies can be broadly categorized as "procedural" or "professional".
- Case Outcomes. The seven programs in this study achieved top charge conviction rates of between 74.6% and 91.8% of convictions; and between 68.2% and 82.0% of all cases accepted into the program. Between 74.1% and 87.7% of all cases accepted to those programs received sentences of incarceration. The ways in which these outcomes were achieved (e.g., pleas, trials, type of incarceration) varied according to the nature of the caseload and prosecution strategies in each jurisdiction.

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1. For a discussion of the use of special units to prosecute forcible rape, see Battelle Law and Justice Center, Forcible Rape: A National Survey of the Response by Prosecutors.
 2. *Dyler v. Boles*, 368 U.S. 456.
 3. Marvin E. Wolfgang, Robert M. Figlio and Thorsten Stellin, Delinquency in a Birth Cohort (University of Chicago Press, 1972); Joan Petersilia, Peter W. Greenwood and Marvin Lavin, Criminal Careers of Habitual Felons (National Institute of Law Enforcement and Criminal Justice, July, 1978); Kristen M. Williams, The Scope and Prediction of Recidivism (Institute for Law and Social Research, July, 1979).
 4. Wolfgang, Marvin E. "The Violent Juvenile: A Philadelphia Profile," in Feinberg (Ed.) Violent Crime in America. Washington D.C.: National Policy Exchange (1983).
 5. *Ibid.*
 6. Williams, Kristen M. The Scope and Prediction of Recidivism Institute for Law and Social Research, (July, 1979).
 7. Petersilia, Joan; Greenwood, P.W., and Lavin, M. Criminal Careers of Habitual Felons. Santa Monica, CA: Rand Corporation, (April, 1980).
 8. Greenwood, Peter W. Selective Incapacitation. Santa Monica, CA: Rand Report No. R-2815-NIJ, (August, 1982).
 9. Dimm, James, et al. A Report of the Survey of Local Career Criminal Programs. Report to the Office of Legal Policy, Federal Justice Research Program, 1981. Washington, DC: INSLAW, 1981.
 10. Rendell, Edward G. "Curbing Crime: A Prosecutor's Viewpoint," in Feinberg (Ed.) Violent Crime in America. Washington DC: National Policy Exchange, (1983).
 11. Statement by Charles Work, reprinted in U.S. Senate, Committee on the Judiciary, Federal Assistance to State and Local Criminal Justice Agencies, Hearings before the Subcommittee on Criminal Laws and Procedures, 95th Congress, 2nd Session (1978):10.
 12. Dimm et al, op cit.
 13. Bartolomeo, "Practitioners' Attitudes Toward the Career Criminal Program," Journal of Criminal Law and Criminology, volume 71, 1980, page 117.
 14. Rendell, op cit., 50

SECTION 1

CAREER CRIMINAL PROGRAM DEVELOPMENT

Selective prosecution of career criminals has represented a persistent theme in crime control policy since the early 1970's. Career criminal prosecution received its strongest impetus in May of 1975 when the concept attracted the attention and support of the federal government. In a major address on crime, President Gerald R. Ford announced that "our job is to put the career criminal out of business." [1] He elaborated briefly, noting that the federal government would take program initiatives to "bring (the career criminal) to a speedy trial, and to make sure that, if found guilty, he is sent back to prison." The concept brought immediate attention from criminal justice practitioners and Congress. In the words of one observer, the career criminal programs were "routinely praised as one of the most significant innovations that LEAA has produced..." [2]

The federal initiative was largely responsible for disseminating career criminal prosecution throughout the nation, and created the institutional base upon which existing programs have built. Accordingly, the history of the national career criminal program is important to the development of existing policy. The first part of this section examines the development and implementation of the program concept.

The second part of this section demonstrates that selective prosecution of career criminals continues to be a widespread and popular approach to enhancing crime control. Based on a national survey of local programs, the section documents a great diversity in the characteristics of the programs in

Implementing a common policy concept. In addition to providing a better understanding of current program operation, the section identifies the areas in which more knowledge about career prosecution is needed. Thus it sets the stage for the design approach used in the study and the selection of the seven study sites.

PROGRAM IMPLEMENTATION: FROM POLICY TO OPERATION

During late 1974 and early 1975, the developing career criminal program was an important indicator of new policy direction within the Law Enforcement Assistance Administration (LEAA). The original solicitation for project proposals came out of discretionary grant programs, one of the small portions of the LEAA budget over which the federal offices exercised discretionary funding authority. Analyses of LEAA's early years had suggested the importance of these discretionary grants for setting national policy -- "(LEAA) cannot help but make policy through the way in which it invests these funds." [3]

Despite their potentially central role in setting national policy, discretionary grant programs had been troubled at LEAA. Few had been sustained, and some had been abandoned in mid-stream. The High Impact Anti-Crime Program provides a case in point. At \$160 million, the program was LEAA's "most expensive and ambitious effort" [4] when it was launched in 1972. Impact Cities specified its objective as reducing rape, homicide, robbery, assault, and burglary in eight cities by 5 % in two years and by 20% in five years. Thus the program set its sites directly on reducing crime rather than improving the criminal justice system, a target that was

Infeasible for the level of effort employed. Faced with performance below expectation and confusion in direction, the program was virtually abandoned three years after inception. The scenario was not unique. A succession of national programs -- Pilot Cities, Impact Cities, Citizen's Initiative, and more -- punctuated the search for policy direction.

The Career Criminal Program, in many ways, represented a refinement in use of discretionary grants. It avoided much of the criticism of earlier programs for several reasons. First, the groundwork for the program was carefully laid, including reviewing the program concept with local prosecutors to insure receptiveness. The program benefitted from being compatible with the basic practices of most prosecutors, e.g., being tougher on demonstrated recidivists. In addition, the program was narrower in scope than previous efforts, had more feasible objectives, and carried a relatively developed program rationale.

Testimony before Congress by the program's prime architects within LEAA demonstrated these program characteristics. In testimony before Congress, LEAA Deputy Director Charles Work commented on the improving state of federally-sponsored research on criminal justice.

Good research takes a long time to do....(R)eliable data about criminal justice has been particularly hard to find....(Today) we are able to do the first really effective cross-city research....The...results point to possible programs that could be...effective and important...[5]

Career Criminals was prominent among these possible programs. According to Deputy Director Work, "the program (was) developed from new research into the subject and our own first hand experience." [6]

Program Objectives

This research included the growing number of studies on career criminality [7] and additional research concerning felony prosecution. Prime among these were LEAA-sponsored studies that used PROMIS (Prosecutor's Management Information System) data to document the high rates at which some offenders passed through the court system. [8] Other LEAA publications had reviewed evidence that a lack of resources combined with current case management practices made prosecutorial activities a focal point for attempts to curb recidivism among offenders.

Possibly most important, program objectives were stated with relative caution. The implication that the program could help reduce crime was there, but the direct goals of the program focused on improvements in prosecutorial performance. Again, the testimony of Deputy Director Work before the Senate Subcommittee on Law and Procedures is exemplary.

I am not certain that we will ever be able to demonstrate that the program by itself actually reduces crime. There are so many factors that actually affect crime rates. I believe we can say, however, that virtually in every city where the program operates, it has improved, and often, in fact, rejuvenated the administration of criminal justice. [9]

The orientation of the program to rather specific performance objectives within the criminal justice system has also been recognized by outside

observers of the program. In a recent review of the program's history, Dimm et al. concluded

The central tenet of the program (was) to focus law enforcement and prosecutory resources in order to increase the probability of early identification, expedited prosecution, conviction to the most serious charge, and incarceration of those individuals that have repeatedly demonstrated a propensity to commit violent crimes.[10]

The Career Criminal Program was designed with its implementors -- the local criminal justice community -- clearly in mind. It refrained from emphasizing goals they probably could not achieve.

The program originally utilized money to fund pilot programs in 12 cities during 1975. Grants were typically made for a 12 month period and could usually be renewed for up to three years. Thus, the federal program funded demonstration projects with the hope that their success would engender continuing local support. Between 1975 and 1980 Federal grants were provided to more than 50 local and 3 statewide career criminal programs.[11] Other programs indirectly received LEAA funds through grants from State Planning Agencies (e.g., California's statewide program). In some instances, programs were initiated entirely through state or local funds. In 1980, INSLAW compiled a directory of career criminal programs that included 127 local programs, thus the program concept had achieved widespread adoption during the six year history of the LEAA-funded effort.

Program Characteristics

One explanation for the widespread acceptance and popularity of the federal effort was the fact that "adopting sites were encouraged to adapt the program model to their own unique situation." [12] In their national evaluation of four career criminal programs, Mitre Corporation concluded "the program in effect provided prosecutors with the opportunity to improve their operations in a way they defined for themselves, an understandably appealing prospect." [13]

The combination of flexible local implementation, a variety of funding sources, and a variety of funding windows, meant that career criminal programs had great opportunity for local diversity. However, LEAA funded programs were encouraged, with varying degrees of insistence, to adopt practices consistent with a limited set of guidelines.

1. Independent units were to be established within prosecutors' offices. Program funds were not to augment "main office" activities, but to support this unit.
2. Explicit selection criteria for identifying career criminals were to be defined, and screening procedures established.
3. Units should be staffed by experienced trial attorneys; clerical and investigative staff should be enhanced; and data analysis staff should be assigned.
4. Procedures for limiting or eliminating plea bargaining should be established.
5. Vertical prosecution -- assignment of cases to a single attorney throughout case handling -- should be established.
6. Adequate records should be kept and regular reports submitted during the period of the grant.

Though there were many variations on the theme, these guidelines constituted a basic "program model" for the LEAA-funded Jurisdictions.

End of Federal Involvement

Federal funding of career criminal programs ended in 1981. During the six year history of the federal initiative, LEAA disbursed more than \$30 million to local prosecutors for implementation of career criminal units. In 1981, INSLAW reviewed the diffusion of local units within the national program

...LEAA has funded the implementation of Career Criminal Prosecution Units in 48 jurisdictions through the Discretionary Program and four multisite programs, involving 24 additional programs, through the Incentive Program. Another 60 jurisdictions have implemented the program with State Block Grant funds, and still other jurisdictions have adopted the program using local funds.[14]

The federal grants were typically for one-year periods, renewable up to three. Thus, the program was based on a demonstration grant, or seed program model. If local programs proved successful and popular, it was hoped that state or local governments would continue to fund them through local revenues. When federal funding ended completely in 1981, programs were left to local support for their survival.

The termination of LEAA funding had two major implications. First was program survival itself. Based on a 1981 survey of local career criminal units, INSLAW researchers found that 14 of the originally funded programs were no longer operating, and concluded:

of the 14...13 listed funding cutbacks as the primary reasons for the discontinuation of the program....It is reasonable to assume that additional programs will be discontinued in the next year." [15]

Despite its great popularity, it was uncertain whether state and local governments would pick up the program.

A second implication of terminated federal funding was the possibility that local diversity in program implementation would increase. While the LEAA program was flexible, it did carry some basic implementation requirements, and conveyed a core program. Though there were many variations on the theme, these guidelines constituted a basic "program model" for the LEAA-funded jurisdictions. With the end of a federal presence, reduced resources could prompt significant alterations of career criminal programming (e.g., greater caseload). Other changes might stem from efforts to further adapt the program to local conditions. In either case, locally generated innovations might provide program options that could be adopted elsewhere.

PROGRAM PROFILE

In July and August of 1983, EMT/UCSC conducted a national telephone survey of career criminal programs still in operation at that time. EMT/UCSC identified 127 programs and completed interviews with 87 local programs; five more programs than INSLAW had identified and interviewed in 1981. [16]

A comparison of the sites responding to INSLAW in 1981 and those responding to EMT/UCSC in 1983 reveals that 54 of the INSLAW programs were also interviewed by EMT. INSLAW surveyed 24 programs that were not among the EMT/UCSC respondents; suggesting that INSLAW was at least partially correct

In the expectation that more programs would cease operations without continued federal support. However, 29 of the 1983 respondents were not surveyed by INSLAW; demonstrating that other programs have been initiated or resumed operations without federal support. Interpretation of these figures must be cautious because neither survey reached every program in existence during the survey period.

The first step in conducting a national survey of career criminal programs was to identify those units that were still active in the summer of 1983. To accomplish this task, EMT/UCSC contacted 127 programs listed in the Directory of Career Criminal Programs prepared by INSLAW in 1981. In addition, three procedures were used to expand the search for active programs beyond the INSLAW survey. First, EMT/UCSC contacted state-level criminal justice agencies in all fifty states. If still in existence, state criminal justice planning agencies or criminal justice commissions were contacted. In other instances, inquiries were directed to data collection units of state departments of justice. Respondents were asked to identify all local prosecution programs currently focusing on career criminals or habitual felons. Second, state-level prosecuting attorneys associations were contacted and asked to identify career criminal programs within their state. Follow-up calls were made to all local jurisdictions not already identified. Third, interviewees in local jurisdictions were asked to identify other active programs within their state. Again follow-up calls were made where appropriate.

Extent of CCP Program Operations

Career criminals programs were active in 30 of the 50 states during the summer of 1983. Table 1-1 arrays the programs by state and region. Programs are operating throughout the Northeast, Southeast, Central, and Western regions.

Programs are, however, concentrated in a relatively few states. California, Michigan, New York, Florida, and Virginia contained more than half (55%) of the active programs. California and New York both provide legislative and financial support for local programs. The implication is that state level support may be an important contributor to local program continuation.

Table 1-2 provides additional information on the initiation of career criminal programs. The oldest of the programs have been in existence for over half a decade. Eleven (12.8%) of those surveyed were established in 1976 or earlier, at the very beginning of the LEAA program. More than two-thirds (69.8%) of the programs were initiated in 1977, 1978, and 1979 when federal funding was at its peak. Fifteen of the programs (17.4%) have originated since 1980. These relatively new programs account for 12 of the 29 surveyed in 1983 but not in 1981. A limited number of jurisdictions have initiated new programs since 1980, and some of the former LEAA-funded sites have or are planning to revive programs terminated with their federal grant. Thus, while individual programs have been terminated in a significant portion of the INSLAW sites, programs have been initiated elsewhere. As a result, the total number of programs did not experience significant attrition between the termination of federal funds and the time of the survey.

TABLE 1-1

NUMBER OF PROGRAMS BY STATE AND REGION
(n=87)

Northeast

Connecticut	(3)	
Delaware	(1)	
District of Columbia	(1)	
Maryland	(1)	
Massachusetts	(2)	
New Jersey	(3)	
New York	(10)	
Pennsylvania	(3)	
Total	[24]	28%

Southeast

Florida	(7)	
Georgia	(1)	
Kentucky	(2)	
Louisiana	(1)	
North Carolina	(1)	
South Carolina	(1)	
Tennessee	(2)	
Virginia	(5)	
Total	[20]	23%

Central and Midwest

Illinois	(1)	
Indiana	(3)	
Iowa	(1)	
Kansas	(1)	
Michigan	(12)	
Missouri	(1)	
Ohio	(1)	
Texas	(1)	
Wisconsin	(1)	
Total	[22]	25%

West

California	(14)	
Hawaii	(4)	
Nevada	(1)	
New Mexico	(1)	
Oregon	(1)	
Total	[21]	24%

TABLE 1-2

YEAR OF PROGRAM IMPLEMENTATION

1976 or before	12.8%	(11)
1977	20.9	(18)
1978	29.1	(25)
1979	19.8	(17)
1980 or after	17.4	(15)

It may be more significant that formal termination and initiation of local "programs" has occurred amidst a climate of flux and experimentation. Some programs have been continued but have been fundamentally modified. Approximately one in seven programs, for example, had disbanded the formally separate career criminal "unit" but continued to selectively prosecute career criminal cases. Miami, Florida is an important example. The jurisdiction maintains selection criteria and distinct policies for cases labeled "career criminal." Career criminal cases are then assigned to attorneys by the normal procedure. There is no separate unit. In other cases, ongoing units have altered selection criteria, modified the scope of the program, or initiated new approaches to balancing program effectiveness and available resources. Austin, Texas, for one example, has implemented a "selection committee" approach which accepts cases to achieve an established quota of twelve "active" career criminal cases at any one point in time. In still other instances, career criminal programs have been formally discontinued, but unit policies (e.g., plea bargaining restrictions, vertical prosecution) have been adopted in the larger prosecutor's office.

PROGRAM OPERATION

The persistence of local career criminal programs after termination of the federal program attests to the popularity and perceived importance of the policy. However, career criminal programs have been modified by local policymakers, sometimes in major ways. In sum, selective prosecution of career criminals is a policy that is receiving on-going attention in states and localities across the nation. This section profiles the status of local programs in the Summer of 1983.

Program Size

Table 1-3 distributes career criminal programs by the population of the jurisdiction in which they are located. Local programs are found across a broad range of jurisdiction sizes. Approximately one quarter (24.2%) are found in jurisdictions of less than 150,000 population, while 60% are located in jurisdictions of 500,000 residents or less. Another 17% of the programs are located in jurisdictions of over 1,000,000 persons. Again diversity of program application is the rule. While many of the smaller jurisdictions are within major metropolitan areas, others are in non-metropolitan settings. Career criminals programs are not restricted to large metropolitan locations.

TABLE 1-3

PROGRAM JURISDICTION POPULATION
(n=87)

150,000 or fewer	24.2%	(21)
150,001 to 300,000	21.9	(19)
300,001 to 500,000	13.7	(12)
500,001 to 750,000	16.1	(14)
750,001 to 1,000,000	6.8	(6)
More than 1,000,000	17.3	(15)

Variation in jurisdiction population implies that career criminal programs will vary in size. Tables 1-4 through 1-6 present information on indicators of program size. Nearly 40% of the programs handled fewer than 100 cases in 1982, the last year for which full information is available. Fewer than one in ten programs prosecuted more than 500 defendants in 1982.

TABLE 1-4

ANNUAL NUMBER OF DEFENDANTS (1982)
(n=66)

100 or fewer	39.4%	(26)
101 to 250	40.9	(27)
251 to 500	10.6	(7)
More than 500	9.1	(6)

Most programs were also small in terms of staff. Fewer than one in five programs (18.4%) had more than four full-time attorneys assigned to a career criminal unit. Nearly one in four (24.2%) had only one or two full-time attorneys, and another third (32.2%) used only part-time attorneys or assigned career criminal cases to attorneys on an individual basis. The original LEAA program guidelines stipulated that funds would be provided for special unit investigators to aid in case development. More than one half of

the programs in the EMT/UCSC survey either did not have investigators assigned (28.8%) or used only part-time investigators (24.2%).

TABLE 1-5

PROGRAM STAFF - ATTORNEYS
(n=87)

One	12.7%	(11)
Two	11.5	(10)
Three	18.4	(16)
Four	6.8	(6)
Five or more	18.4	(16)
Part time or assigned	32.2	(28)

TABLE 1-6

PROGRAM STAFF - INVESTIGATORS
(n=87)

One	26.5%	(23)
Two	12.7	(11)
Three	7.8	(7)
Part time only	24.2	(21)
None	28.8	(25)

Caseload

The original LEAA guidelines stipulated several program elements designed to improve the effectiveness of career criminal prosecution. Basic among these were caseload reduction among career criminal prosecutors. Table 1-7 indicates that programs vary considerably in average active caseload per attorney as reported by survey respondents.

TABLE 1-7

APPROXIMATE ACTIVE CASELOAD (DEFENDANTS) PER ATTORNEY
(n=59)

10 or fewer	28.8%	(17)
11 to 20	44.1	(26)
21 to 30	16.9	(10)
31 to 40	10.2	(6)
More than 40	6.8	(4)

Nearly three-fourths of the programs reported twenty or fewer active cases per attorney. A very few programs reported average active caseloads of more than forty.

Perceptions of active caseload must be interpreted cautiously. Respondents were frequently hesitant to make such an estimate, and the figures do not indicate any differential between career criminals and other prosecutions. Table 1-8 displays average active caseload of career criminal attorneys as a percentage of the average active caseload for attorneys prosecuting other felony cases.

TABLE 1-8

AVERAGE CASELOAD FOR PROGRAM ATTORNEYS AS PERCENTAGE
OF AVERAGE CASELOAD FOR OTHER FELONY PROSECUTORS
(n=50)

25% or less	16.0%	(8)
26 to 50%	46.0	(23)
51 to 75%	18.0	(9)
More than 75%	20.0	(10)

Respondents indicated that, in the majority of jurisdictions, career criminal prosecutors carry a significantly lower caseload than other felony prosecutors. Nearly two-thirds of the respondents indicated career criminal

caseloads were one-half or less the caseloads of other felony prosecutors. In one of five programs career criminal prosecutors do not enjoy an active caseload less than 75% that of other prosecutors. While most programs have maintained lesser caseloads for career criminal prosecutions, a significant minority maintain caseloads similar to those office wide.

Case Selection

Career criminal programs are selective. However, no consensus exists regarding the exact criteria for identifying career criminal cases. Generally, selection is based at least partially on some indicator of prior criminal activity -- prior convictions, prior arrests, probation or parole status, or juvenile record. These indicators can be used in a great variety of ways, and criteria vary in complexity between programs. In Portland, Oregon, for example, any person charged with a felony (excluding sex crimes or criminal mistreatment) and having two prior felony convictions can be accepted into the career criminal program. The formal criteria are simple and straightforward. In Madison, Wisconsin, on the other hand, indicators of prior criminal behavior are assigned points in a complex system that differentiates past behavior by degrees of violence and whether the defendant is wanted, on bail, on probation, or on parole for prior crimes.

As indicated in Table 1-9, nearly all (94%) of the career criminal programs require prior felony convictions as a criteria for prosecution in the program.

TABLE 1-9

**FACTORS IN CAREER CRIMINAL SELECTION CRITERIA:
INDICATORS OF CRIMINAL HISTORY
(n=84)**

Prior Felony Convictions	94.0%	(79)
On Probation/Parole	14.2	(12)
Prior Misdemeanor Convictions	14.2	(12)
Violence	14.2	(12)
Prior Felony Arrests	11.9	(10)
Pending Charges	5.9	(5)
Juvenile Record	3.5	(3)
Prior Misdemeanor Arrests	2.3	(2)

Indeed, the most common criteria for selection are based simply on some specified number of prior felony convictions. While other indicators of past criminality are used relatively infrequently, a number of options are applied. In twelve programs defendants on probation or parole for a felony conviction were specifically targeted. In another five programs, pending felony cases were considered in selection. Both of these indicators have the effect of emphasizing recent criminal involvement in defining career criminals. Prior convictions for violent felonies are weighted more heavily than non-violent priors in 12 programs, and misdemeanor convictions are included among selection criteria in 12 others.

Approximately one-third of the responding programs (32.2%) depend primarily on prior criminal activity in selecting career criminal cases. However, most programs restrict career criminal prosecutions to particular offenses. Table 1-10 displays the numbers of programs targeting specified crimes.

TABLE 1-10

TARGET OFFENSES FOR CAREER CRIMINAL SELECTION
(n=57)

Burglary	71.9%	(41)
Robbery	71.9	(41)
Murder	45.6	(26)
Rape	40.3	(23)
Sexual Assault	38.6	(22)
Arson	29.8	(17)
Kidnapping	28.0	(16)
Drug Offenses	17.5	(10)
Child Molestation	12.3	(7)

Clearly, burglary and robbery are the most commonly targeted offenses. Indeed, in some programs (e.g., Portland, Oregon) armed robbery or residential burglary may qualify a defendant for prosecution by the unit even if the crime is a first offense. The emphasis on burglary and robbery also reflects the orientation of career criminal programs to property crimes. In the extreme cases units accept only property crimes -- the rationale for this focus is that property crimes constitute the basis for a "career" of economic gain through criminal activity. In fewer instances targeted offenses include crimes of person-to-person violence -- murder, rape, assault, etc. Sometimes these crimes are excluded because of a prime concern with property crime; sometimes because they are prosecuted in special units that focus on violent crime as distinct from career criminality. The latter reason probably accounts for the relatively small number of programs that include drug offenses. While drug offenders are prime candidates for making a criminal living, they are frequently prosecuted in special units with special expertise in search and seizure or related legal issues.

The specification of target offenses in local programs has sometimes been shaped by state or local concern regarding particular crimes. In California, the state career criminal statute was amended to include child molestation as a target crime. In Portland, Oregon, the unit was reorganized to prosecute first time robbers and burglars as well as repeat felons. In these instances local units are expanding the initial concept of career criminality, and may be modifying it significantly. While the original career criminal concept is based on expectations about rehabilitation potential, local modification of selection criteria may tend to emphasize community reaction to crime types rather than offender recidivism.

Selection criteria also vary in degrees of formalization and complexity. At one extreme are programs that utilize formal weighting systems that assign scores to a large number of factors. The scoring sheet used by the Calhoun County, Michigan (Exhibit 1-1), is an example of a detailed point weighting system. One characteristic of this type of selection criteria is that it allows for several different types of defendant characteristics to place an individual beyond the "threshold" for inclusion in the career criminal caseload. In the Calhoun County example, various combinations of victim characteristics, severity of the offense, prior criminal record, or current criminal involvement may qualify the defendant. In other instances, criteria are simple.

Prosecutorial Discretion

Another differentiating factor with respect to career criminal selection is the degree of discretion afforded prosecutors in accepting cases. In most programs there is some degree of discretion in accepting cases, though the

Calhoun County, Michigan, Intake Sheet
INTAKE SCORING SHEET

DEFENDANT'S NAME _____ POLICE AGENCY _____
DATE _____ COMPLAINT # _____
REVIEWING, APA _____ OFFICER _____

CRIME INFORMATION

- A. VICTIM
 - 1 Public
 - 3 Property
 - 6 Person
 - 9 Law Officer
 - 12 Under 13-Over 60
 - 15 Physically/Mentally Disabled
- B. VICTIM INJURY
 - 0 None
 - 7 Minor (No Treatment)
 - 14 Treatment Required
 - 21 One Hospitalized
 - 25 More than One Hospitalized
 - 35 Loss of Life
- C. WEAPON AT CRIME
 - 0 None
 - 10 Other Dangerous Weapon
 - 15 Gun Carried
 - 20 Gun-Fired Shot
 - 25 Explosives
- D. WEAPON AT ARREST (If arrested 12 or more hours after crime)
 - 0 None
 - 10 Other Dangerous Weapon
 - 15 Gun Carried
 - 20 Gun-Fired Shot
 - 25 Explosives
- E. ECONOMIC VALUE OR DAMAGE
 - 0 None
 - 4 \$1-\$100
 - 7 \$101-\$499
 - 8 \$500-\$1,499
 - 10 \$1,500-\$4,999
 - 20 \$5,000-Over
- F. MULTIPLE OFFENSES
 - 0 None
 - 12 Confessed 1-9/Can't Charge
 - 18 Confessed 9-Over/Can't Charge
 - 24 Can Charge 2 Others or Less
 - 30 Can Charge 3 or More
- G. CHARGE (As issued this case)
 - 4 Larceny (5 yr. or greater)
 - 8 Breaking and Entering
 - 12 Assaults (Felony)
 - 16 Delivery/Sch. 1 Narcotic
 - 20 Robbery
 - 24 Forcible Sex
 - 28 Homicide
- H. DRUG INVOLVEMENT
 - 0 None
 - 7 Non-Narcotics
 - 15 Narcotics

DEFENDANT'S INFORMATION

- A. FELONY CONVICTIONS
 - 0 None
 - 18 One
 - 27 Two
 - 36 Three-Four
 - 45 Five or More
- B. MISDEMEANOR CONVICTIONS
 - 0 None
 - 7 One
 - 14 Two-Four
 - 19 Five-Seven
 - 23 Eight or More
- C. FELONY ARRESTS
 - 0 None
 - 12 One
 - 18 Two-Four
 - 24 Five-Nine
 - 30 Ten or More
- D. STATUS
 - 0 Not Applicable
 - 15 Bail
 - 23 Probation
 - 35 Parole
 - 38 Escape
- E. PENDING CASES
 - 0 None
 - 12 Misdemeanor-Other Locale
 - 18 Misdemeanor-Calhoun
 - 24 Felony-Other Locale
 - 30 Felony-Calhoun

_____ Total Crime Information
_____ Total Defendant Information
_____ TOTAL DEFENDANT SCORE

THRESHOLD MET
_____ YES _____ NO

TYPE OF INFORMATION

ACCEPTED
REJECTED

SCORED BY _____

extent and rationale for these differences varies significantly. In Austin, Texas, and Madison, Wisconsin, for example, cases are selected based on a "quota" for the entire program. In Austin a committee decides between cases referred from a local law enforcement career criminal unit. A sufficient number of cases are selected to maintain an active caseload of 12 career criminal cases. In Madison a point weighting system is used to rank cases and selection is based on maintaining approximately 30 active cases.

In some instances, discretion is not based on caseload maintenance, but selection focusses on identification of cases that are particularly heinous or highly visible in the community. While the telephone survey did not provide precise information on the frequency or importance of these discretionary decisions, it appears that they are more likely in jurisdictions where career criminal units are staffed by attorneys with superior trial skills and experience.

Finally, discretion may be used to select cases that are more likely to produce a conviction -- cases in which evidence is strong. Selection criteria in Monroe County, New York (Rochester), award points for evidence, identification of defendant, and time lapsed between the criminal incident and arrest. The program focuses on those cases for which there is sufficient state's evidence. In other programs (e.g., New Haven, Connecticut) there is a strong orientation to committing resources to cases that are difficult to prosecute if they involve repeat offenders. These differing approaches to selection based on case strength reflect differing perceptions of the most effective uses of program resources. The logic of accepting "strong" cases

presumes that effective prosecution of those cases will bring stronger sentencing results. The logic of focusing on weak cases emphasizes the ability to obtain convictions that would not otherwise be attained. There is no consensus among program participants on which is the more important effect of career criminal programming.

Case Screening

The process of selecting career criminal cases requires screening of felony arrests so that criteria may be applied. A variety of arrangements for screening are possible. Table 1-11 indicates the number of programs that utilize each of three options for referral of career criminal cases to the program.

TABLE 1-11
SOURCES OF CAREER CRIMINAL REFERRALS

Law Enforcement	44.0%	(37)
Review by Program		
Attorneys	44.0	(37)
Screening Staff	35.7	(30)

Law enforcement, career criminal attorneys, and other staff in the prosecutor's office are all involved in screening cases for various programs. The specific arrangements are extremely varied, often involving more than one referral or screening source. Examples will best demonstrate this diversity.

In Memphis the felony arrest "ticket" for the previous day is delivered to the CC unit secretary each morning. Because felony arrests are all processed

through the local centralized criminal justice complex, the list is complete. Memphis Police Department rap sheets are reviewed and five prior felony arrests trigger second stage screening. In this state the unit secretary checks centralized court records to verify prior convictions. Cases are then referred to the supervising attorney for the unit who applies a point weighting system based on type and number of prior convictions, status at arrest, and juvenile convictions. Using the weighted score, the unit supervisor accepts or rejects a case. With approval, individual CC attorneys may ask that an exceptionally weak case be disposed of in lower court.

In San Mateo, California, screening is accomplished by the presiding attorney in each of three municipal courts. These experienced attorneys apply criteria stipulated by state legislation to all felony cases docketed for preliminary hearing. Eligible cases are referred to the Career Criminal unit for prosecution. They are not referred to other units once sent to the CCU.

In Chicago, police notify felony review attorneys regarding every felony arrest. Felony review attorneys are on call 24 hours a day and make determinations on whether an arrest will support felony charges. In serious cases they make these determinations in person. All felony cases go before preliminary hearing courts and, if not resolved in lower court, come before the presiding judge for assignment to criminal trial courts. Clerks for the presiding judge screen all cases using specific criteria based on current offense and prior felony record. If a case meets the criteria, the presiding judge assigns it to one of four Repeat Offender Courts (ROC).

In Austin, Texas, police in a career criminal unit keep an active list of repeat felons. When arrests are made they screen them for career criminals, and prepare special dossiers recommending chronic recidivists for special prosecution. A committee of prosecutors selects from these recommendations according to open spots in the limited caseload of select trial attorneys.

In New Haven, Connecticut, all jurisdiction arrests for targeted felonies (burglary, robbery, sexual assault, homicide, assault) are screened. New Haven Police Department arrests are delivered daily and account for approximately two-thirds of referrals. Arrests by smaller police jurisdictions are delivered several times a week. The unit screening attorney assesses Connecticut rap sheets to determine whether a defendant meets the offender-based criteria: 2 prior felony convictions or 1 prior felony conviction and on bond, probation, or parole. Once accepted, cases are not referred outside the unit.

Finally, in Portland, Oregon, arrests for target crimes are delivered to the unit each day by Portland City Police or Multnomah County Sheriffs. Available unit attorneys accept arrests for review, and make a determination whether to issue a felony charge within the career criminal unit, to refer to another felony unit, or to issue a misdemeanor charge.

These examples make the variety selection procedures evident. They also demonstrate the major dimensions along which these procedures differ. First, the time and location of initial screening may differ. In most instances, arrest logs are the subject of initial review, but they may be initially screened by police officers, by lower court attorneys, or by career criminal

unit staff. In some instances, career criminal screening does not take place until after initial lower court proceedings.

Second, screening procedures differ in the locus of final decisions to accept or reject. Sometimes the decision rests solely with the unit supervisor, sometimes it rests with individual attorneys, and sometimes individual attorney decisions are subject to supervisory review and approval. Indeed, in some instances decisions to accept or reject are made primarily by individual prosecutors.

A third dimension of difference is the explicitness of the selection process -- or the degree to which selection procedures are flexible. This is partly a function of the degree of discretion in selection -- e.g., whether a point-weighting system has an absolute decision threshold or whether it serves as a "tool" for making comparisons between cases. Flexibility in procedure also reflects the number of points at which selection decisions are made, and the number of persons involved. For instance, in Portland, all unit attorneys are involved in initial screening. In Memphis, the unit supervisor makes initial decisions but individual attorneys may request that a case be resolved in lower court. In Chicago, decisions are made at a single point by the presiding judge.

Plea Negotiation

In addition to requiring development of selection criteria, the original LEAA career criminal program set forth other program elements that local jurisdictions were asked to implement. One of these elements was the

elimination or limitation of plea negotiations in career criminal cases. The issue of plea bargaining policies is controversial because it calls to question the adequacy of prosecutors' use of discretion. Furthermore, it is not easy to establish a precise understanding of what constitutes plea negotiations. In our survey we adopted a broad view of the term. Plea negotiations may include dropping or reducing charges in return for a plea of guilty (charge bargaining), or it may refer to agreements on specific sentence recommendations in return for a plea of guilty (sentence bargaining). Table 1-12 displays the plea negotiation policies of programs as reported by our respondents.

TABLE 1-12

PLEA NEGOTIATION POLICY
(n=84)

No Charge or Sentence Negotiations	36.9%	(31)
No Charge Negotiations	33.4	(29)
No Sentence Negotiations	7.1	(6)
No Policy Limiting Negotiations	21.4	(18)

The great majority of programs report some policy limiting plea negotiations. Even among the 21% that reported no specific limitations, it was usually understood that career criminal cases would be subject to more stringent negotiating standards than most other felonies. Just over one-third of the programs reported that they did not negotiate either charge or sentence. Nearly as many indicated restrictions on charge bargaining only, often focusing on no reduction of the top charge. A small minority of programs (7.1%) indicated that they did not negotiate sentence, but may negotiate charges.

While these broad categories indicate that some limitation on plea negotiation is common among career criminal programs, these limitations take a great variety of forms. In California, for instance, state law requires that there be no reduction or dropping of charges in career criminal cases, and the determinate sentencing law in that state reduces discretion in sentencing recommendations. In Portland, Oregon, there is a policy of no reduction or dropping of charges, and sentencing recommendations are made only after agreement among a group of three career criminal prosecutors who discuss the case. In Miami, there is a policy of no charge reduction though exceptions may be granted after review by a designated senior attorney. Plea bargaining policies may vary according to the specific objectives of the unit. For example, the Rochester unit emphasizes speedy convictions. Accordingly, the unit has a policy of allowing a plea to a one step reduction in top charge and will negotiate sentence before indictment. After indictment, however, there is a no negotiation policy. Plea bargaining policies among career criminal units often reflect the criminal justice environment (e.g., the degree of influence of sentence recommendations) and the specific objectives of the local unit.

Law Enforcement

An important objective of many career criminal prosecution programs has been to improve interaction between prosecutors and police agencies. More effective links to law enforcement are important for early case intervention by career criminal prosecutors, for more effective development of evidence by

police officers, and for increased morale and cooperation in the development of cases. Table 1-13 indicates the number of respondents that reported specific efforts to improve links between law enforcement and career criminal programs.

TABLE 1-13
LINKAGES TO LAW ENFORCEMENT
(Total Mentions)

Liaison Personnel	70.1%	(61)
Enhanced Personal Communications	52.8	(46)
Direct Telecommunication/ Hotline	33.3	(29)
Career Criminal List	24.1	(21)
No Special Linkage	13.7	(12)

Only a small minority (13.7%) of the programs reported no special efforts to improve communications and cooperation between career criminal prosecutors and law enforcement agencies.

The most commonly reported linkage between career criminal prosecutors and law enforcement was liaison personnel -- from either law enforcement or prosecution. The extent of involvement by liaison personnel varies widely. In New Haven, Connecticut, the liaison officer from the local police force is in daily contact with the unit and is responsible for delivering relevant arrest tickets. In other instances, liaison is a much more passive activity. The next most frequently mentioned "special effort" to improve police-prosecutor relations was enhanced personal communications. Again, the exact content of these efforts varies among sites. In some instances, respondents were simply referring to the fact that individual career criminal

prosecutors make a greater effort to work with Investigating officers and establish strong ties with officers in their area. In other instances, programs have made very strong efforts to involve law enforcement in career criminal activities. In Knoxville, Tennessee, for example, prosecutors in the unit offered training and orientation classes at the police academy, gave frequent talks to police groups, and worked closely with law enforcement immediately upon arrest. The unit and the metropolitan police force jointly conducted several major "sting" operations. In this instance the strengthening of working relationships with law enforcement was a major element in program operations.

A smaller number of units (33.3%) have established direct telephone communications between law enforcement and career criminal attorneys. Direct contact is facilitated in a number of ways. In some instances, unit attorneys rotate being "on call" so that they can respond to police calls around the clock. In approximately one-fourth of the jurisdictions law enforcement compiles some sort of career criminal list to aid in the identification of career criminal defendants. In Austin, Texas, for example, this list serves as the major basis for police recommendation of cases to the unit.

The EMT/UCSC survey demonstrates that selective prosecution of career criminals continues to be a widespread and popular approach to enhancing crime control. Selective prosecution of career criminals may reflect a common policy concept, but local implementation of this concept is diverse. The profile of current programs documents the willingness of local

prosecutors to adapt programs to their local environments, and suggests the wealth of experience and knowledge that local career criminal prosecutors may gain from their counterparts elsewhere.

SUMMARY DISCUSSION

The national career criminal program has paved the way for the widespread, local application of this crime control policy. While there has been some attrition of local programs since the end of federal funding in 1981, the great majority of the programs have continued with state or local support, and local programs continue to be initiated or resumed. Currently there are nearly 90 CCP programs operating in thirty states. This great diversity of local programs is a testimony to the durability of the concept but also demonstrates the need to better understand the adaptability of operational procedures that accounts for their programs continued viability and presence. Specifically, there are five broad areas in which more knowledge about career criminal prosecution is needed. They are:

1. Selection Criteria. Programs target current offenses, past criminal history, and specific case characteristics (e.g., strength of evidence) in a broad array of combinations. Contributing even more diversity, programs use a variety of indicators to score or evaluate these criteria (e.g., past convictions, past arrests, timing of past arrests or convictions, probation/parole status). Beyond the criteria themselves, programs allow varying amounts of discretion in accepting cases, and place that discretion at differing points in case processing.

It is not surprising that selection criteria have been in a state of flux both between and within programs. While current research on career criminals has confirmed a small group of high rate offenders that account for a disproportionate amount of crime, it provides no clear

Indicators for selecting these offenders. To date, predictive measures produce a large number of false positives, and retrospective measures (e.g., past record) run the risk of identifying career criminals in the twilight of their felony activity. Even with research-based guidance, local programs will find themselves facing different climates of crime, different climates of public opinion, and different criminal justice systems. The demands of each will legitimately be reflected in the selection criteria most appropriate for a given locale.

Within this context, it is important that local programs have adjusted their criteria over time to more effectively target prosecution, to improve the use of resources, or to meet other local demands. Comparisons between programs with different approaches to selection, and examination of changes in selection within jurisdictions, may provide useful information concerning the effects of selection criteria on program processes and result.

2. Policies and Procedures. The policies and procedures utilized by local career criminal programs have been influenced by the LEAA guidelines. Vertical prosecution, for instance, is a pervasive element in case handling procedures for career criminal programs. It is a direct case management device that has clearly been well-received by local prosecutors. Still, the evaluation record to date provides no analysis of the relationship between vertical prosecution and specific program outcomes.

In other areas of procedure there is less consistency between programs. Plea negotiation practices represent a variety of policies with a variety of specific objectives. In some sites, strict prohibitions against any plea negotiation were adopted with the explicit purpose of gaining the lengthiest possible period of incarceration. In others, plea negotiation was conducted within specific limitations to expedite cases and ensure conviction. Similar variation between units is manifest in caseload, procedures for bringing initial charges, follow-up investigation, and in other procedural areas.

Thus, although existing programs have largely developed from a common model, they have given that model a variety of shapes. This model has several procedural components, and existing studies provide little basis for determining how these components individually effect program operation and result. One observer of career criminal programs has criticized the emphasis on evaluating performance measures without adequate attention to those components of program

implementation that explain them. He concluded that research in the area

...should be enhanced to ask the next logical questions: why does the program fail or succeed and what can be done about it? Until this enhancement occurs, these studies cannot avoid generating frustrations among practitioners and policymakers alike. [17]

At the present, we know little about the relationship between program procedures and program performance.

3. Jurisdictional Constraints. One of the major assumptions underlying the selective prosecution approach to career criminals is "that the prosecutor is in a position to effect the kinds of changes envisioned for the program.[18] Yet prosecutors are surrounded by legislation, court decisions, and other criminal justice actors that constrain their actions. The authors of the prior national evaluation suggested that factors outside the prosecutor's office itself may preclude attaining certain objectives of the program. In their words, "what is in question is whether improving (the prosecutor's) ability to manage his target caseload can necessarily be expected to influence certain criminal justice system outcomes for this particular caseload." [19]

Sentencing represents a particular case in point. In some jurisdictions, such as California, sentencing laws tie the judges sentencing decisions rather closely to the charges at conviction. In this context it may be more plausible for a prosecutorial program to impact sentence length. In jurisdictions with broad judicial discretion in sentencing, this expectation may be less realistic. Furthermore, in some jurisdictions judges are sympathetic to sentence recommendations from the prosecutor; in others they are not. Indeed, in a single jurisdiction some judges may be receptive to recommendations and others opposed. Release decisions in some jurisdictions may be determined primarily by a parole authority, and therefore lie beyond the realistic influence of the prosecutor. A better understanding of the most effective selective prosecution policies must consider the differences in constraints and opportunities provided by differing contexts.

4. Program Continuity. The most sophisticated of the studies of LEAA-funded programs compared cases prosecuted in the program to similar cases prosecuted prior to the program. They treated the initial implementation of the program as the critical factor expected to impact case outcomes. This

approach has shortcomings.

First, it assumes that the program is constant, that no changes take place after implementation that have important effects on outcomes. Given the flexibility of these programs, this is an unrealistic assumption. Prosecutors or other actors in the criminal justice system may modify policies or case management. Laws may change. Career criminal programming is approaching a decade of history, and right now we know little about what local prosecutors may have learned during this time.

5. Policy Objectives. One of the most important implications of the flexibility that the LEAA program allowed local prosecutors is the recognition that they may emphasize different policy objectives in their design of the programs. Several observers of career criminal prosecution have linked it closely to

the concept of selective incapacitation, the notion that the criminal justice system can be most efficient and effective in combatting...crime if it focuses its attention and resources on carefully defined groups of offenders, who are responsible for the bulk of the...crime, and actively seeks to incarcerate them.[20]

In terms of this selective incapacitation policy objective, a prime indicator of program success would be increases in periods of incarceration for targeted offenders.

Assuming that selective incapacitation is the underlying policy objective of career criminal programs, however, is problematic. First, as argued above, the goal of selective incapacitation may be beyond the realistic scope of a program of selective prosecution. Its accomplishment may rest equally, or primarily, with the law or with other actors in the criminal justice system. Furthermore, the policy itself is controversial. The most basic issue is "whether it is permissible to allow crime-control to be an objective of sentencing policy." [21] Other purposes of sentencing -- such as retribution -- may compete. Even tougher, since preventing crime through selective incapacitation depends upon predicting the high-rate offender, "there is bound to be a debate about the legal and even ethical propriety of using certain facts as the basis for making predictions." [22]

A policy of selective prosecution of career criminals can serve ends other than selective incapacitation. It may, for example, improve the operation of the criminal justice

system through expediting the handling of cases, improving prosecutor's morale, improving the relations of police with prosecutors, etc. It may serve to meet the public's desire that something be done about serious repeat offenders. Evaluation of policies for selective prosecution of career criminals should recognize that the program can serve multiple policy objectives, and that these objectives may differ between local programs.

Information relevant to these issue areas requires a research effort that departs from prior studies of career criminal prosecution. Section 2 of this report sets forth the rationale and overall design for the research that provides the foundation of this report. Part 2 presents substantive findings addressing the issues outlined above.

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SECTION 2

STUDY DESIGN

The research objective of the national evaluation of selective prosecution of career criminals is to describe and compare the ways in which local prosecutors have organized and implemented programs to selectively prosecute career criminals. The ultimate goal is to produce information and recommendations that will be of use to local prosecutors seeking to replicate or improve career criminal programs. These objectives require an evaluation design that

- is oriented to differences in process between jurisdictions and to empirically linking these differences to differential program outcomes;
- is sensitive to differences in jurisdictional context which influence and constrain program policy and management;
- use modes of analysis which discover jurisdiction specific explanations of performance and identify factors which may enhance or limit their application elsewhere.

By addressing process characteristics, contextual variables, and effects of both over time, the proposed study can produce knowledge relevant for improving career criminal program policy.

PROGRAM EVALUATION APPROACHES: PAST AND CURRENT

The federal Career Criminal Program was administered with an emphasis on the role of program monitoring and evaluation. Quarterly reports in a standardized format were required of participating local prosecutors, and the National Legal Data Center compiled and archived them. LEAA commissioned a

number of independent evaluations of programs, including a major study of four sites by the MITRE Corporation. In addition, states and localities were strongly encouraged to undertake their own evaluations, sometimes as a condition of funding. In some instances, such as the statewide studies of California and Michigan, these evaluations represented major research efforts. Thus, by 1980, a substantial record of evaluation studies had been established.

Previous Evaluation Designs

Evaluations of LEAA-funded local programs did not employ a common research design and focussed on different specific indicators of program results -- a diversity consistent with the local flexibility in program design. A report to LEAA by principals to this study summarized and critiqued 15 separate studies encompassing 34 individual CCP units.[1] Some consistent findings emerged from this review of empirical research.

1. The major purpose of the evaluations was to determine the degree to which the programs achieved immediate performance objectives regarding prosecutorial effectiveness (e.g., increased numbers of convictions). To accomplish this impact evaluation, the most sophisticated studies attempted to utilize quasi-experimental research designs.
2. Virtually all existing evaluations of CCP performance were accomplished within a single jurisdiction, or within a single state. Only the national evaluation (four sites) spanned state lines. While most of the studies include descriptions of the program environment, there has been little systematic attention to the contextual factors (i.e., introduction of determinant sentencing which may be important in explaining CCP procedures and performance).
3. The studies varied greatly in the extent to which they attempted to evaluate internal or external process related

results, but process evaluation was often minimal. Indicators and procedures used for process analysis varied widely. The lack of systematic process evaluation limited the practical value of the studies for local program managers.

The greatest shortcomings of the existing evaluation record stem from the dominant focus on program impacts -- the attempt to determine whether career criminal programs "make a difference" in discrete measures of prosecutorial success.

The logic of this question led evaluators to design quasi-experimental studies that could separate the results of career criminal prosecution from the outcomes that career criminal cases would have received without a program.

The most sophisticated of the studies in the existing CCP evaluation record utilized a four cell evaluation design.[2] This design allows comparisons of change in prosecutorial performance between baseline (pre-CCP) cases which would have met CCP screening criteria and CCP prosecuted cases. It also incorporates a non-equivalent control group of baseline and current cases which do not meet CCP selection criteria in the jurisdiction, and thereby helps isolate the unique performance contribution of CCP programming. However, the four cell design was subject to several problems:

1. The fundamental flaw in the design was the impossibility of truly "matching" control cases with career criminals. Control cases were typically matched on top charge, but the critical factor of criminal history (which weighs heavily in prosecutor's decisions) could not be matched. The fundamental component of selective prosecution programs -- selection of cases on a crucial variable makes the use of control group designs infeasible.

2. The design could not account for the effects of discretionary selection among CCP eligible cases which met the threshold criteria for CCP prosecution. Baseline cases were selected according to these criteria, but operating programs screened out many eligible cases on the basis of criteria which were not publicly articulated. Analysis of a fifth cell, CCP eligible cases which were rejected by the CCP unit, would have strengthened these studies, but was not accomplished.
3. The design assumes a single intervention point attributable to CCP implementation. However, implementation of innovative programs occurs over time, and substantial modifications in program activities often occur. Any effect of procedural changes (e.g., changes in case selection procedure) would be hidden in the four cell design.
4. The design did not lend itself to precise statistical tests. The simple use of pre-post statistical tests for treatment and control groups did not allow analysis of the important case when both groups showed a significant improvement over baseline, but the improvement for the control group was smaller (i.e., was the CCP improvement significantly greater than improvement in regular prosecution?). Furthermore, the "potential improvement analysis" developed for the California evaluation suggests that some studies did not sufficiently consider differences in baseline performance between treatment and control groups (i.e., CCP-eligible cases demonstrated much higher levels of baseline prosecutorial performance than control cases, and performance may have been more difficult to improve).[3]
5. The longer history of most current CCP units and the attendant historical contamination of effects, combined with the moderate magnitude of program impact on most measures, would render the results of current four cell applications indeterminate.

In sum, the four cell design served a useful purpose in the first generation of research into CCP prosecution. However, these problems make it unsuitable for the detailed process analysis accomplished in the current study.

Just as significant as this diversity in evaluation approaches is the diversity in program implementation between jurisdictions. The fact that local programs are very different obfuscates the implications of the existing evaluation record. This first generation of studies was designed to accomplish the traditional purpose of evaluation research -- to test a program hypothesis through an examination of the results of program implementation. The diversity of local programs confounds this intent; rather than one program hypothesis, we have many.

Need for a Revised Evaluation Approach: The Current Study

One critic of the existing CCP evaluation record has argued that:

the design of the evaluation research is incomplete and should be enhanced to answer the next logical question: Why does the program fail or succeed, and what can be done about it? Until this enhancement occurs, these studies cannot avoid generating frustrations among practitioners and policymakers alike...[4]

To remedy the shortcomings of previous CCP evaluations, and meet the objectives of the current research solicitation, requires a multi-level, multi-method study design which systematically compares a larger number of sites than included in previous studies. Multiple levels of analysis must be included in the research to accomplish the following tasks:

1. Analysis of jurisdictional contexts will allow the specification of differences between sites and the effects of jurisdictional variables on case processing and outcomes.
2. Within jurisdictions, process description will allow the specification of formal and informal procedures for processing serious habitual offender cases, the ways in

which the procedures differ from regular prosecution, and any major changes in these procedures during program implementation.

3. Within jurisdiction analysis of quantitative performance measures and case file information will allow the documentation of case management through statistical records of actual career criminal prosecutions. Statistical analysis of case outcomes will describe changes in conviction rates, incarceration rates, and sentence length over time.
4. The comparative analysis between jurisdictions will allow strong inferences regarding what CCP policies and actions are likely to improve prosecutorial performance in different jurisdictional contexts.

To accomplish these multi-level analyses, the study design required several major data collection tasks in different jurisdictions. Table 2-1 summarized the major data collection tasks accomplished in the study.

TABLE 2-1

SUMMARY OF DATA COLLECTION

<u>Data Collection Task</u>	<u>Procedures</u>	<u>Data Sources</u>	<u>Products</u>
National Population	National Telephone Survey	Supervisors of existing programs for selectively prosecuting career criminals.	Profile of existing programs (size, staff, selection criteria, procedures, history, environment, evaluability).
Jurisdiction Environment	Legal research/statistical profiling.	State penal codes/judicial decisions/published statistics and information systems (e.g., PROMIS).	Description of legal environment and history/monthly statistical data file on criminal activity and prosecution.
Selective Prosecution Process Description	In-depth interviews with local criminal justice personnel.	Prosecutors, investigators, defense attorneys, law enforcement personnel, judges.	Coded interview transcripts on local policies, procedures and organization of selective prosecution.
Case Level Prosecution	On-site coding of primary records for individual cases meeting formal career criminal selection criteria (selective and regular prosecutions).	Police records (e.g., arrest reports), CCP selection records, prosecutors' case jackets, court records.	Computerized data file with detailed outcome, defendant, crime and case processing data suitable for statistical analysis.

The organization and analysis of these four data components will be discussed under the following headings:

- Selection of study jurisdictions
- Process and impact analysis of career criminal cases with jurisdictions, and
- Comparative analysis.

SELECTION OF STUDY JURISDICTIONS

A major purpose of the proposed study is to document the impacts of differences in CCP processes on unit performance. Differences in process are likely to be partly attributable to characteristics of the jurisdictional environment and partly attributable to internal policy and discretionary decisions. Three factors were predominant in the selection of study sites, they were:

1. Most Different System Representation.

A sufficient number of sites must be selected to permit observation of CCP processes with a variety of contexts. Within the resource constraints of the study, it was our judgment that seven sites would allow the optimal tradeoff between site variability and intensive data collection with sites. It was important that sites reflect a most-different system design and consequently sites were assessed in the degree to which they represented variability or potentially important contextual dimensions. These factors included:

- length of program operation,
- different screening criteria (i.e., defendant vs. offense based),
- different target offenses (e.g., violent offenses vs. property related offenses),
- varying program structure (i.e., integrated vs. separate units),

- and varying state penal codes (e.g., determinant vs. Indeterminant sentencing)

2. Regional and community size representation.

Sites should be geographically dispersed through the major regions of the nation and represent a range of metropolitan populations.

3. Evaluability Assessment.

Given the detailed data requirements of our proposed process analysis, the quality and availability of adequate case documentation at a variety of points in the system was a major consideration.

Site Selection Procedures

The procedures for selecting the study sites consisted of three steps.

1. Identify and profile existing programs.

All identifiable local prosecution offices that currently operate selective prosecution units or policies were interviewed by telephone (See Attachment B for the Interview Instrument). The purpose of the survey was: (a) to profile sites on basic selection criteria to ensure an appropriate range of differentiation between sites; (b) to gain an initial indication of willingness and ability to participate in the study; and (c) to provide a state-of-the-art review of current selective prosecution of career criminals nationally.

2. Conduct Preliminary Site Visits.

A subset of promising sites meeting the criteria identified above, was selected from the national population identified and profiled in Step 1. Preliminary site visits were made to twelve locations. Site visits involved several data collection activities including documentation of local program activities were gathered (e.g., annual reports). Second, interviews were conducted with prosecutors, law enforcement, and court personnel. Third, past career criminal cases were randomly selected and traced from arrest to disposition. The content and management of all

records relating to the case were completely documented. This component of the site visits was crucial for assessing the quality and availability of data in the jurisdiction, and for preparing data collection instruments.

3. Recommendation and Final Selection.

The results of the site visits were presented to the project Advisory Committee in September, 1983. Recommendations for the final selection of study sites was based on: (a) data availability and cooperativeness of site participants, (b) variability in characteristics crucial for site comparisons; (c) geographic representativeness, and; (d) clarity in application of selective prosecution policy. Final site selection was contingent upon Advisory Committee review and approval.

The seven sites selected were:

- Cook County, Illinois
- Dade County, Florida
- Knox County, Tennessee
- Monroe County, New York
- Multnomah County, Oregon
- Philadelphia, Pennsylvania
- San Mateo County, California

Programs were notified of their selection in the fall of 1983 and preliminary data collection site visits were initiated in December.

PROCESS AND IMPACT OF CAREER CRIMINAL CASES

Evaluation studies often treat processes and impacts as separate program elements. The study design used in this study combines contextual analysis, process analysis and impact analysis to provide an integrated understanding of links between career criminal case processing and case outcomes within a particular jurisdiction. A brief discussion on the procedures used to address these three design features follows.

Contextual Analysis

Several of the questions in the research solicitation center on differences in selective prosecution programs between jurisdictions. These differences are partly determined by unit policy and partly determined by outside influences on programs, particularly state penal code provisions and the nature of criminal activity in the jurisdiction. Thus the second major data collection effort documented these environmental influences. The description and analysis of the legal and operational context of local CCP units focused on the following:

- identification of the formal legal constraints on the prosecutorial process generally, and on CCP units in particular (e.g., legal formalizations of plea bargaining, statewide CCP statutes);
- identification of the legal environment characteristics which had the potential to influence the ways in which prosecutors charge or manage cases (e.g., the presence of sentencing enhancement legislation, mandatory or determinant sentencing laws, speedy trial laws, sentencing or charging guidelines, sentencing review boards);
- identification of the institutional structure of the criminal justice system in the jurisdiction (e.g., description of size, jurisdiction of law enforcement agencies, structure, jurisdiction, venue, and caseload of court systems); and
- construction of a profile of aggregate performance indicators (e.g., conviction rate, incarceration rate) for jurisdictional prosecution from available published data.

The major emphasis of the contextual analysis is to identify those factors which constrained CCP procedures in a given context (e.g., fragmented law enforcement agencies, severe prison crowding), which limited or determined the location of discretionary decisions in the system (e.g., legally

formalized plea negotiation procedures), and which offered a basis for specific prosecutorial strategies (e.g., sentencing enhancement provisions). The contextual analysis identified the major legal requirements, institutional dependencies, and strategic opportunities which may influence the development and success of CCP processes in a given jurisdiction.

Many contextual factors act as constants in their effects on prosecutorial activity within a single jurisdiction. Since these site parameters would be subject only to the "weak" statistical test of comparison to other sites which differ in the parameter, specifying the effects of context depends upon carefully analyzing the links between contextual factors and case processing. For example, the importance of an habitual felons statute is not best determined by comparing overall sentence length in states with statutes to states without. Too many other factors impact sentence length. A more precise method of analysis is to determine how the statute is used by prosecutors within the jurisdiction.

Process Description

Another focus of important inter-jurisdiction differences is the policies, procedures and organization of local selective prosecution programs. The initial federal program funding career criminal prosecution provided several basic guidelines to selective prosecution processes, but allowed significant local discretion in designing their units. A basic assumption of the current study is that this local discretion has produced some lessons that can be fruitfully applied elsewhere. The third component of EMT/UCSC data collection provides a comprehensive process description of selective prosecution in each jurisdiction.

The objective of the process description is to provide a detailed mapping of the routes that serious habitual offender cases will follow through the criminal justice system (police, prosecution, and courts). The description focussed on the following:

- Formal and informal procedures and policies for processing career criminal cases by police (e.g., targeted apprehension, crime analysis, CCP referral), prosecutors (e.g., case selection, case management, investigation, victim/witness contact) and court (e.g., prioritized scheduling).
- The degree to which career criminal processing by different components of the system is carried out independently of or through interaction with other components (e.g., amount of police/prosecutor contact, channels of formal or informal feedback).
- Formal and informal differences in procedure and level of effort in particular prosecutorial activities (e.g., investigation, expanding a case, documenting priors) between CCP and regular prosecution.
- The degree of formalization of procedures for CCP and regular prosecution.
- The major points of individual (police, prosecutor, court) discretion in making case decisions and the criteria applied at these points.
- Major changes in formal procedure or major perceived changes in an informal procedure during the implementation period.

Procedures

Contextual and process data was collected in a field visit to each site in the research program. Site visits included the following data collection activities:

- In-depth personal and semi-structured group interviews were conducted with strategically placed participants of the criminal justice system to gain their perceptions of the crucial elements of the legal, institutional, and community environments which impact on CJS generally, and prosecution particularly.
- Selective analysis of penal code and relevant legislation or ordinances.
- Review of documentation of institutional structure and functions in the local CJS (e.g., institutional description, policy statements, procedures, manuals, evaluation reports).
- Review of crime and criminal justice system statistics for the jurisdictions.

IMPACT DATA COLLECTION AND ANALYSIS

The primary objectives of the research concern detailed analysis of the ways in which selectively prosecuted cases are processed, and the effects of differences in processing on disposition.

Quantitative analysis of the links between process and impact requires data which capture significant temporal detail. Past evaluations of selective programs have had two major failures. Process has been obfuscated by aggregating program outcomes into a single temporal category (post implementation) or by treating case processing through time as a "black box" with only aggregate impact on performance. Secondly, many of the studies have based process analysis solely on interviews and documentation. Our design sought to augment process description with detailed information on processing of individual cases. This case level information constituted the primary data collection effort in the study. It provided the basis for conducting the detailed analysis of process by pinpointing case outcomes and process activities more specifically in time. This objective requires a specialized data collection approach.

Procedures

The case level data collection procedure required coding primary data from prosecutor's records. Data was directly coded on-site in each location. The physical source of data was the prosecutor's case file. This file is typically enclosed within a standard jacket that summarizes basic information concerning a case. The contents of the file typically include:

- crime reports, arrest reports, and police investigative reports;
- criminal histories ("rap" sheets) for the defendant;
- a summary of court dates and the actions taken at each;
- lab reports in evidence;
- a copy of the charging instrument;
- disposition and sentencing records.

Depending on jurisdiction practice on the attorney, the file may also contain:

- a copy of the pre-sentencing investigation (PSI) for the defendant;
- preliminary hearing transcripts;
- transcripts of witness testimony;
- trial transcripts;
- plea negotiation forms;
- pre-trial conference forms; or
- notes by the prosecuting attorney.

The initial task in collecting information from case jackets was to draw a sample that was representative of all career criminal cases prosecuted in the program.

Sampling

Sampling size was determined by the total number of career criminal cases prosecuted in each jurisdiction and the duration of the program. Table 2-2 summarizes the samples drawn in each jurisdiction.

TABLE 2-2
PROSECUTOR'S CASE FILE SAMPLE

	<u>Career Criminal Cases</u>	<u>Others</u>	<u>Total</u>
Cook County	369	180	(549)
Dade County	503	--	(503)
Knox County	124	63	(187)
Monroe County	215	55	(270)
Multnomah County	413	246	(659)
Philadelphia	266	134	(400)
San Mateo County	344	181	(525)
Total	2,234	859	(3,093)

The exact sampling procedure for each jurisdiction had to be tailored to the ways in which records are kept on career criminal cases. For example, in Cook County, San Mateo County, and Monroe County, the sample was drawn from weekly logs of career criminal case acceptances. In Dade County and Knox

County the sample was drawn from computerized listings of career criminals ordered by time of disposition. In Multnomah County and Philadelphia, the sample was drawn from alphabetized card files of all cases accepted by the programs.

Despite the differences in physical sampling frames, sampling strategies in each jurisdiction were similar. Samples were drawn through systematic sampling with a random start. Thus, each sample was automatically stratified according to the basis for ordering the program caselogs or casefiles. The result is samples that are proportionally representative of career criminal cases throughout the history of each program.

Non-career criminal cases were sampled through a procedure which identified cases with top charges and times of disposition matched with career criminal cases. In Miami no non-career criminal prosecutions were sampled because the organization of office records did not allow a practical matching to career criminal prosecutions.

Case File Data Collection

Machine readable data were coded on-site using a detailed code form and code instruction manual developed for this study. The coding form is displayed in Attachment C; the coding manual is attached.

The ability to conduct a detailed analysis of case-processing depends on adequate specification and measurement of independent variables affecting the process. These include two major categories:

- the defendant, including personal characteristics and past criminal involvement; and
- the instant offense, including type of crime and severity of the incident (e.g., injury to victims, relationship to victims, amount of property loss).

In addition, the design of this study requires case-specific information on handling of the case through intake, accusatory, and case disposition. Major categories of variables include:

- case referral and selection;
- accusatory procedures and pre-trial release;
- charging patterns; and
- disposition type.

The research design anticipates greater detail in case processing variables than has characterized previous evaluation of career criminal prosecution. The research solicitation placed an emphasis on the appropriate use of dependent measures. A measure of presumptive sentence severity at case disposition constitutes the prime dependent variable. The exact form of this measure depended on sentencing law in the sites. More traditional dependent measures -- conviction, charge reductions/dismissals, guilty pleas, incarceration -- were also analyzed. However, the critiques of past evaluations have demonstrated that the analysis of these immediate outcomes as indicators of program success can be misleading.[5] Therefore, in this analysis, immediate outcomes will be viewed primarily as levers to contribute to sentencing results rather than as discrete indicators of success or failures.

COMPARATIVE ANALYSIS

The final step in our research design was to synthesize information across levels of analysis (jurisdiction context, jurisdictional procedures and outcomes for career criminals, and case outcome explanations). The objective of the analysis is to develop useful propositions regarding the impacts of particular case processing characteristics on the potential incapacitation of career criminals in different jurisdictional contexts. At the jurisdictional level the analysis:

- Utilizes aggregate measures of local unit performance which examined total incapacitation potential including prosecutorial quality and volume of career criminal population prosecuted through CCP's.
- Compares jurisdictions by the nature and extent of contextual limitations and influences on processing of career criminal cases.

At the case level the analysis:

Compares the overall patterns of relations between case and offender characteristics, case processing activities, and outcomes in different jurisdictions.

Synthesizing between levels of analysis, we developed propositions which identified systematic links, between jurisdictional context, case level relations to outcomes, and overall incapacitation potential for career criminal population in the jurisdiction.

LIMITATIONS OF THE STUDY

This study differs from traditional evaluation studies in several important ways.

- The study emphasizes the importance of state law, local resources, local organization, and local group culture for shaping policy and policy success. Therefore, the study has gathered data in seven major study sites. The combination of detailed case-level information and a large number of study sites provides unique opportunity for detailed comparisons.
- The study design is premised on the recognition that policy-relevant data must focus on "how" a program achieves results. Accordingly, there is a great emphasis on the analysis of program management and procedures.
- The study design recognizes that career criminal programs have multiple and varying objectives. Therefore, no single dependent variable can be used as an indicator of success.
- The study design recognizes that programs do not remain constant. The design allows us to assess the stability of local programs, and search for explanations for changes.

These orientations shape the analysis presented in subsequent sections of this report. Some of the limitations that accompany this emphasis should be noted.

First, the detailed process description required data sources that would provide the range of information relevant to this study objective. At the individual case level, the data source that most completely meets that need is the prosecutor's case file. While court records or correction records may contain more detailed and accurate information on specific variables (e.g., pre-trial release and bonding, days in jail prior to trial), no other single source includes the range of relevant information that is found in the

prosecutor's case file. The number of sites and cases precluded gathering case level information from more than one data source, so the study data reflects the limitations of data quality inherent to prosecutor's case files in the various jurisdictions.

The primary limitation of prosecutor's case files as data sources are twofold. First, certain types of information may not be available in some jurisdictions. For example, in jurisdictions that do not routinely prepare presentence investigations (PSI's) information on the personal characteristics of defendants may be sparse.

Second, information may be inconsistent between cases in the same jurisdiction. For instance, most jurisdictions information on court actions (bonding, pre-trial motions, continuances) is recorded through prosecutor's notations in a case "log". Attorneys made these notations with differing degrees of consistency and completeness. In some cases (e.g., the nature and result of defense motions), these notations were sufficiently cryptic to render the data unreliable in our judgment.

While variability in information between case files has drawbacks in terms of gaining valid and complete information on the "true" facts of a case, the contents of the case file do reflect the documented information available to the prosecutor in a case. If a jurisdiction obtains FBI rap sheets in only one of ten cases, the prosecutor will be aware of FBI criminal history information only on that limited number of defendants.

A second set of limitations to the current report follows from the comparative and process foci of the study design. This report provides an overview of the data collected in the seven jurisdictions. There is a primary concern with comparing the approaches taken to career criminal prosecution in each jurisdiction, relating them to the opportunities and limitations of the environment, and providing concrete discussion relevant to the choices that practicing prosecutors can make. This approach precludes the detailed analysis of many specific questions that this rich data set can support. These more focussed questions must await future analyses of the data.

A related limitation is that the design does not attempt to provide a controlled test of whether career criminal programs result in prosecution outcomes that are "more severe" or "more successful" than otherwise would have occurred. Indeed, without the ability to randomly assign career criminals to program prosecutions and regular prosecutions, the validity of any such analysis remains severely compromised.

The non-career criminal cases in this study are not intended to provide a control group against which the success of career criminal programming can be measured. The sample represents a distinct population of cases that are useful for limited descriptive purposes.

Finally, the study does not focus on any single measure of success or failure in career criminal programs. Discrete measures such as conviction rates cannot adequately reflect the multiple objectives of local career criminal units. Furthermore, any measure that utilizes a base rate of felony indictments cannot assess the effects of lower court and unit selection on

the portion of total career criminal arrests that reach felony court. In short, no single indicator of unit performance is adequate, and this report profiles several alternative indicators of performance.

The following report reflects the objectives and limitations of the research design. It is comparative, process-focussed, and emphasizes the effects of seven different jurisdictional contexts. While the data generated in the study will support additional analysis of detailed questions regarding individual programs, those analyses go beyond the scope of a single comparative report. The major focus of the following pages is to provide detailed consideration of the alternatives that face prosecutors attempting to replicate or improve selective prosecution of career criminals and to provide some guidance in choosing among them.

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1. Springer, J. Fred and Phillips, Joel P., The Career Criminal Prosecution Program: An Examination of Program Results (Washington, D.C.: MetaMetrics, Inc., 1981).
 2. These studies included the California Career Criminal Prosecution Program Evaluation. The National Study funded by NIJ and a local evaluation conducted in Hennepin County, Minnesota.
 3. The "four cell improvement analysis" adapted Bayesian statistical logic to reflect the difficulty of improving already high baseline performance rates. The analysis statistically tested for significant differences in the portion of potential performance improvements over baseline that was actually realized in current CCP and non-CCP prosecution.
 4. John S. Bartolumco, "Practitioners' Attitudes Toward the Career Criminal Prosecution Program," 71 The Journal of Criminal Law and Criminology, 1980, p. 117.
 5. MetaMetrics, Inc. Evaluation of the California Career Criminal Prosecution Program. Final Draft submitted to Office of Criminal Justice Planning, December, 1980: Section 6.

SECTION 3

THE PROGRAMS AND THEIR ENVIRONMENT

The seven programs selected for intensive study represent a variety of approaches to the selective prosecution of career criminals. The nature, reasons, and results of these differential approaches must be understood within the context of the program jurisdiction. Thus a preliminary step in the evaluation of the career criminal programs must involve a profile of their respective environments. Understanding the programs depends on knowledge of the constraints and opportunities within which they operate.

This section describes each of the programs and their environments. The origins and development of each career criminal program are presented within the context of the community and the resources of the prosecutor's office.

COOK COUNTY, ILLINOIS

Cook County is the major urban area in the nation's midwest. The county is dominated by the city of Chicago which accounts for nearly 60% of the county population. Indeed, for structural reasons that will be discussed below, the Repeat Offender Courts (ROC) draw almost exclusively from the city of Chicago. The County population is approximately 65% white, with a minority community of 20% black, 8% hispanic, and 7% other.

In comparison to other American cities, Chicago has a relatively high incidence of violent crime as compared to property offenses. Within Illinois, Chicago accounts for a disproportionate amount of prosecuted crime. Furthermore, prosecutions in Chicago tend to be more frequent for

violent crime. In 1981, 33.2% of felony convictions in the county were within the serious violent felony crime categories; 18.9% of downstate convictions were in those felony classes.

Prosecution: Office Organization and Resources

The Cook County State's Attorneys Office is a highly visible public agency in Illinois. Cook County is the largest of the jurisdictions in this study, and the prosecutor's office reflects that position. The office employed 460 deputy states attorneys in 1982 with a budget of \$28.9 million. In 1982 the office obtained 11,680 felony case dispositions county wide. More than half of these (56.7%) were prosecuted through the state's attorneys offices at 26th and California.

Since the mid-1970's the budgetary resources of the Cook County State's Attorney have increased significantly. The office is organized parallel to the number of felony courtrooms in the County. As the numbers of court rooms increased during the 1970's, the number of ASA's and the office budget have also been increased.

The magnitude of the Cook County office mandates a complex and specialized organizational structure. The current state's attorney, Richard M. Daley, instituted a major reorganization of the office that expanded the number of basic organization from four subdivisions to six bureaus. Briefly they are:

1. The Civil Actions Bureau is legal counsel for Cook County officials. The bureau represents the county in all litigation and administrative proceedings.

2. Special Prosecutions includes a number of selective prosecution task forces. Most of these differ from the Career Criminal Program in targeting specific crimes without regard for the defendants history (Arson, Narcotics, Financial and Governmental Fraud, and Official Misconduct). A fifth Task Force selectively prosecutes crimes involving youth gangs.
3. The Public Interest Bureau was newly created by State's Attorney Daley. The unit initiates civil suits against persons or businesses that commit offenses against the public interest, e.g., environmental law violations, consumer fraud, offenses against the elderly and infirm.
4. Investigations is a second new unit under the current state's attorney. It is designed to provide expertise and experience to conduct extensive and/or long term investigations in support of prosecution in the office. The expertise of the unit in auditing and long term case development minimizes its significance for career criminal prosecutions.
5. Legal Support provides ancillary and support services to the line bureaus, e.g., financial control, budgeting, purchasing and supply.
6. Criminal Prosecutions. The Chicago Career Criminal Program is located within the largest of the office subdivisions -- Criminal Prosecutions. This bureau prosecutes violations of Illinois penal statutes including felonies, misdemeanors, and juvenile proceedings, and is itself composed of several subunits. Several of these units are directly related to the processing of career criminal cases in the jurisdiction.

Subdivisions within the Bureau reflect the major steps in processing felony cases within Cook County. The Municipal Division is the initial point of contact with felony cases, and provides two critical functions concerning their prosecution. First, it provides felony review for all felony arrests within the City of Chicago. During felony review, Assistant State's Attorneys make judgments concerning the appropriateness of felony charges in the incident, and may provide advice concerning the evidentiary requirements of the case. This separate felony review is unique among the study sites, and

will be discussed in more detail with respect to the intake of career criminal cases. Second, the Municipal Division handles the initial prosecution of all felony cases through Preliminary Hearing.

The second major organizational unit within the Criminal Prosecutions Bureau is the Felony Trial Division. Assistant State's Attorneys within the Division are responsible for prosecuting cases in felony trial court at four locations; 26th and California, and 13th and Michigan within the city; and the suburban and Markham felony courts in the County.

Clustered closely with most of the county's felony courtrooms, and the sprawling Cook County Jail, the 26th and California offices house most of Cook County's felony prosecutors. Attorneys are assigned to "wings". Each wing is headed by a senior ASA "wing supervisor" and handles cases for four felony trial rooms. Within wings ASA's are assigned to courtrooms in teams of three per court. While assigned to a particular court, ASA's prosecute all of their cases before "their" judge.

Career Criminal Unit

The Career Criminal Program is located in the 26th and California office, organized as a "wing" that processes cases for the four designated Repeat Offender Courts (ROC). The ROC wing differs from other felony trial courts primarily because it handles a selected set of cases, other felony cases are computer assigned to felony courtrooms on an availability basis. Organizationally, the unit exactly parallels other felony trial wings. The 12 ASA's are assigned three to a judge. The wing supervisor is an

experienced trial attorney who still prosecutes selected cases. The wing is funded just as any other felony trial wing, and has no separate budget. ASA salaries are on the standard scale.

Program Origin and Development

Chicago's Career Criminal Program had a unique beginning -- a beginning that has profoundly affected the program's subsequent history and performance. The driving force behind initiation of the program was Chief Judge Fitzgerald. Intrigued by a journalistic account of the pioneering Bronx Major Violators Unit and concerned about statistics suggesting the existence of a subset of repetitive felony offenders in the Cook county courts, the Judge requested that members of the Cook County Office of the State's Attorney form a study group to identify an appropriate format for a similar program in Cook county. In late 1977, Fitzgerald issued a court order that initiated selective prosecution of career criminals in Cook County.

There are several significant features in the origin of the Cook County program. First, the initiation of the program through order of the chief judge ensured full cooperation of the courts. Indeed, the Cook County program is uniquely a "court-centered" program. Eligible cases are assigned to Repeat Offender Courts (ROC) by the chief judge. Trial judges are also assigned to ROC courtrooms by the chief judge. This central role of specialized court rooms dominates the operations of the Cook County program, and stems from the early involvement of the judiciary through Judge Fitzgerald.

Secondly, the Chicago program was a product of local initiative. It was initially funded through local sources. It was not funded through the LEAA discretionary program and was not designed in response to the LEAA guidelines. Thus, from its beginning, the program was locally designed and locally supported.

Through late 1977 and early 1978 the program operated in a pilot status in three felony courtrooms. Until selection procedures were refined, caseloads included a significant number of cases that did not meet eligibility criteria. Security problems in transporting defendants from the Cook County jail to the courts precluded prosecution of some eligible cases. Within several months, the ROC court location was changed to the newly expanded court facilities adjacent to the Cook County jail. It helped stabilize the case load, and allowed selection criteria to be uniformly applied. The move brought the program a maturity that, except for expansion, has remained virtually unchanged.

In sum, the program was locally implemented through the initiative of the Chief Judge of the Cook County courts. The program was initially well-received in the criminal justice system, and has been publicly acclaimed through its five year history. Indeed, the program has gained widespread attention outside Chicago. Several major cities -- notably Los Angeles, Philadelphia, and St. Louis -- studied the program for possible adaptation to their own jurisdictions.[1]

Staffing Assignment and Responsibility

Assistant State's Attorneys in Cook County follow similarly structured career paths. They begin as entry ASA's in the traffic bureau, and spend their early years moving through misdemeanor courts, felony preliminary hearings, their initial service in felony review, and finally the felony trial courts. Once an ASA has become a felony trial attorney, they still are rotated back into Felony Review for occasional tours of duty, and experience some changes in court assignment.

Rotations are made at regular intervals and are determined by the managers of the Felony Trial Division in consultation with wing supervisors. Attorneys in the ROC courts are selected for their trial and prosecutorial skills, though the assignment is not in any explicit way "elite." In the Cook County system, important cases and skilled ASA's are assigned to experienced and talented judges. The skilled ROC court judges are good assignments, but the ROC court wing is assigned ASA's with differing degrees of experience just as other wings. The wing is assigned two investigators, just as other felony wings.

Case load

ROC courts do carry a lower case load than is typical of felony trial courts in the county. Indeed, the expanding caseload of the courts resulted in the addition of a fourth court during mid-1981. During 1983, the ROC courts each had approximately one hundred active cases on the call, or approximately 33 active cases per attorney. The typical felony court in Cook county would carry between 125 and 150 cases on the call. The numbers of felony dispositions for the Cook County CCP have expanded steadily from 1978 (600

dispositions) to 1983 (832) dispositions. In 1981, the 865 CCP dispositions accounted for 7.6% of all felony dispositions in the County.

EXHIBIT 3-1

COOK COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	Cook County -- 5.2 million; Chicago -- 3.0 million
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	2
# Felony Courts	49 (4 CCU Courts, increase by 1 in 1980)
PROSECUTOR'S OFFICE	
# Attorneys - 1983	460 (160 Felony Trial Deputies)
Range (during program years)	
Trends	Major increases occurred between 1977-78
Budget - 1983	\$28.0 million
Range	\$16.0 - 28.9 million
Changes in Elected Prosecutor (years)	One change, 1980
# Felony Dispositions - 1983	11,680
Range	
CCP UNIT	
Start Up Date	1977
Years of Operation	1977 -- Present, Continuous
Staffing	
Attorneys	13
Investigators	2
Others	4
Trends	Increased by 3 attorneys, 1982
% of DA's Office	3% (8% of the felony trial attorneys)
Budget - Current	
Range	N/A -- Part of Operational Budget
Trends	N/A
% of DA's Office	N/A
Unit Caseload - 1983	
Range	832
Trends	600-832
	Steady increase
% of Felony Caseload - Current	Approximately 8%

In sum, the Cook County CCP is not defined by unique organizational status. The designated courts which the wing serves are assigned selected cases, have a reduced call, and have respected judges on the bench. These factors make the CCP an important felony prosecution wing to which talented ASA's are assigned. Beyond this, the CCP has no special status within the Office of the Cook County State's Attorney.

Summary

The origins of the CCP in Cook County and the size and complexity of the State's Attorneys Office help account for the organizational status of the program. The Repeat Offender Courts were not an initiative of the politically elected prosecutor, but of the Chief Judge. Therefore, the program was not associated with any one elected State's Attorney. The program was not LEAA funded so it was not originally required to have separate organizational status. The Cook County State's Attorneys office is large and differentiated. The State's Attorney himself is necessarily somewhat removed from the day to day administration of the office. The current Chief of the Felony Trial Division was the first ROC court wing supervisor, a solid supporter of the program. The program has been popular, and is only a plus for the elected prosecutor. These factors all contribute to making career criminal prosecution in Cook County a stable and institutionalized component of the criminal justice system.

DADE COUNTY, FLORIDA

Dade County, Florida is the 21st largest SMSA in the country. The county's population is concentrated in Miami. The metropolitan area is located on the Southeast tip of the Florida peninsula and anchors the southern tip of the urban strip that extends down the state's Atlantic coast. The area is characterized by a seasonal tourist trade, a relatively large population of elderly retired persons, and an influx of population from nearby Caribbean and Latin American nations. The 1980 census profiled a Dade County population that is 46% white, 36% hispanic, 17% black, and 1% other. In the recent past, Miami has experienced unique law enforcement problems. In May of 1980, the city was the scene of the most costly civil disturbance in U.S. history. Sparked by the acquittal of four Miami police officers charged with killing a Black suspect, the Miami riots left 17 dead, approximately 400 injured, and 149 buildings burned or looted. Fifty-two square miles of the city were under curfew for three days, over 3,600 National Guardsmen were called into the streets, and 1,267 arrests were made -- most for curfew violations.

The crime problem in Miami is of serious and pervasive nature. Its UCR index represents the highest reported level of all the sites participating in this study (9,512 index crimes reported per 100,000 population). It is a situation that is getting worse. The County experienced a 100% increase in homicide and robbery rates between 1978 and 1980. These increases in criminal activities largely relate to the dramatic rise in drug trafficking that has occurred in Miami over the past decade. A consequence of this reported

Increase in violent offenses has been a relatively recent shift in CCP program screening criteria. In 1983, the director decided to focus more program resources on offenders charged with violent offenses.

PROSECUTION OFFICE: ORGANIZATION AND RESOURCES

The Dade County State's Attorney heads a large metropolitan prosecution office. In 1983 the office employed approximately 250 Assistant State's Attorneys (ASAs) and support staff with a budget of 14 million.

The Dade County office is organized into two major divisions, each containing a number of subdivisions, and several smaller divisions. The Municipal Courts Division contains a Traffic Unit, a special DUI Unit, and a Crimes division that handles misdemeanors and local ordinances which constitute the criminal jurisdiction of the Municipal courts. The Division is further subdivided into eight Branch Court Divisions that prosecute traffic and crimes cases at Branch Court sites throughout the county.

The Circuit Court Felony Division prosecutes the majority of crimes in the felony courts. Career criminal cases are prosecuted within this division. As in Cook County, the office is organized into felony units that correspond to the number of Circuit Judges (17) permanently assigned to the Criminal Division of the Circuit court. Four ASA's, and a Division Chief with administrative duties in addition to his caseload, are assigned to each unit. The entire division is supervised by the Deputy Chief Assistant State Attorney for Operations.

Several other subdivisions of the State's Attorney's Office also service the circuit courts. The office contains several selective prosecution units. A Major Crimes Division operates directly under the supervision of the Deputy Chief of Operations. This division is responsible for the identification and prosecution of particularly serious and sensitive cases, including homicides, sexual batteries, kidnappings and robberies involving serious injuries. The unit is staffed by experienced prosecutors.

Other selective prosecution units are a Narcotics Division, Sexual Battery Unit, an Organized Crime and Public Corruption Division, a Narcotics Division, an Economic Crime and Consumer Fraud Division, an Arson Division, and a Child Support enforcement division.

Finally, the office includes several support divisions. An Intake Division screens walk-in civilian complaints, worthless check cases, and requests for felony warrants. A Legal Division provides support to ASA's on a variety of complex legal issues. An Investigations Division is composed of investigators who aid ASA's in preparing cases and locating witnesses. They concentrate investigative activity on complex criminal activity, public corruption, and assigned matters.

Career Criminal Program

The Dade County Career Criminal Program has undergone fundamental changes in organization and resources since its inception in 1975. Initiated in March, 1975 with a \$453,000 grant, the Dade County Career Criminal Unit was one of the earliest LEAA-funded programs. Typical of the early program initiatives, the unit was aggressive, highly visible, and enthusiastic. Approximately 500

career criminals were prosecuted each year by the seven staff attorneys in each of the three years of federal funding. However, the federal grant ended in 1978, and the Miami program entered a period of adjustment. Indeed, the eight year history of the Miami program provides a portrait of a unit that has undergone major transitions, including a hiatus in operations during 1980.

With the end of federal funding, the program lost its separate organizational status within the office. Though the program was stripped of its resource advantages, its separate organizational status, and its separate staff, the concept of targeting career criminal cases maintained appeal and support in the office.

In the face of reduced resources, selective prosecution of career criminals was continued through "tagging" cases as career criminals and directing ASA's to apply an extra level of effort in their prosecution. Between 1978 and 1980, the program was not vigorously pursued. The number of cases flagged as career criminal declined drastically in 1979 and the program literally ceased operations by 1980. The second phase of the program is characterized by low priority and a minimal level of effort, culminating in an implementation hiatus.

In sum, what may be most significant concerning development of the Dade County program are the number and degree of changes in the program during its eight years. Career criminal prosecution in Dade County has been impacted by declining resources, political transitions in the office of the State Attorney, and significant changes in the legal environment. However, Dade

County prosecutors have continued to initiate modified responses to career criminal cases in this changing environment.

Case load

In 1981 career criminal programming received increased attention, and a refocus in effort. The number of cases processed by the unit increased dramatically to approximately 1000. During this phase, selection criteria for the program were also adjusted to focus on the identification of career criminals involved with more serious cases. Thus, the number of cases prosecuted as career criminal cases has been focused to approximately 800 defendants.

The Dade County Career Criminal Program is not currently organized as a separate unit within the prosecutors office. Cases are screened by the program supervisor, a Major Crimes Attorney, and tagged as career criminal cases. Except for special designation as career criminals, cases are assigned to felony ASA's in the standard rotational fashion.

ASA's are on a three week rotation in which they receive and pre-file cases one week, go into a case preparation the following week, and have a third week assigned for trial. Cases are assigned to attorneys in courts with space available on their call.

EXHIBIT 3-2

DADE COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	Dade County -- 1.7 million; Miami -- 360,000
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	27
# Felony Courts	5
PROSECUTOR'S OFFICE	
# Attorneys - 1983	176 -- Felony
Budget - 1983	\$14 million
Changes in Elected Prosecutor (years)	1980
CCP UNIT	
Start Up Date	1975
Years of Operation	1975-80, 1981-Present, Non Continuous
Staffing	N/A Part of Operational Budget
Budget - Current*	N/A
Unit Caseload - 1983	1,200
Trends	Fluctuating
% of Felony Caseload - Current	5% (est. based on interviews w/ attorneys & their caseloads)
Range	
Trends	

* Previous Unit: March 1977 - October 1978, \$453,035 7 attorneys and 4 support staff.

SUMMARY

Career criminal prosecution in Dade County is not distinguished by separate organizational status, specially qualified personnel, or enhanced resources. Indeed, career criminal prosecution does not receive the organizational emphasis of other selective prosecutions in the office, particularly the Major Crimes Division. Organizationally, the program has been fully "integrated" into the Circuit Court Felony Division. In response to the increasing violent crime problem in Miami, the program in 1983 began to focus

on defendants charged with violent offenses and who met the screening criteria.

KNOX COUNTY, TENNESSEE

Knoxville is the urban center in the smallest, and the most geographically isolated, of the SMSA's represented in the study. Located in the southeast corner of Tennessee at the foot of the Smokey Mountains, Knoxville has experienced a surge of growth and development during the 1970's. The city of Knoxville has experienced commercial revitalization, particularly surrounding the 1982 World's Fair. However, the majority of the county's growth has occurred in suburban areas. Between 1970 and 1980, the city grew only 0.3% in population. The remainder of the county grew 42.2%.

As of the 1980 census, the population of the Knoxville SMSA was 92.1% white, 7.1% black, and 0.8% other. The minority population is heavily concentrated in the central and eastern sectors of the city, which are 82.3% black. The mean income of families in the city as of 1980 was \$19,390; in the remainder of the county it was \$23,911.

The UCR report indicates that Knox County ranks third of our seven sites in burglary rates per 100,000. Overall, Knox County has experienced a reduction in all index crimes between 1980 and 1983. It is the only site of the seven jurisdictions participating in this study that demonstrates a uniform reduction in the index crime rates.

Career Criminal Program

Like Chicago, the initiation of the Knox County program was also significantly influenced by the interest and ideas of a small number of persons. The original impetus came from the District Attorney General (Tennessee's term for locally-elected head prosecutors), who was keenly interested in innovations in prosecution. In the waning months of the LEAA program, the Attorney General appointed a task force of highly experienced deputy prosecutors to write a proposal for LEAA funding of a career criminal unit. The proposal was developed by a team with thorough knowledge of the nature of the local crime problem and the requirements of successful prosecution in the district, and was funded in March of 1980 with a \$250,000 grant from LEAA.

Program Origin And Development

Two factors in the origination of the program carried great import for its subsequent history. First was the close association of the program with specific personnel. A small group of experienced prosecuting attorneys was hand picked to initiate the unit. This core team was known and respected in the Knox County criminal justice system. Their presence was important to the early acceptance and impact of the program. On the other hand, the strong influence of individual personalities made the program subject to a lack of continuity when they left. The program was also closely identified with the policies of a highly visible elected public prosecutor. Under these conditions, transition in the attorney general's office inevitably subjected the program to scrutiny and change.

It was also significant that the program was initiated just as Congress was eliminating many LEAA programs and services. In less than a year the original discretionary grant was terminated. Before really having the opportunity to mature, the program had to search for new sources of support. Upon termination of the original funding, a combination of state and residual federal funds through Tennessee's state planning agency sustained the unit. Subsequently, the county has provided continuing, albeit reduced, support. In sum, the Knox County program has been subject to destabilizing influences throughout much of its three year history.

During this unstable period the funding of the program was reduced from \$250,000 to \$102,000. The loss of resources was compounded by several major related changes in the program. First, all of the attorneys originally staffing the program left the prosecutor's office. Secondly, decreases in funding brought a reduction in the program staff. By the time the county assumed funding, the program had lost its special investigators and its data analyst, and the number of attorneys had been reduced by one.

Another transition had important implications for the Knoxville career criminal program. The current Attorney General defeated the former Attorney General in 1982. In this change, the close identification of the CCP with the former Attorney General may have resulted in a reduction of emphasis and status for the program. At the very least, the program has undergone a reexamination as part of a general reassessment of priorities within the prosecutor's office. At the time of the field work in this study the office was still experiencing a transitional period. Efforts were being made to reestablish the level of effort in the career criminal program, but the two

deputies and the program Director were dividing their efforts between career criminal cases and other prosecutions.

The unit has continued to handle approximately 100 cases a year, and accounts for about 12.1% of the felony dispositions in Knox County.

EXHIBIT 3-3

KNOX COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	Knox County -- 320,000 Knoxville -- 185,000
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	2
# Felony Courts	3
PROSECUTOR'S OFFICE	
# Attorneys - 1983	15
Budget - 1983	\$1.1 million
Changes in Elected Prosecutor (years)	September, 1982
# Felony Dispositions - 1983	2,075 (Cases closed)
CCP UNIT	
Start Up Date	March 1980
Years of Operation	1980 - Present
Staffing	
Attorneys	Initially 4; now 2
Investigators	2
Others	3
Range in Attorneys	2-4
Trends	Decreased
% of DA's Office	13%
Budget - 1983	
Range	\$259,000 - \$102,223
Trends	Decreased
% of DA's Office	
Unit Caseload - 1983	Approximately 100 cases
Trends	Decreased
% of Felony Caseload - 1983	12.1%

MONROE COUNTY, NEW YORK

The Monroe County District Attorney's Office is staffed with approximately 60 Assistant District Attorneys. In FY1983 the office budget was \$3,485,000, with a felony caseload of 1,206 indictments. Felony caseloads in the jurisdiction have fluctuated without clear trends since the inception of CCP. Since the program was initiated, felony caseloads have been: FY1978, 1807; FY1979, 1158; FY1980, 985; FY1981, 1302; FY1982, 1203.

Organization of the Monroe County office has been influenced by the advent of career criminal programming in 1978. Until the late 1970's ADA's were assigned primarily to units with "horizontal" responsibilities -- intake, preliminary hearing, trial, etc. It was not until the LEAA career criminal grant that significant emphasis was placed on specialized units (bureaus). These targeted bureaus are currently a major part of office organization.

Non-targeted felony cases are prosecuted primarily through the Grand Jury Bureau. However, a significant portion of the jurisdictions are prosecuted through specialized prosecution units. These units include: Career Criminal, Violent Felony Offenses, Arson, Domestic Violence, DWI, and Economic Crimes. Support services include an Investigations Bureau.

CAREER CRIMINAL PROGRAM

Monroe County District Attorney Larry Kerlander first became aware of selective prosecution of career criminals through a national District Attorney's conference sponsored by LEAA. Intrigued, he appointed two of his top attorneys to study the program concept and develop a proposal for a Monroe County unit. The development team studied the Bronx Major Offenders

Bureau and attended another LEAA conference, focusing specifically on career criminals, to gain ideas.

Origin and Program Development

The Monroe County proposal was approved, and the CCU was initiated in March of 1978. The program was characterized by thorough planning, made manifest in several ways. First, the purposes of the program had been carefully considered. The state of New York had recently passed a sentencing statute that tied sentence closely to the defendant's past record. In this setting, the designers of the Monroe County program placed objectives other than sentence in high priority. In the words of one of the program planners "sentence was not the top concern. We were more concerned with convictions, and were particularly concerned with getting the evidence out well, showing we were doing a good job of prosecuting." Providing a visible, well-functioning program was a high priority in Monroe County.

The program began operation with a complex point-weighted scheme of case selection, another product of the planning process. The elite status of the Monroe county program was evidenced in its relation to other prosecution units in terms of case selection. The Monroe County office was organized into specialized prosecution units. The career criminal category cut across many of these existing units, and the issue of precedence in selection had to be resolved. The CCU was made the first screen, and reviewed all felony cases before referring them elsewhere. The Monroe County unit has been in continuous operation for six years. Program organization has remained relatively stable, with the state of New York picking up funding when LEAA support ended. Important changes have occurred in unit selection criteria.

Staffing

The Monroe County Career Criminal Bureau has been organized as a separate unit throughout its history, and has been continuously staffed by three Assistant Deputy Attorneys. Initially, support staff consisted of two Investigators, one secretary, and a research analyst. When federal funding ended the unit lost its research analyst. In 1983, one of the two investigator positions was terminated. The unit is one of the desirable assignments for ADA's, though the widespread application of selective prosecution in the office provides other prestigious opportunities for skilled trial attorneys. This is particularly true of the Violent Felony Bureau. The original prosecution team was put together by the initial Bureau Director. Attorneys were selected to provide a mix of trial and investigatory skills.

When federal funds expired, the county agreed to continue special funding of the program on the basis of its apparent success. Within several months, the state provided the opportunity for support of career criminal programs through a statewide Major Offenders Prosecution Program (MOPP). The Monroe County program attracted state funds and has retained them since (in 1983 state support was reorganized into the Target Crimes Initiative). Thus, except for a brief hiatus, the program has been continuously supported by outside funding.

EXHIBIT 3-4

MONROE COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	Monroe County -- 702,000; Rochester -- 242,000
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	9 (7 In 1978)
PROSECUTOR'S OFFICE	
# Attorneys - 1983	30 Felony
Range (during program years)	23-30
Budget - 1983	\$3.5 million (including CCU)
Range	Non CCU \$760,000 (1978); \$2,100,000 (1983)
# Felony Dispositions - 1983	1,085
Range	1,345 - 1,085
CCP UNIT	
Start Up Date	May, 1978
Years of Operation	6
Staffing	
Attorneys	3
Investigators	2
Others	
Range in Attorneys	No change
% of DA's Office	10%
Budget - Current	\$1.4 million
% of DA's Office	40%
Unit Caseload - 1983	60
Trends	Stable over time
% of Felony Caseload - Current	5.5%

The caseload for the first year of the program (1978) was 32. The caseload for subsequent years has been: 1979, 40; 1980, 45; 1981, 43; 1982, 43; and 1983, 60. The small caseload demonstrates the high selectivity of the Bureau. Since the program was initiated it has not handled more than 4 percent of the office felony cases in any year.

The Career Criminal Bureau has been characterized by continuous outside support and organizational stability. Personnel in the prosecutor's office perceive that the program has had a significant influence on current office organization and procedures.

MULTNOMAH COUNTY, OREGON

The Portland SMSA is located in the Pacific Northwest on the Oregon-Washington border. The metropolitan area is heavily dependent on service employment and is indirectly dependent on the areas timber industry. Portland was severely impacted by the recession of the late 1970's and recent unemployment rates top 8%.

The population of Multnomah County is approximately 570,000; however, the metropolitan area of Portland extends across the county boundary and contains a population of nearly one million. Approximately 93% of the county population is white.

Of the seven program sites, Multnomah County has consistently ranked first in UCR index crime rates for rape, burglary and larceny. In 1983, it had the second highest assault rate and ranked third in robbery.

PROSECUTION: OFFICE AND RESOURCES

The Multnomah County District Attorney's office employs 60 deputy assistant prosecutors. In 1983 the office had a budget of \$3.9 million and issued 4,861 felonies. The late seventies and early eighties have been a time of shrinking resources in the office, with the number of attorneys declining from 67 when the Career Criminal Unit was launched in 1976. During this same period the number of felony charges issued by the office has risen steadily, from 2,353 in 1976 to 4,861 in 1983.

The office has long been organized into specialized prosecution units corresponding to different categories of felony crime. Unit A is responsible for arson and felony crimes that do not fall within one of the other specialized units; Unit B prosecutes drug cases; and Unit E handles economic crimes including forgery. Unit D is a major trial unit that prosecutes violent crime, including rape and sexual assault. Finally, the Major Violators Unit prosecutes career criminal cases and selected other crimes including robberies and residential burglaries.

Career Criminal Program

Multnomah County's Career Criminal Program was initiated in 1976, and was consistent with a tradition of innovative prosecution in the jurisdiction. Under the impetus of a strong elected District Attorney and a progressive office staff, Multnomah County was attentive to and involved in LEAA-sponsored activities during the 1970's. The office had received an "impact cities" grant to launch "Unit C" which prosecuted robberies and residential burglaries. When the career criminal program was launched at LEAA, Multnomah County was an early applicant.

Origin and Program Development

The office formed a task force to develop major objectives and procedures that would define a local program. According to task force participants, their major orientations were a) to get eligible cases into the system as quickly as possible, b) to prevent pre-trial release, and c) to devise procedures to influence sentence length. As might be expected in a

jurisdiction with experience in developing innovative programs, the task force developed unit selection criteria based upon an analysis of local crime problems, and a thorough review of programs and proposals developed by other jurisdictions across the country.

When implemented in 1976, the unit took its place alongside several other specialized prosecution units in the DA's office. The program has been in continuous operation to the present, but has been affected by the termination of LEAA funding in 1979, and the severe economic recession that reduced resources in Oregon. Most importantly, the CCU was merged with Unit C in 1981. While procedures have been stable through the program's history, resources have declined.

The Multnomah County career criminal program has been significantly affected by declining resources. The original LEAA grant provided \$293,683 the first year. Originally, the federal funding was augmented with a ten percent local match. By the end of the federal funding period, the state/local match had increased to 50%.

Staffing and Organization

When initially implemented, the Career Criminal Unit was staffed by five attorneys, a full-time investigator (who is still with the program), a data analyst, and a secretary. Personnel were selected for their experience and skill as trial attorneys.

An important series of organizational changes were imposed on the program during the summer of 1980. During that summer, Assistant Deputies created an

organization to represent them in contract negotiations with management. One of the products of the organizing effort was an agreement specifying numbers of supervisory, or management, positions for attorneys in the office. The agreement made it necessary to reduce the number of specialized units in the office if there were to be a management position at the head of each. Career Criminal had exhausted its federal funds, as had Unit C which had been funded under Impact Cities to prosecute robberies and residential burglary. A decision was made to merge Unit C and Career Criminals into a common unit, the Major Violators Unit (MVU). The MVU currently is staffed by five assistant deputies, a Director, an Investigator, and three secretaries. However, the unit caseload is larger than handled by the five attorneys in the original program because it also includes the robbery and burglary caseload from Unit C.

In its initial year, the CCU disposed of 175 cases. In 1977, 1978, and 1979 and 1980, the figures were 147, 157, 323, and 415. In its first year (1981) MVU disposed of 690 cases; in 1982, 935, and in 1983, 659. The reasons for the active caseload of attorneys increased greatly throughout the period. In 1976 the CCU disposed of 35 cases per deputy. In 1983 it disposed of 131 per attorney. The Multnomah County program has handled between 5 and 16% of the total annual felony caseload in the jurisdiction.

EXHIBIT 3-5

MULTNOMAH COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	Multnomah County -- 570,189 Portland -- 370,000
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	2
# Felony Courts	11
PROSECUTOR'S OFFICE	
# Attorneys - 1983	60
Range (during program years)	67
Trends	Slight decrease
Budget - 1983	\$3.9 million
Range	\$2.7 million - \$3.9 million
Trends	Increase
Changes In Elected Prosecutor (years)	1980
# Felony Dispositions - 1983	
Range	2,353-4,861
Trends	Increase
CCP UNIT	
Start Up Date	October, 1976
Years of Operation	8 years
Staffing	
Attorneys	5
Investigators	1
Range in Attorneys	5-7
Trends	5-7
Budget - Current	\$293,628 -- Co. funds now
Unit Caseload - 1983	659
Range	147-659
Trends	Increase
% of Felony Caseload - Current	13.6%
Range	5 - 16%
Trends	Increasing percentage of caseload

PHILADELPHIA, PENNSYLVANIA

Philadelphia is a major nexus in the nations Northeastern urban corridor. It shares many of the characteristics of large northeastern cities and has had serious problems with unemployment. Nearly 2 million people live in the

greater metropolitan area of Philadelphia. The population of the metropolitan area is 79% white, and 19% black.

Based on UCR reports, Philadelphia ranked second for criminal incidents involving rape and murder in 1983. Only Dade County exceeded the rate per 100,00 population for these two serious crimes. Unlike any of the other study jurisdictions, Philadelphia has demonstrated a consistent, increase in all index crimes between 1976 and 1983. All the other jurisdictions experienced some decline in one or more of the index crime rates.

PROSECUTION: OFFICE AND RESOURCES

The Philadelphia district attorneys Office employs approximately 200 Assistant Deputy Attorneys (ADAs). The office budget in 1983 was \$11.9 million and the office handled 8,125 felony case dispositions. Since 1980, the number of felony case dispositions per year has been: 1980, 7498; 1981, 7566; and 1982, 11952.

The office is organized in major divisions assigned to misdemeanors which are prosecuted in the Municipal Courts, and felonys, which are prosecuted in the Court of Common Pleas. Within the felony division there are several specialized prosecution units. Homicide and Rape are the largest and practice vertical prosecution as does the Career Criminal unit (CCU). There are also several smaller specialized units including Economic Crimes and Special Investigations.

Career Criminal Unit

Philadelphia's Career Criminal Bureau was established through an LEAA grant in late 1978. The program shared some of the character of the Chicago program, particularly in the coordination of prosecution and courts through a courtroom devoted solely to career criminal cases. The Philadelphia program has operated throughout its 5 year history under a single, highly supportive District Attorney -- Charles Rendell. The CCB has been stable in its basic operations throughout this period.

Original staffing was five ADA's, a program supervisor, a secretary and a data analyst. Personnel levels have changed only slightly. From 1980 to 1982 two additional ADA's served in the unit, in 1983 one position was eliminated.

In 1979 the unit operated for only part of the year, disposing of seven cases. Numbers of career criminal cases disposed in subsequent years were: 1980, 162; 1981, 203; 1982, 232; and 1983, 236. The program handles between 2 and 3% of the total felony dispositions in the jurisdiction.

EXHIBIT 3-6

PHILADELPHIA COUNTY CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	County -- 1.9 million Philadelphia -- 1.7 million
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	1
# Felony Courts	3 CC Courts
PROSECUTOR'S OFFICE	
# Attorneys - 1983	200
Range (during program years)	151 - 200; from 159 - 200 in 1982-83
Budget - 1983	\$11.9 million
Range	\$6.5 - \$11.9 million
Trends	
Changes in Elected Prosecutor (years)	Same - no change
# Felony Dispositions - 1983	8,125
Range	7,498-11,952
CCP UNIT	
Start Up Date	July, 1979
Years of Operation	5
Staffing	
Attorneys	7
Investigators	3
Others	
Range in Attorneys	6-7
Trends	Slight Increase
% of DA's Office	4%
Budget - Current	N/A -- Part of Operational Budget (was \$332,225 in 1979)
Unit Caseload - 1983	236
Range	162-236
Trends	Increase
% of Felony Caseload - Current	2.9%
Range	2.2%-2.9%

SAN MATEO, CALIFORNIA

Located south of San Francisco, San Mateo, California is one of many suburban, residential communities linked by Highway 101 that provide the working force for Silicon Valley, San Francisco and San Jose. The population is 589,000 for the county and is predominately white.

Relative to the other program sites, San Mateo ranks low on the UCR index of reported crimes. Between 1978 and 1983 reported UCR rates have shown slight increases in rates for robbery, assault and slight decreases in rates for rape, murder and auto theft. The most dramatic decrease occurred with burglary. In 1978 the reported rate was 1,604 per 100,000, by 1983 that rate was down to 1,319. Larceny rate per 100,000, however, has nearly doubled during this period.

In 1978, the California legislature approved a statewide program providing funding of career criminal units in counties that would provide 10 % matching funds, and implement programs within the statewide guidelines. In March of 1978 San Mateo County implemented a Career Criminal Unit within the provisions of the state legislation. Thus the program was a local response to a statewide program that was adopted in most of the states major urban jurisdictions.

Origin and Development

The San Mateo CCP Unit became operational in March 1978 with the award of a \$228,962 grant. The grant supported four attorneys and one legal secretary. Later staff modification resulted in three full-time attorneys assigned to the unit, with the project director serving in a half-time capacity.

The program has conformed closely to the full program outlined by the state. While some California counties have chosen from the list of selection criteria approved by the state, San Mateo has formally accepted the entire

range of state-sanctioned criteria with one exception. The county did not adopt "child molestation" as a target crime when the state made this an option in 1982. The San Mateo unit, then, was implemented as a response to a statewide initiative. It has operated continuously, making significant program changes only at the infrequent points in which they have been required by the state.

EXHIBIT 3-7

SAN MATEO CAREER CRIMINAL PROGRAM PROFILE

JURISDICTION	
Population	San Mateo County -- 589,000
CRIMINAL JUSTICE SYSTEM	
# Law Enforcement Agencies	17
# Felony Courts	5
PROSECUTOR'S OFFICE	
# Attorneys - 1983	16
Range (during program years)	14-16
Budget - 1983	\$1.8 million
Range	\$1.2 million - \$1.8 million
# Felony Dispositions - 1983	2,259
Range	1,971-2,259 Total felony cases
Trends	
CCP UNIT	
Start Up Date	1978
Years of Operation	16
Staffing	
Attorneys	4
Investigators	1
Others	1
Range in Attorneys	4
Trends	Stable
% of DA's Office	25%
Budget - Current	\$245,962
% of DA's Office	20%
Unit Caseload - 1983	192
% of Felony Caseload - Current	8%
Range	7-10%

Staffing and Caseload

The Career Criminal Unit in San Mateo is organized as a separate unit and is funded through a 90 percent grant from the state of California. Except for a brief hiatus when legislation was being renewed, the outside funding has been continuous and has increased when necessary. Staffing has been constant since the program began with three trial assistants and a Director. The California program requires that unit attorneys be "senior", and provides for salary augmentations. The state program also requires that unit attorneys have a reduced caseload. Accordingly, CC attorneys in San Mateo carry approximately 12 active cases, compared to 30-35 for the office as a whole. Within the statewide California Career Criminal Prosecution program, the San Mateo CCP Unit developed a reputation for (1) handling much larger caseloads than many of the CCP Units located in much larger jurisdictions; and (2) for expeditious case processing.

SUMMARY DISCUSSION

The office of the American public prosecutor is unique. The local public prosecutor has been described as "except for the judge...the most influential court official"[2] and "the central figure in the administration of justice." [3] Yet the American prosecutor's power is a "special hybrid of quasi-judicial and political power" [4] While exercising great discretion in the administration of justice, the prosecutor is, in most cases, a locally elected official. This elected status ties the office closely to the local community. The prosecutor "must reflect the values and norms of the

community if he is to attain (and retain) office." [5] Thus, the nature of the community the prosecutor represents shapes the basic parameters of office discretion.

The seven intensive study sites for this report are located in metropolitan areas of greater than 200,000.

TABLE 3-1
 JURISDICTION POPULATIONS -- 1980

	Major city	County	SMSA
Cook Co. (Chicago)	3,005,072	5,200,000	7,103,624
Knox Co. (Knoxville)	175,000	320,000	500,000
Dade Co. (Miami)	347,000	1,600,000	1,734,000
Philadelphia (Philadelphia)	1,688,200	1,688,200	4,716,818
Multnomah Co. (Portland)	368,100	564,000	1,267,900
Monroe Co. (Rochester)	242,000	702,000	971,230
San Mateo Co. (San Mateo)	78,000	587,000	600,200

The analysis of these jurisdictions will be most applicable to programs in those medium to large metropolitan areas that handle the majority of career criminals. Variations in jurisdiction population implies that career criminal programs will vary in size.

The sites also dramatize the differences in jurisdictional characteristics among these metropolitan areas. Based on population alone, for instance, the sites range from Chicago, one of the largest cities in the nation at the hub of the third largest SMSA, to Knoxville, a city of fewer than 200,000 at the center of an SMSA of approximately one-half million. The Knoxville, Rochester, and Portland SMSA's are of moderate size, and are not directly contiguous with other large SMSA's. San Mateo, on the other hand, is an SMSA of just over one-half million, but it lies within the sprawling San Francisco Bay area. It is a residential community within a much larger urban complex. These basic demographic characteristics will inevitably shape the type and volume of the prosecutorial caseload in each jurisdiction.

Career Program Development and Operations

The seven jurisdictions compared in this report were established under a variety of circumstances, and are characterized by differing degrees of change during their histories. Table 3-2 provides a summary of their origins and operational features.

TABLE 3-2

SUMMARY OF PROGRAM ORIGINS AND OPERATIONAL FEATURES

	ORIGINS			FEATURES		
	Year of Origin	Nature of Initiative	Degree of Program Change	Number of Attorneys	Annual Caseload	% of Felony Caseload
Cook County	1978	Local/Chief Judge	Very Low	13	832	8%
Dade County	1975	Early LEAA	Very High	N/A, not a separate unit	1,000	5%
Knox County	1981	LEAA Program/ Elected Prosecutor/ Development Team	High	2	100	12%
Monroe County	1978	LEAA Program/ Elected DA/ Development Team	Medium	3	60	5-6%
Multnomah County	1976	Early LEAA/ Elected DA/ Staff	Medium	5	659	14%
Philadelphia	1979	LEAA Program	Low	7	236	3%
San Mateo County	1978	State Funded Program	Low	4	192	7-10%

Based on caseloads reported in the national survey, EMT/UCSC estimates that more than 12,000 defendants were prosecuted in career criminal units during 1982. However, approximately half (5,930) of these defendants were prosecuted in the sixteen units that handle 200 or more cases per year. These are the

units in large metropolitan areas. A large number of career criminal cases, therefore, are handled in a relatively small number of programs in large urban areas. On the other hand, there are many jurisdictions that may have a need for programs that will handle a low volume of cases per year. The nature of community demands, and the appropriate organization and policies of career criminal programs, are likely to be very different in these settings.

Our seven programs accounted for 3,079 career criminal cases on approximately 26% of the estimated national total prosecuted in 1983. In the subsequent section, we will describe the case selection procedures utilized to identify and select these defendants for selective prosecutors.

1. Chicago Daily Law Bulletin, August 30, 1982.

2. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 11, 1967: 147.

3. Bubany and Skillern, "Taming the Dragon: An Administrative Law for Prosecutorial Decision Making," 13 American Criminal Law Review, 1976: 474.

4. Jacoby, op cit, xv.

5. Ibid, 47.

SECTION 4

SELECTION CRITERIA

For any policy of selective prosecution, the fundamental defining attribute must be the criteria used to determine which cases will receive special attention. Yet tremendous diversity in selection criteria is one of the most evident features of career criminal programming across jurisdictions.

The lack of consensus in defining characteristics of 'career' or 'habitual' offenders, combined with the stance taken by the LEAA in permitting each jurisdiction participating in the Career Criminal Program to develop its own target population definition, have resulted in a range of different 'career criminal' target populations in all jurisdictions participating in the program.[1]

The national telephone survey of current career criminal programs confirms that no shared approach to selecting cases has developed.

BASIS FOR SELECTION CRITERIA

The lack of consensus on case criteria is significant because of the crucial importance of selection in a targeted program. For career criminal programs, it has commonly been argued that selection criteria should identify those offenders who are likely to commit the greatest number of future crimes. Petersilia and Samulon observe that,

It is generally agreed that the appropriate elements in the definition (of career criminals) should have demonstrated value for predicting the likelihood of future involvement in criminal activities. Knowledgeable persons have presented convincing arguments that future criminal involvement can best be predicted by using knowledge concerning the number of contacts with the criminal justice system; some criteria of "dangerousness versus

non-dangerousness;" background characteristics, such as employability, self perception, peer group associations; or possibly some clinical diagnosis of mental stability.[2]

As Predictors of Criminality

Reviews of the actual criteria used in programs, however, have concluded that they are not designed to maximize this objective. In their evaluation of four LEAA programs, Chelmsky and Dahmann concluded that, with respect to selection,

none of the four was specifically concerned with any quantitative prediction of the likely future criminality of the population they had identified, a key element in translating targeted prosecution into crime effects.[3]

These observations are not surprising. The barriers to basing selection criteria on predicting criminal activity are rooted in several conditions. First, studies of career criminality have not produced a reliable set of predictors that provide clear guidance to practitioners (see Appendix A for review of this literature). Second, information concerning many potential criteria, such as background characteristics or mental stability of the offender, are not available in the criminal justice records used by prosecutors. Third, the appropriateness of many of these predictors for making major decisions about a defendant's future is not resolved legally, professionally, or ethically. Thus, the development of criteria based solely, or even primarily, on the prediction of future criminal activity faces great practical barriers. Even more fundamentally, the desirability of developing selection criteria to predict future crime assumes that the goal of career criminal programming is to reduce crime through incapacitating high

rate offenders. The selection problems inherent to achieving this goal go even beyond identifying appropriate predictors. If incapacitation is to be maximized, selection must be closely linked to increasing the risk of sanction at arrest. If the prosecutor improves successful prosecution through tight case screening, the possibilities of achieving incapacitation are reduced. This is a point to which we will return throughout our discussion of selection criteria and procedures.

Symbolic Justice

If other legitimate objectives of career criminal programming are recognized, the grounds for developing selection criteria may shift. Greenwood [4], Kramer[5], and others have argued that career criminal units may have important symbolic goals within the criminal justice system. They may provide important evidence to the public that their victimizations are taken seriously and efforts are being made to protect them. To further these objectives, selection criteria would not necessarily emphasize the prediction of future criminal activity. It may be more appropriate to further high visibility prosecutions of crimes that are of great concern to the community.

Innovative Case Management

A third potential goal for career criminal programs is to further innovative improvements in prosecution generally. [6] Objectives in this area would inject yet another set of considerations into the development of selection criteria. Cases may be selected because they provide certain challenges in

their prosecution, or even because they are typical of a large portion of the caseload prosecuted in an office.

Summary

In defining the gateway to career criminal prosecution, selection criteria impact more than the plausibility of achieving specific objectives. The definition and application of selection criteria fundamentally impact the case processing strategies and opportunities available to the program. Selection criteria directly determine the numbers of cases that are accepted by a program, therefore determining caseload and the degree of additional time that can be devoted to career criminal prosecutions over regular office prosecutions. Selection criteria influence the difficulty of the prosecutions accepted into the program -- whether they are "dead-bang" or marginal in terms of evidentiary strength.

The central role of selection criteria in shaping career criminal programming carries several implications. First, local diversity in criteria is understandable. Local prosecutors will tailor criteria to reflect the particular objectives they hold for the program, and to accommodate the organizational and resource opportunities available to them. Second, while local flexibility in specifying criteria seems desirable, indeed inevitable, the importance of their specification warrants careful attention. Local programs have now logged years of experience with a variety of selection criteria, and analysis of their experience with these criteria may yield important lessons.

This chapter describes and compares the selection criteria applied in each of the seven study jurisdictions. The chapter also describes and compares the nature of the caseloads produced by criteria in each jurisdiction. Types of crime, the personal characteristics of defendants, criminal histories of defendants, and characteristics of their instant offenses will be profiled. Finally, the implications of differences in selection criteria will be discussed.

DEFINING CAREER CRIMINALS

Selection criteria for career criminal units can be structured along a number of dimensions.

1. The career criminal concept has developed within a context of concern regarding the threat of serious crime to the community. The seriousness of an offense may be represented in selection criteria through targeting specific crimes; or, less frequently, through considering attributes of individual offenses that indicate a serious threat to the public (e.g., violence against strangers).
2. Since the career criminal concept focuses on persons rather than crimes, selection criteria must distinguish among offenders -- usually on the basis of criminal histories.
3. A third dimension that may be represented in selection criteria concerns case attributes that may affect prosecutability. In some instances selection may screen out cases that appear to offer little opportunity for successful prosecution. Selection criteria may allot more or less weight to the discretion of prosecutors in selecting cases for unspecified reasons.

In the following sections, selection criteria for each of the seven career criminal programs are described.

Cook County

Selection criteria for the Cook County program were defined in the original court order that established the Repeat Offender Courts (ROC). Chief Judge Fitzgerald ordered that felony cases would be assigned to the ROC judges when they qualified under a three part test. Cases will be added to the ROC court dockets when:

1. A defendant has two or more previous separate felony convictions and who is charged in a new charge in which the new charge is:
 - Homicide (excludes cases in which there is a family relationship between victim and defendant);
 - Armed robbery;
 - Attempted murder, aggravated battery (stranger on stranger);
 - Rape, indecent liberties, deviate sex (stranger on stranger); or
2. A defendant has three or more previous separate felony convictions and is charged in a new charge in which the new charge is:
 1. Burglary (residential); or
3. A defendant has one felony conviction, is out on bond on a felony charge, and is charged with any of the above crimes while out on bond.

The Cook County criteria combine the offender's criminal history and the seriousness of the offense to define career criminals. Seriousness of the crime is determined through the charge brought against the defendant.

Assignment to the ROC courts is restricted to residential burglary, robbery, homicide, and specific crimes of violence against persons. In the latter crimes, only stranger to stranger violence is considered. Criminal history is weighted so that more prior convictions are required to define current burglars as career criminals. Recent contact with the justice system weighs heavily in the criteria; arrest while on felony bond reduces the required number of prior convictions for any target crime to one.

Cook County's selection criteria make no formal provision for discretionary considerations in selection, though the presiding judge may assign cases to judges for reasons unique to a particular circumstance. Selection criteria for the ROC courts have remained unchanged since the original judicial order.

Knox County, Tennessee

According to their own proposal for LEAA funding, the Knox County career criminal program is both offense and offender oriented.

The purpose of the Program is to concentrate prosecutorial efforts on the persons and crimes that plague the community. The program is further directed to specific offenses that have a high potential for violence and personal injury.

Specifically, the unit formally proposed to accept cases in which the defendant:

1. is currently charged with murder, robbery, aggravated felonious assault with intent to commit first degree murder, forcible rape, or burglary of a residence; and
2. has two prior felony convictions within the last ten years.

The intended selection criteria for the Knox County program were straight forward. However, the early months of program implementation brought significant modification in actual selection into the program.

The Knoxville program worked closely with law enforcement through an enthusiastic team of prosecutors. The actual case load produced through the Knoxville selection process differed significantly from that envisioned in the project proposal (see discussion of screening procedures in Section 3). Early in program implementation selection procedures were applied to be more responsive to the habitual crime problems perceived and targeted by law enforcement. In practice, this adjustment brought greater attention to property crimes than was envisioned in the original program proposal. Indeed, the career prosecution unit worked very closely with law enforcement on a series of sting operations aimed at property crime pools in the metropolitan area.

As a result of the early program experience, selection criteria in Knoxville represent a somewhat special case. The formal criteria reflect a focus on serious violent crime. Requirements focussing on the individual were very simple -- two prior felony convictions. Those focusing on crime type were much more specific. Certain crimes were targeted, all violent with the exception of residential burglary. In rape cases the program proposal specified that attention would be focused on "the difficult stranger to stranger crimes in which the prime difficulty is identification of the assailant." Residential burglary was targeted because of the danger to occupants of the dwelling.

The formal criteria did not specify a role for other case characteristics or for prosecutorial discretion. However, the criteria only defined those conditions that would be met before a case was "considered" for prosecution. The program director would screen and make actual decisions concerning case acceptance. In fact, selection of cases into the program reflected the concern in the community about property crime, and the knowledge of law enforcement concerning property-related career criminals. The implications of this application of selection criteria will be discussed in subsequent sections of the report.

Miami

The Miami Career Criminal Program has a long history, and selection criteria have evolved through several stages.

With the end of LEAA funding and the disbanding of the separate Career Criminal Unit, criteria were developed for flagging career criminal cases that were to be assigned in the regular rotation of prosecuting assistants. These criteria were simple, and focused on the offender's prior criminal history. Specifically, cases were selected for prosecution as career criminals if the current offense was a felony and:

1. The defendant has been convicted of two felonies during the past 10 years, OR
2. The defendant has been convicted of two misdemeanors and one felony during the past ten years.

Formally, Miami's selection criteria addressed only the characteristics of the offender, specifically the extent and nature of their prior criminal history. In application, however, the organization of the prosecutor's office excluded "serious" and violent crimes from career criminal prosecution. These categories of offenses are screened into a separate "Major Crimes Bureau" staffed by selected senior trial attorneys. Thus, career criminal criteria are applied to a pool of felony cases that had been reduced through prior selection.

The selection criteria were applied by the Program Director who acted with some discretion in actually flagging cases. Accordingly, though the formal criteria for assigning cases as career criminals did not change, the numbers of career criminal cases fluctuated as criteria were more or less strictly applied.

Under the current program Director criteria were consistently applied with respect to the prior felony criteria, though exceptions continued for the two misdemeanor rule. The result was a great increase in the numbers of career criminal cases during 1981 and 1982.

Criteria were revised in April of 1983 to focus on more serious and violent crimes. The revisions require the following:

1. The defendant shall be charged with one of the following "enumerated felonies":
 1. Homicide,
 2. Sexual battery,

3. Armed robbery,
 4. Residential burglary,
 5. Assault involving serious injury or discharge of firearm,
 6. Extortion,
 7. Kidnapping,
 8. Arson, and
 9. Bombings
2. Generally, offenses involving friends, relatives, and neighbors will not be considered career criminal.
 3. The defendant shall have been convicted of two prior separate felonies, one of which is for an enumerated felony, HOWEVER,
 4. Any person reasonably believed by the law enforcement community to be a "career criminal" regardless of the ability of the law enforcement community to arrest or convict such individual may be considered through a request from an investigating agency.

These extensively revised criteria are currently in effect in Dade County. However, they have not been in place for a sufficient amount of time to impact a significant number of cases. Subsequent discussion of the Miami program will accordingly focus primarily on the selection criteria that were in effect between 1979 and April, 1983.

Philadelphia

Philadelphia's selection criteria combine offense and offender characteristics. When initially implemented, the program accepted cases in which:

1. The defendant was currently charged with robbery and had at least three prior felony convictions, OR
2. The defendant was currently charged with homicide, rape, involuntary deviate sexual intercourse, burglary of an occupied dwelling or building, and aggravated assault involving serious bodily injury (generally omitting domestic assaults), and had at least four prior felony convictions.

These criteria have been revised only once during the program's history. In January, 1983, the requirements for criminal history were reduced to 2 prior felonies for robbery and 3 prior felonies for other designated offenses. If none of the prior convictions occurred during the past ten years, the case is excluded.

Multnomah County

Multnomah County's program originally selected cases primarily on the basis of offender characteristics. Program policy declared that:

the purpose of the Career Criminal Prosecution Unit (CCU) in Multnomah County is to effectively and expeditiously prosecute those offenders whose criminal careers pose a serious threat to the security of lives and property in the community.

A defendant was considered for prosecution by the CCU if he or she commits a felony, excluding sex crimes, and:

1. Has two prior felony convictions, OR
2. Is on probation, parole, or institutional supervision for a felony and the current offense is one of violence against a person or burglary of a dwelling, OR
3. A law enforcement officer or deputy district attorney feels that a particular case, for compelling reasons, should be handled by the CCU. Such consideration may be requested

even though the case does not fall within the above guidelines. Such a case shall be approved for acceptance within the program only by the unit chief.

These original criteria cast a broad net. Almost any felony instant offense could be considered if the defendant had two priors. Indications of a high rate of current serious criminal activity were weighed heavily in the second selection rule. Discretion in case selection was allowed in two ways. First, the third criteria allowed exceptional cases to be prosecuted in the office. This provision, known as the "Houston exception", was restricted to no more than five percent of the unit's cases. Second, discretion was granted to the Unit Director who screened cases that the criteria made "eligible" for the program. Given the scope of potential unit cases, there was considerable room for selectivity.

Case selection in the Multnomah County CCU has undergone one major formal revision. In early 1981, criteria were revised in conjunction with the merger of CCU and Unit C into the Major Violators Unit (MVU). Formally, MVU receives all cases specified under the original criteria, plus it is responsible for the following felonies regardless of the defendant's criminal record: robbery in the first degree, burglary in the first degree (in dwelling), ex-convict in possession of a firearm, unlawful possession of weapon (if a felony), theft in the first degree (sting operations only), reckless vehicular assaults and vehicular homicides, and serious cases of special significance. These additional criteria apply to MVU as a whole, and were created by combining the old Unit C and CCU caseloads. Within the unit, however, distinctions in case handling still occur between career criminal and other MVU cases. For purposes of case handling, then, it is more

accurate to say that CCU has been integrated into an organizational unit with larger prosecutorial responsibilities. All cases that meet the above criteria will be accepted into MVU; not all of them will be prosecuted as career criminals. The implications of case differentiation within the unit will be explored further in subsequent sections of this report.

The selection criteria for career criminals in Multnomah County would appear to allow for almost any felony instant offense. In fact, however, the organization of the office into specialized units means that MVU criteria are applied to a reduced population of cases. In particular, violent crimes are assigned to the Violent Crime Unit rather than MVU.

Monroe County

Case selection criteria in Monroe County have undergone a major transformation since program inception. The early case selection criteria applied during the period of LEAA funding. However, the original procedures warrant careful attention because they demonstrate some of the basic selection purposes that characterize the program.

The original Monroe County criteria were the most complex applied in the seven study jurisdictions. Cases involving the instant offense categories of aggravated assault, aggravated sex offenses, robbery, burglary, and larceny were screened. If the defendant had at least one prior felony conviction, the case was scored through a detailed point weighing form. (See Exhibit 4-1.)

Assignment of weights in the forms was periodically adjusted, but the basic features remained. Within the designated crimes, "seriousness" of the

EXHIBIT 4-1

MONROE COUNTY DISTRICT ATTORNEY'S CASE EVALUATION

Multiple defendant-use most serious crime

Police Agency _____

<u>Defendant</u> _____	<u>DEFENDANT</u>
<u>Charge(s)</u> _____	<u>FELONY ARRESTS</u>
<u>Date</u> _____	Single 3
<u>Time</u> _____	Multiple 5
<u>CASE</u>	<u>MISDEMEANOR ARRESTS</u>
<u>VICTIM(S)</u> 5	Single 3
No. of Victims _____	Multiple 5
Injury _____	<u>FELONY CONVICTIONS</u>
Hospitalized _____	Single 5
Police _____	Multiple 10
<u>PHYSICAL FORCE</u> 10	<u>MISDEMEANOR CONVICTIONS</u>
<u>WEAPON</u> 5	Single 3
1. gun carried 5	Multiple 5
2. gun fired 10	<u>STATUS AT ARREST</u>
3. knife _____	Probation 5
4. explosives _____	Parole 10
5. other _____	Warrant Pending 3
<u>PROPERTY TAKEN</u>	Pending Indictment(s) 5
A. little value 3	<u>SOURCE OF INFORMATION</u> _____
B. substantial value 5	(indicate with <input checked="" type="checkbox"/>)
1. approx. monetary value _____	<u>IMMEDIATE REFERRAL C.C.B.</u>
2. taken from "the person" _____	Felonies with serious physical injury or weapon _____
<u>EVIDENCE</u>	Armed robberies with firearm _____
Confession of defendant 5	Forcible sex crimes with no previous relationship between parties _____
statements of witnesses 5	Kidnapping _____
witnesses (I.D.) 5	Possession of bombs or explosives _____
<u>IDENTIFICATION</u>	Multiple armed robberies _____
A. POSITIVE I.D. 15	Multiple armed burglaries _____
1. fingerprints _____	<u>PRIOR RELATIONSHIP</u>
2. on-scene _____	Family _____
3. line-up _____	Neighbor _____
4. photo _____	Friend _____
5. other _____	Other _____
<u>ARREST</u>	<u>POLICE EVALUATOR</u> _____
At scene 10	<u>POLICE SUPERVISOR</u> _____
within 48 hours 5	<u>FOR USE OF C.C.B.</u>
<u>TOTAL SCORE</u> 	accepted _____
	rejected _____
	further investigation _____
	referred _____
	ADA _____

offense was determined through scoring victimization (number, injury), physical force and use of weapon, whether property was taken, the value of the property, and the relationship of defendant and victim. Offender characteristics were assessed through assigning points for felony and misdemeanor arrests, felony and misdemeanor convictions, and status at arrest. Finally, the prosecutability of the case was established by assigning points for confessions, witnesses, identification and time from offense to arrest.

The exact nature of the weighting system is less important than the general features it reflects. First, the forms do not provide a precise decision concerning acceptance or rejection. They did provide a tool for comparing different cases along a number of dimensions. Cases could then be selected from the active caseload according to the number of cases the unit could accommodate. Second, the forms do not set clear priorities between dimensions. The total score can reflect very strong characteristics in one dimension, or a combination of less strength on a number of dimensions. Finally, the criteria explicitly include items that give "stronger" cases a greater chance of selection (though very serious offenses, or serious offenders, may warrant selection despite weak cases).

The point scoring sheets were discontinued when LEAA funding of the Monroe County program ended. Designated target offenses have remained the same, though cases may now be handled outside of the target offenses if a pattern of several convictions for the same crime is identified. Within the target offenses, one prior felony conviction is still the threshold, and CCU has

"first cut" at case acceptance over other specialized units. The large potential pool of cases eligible under these criteria, and the modest caseload of the Monroe county CCU mean that there is substantial discretion in case acceptance.

The CCB Chief determines which cases will be accepted by the Unit. Although cases are no longer formally scored, the unit Chief considers the same basic factors -- circumstances of the offense, prior criminal record, and the evidentiary strength of the case. Discontinuing the scoring sheets has changed the procedures for case selection, but has not redirected the criteria themselves.

San Mateo County

Selection criteria in San Mateo are developed within the guidelines set through the statewide California Career Criminal Prosecution Program. Acceptable target offenses in the California program were based on two factors:

(First), they represent offenses which provide for illicit economic gain. (Second), since the program involved enhanced prosecutorial resources, it was important to target offenses that did not routinely get the type of intensive prosecutorial attention that murder or rape cases normally attract.[7]

San Mateo County targets all seven of the crimes originally allowed under the state guidelines:

- Arson
- Burglary
- Health and Safety Codes 11351 and 11352 (sale of narcotic drugs)
- Grand theft
- Receiving stolen property
- Robbery

In January, 1983, the state authorized lewd or lascivious conduct upon a child as a target offense. San Mateo did not adopt this target because the crime was already being handled in a special unit.

Within the target offenses, the California legislation defines career criminality through three separate rules.

1. A defendant being prosecuted for three or more offenses, not arising from the same transaction, that involve one of the target offenses will be prosecuted as a career criminal.
2. A defendant who has had at least one felony conviction in the last ten years (excluding time in prison) for robbery with a deadly or dangerous weapon, burglary of the first degree, arson, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct with a child, kidnapping, or murder.
3. A defendant who has had at least two felony convictions in the last ten years (excluding time in prison) for grand theft, grand theft auto, receiving stolen property, robbery other than above, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon, or any violation of Health and Safety Code 11351 or 11352.

These criteria embody a calculus to determine the seriousness of both offense and offender. This calculus is more specific in its targeting than in many programs because it weights serious past convictions more heavily, thus attempting to incorporate the pattern of past activity into the criteria. The California program offers a menu of acceptable target offenses to local jurisdictions from which they have limited selection. Although local

Jurisdictions can select from among target crimes to suit the particular crime problems in their jurisdiction, there is no provision for discretionary choice within the defined criteria accepted by a program.

SUMMARY AND COMPARISON OF SELECTION CRITERIA

The introduction to this section identified several dimensions represented in career criminal program case selection. These dimensions provide a framework for identifying similarities and differences among the jurisdictions, and for summarizing their approaches to career criminal selection. Table 4-1a provides an overview of each jurisdiction.

In all jurisdictions, the seriousness of the charge is the primary factor in the targeting on serious crime. Monroe County is the only jurisdiction that has formally incorporated other indicators of the seriousness of the offense into selection; and with the end of LEAA funding these considerations became discretionary (though they still operate). Two of the jurisdictions -- Dade County and Multnomah County -- formally consider nearly all felony offenses for career criminal status. In practice, however, priority assignment to other selective prosecution units reduces the pool of cases from which they draw. Thus, in practice, none of the programs are solely offender-based in their case selection.

The targeting of charges typically reflects perceptions of serious crime problems in the jurisdictions. In this regard, the criteria do reflect differences in the types of crime considered to warrant career criminal status. As a dichotomous standard, the jurisdictions can be categorized as

TABLE 4-1a

SUMMARY AND COMPARISON OF SELECTION CRITERIA
FOR CAREER CRIMINAL PROGRAMS

	Cook County	Dade County	Knox County	Monroe County	Montgomery County	Philadelphia	San Mateo County
TRIGGER FOR CC CONSIDERATION	Offenses	Criminal History/ Discretion	Discretion/Offenses	Offenses/multiple priors for any offense	Criminal History/ Offenses	Offenses	Offenses
TARGET OFFENSES	1) Homicide 2) Armed Robbery 3) Attempted Homicide 4) Aggravated Battery 5) Rape 6) Burglary	Any Felony	1) Burglary 2) Robbery 3) Aggravated Assault 4) Homicide 5) Rape	1) Burglary 2) Robbery 3) Aggravated Assault 4) Sex Offenses 5) Larceny (discretionary)	All felonies excluding sex offenses & criminal mistreatment	1) Robbery 2a) Murder b) Rape c) Inv. deviant sexual intercourse d) Burglary (occup. dwelling) e) Aggravated assault (serious bodily injury, non-domestic)	1) Arson 2) Burglary 3) Health & Safety 11351 Drugs 4) Health & Safety 11352 5) Grand Theft 6) Receiving Stolen Property 7) Robbery
Sufficient for Selection	No	No	No	No	Yes, for vehicular assault & homicide, robbery 1, burglary 1, ex-con w/ firearm, unlawful possession of weapon, theft 1		Yes, if multiple (3) current offenses
CRIMINAL HISTORY							
Priors Criteria	(1) 2 prior felony convictions if current offense is (1)-(4) above or (2) 3 or more prior felony convictions for (6) & (7) above or (3) 1 prior felony conviction if released on bond for (1)-(6) above	(1) 2 prior felony convictions within previous 10 years minimum or (2) 2 misdemeanors plus 1 felony	2 prior felony convictions with the last 10 years	1 prior/multiple priors for any offense	(1) 2 prior felony convictions or (2) 1 prior felony convictions and defendant on parole or on probation and commits burglary/violent felony	(1) 2 prior felonies if (1) above or (2) 3 prior felonies if (2) above	(1) is being prosecuted for 3 or more offenses or (2) One felony conviction in last 10 years for serious, violent felony, or (3) Two felony convictions in last 10 years for less serious felonies
Sufficient for Selection	No	No	No	Yes, for series of same offenses	No	No	No
OTHER CASE CHARACTERISTICS	None	Defendant's relationship w/ victim (do not accept domestic cases)	Important cases at Director's discretion	(Discretionary) Harm to victim, extent and nature of past offenses evidentiary strength	Special cases of great significance with Director's approval	None	None
Sufficient for Selection	N/A	No	Yes	No	Yes	N/A	N/A
CHANGES (what/when, broadened or narrowed)	No	Yes, narrowed	Yes, broadened informally	No	Yes, broadened	Yes	No
DISCRETION	Low	High	High	High	Moderate	Low	Low
SCOPE							
Offense Criminal History	Narrow Narrow	Broad Broad	Narrow Broad	Broad Broad	Broad Broad	Narrow Narrow	Narrow Narrow

having "broad" target criteria if felonies less serious than burglary can qualify as career criminals (without special exception). Dade County, Monroe County, Multnomah County, and San Mateo County fall within this group. Cook County, Philadelphia, and Knox County target offenders charged with burglary, robbery and crimes of violence. Their scope is narrow, though there may be exceptions in particular cases. Differences in the charge makeup of caseloads produced by jurisdiction criteria will be described in the next section.

Formal criteria for identifying particular defendants as career criminals in the jurisdictions rely entirely on criminal history. More specifically, most reference prior felony convictions, though Cook County also counts release on felony bond and Multnomah County formally considers parole and probation (Dade County is the only jurisdiction that formally considers misdemeanor convictions).

Criminal history criteria vary in scope. In Dade County, Knox County, Monroe County, and Multnomah County one or two prior felony convictions of any type constitute the threshold. Criminal history thresholds may be categorized as "broad" in these jurisdictions. In the remaining jurisdictions criminal history requirements are more detailed -- requiring more priors, specific categories of past convictions, and/or varying the criminal history requirements according to the instant offense. Criminal history thresholds in these jurisdictions may be categorized as "narrow".

The programs also vary in the degree and manner of discretionary choice allowed within the criteria. In Cook County, San Mateo County, and

Philadelphia criteria are intended to be strictly applied -- little discretion is anticipated. In contrast, Knox County, Monroe County, and Dade County utilize criteria that establish a pool of cases that are considered for selection. Considerable discretion is applied in actual case acceptance. Multnomah County falls between.

In Chicago and Philadelphia, the jurisdictions that have established narrowly focused criteria, discretion is low. In San Mateo, targeted offenses do allow for lesser felonies to be prosecuted as career criminals, but this part of a strategy that specifically targets crimes that may not be prosecuted vigorously without conscious flagging. Thus, not surprisingly, those jurisdictions with low discretion in selection are those with specific and purposeful formal criteria.

Selection criteria in the programs confirms what has frequently been observed. Career criminal programs have not developed criteria that are clearly designed to maximize selection of persons most likely to commit future crimes at a high rate. The criteria represent a balancing of considerations -- past criminal behavior, available and easily interpretable information, perceptions of "serious" crime in the community, the desire to identify cases that can be successfully prosecuted, and perceptions of those areas of prosecution which could be improved by concentrated effort. The balance of factors varies between local programs.

These criteria may be judged "inadequate" if prediction of future criminal activity is held to be the standard. However, career criminal selection criteria must do more than this. Criteria that are useful to the prosecutor

must provide a useable gateway to a case handling process that can achieve prosecution objectives within a local criminal justice context. Criteria that maximize prediction of criminality are not useful if the information they require is not available or is unreliable. Neither will they be useful if they are not acceptable to the larger criminal justice system in which the prosecutor must work. In future sections, the selection criteria described here will be assessed according to the multiple constraints that face the prosecutor.

THE CAREER CRIMINAL CASELOAD: A PROFILE

Selection criteria provide the initial standard for identifying cases that warrant prosecution as career criminals in a jurisdiction. In this section the cases accepted and prosecuted in the four jurisdictions will be profiled according to top charge, defendant characteristics, and indicators of the seriousness of the instant offense. These data will allow comparison of the actual caseloads prosecuted by career criminal programs in each jurisdiction, and an assessment of the caseload produced by selection criteria in each jurisdiction.

Felony Charges

Figure 4-1 presents the distribution of crimes in the career criminal caseload of each jurisdiction. The crime category for each case reflects the most serious charge (top charge) filed in felony court. (Cases are not categorized by charge at conviction.)

Burglary and robbery are the most common crime types across all jurisdictions, accounting for between 56 (Knox County) and 85 (Philadelphia) percent of the cases in each jurisdiction. In Cook County and Philadelphia, robbery was the single most common crime, accounting for 36 percent of the cases in the former and one half of the cases in the latter. In the remainder of the jurisdictions burglary was the single most common crime, approaching half (44%) of the crimes handled by the Knox County and San Mateo County programs. Burglary accounted for more than one third of the cases in Multnomah County (40%), Monroe County (39%), and Philadelphia (35%).

The most evident contrast between jurisdictions is in the proportional distribution of property crimes (burglary, theft/larceny) versus crimes against persons (murder, rape, assaultive crimes, robbery). Crimes against persons constitute more than 50 percent of the caseload in only two jurisdictions -- Cook County (68%) and Philadelphia (57%). Cook County emphasizes violent crimes against persons far more than any other jurisdiction. Even if robbery is excluded, one third of the crimes in the Chicago ROC Courts have been crimes of violence against people.

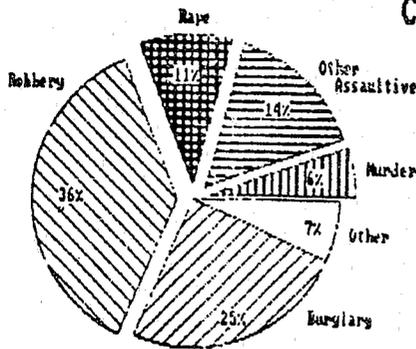
The other five jurisdictions emphasize crimes against property. In San Mateo County this is largely attributable to the large number of burglaries. Dade County and Monroe County have prosecuted the largest proportions of thefts and larcenies (29% and 21% respectively).

In addition to providing a basic caseload description in which to interpret program performance, Figure 4-1 provides a basis for assessing the nature of the caseloads produced by each jurisdiction's selection criteria. In Cook County and Philadelphia the emphasis on crimes against persons reflect the

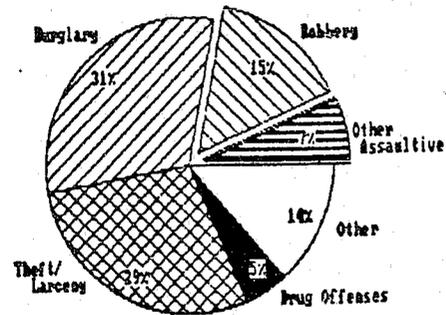
FIGURE 4-1

Career Criminal Caseload
Crime Distribution

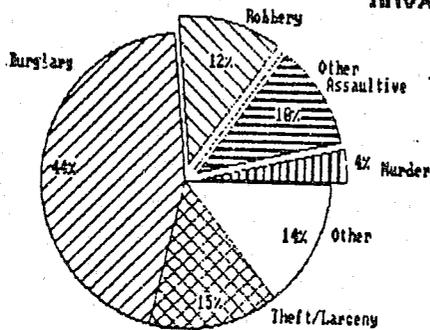
COOK COUNTY



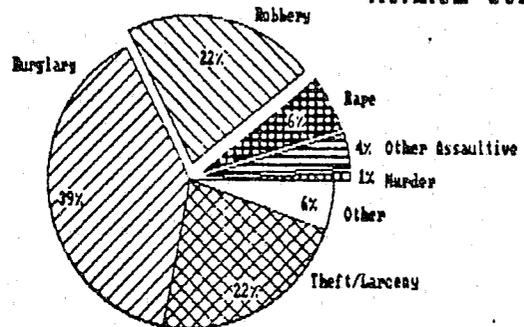
DADE COUNTY



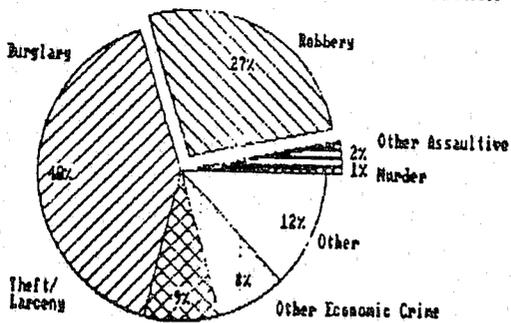
KNOX COUNTY



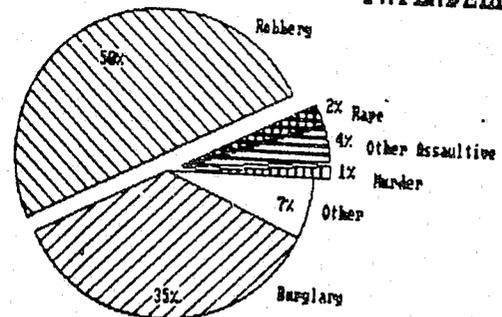
MONROE COUNTY



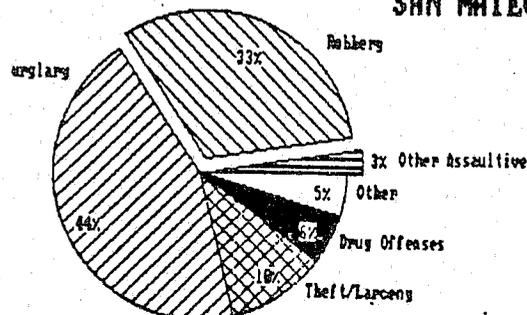
MULTNOMAH COUNTY



PHILADELPHIA



SAN MATEO COUNTY



narrow scope of their criteria. Similarly, the distribution of crimes in San Mateo County reflects the close targeting of property crimes in selection criteria. When criteria were broad, as in Monroe and Multnomah Counties, the more numerous property crimes tended to dominate the caseload. Knox County, however, provides an atypical case. The Knox County program targeted serious and violent crimes against people, yet the actual caseload has been predominately composed of property crimes.

One explanation for this discrepancy may lie in community crime patterns. UCR index crime suggests that in most cases, whether through planning or the availability of cases, CCP case selection has been generally congruent with the crime patterns of these jurisdictions. High incidences of violent crime as a percentage of all index crime (1982) were found in Philadelphia (18.4%), Cook County (14.4%), where the criteria emphasize violent crime against persons. Philadelphia led all jurisdictions in the percentage of index crimes that were robberies (11.2%). In the remaining jurisdictions, burglaries and theft/larceny accounted for a greater proportion of index crime than in Cook County and Philadelphia (Dade County, 74.0%; Knox County, 77.5%; Monroe County, 83.4%; Multnomah County, 80.8%; San Mateo County, 77.8%; Cook County, 67.9%; Philadelphia, 66.5%). Notably, Knox County is among the jurisdictions with proportionally great incidences of property crime. The County's career criminal caseload reflects this apparent crime distribution despite formal targeting on crimes against people.

Crime Characteristics

Top charge is a base indicator of the nature of the criminal caseload in each jurisdiction. However, the nature and seriousness of crime and its impact on society can be gauged through other characteristics of criminal incidents. Table 4-1b presents data concerning use of weapons and injury to victims in the CCP caseload of each jurisdiction.

The data reflect the distribution of crime types across the seven jurisdictions. Criminal incidents in Cook County and Philadelphia were far more likely to involve the use of a weapon (68.4% and 60.0% of the cases respectively involved the use of weapons). No other program had more than half of its cases involve weapons. In Knox County and Dade County, weapons were present in fewer than 30% of the cases.

In addition to differences in the presence of weapons, there are contrasts between sites in the use of those weapons. In Cook County (42.3%), Knox County (41.2%), and Philadelphia (33.8%), more than one third of the cases involving weapons resulted in injury or death. In sum, these additional case characteristics provide a further indicator of the emphasis on threatening crimes against people in the Chicago and Philadelphia programs.

CCP DEFENDANT PROFILES

The unique characteristic of career criminal selection is that it focuses on the offender and not simply the crime. This section of the report provides a brief profile of the defendants selected for career criminal prosecution in each jurisdiction. Table 4-2 displays data on the personal characteristics of defendants. These data were tabulated from prosecutor's case records. In those instances where data was available for a greatly reduced portion of the

TABLE 4-1b

Use of Weapon and Injury to Victim

Weapon	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	(364)	(100.0)	(487)	(100.0)	(115)	(100.0)	(214)	(100.0)	(408)	(100.0)	(265)	(100.0)	(335)	(100.0)
Physical Force	39	10.7	37	7.6	4	34.8	19	8.9	37	9.0	50	18.9	25	7.4
Blunt or Sharp Instrument	66	18.1	29	6.0	11	9.6	25	11.7	35	8.6	36	13.6	24	7.2
Firearm	143	39.3	73	15.0	18	15.6	32	15.0	101	24.8	73	27.5	75	22.4
Other Arms	1	.3	--	--	--	--	1	.4	--	--	--	--	1	.3
None	115	31.6	348	71.4	82	71.3	137	64.0	235	57.6	106	40.0	210	62.7
Injury to Victim(s)	152	(46.1)	64	(17.5)	23	(21.9)	42	(35.8)	44	(11.5)	91	(38.9)	29	(8.8)

County	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Gender	(368)	(100.0)	(503)	(100.0)	(124)	(100.0)	(214)	(100.0)	(413)	(100.0)	(267)	(100.0)	(344)	(100.0)
Male	358	97.3	466	92.6	119	96.0	205	95.8	387	93.7	266	99.6	320	93.0
Female	10	2.7	37	7.4	5	4.0	9	4.2	26	6.3	1	0.4	24	7.0
Race	(366)	(100.0)	(500)	(100.0)	(124)	(100.0)	(213)	(100.0)	(412)	(100.0)	(267)	(100.0)	(366)	(100.0)
White	44	12.1	147	29.4	75	60.5	62	29.1	238	57.8	35	13.1	137	40.8
Black	285	78.3	353	70.6	49	39.5	143	67.1	153	37.1	228	85.4	151	44.9
Hispanic	35	9.7	--	--	--	--	8	3.8	6	1.5	4	1.5	45	13.4
Asian	--	--	--	--	--	--	--	--	1	.2	--	--	1	.3
Other	--	--	--	--	--	--	--	--	14	3.4	--	--	2	.6
Age	(369)	(100.0)	(488)	(100.0)	(124)	(100.0)	(215)	(100.0)	(413)	(100.0)	(267)	(100.0)	(344)	(100.0)
18	24	6.5	23	4.70	1	0.8	33	15.3	18	4.4	1	0.4	18	5.2
18-20	25	6.8	19	3.90	9	7.2	32	14.9	58	14.0	4	1.5	33	9.6
21-25	110	29.8	104	21.3	36	29.0	64	29.8	113	27.4	38	14.2	109	31.7
26-30	96	26.0	127	26.0	40	32.3	47	21.9	83	20.1	77	28.8	78	22.7
31-35	62	16.8	102	20.9	16	12.9	15	7.0	72	17.4	85	31.9	59	17.2
36-40	30	8.1	45	9.2	10	8.1	13	6.0	31	7.5	26	9.7	29	8.4
41-50	17	4.6	52	10.7	11	8.9	8	3.7	29	7.0	28	10.5	14	4.1
> 50	5	1.4	16	3.3	1	.8	3	1.4	9	2.2	8	3.0	4	1.1
Education	(369)	(100.0)	(503)	(100.0)	(124)	(100.0)	(215)	(100.0)	(413)	(100.0)	N/A	N/A	(344)	(100.0)
Grade School	261	70.7	487	96.8	101	81.4	94	43.8	122	29.5			69	20.1
Some High School	67	18.2	10	2.0	12	9.7	74	34.4	114	27.6			169	49.1
High School Grad.	28	7.6	3	.6	9	7.3	36	16.7	109	26.4			70	20.3
Some College	13	3.5	3	.6	2	1.6	8	3.7	62	15.0			34	9.9
College Degree	--	--	--	--	--	--	3	1.4	6	1.5			2	.6
Employment	(272)	(100.0)	(377)	(100.0)	(63)	(100.0)	(133)	(100.0)	(341)	(100.0)	(249)	(100.0)	(304)	(100.0)
Unemployed	231	84.9	314	83.0	41	65.1	112	84.2	228	66.9	204	82.0	183	60.2
Part Time	17	6.3	34	9.0	--	--	10	7.5	65	19.1	23	9.2	72	23.7
Full Time	24	8.8	29	7.7	22	34.9	11	8.3	48	14.0	22	8.8	49	16.1
Residence	(267)	(100.0)	(462)	(100.0)	(118)	(100.0)	(210)	(100.0)	(385)	(100.0)	(260)	(100.0)	(333)	(100.0)
Local	263	98.5	446	96.5	104	88.1	201	95.7	321	83.4	227	87.3	296	88.9
Non Local	4	1.5	16	3.5	14	11.9	9	4.3	64	16.6	33	12.7	37	11.1
Marital Status	(208)	(100.0)	(49)	(100.0)	(67)	(100.0)	(134)	(100.0)	(336)	(100.0)	(230)	(100.0)	(310)	(100.0)
Married/C.L.	61	29.3	15	30.6	27	40.3	17	12.7	90	26.8	49	21.3	86	27.7
Divorced/Separated	14	6.7	5	10.2	12	17.9	9	6.7	79	23.5	46	20.0	54	17.4
Single	133	64.0	29	59.2	28	41.8	108	80.6	167	49.7	135	58.7	170	54.9

DEPENDANT PROFILE
Personal Characteristics

sample, results should be interpreted with caution. Table 4-3 profiles the past criminal involvement of CCP defendants. These data were gathered primarily from law enforcement criminal histories (rap sheets). Table 4-4 indicates the proportion of CCP defendants on probation or parole at the time of their current arrest.

Defendants across the jurisdictions display some basic similarities in personal characteristics, though they are accentuated in specific sites. CCP defendants are overwhelmingly male, are almost always local residents, and display extremely high rates of unemployment. San Mateo had the lowest percentage unemployed at 60.2%; percentages in Cook County, Dade County, Monroe County and Philadelphia were all over 80 percent. In all jurisdictions the majority of defendants have not attained a high school diploma. Educational levels are lowest in Dade County (1.2% high school graduates), Knox County (8.8%) and Cook County (11.1%); highest in Multnomah County (42.9% high school graduates) and San Mateo County (30.8%).

Career criminal programming has been criticized because selection criteria identify offenders only after they have established a pattern of serious crime -- a time at which they are aging out of their most active years of crime. The age distribution of offenders varies considerably between the programs, but the relationship to selection criteria is not clear. Philadelphia has the oldest offenders -- only 1.9% are 21 or younger, more than half (55%) are over 30. This distribution is consistent with the large number of prior convictions required in the program. Monroe County is at the other extreme, with 30.2% of its offenders under 21 and only 20% over 30.

This young distribution is consistent with a low prior convictions threshold and high discretion. In other jurisdictions the distribution may be more indicative of conditions other than selection. Miami for instance has relatively broad selection (two prior felonies/two prior misdemeanors plus a felony) but 46% of its defendants are over 30.

Table 4-3 profiles prior criminal justice involvement for CCP defendants. Selection in the jurisdictions has generally identified defendants with extensive prior criminal involvement, but the extent of that involvement varies between jurisdictions. Again, the narrow selection criteria in Philadelphia have produced a defendant population with the most extensive criminal history among the sites. Only 1.2% have no prior felony convictions, and more than half (53.5%) have more than three prior felony convictions, and almost one third (30.6%) have more than six. More than three fourths (77.7%) have received prior state prison sentences; one third have been sentenced to prison more than twice. Defendants in Cook County, Dade County, Knox County, Multnomah County have similar histories of felony conviction. Ten percent or fewer have not been convicted of a felony in the past, while, in each jurisdiction, more than half of the defendants have three or more previous felony convictions. The large number of defendants with more than ten prior felonies in Dade County (14.5%) may reflect the large portion of theft/larcenies in the program's caseload. More than two thirds of the defendants in each of these programs has been sentenced to state prison at least once in the past.

TABLE 4-3

DEFENDANT PROFILE
ADULT CRIMINAL HISTORY

	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Misdemeanor Arrests														
0	52	14.3	81	19.0	22	18.6	47	24.4	44	10.7	47	18.2	60	17.8
1-2	48	13.2	64	15.0	21	17.8	35	18.1	52	12.7	37	14.3	57	17.0
3-5	165	45.6	175	41.1	57	48.3	77	39.9	173	42.2	103	39.9	132	39.3
6-10	72	19.8	66	15.5	12	10.2	25	13.0	87	21.2	59	22.9	61	18.1
11-15	11	3.0	14	3.3	3	2.5	6	3.1	38	9.3	6	2.3	18	5.4
16-20	12	3.3	9	2.1	2	1.7	1	.5	9	2.2	2	.8	5	1.5
21+	3	.8	17	4.0	1	.9	2	1.0	7	1.7	4	1.6	3	.9
	(363)	(100.0)	(426)	(100.0)	(118)	(100.0)	(193)	(100.0)	(410)	(100.0)	(258)	(100.0)	336	(100.0)
Drug Arrests														
0	164	45.3	174	39.9	86	73.5	156	80.5	206	50.5	145	56.3	162	48.7
1	76	21.0	80	18.3	20	17.1	21	10.8	91	22.3	46	17.8	60	18.0
2	41	11.3	53	12.2	6	5.1	9	4.6	47	11.5	31	12.0	34	10.2
3-5	59	16.3	95	21.8	5	4.3	7	3.6	52	12.8	21	8.1	49	14.7
6+	22	6.1	34	7.8	--	--	1	.5	12	2.9	15	5.8	28	8.4
	(362)	(100.0)	(436)	(100.0)	(117)	(100.0)	(194)	(100.0)	(408)	(100.0)	(258)	(100.0)	(333)	(100.0)
Felony Arrests														
0	22	6.4	12	2.7	11	10.4	24	13.4	24	6.1	--	--	32	10.7
1-2	101	29.3	67	15.2	54	50.9	114	63.7	157	40.2	68	26.5	138	46.1
3-5	132	38.2	118	26.8	30	28.3	31	17.3	158	40.4	104	40.5	86	28.8
6-10	58	16.8	97	22.0	9	8.5	9	5.0	38	9.7	65	25.3	32	10.7
11-15	22	6.4	48	10.9	2	1.9	1	.6	12	3.1	14	5.4	8	2.7
16-20	10	2.9	99	22.4	--	--	--	--	2	.5	6	2.3	3	1.0
21+														
	(345)	(100.0)	(441)	(100.0)	(106)	(100.0)	(179)	(100.0)	(391)	(100.0)	(257)	(100.0)	(299)	(100.0)
Felony Convictions														
0	37	10.1	28	6.5	12	10.2	34	17.8	31	7.6	3	1.2	58	17.6
1	51	14.0	29	6.8	18	15.4	66	34.6	50	12.3	5	1.9	56	17.0
2	88	24.1	50	11.7	26	22.2	45	23.6	91	22.3	21	8.1	59	17.9
3-5	167	45.7	148	34.6	43	36.8	43	22.5	168	41.2	138	53.5	99	30.2
6-10	21	5.8	111	25.9	16	13.7	2	1.0	63	15.4	79	30.6	54	16.4
11+	1	.3	62	14.5	2	1.7	1	.5	5	1.2	12	4.7	3	.9
	(365)	(100.0)	(428)	(100.0)	(117)	(100.0)	(191)	(100.0)	(408)	(100.0)	(258)	(100.0)	(329)	(100.0)
Prior State Prison														
0	110	30.2	129	31.3	23	20.7	109	56.5	121	29.7	57	22.3	165	50.3
1	101	27.8	122	29.6	35	31.6	46	23.8	105	25.8	66	25.7	63	19.2
2	91	25.0	75	18.2	27	24.3	21	10.9	82	20.1	48	18.8	54	16.5
3	40	11.0	42	10.2	13	11.7	13	6.7	45	11.1	42	16.4	21	6.4
4+	22	6.0	44	10.7	13	11.7	4	2.1	54	13.3	43	16.8	25	7.6
	(364)	(100.0)	(412)	(100.0)	(111)	(100.0)	(193)	(100.0)	(407)	(100.0)	(256)	(100.0)	(328)	(100.0)

Defendants in Monroe County and San Mateo County have less extensive criminal records. Three fourths (76.9%) of the Monroe County defendants have two or fewer past felony convictions, and 17.8% have none. Fewer than half (43.5%) have ever been sentenced to state prison. In San Mateo County, defendants are more varied in their background; 17.6% have no prior felony convictions, but 47.4% have three or more.

Finally, Table 4-4 profiles the release status of CCP defendants at the time they were arrested on their current charge. Multnomah County, which includes release status in their selection criteria, has the greatest portion of defendants on probation (26.3%) or parole (37.5%). Philadelphia also has a great majority of defendants on probation (42.4%) or parole (20.5%). Monroe County (37%) and Dade County (29%) have the fewest defendants on supervised release (the Dade County figure reflects recent reforms that will eliminate parole in Florida).

Conclusion

Selection criteria defines the gateway to career criminal programs, and will strongly influence their operation and result. The preceding analysis documents the variation in selection criteria between the study sites and compares the resulting caseload in terms of crime severity, personal characteristics of the defendant, and defendant criminal history. Subsequent sections describe and compare the ways in which these distinct caseloads are prosecuted in the study jurisdictions.

TABLE 4-4

Defendant Status at Time
of Arrest

Status	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
No Probation/Parole	131	43.2	215	69.4	43	44.4	90	62.9	133	33.0	84	36.7	152	45.0
On Probation	61	20.1	84	27.1	13	13.4	25	17.5	106	26.3	97	42.4	87	25.7
On Parole	108	35.7	6	1.9	40	41.2	27	18.9	151	37.5	47	20.5	97	28.7
No Indication	1	.3	3	1.0	--	--	--	--	--	--	--	--	--	--
Other	2	.7	2	.6	1	1.0	1	.7	13	3.2	1	.4	2	.6
	(303)	(100.0)	(310)	(100.0)	(97)	(100.0)	(143)	(100.0)	(403)	(100.0)	(229)	(100.0)	(338)	(100.0)

1. Dahmann and Lacy. Criminal Prosecution In Four Jurisdictions: Departures from Routine Processing In the Career Criminal Program. McClean, VA: MITRE, June, 1977.

2. J. Petersilia and M. Samulon, Habitual Offender Characteristics and Criminal Career Patterns In A Review of the Literature Dealing with the Dangerous Habitual Offender 8 (Rand, Working Note, Feb. 1976).

3. E. Chelmsky and J. Dahmann, National Evaluation of the Career Criminal Program: Draft Report McClean, VA: MITRE, October, 1979:133.

4. "Career Criminal Prosecution: Potential Objectives" In Journal of Criminal Law and Criminology.

5. "From 'Habitual Offenders' to 'Career Criminals': The Historical Construction and Development of Criminal Categories", Law and Human Behavior Vol. 6, No. 314, 1982: 273-293.

6. Greenwood, Ibid.

7. Office of Criminal Justice Planning, California Career Criminal Prosecution Program: 1982 Legislative Report. Sacramento, CA, 1983: 20.

SECTION 5

CASE MANAGEMENT AND PROCESSING

A basic assumption of career criminal prosecution programs is that local prosecutor's perform functions that can provide important leverage on the outcome of cases involving career criminals. This assumption hinges on two sets of considerations.

1. Career Criminal Programs must be able to develop procedures for charging, case development, and case presentation that will represent improvements over current practice. Improved procedures and enhanced resources will overcome existing deficiencies in the handling of cases that will qualify as career criminal. Opportunities for improving internal procedures will be particularly important for impacting relatively immediate objectives such as conviction rates, case processing time, or sentencing.
2. The functions of the prosecutor's office within the local criminal justice system must be sufficiently central and pervasive to effect the desired outcomes. These external considerations will be particularly important for the more distal effects on incarceration time, crime, or the system itself.

A major objective of the current study is to identify and compare the case management and processing practices developed within the seven career criminal programs. If the rationale for these practices is to be understood, and their effectiveness assessed, they must be described within the contextual opportunities and constraints in each jurisdiction.

To accomplish this objective, this section will describe and compare the structure and process of felony case processing in each jurisdiction. The

structure consists of one or more: police agencies, prosecuting agencies, courts with criminal jurisdiction, and local and state correctional agencies. Woven among them are: probation agencies, pretrial release services, and various arrangements for the provision of defense counsel for indigents.

The process consists of the basic steps through which felony cases pass in each of the seven jurisdictions. This section focuses on the intake and accusatory stages and the following section concludes the description with a discussion on the trial, disposition, and sentencing phase of the process.

FELONY CASE PROCESSING

The progress of a felony case through the criminal justice system is complex. Describing the process is made more challenging when seven separate systems with their own organizational structures and legal requirements are involved. To facilitate the presentation of the material, a number of phases and steps that must be accomplished in most local justice systems can be identified.

The ways in which each step is accomplished will vary between states and localities, but the sequence of steps will be similar in all.

Intake Phase

Felony cases enter the criminal justice system through an Intake Phase. Intake is fundamental to case prosecution because it is the initial point at which the prosecutor makes charging decisions -- it illustrates the

gate-keeping function of the prosecutor." [1] Intake is also the point at which initial information concerning the criminal incident and the defendant passes from law enforcement to the prosecutor. This information forms the basis for an initial decision to charge. Intake can be divided into two steps: [2]

1. Arrest, booking, and referral of the case for prosecution; and
2. the initial decision to charge, usually in the form of an initial accusatory instrument.

Accusatory Phase

The second phase in the progress of a felony case through the justice system is the Accusatory Process. The accusatory process takes a great variety of forms across the states, but in all jurisdictions the outcome determines whether the case will pass on to further steps of felony case processing. The central issue in this second phase is the determination of probable cause to hold the defendant to trial on the felony charge(s) filed by the prosecution. The phase consists of three steps.

1. Initial appearance before a lower court judge or magistrate. At this point the conditions of pretrial release are usually set.
2. A preliminary hearing before a magistrate or grand jury to determine probable cause.
3. Filing of an accusatory instrument (indictment or information) with the felony court (binding over).

Trial and Disposition Phase

Preparation for felony trial and disposition marks the third phase in case processing. This phase is often the "most work-intensive, since it anticipates the possibility of trial."^[3] At this stage the prosecutor focuses on attaining a favorable disposition in the case rather than focusing on the charging decision. This phase will be described in three steps.

1. Arraignment in felony court.
2. Pre-trial preparation including the filing of motions and pre-trial conferencing (it is at this stage that plea negotiations often take place).
3. Trial and disposition.

Sentencing and Corrections Phase

The final phase in the progress of felony cases through the justice system is Sentencing and Corrections. In this stage the central question concerns the determination of sentence to be applied in cases which produce a conviction in the trial and disposition phase. In this phase the role of the prosecutor diminishes -- indeed the prosecutor may not be involved at all. This final phase consists of three steps.

1. A presentence investigation providing detailed information on the crime and the defendant for judicial consideration in sentencing (not in all jurisdictions or in all cases).
2. Imposition of sentence.
3. The decision to release from corrections.

This section and section 6 are organized by these phases and the steps within them. An overview of the case processing steps in each of the jurisdictions will be presented, followed by a detailed discussion of each phase across all sites. A concluding section will summarize and compare the ways in which career criminal management and case handling have developed within their jurisdictional contexts.

OVERVIEW: CASE PROCESSING IN THE JURISDICTIONS

The phased model provides a framework through which to compare case processing in the study sites. Figure 1 provides a schematic comparison of regular and career criminal case processing through each step of the model. The schematic requires some explanation. Solid lines represent case processing within the standard organization of the prosecutors office. If a single solid line passes through a step in the case processing model, it means that career criminal cases are handled within the regular organization of the prosecutor's office at that point. A dashed line represents the flow of career criminal cases once they are organizationally separated from the regular organization of office proceedings and handled in a separate selective prosecution unit. Light dashed lines represent secondary or auxiliary lines of referral to the unit.

The squares and rectangles along each path represent the organizationally distinct points at which steps in the process are accomplished. A contiguous rectangle encompassing more than one decision point indicates that decisions are made in a single undifferentiated organizational structure. Thus, in Knox County, career criminal cases are docketed and processed in the same

courtrooms. Labels indicate local terminology for organization of the steps in case processing.

The comparative flow chart will be explained in detail in ensuing sections of the report. Before beginning the description of the procedures used in each site, some general orientation to differences between procedures will facilitate their presentation. The flowchart graphically depicts basic distinctions in the organization of career criminal programs. First, the programs differ in the degree and nature of organizational separation from regular felony case processing. Three distinct organizational designs are utilized:

1. Bifurcation. A bifurcated design for program organization is most common in the jurisdictions. In this design career criminal cases are handled by a separately staffed organizational unit in the prosecutor's office, but there is no corresponding organizational specialization in other components of the criminal justice system. In a completely bifurcated design, career criminal cases would be handled from intake to sentencing by a designated unit in the prosecutor's office, but they would be handled by law enforcement, courts and corrections just as any other felony case.
2. Coordination. A coordinated design provides career criminal cases separate organizational status in the prosecutor's office and in other agencies within the criminal justice system. In a completely coordinated system career criminal cases would be subject to targeted treatment in law enforcement, courts, and corrections as well as in prosecution. The Cook County system provides a prime example of coordination between courts and prosecution.
3. Integration. Integrated designs identify career criminal cases and may establish separate policies for case handling but do not provide specialized staff or organizational resources for their prosecution. Dade County is an example of integrated program design within the study jurisdictions.

These approaches provide a means of describing and comparing the organization of career criminal programs. Specific programs, however, frequently mix designs at different steps in case processing. The remainder of this section will address each phase of case processing in the study jurisdictions.

INTAKE

The intake phase is the point at which prosecutors provide a bridge between law enforcement and the court system. It is the point at which the charges warranted by a criminal incident are initially determined. The intake phase of each jurisdiction will be described in terms of structure -- the criminal justice agencies that are involved, and the procedures used to accomplish step 1 (arrest, booking, and referral) and step 2 (initial decision to charge).

Cook County

Intake in Cook County is shaped by the fact that all ROC courts are located in a single location -- the major court building at 26th and California. The courtrooms in that facility receive cases almost entirely from the Chicago Metropolitan Police (CMP). Thus, intake for 99.2 percent of career criminal cases in Cook County originates with the CMP, a very small number of cases are received from the Cook County Sheriff. Intake from the CMP is accomplished through the Felony Review Unit, a specialized unit within the prosecutor's office. Felony Review is the most important structural element in the intake phase.

The Felony Review Unit was initiated in the early 1970's to provide early prosecution review and involvement in homicide cases. Within the next few years the procedure was expanded to cover all felony arrests. The unit is currently staffed by 27 Assistant State Attorneys (ASA's). Attorneys are available 24 hours a day, serving shifts of 12 hours on, 12 hours off; three days on, three days off. Felony review is staffed to ensure that trial experienced attorneys are available to aid in charging decisions at the beginning point of prosecutorial involvement in Chicago felony cases. Experienced attorneys are periodically rotated through Felony Review for six month assignments. At any one point, eight experienced trial attorneys will be assigned to the Unit. These senior attorneys act as a resource to less experienced Felony Review Assistants, and will personally respond to serious cases.

Felony Review is contacted with every felony arrest in Chicago. Unit ASA's provide immediate advice to detectives concerning: a) the appropriate felony charge for the incident, and b) commentary and advice on potential improvements in the case evidence, e.g., suggesting an in-person lineup. In determining the appropriate felony charges, ASA's assess both the nature of the incident and the likelihood that the evidence will support those charges beyond probable cause.

There are a number of "rules of thumb" influencing ASA decisions in the review process. All cases of murder, attempted murder, or sexual assault are reviewed in person, as are most cases of aggravated assault. In personal reviews defendants and witnesses may be interviewed. Robberies and

residential burglaries may be reviewed in person depending on the seriousness of the incident and the availability of a Felony Review attorney. Other cases are reviewed by telephone.

While attorneys exercise discretion in making felony review decisions, there are guidelines that will usually be followed. A "single finger" identification of a defendant by an average citizen, for instance, would usually suffice to support felony charges. When a felony arrest has been approved, the Felony Review attorney prepares a case indicating the approved charges and including the defendant's CMP rap sheet. The case file passes on to the Municipal Court division of the prosecutors office, and the intake process is complete.

Career criminal cases are not differentiated from other felonies during the intake phase. However, the high visibility of the ROC courts in Chicago means that Felony Review ASA's are aware of the destiny of cases meeting the ROC court criteria. While there are no formal differences in decisions involving these cases, ASA's perceive that felony review is likely to allow "serious" cases through on more marginal evidentiary grounds than for routine cases.

In sum, there is no formal selective treatment of career criminal cases at the intake stage in Cook County. However, intake does insure early prosecutorial involvement in serious felony cases.

Dade County

Intake in Dade County involves 27 separate metropolitan area police agencies. Approximately eighty percent of felony arrests in Dade County are

Initiated by police officer's apprehending a subject based on the officer's determination that probable cause exists to believe a felony was committed. The most important arresting agency is the Metro-Dade Police Department (MDPD) who referred 44.3 percent of the career criminal cases sampled. The Dade County Sheriff referred 21.6 percent and the remaining 34.1 percent of the career criminal cases were arrests by law enforcement agencies in the many smaller cities in Dade County.

When a felony arrest is made, the suspect is booked in Dade County jail and an arrest affidavit (A-Form) is completed. The original A-Form is forwarded to the County Clerk where it is assigned for arraignment in a Circuit (felony) Court. Arraignment is set within 14 days if the defendant is in custody, and 21 days if on release. Felony arrests are therefore docketed for arraignment independently of prosecutorial action.

Simultaneously, a copy of the A-Form is forwarded to the office of the State Attorney. The A-Form is accompanied by any rap sheets in possession of the MDPD. Within the prosecutor's office, juvenile rap sheets are obtained for all 18-23 year olds if available. The file is then processed by the Intake staff of the felony division. This staff contacts victims and witnesses to notify them of their responsibilities to appear during the probable cause phase, and passes the file on for assignment to a felony ASA. Prior to assignment, cases are screened by clerical staff and referred to the Career Criminal Program Chief if they meet basic eligibility criteria. The program Chief makes the final decision to stamp the case as career criminal and cases

are then assigned in regular rotation to one of the three ASA's in the court division in which the case will be arraigned.

The Dade County Intake Phase is unique because cases are assigned for arraignment in felony court on the basis of the police A-Form. There is no need for the prosecutor to make a decision to charge in a lower court. The prosecutor's office has no early involvement in the intake phase, and receives a case with police charges attached. In Dade County the prosecutor does not exercise discretion to charge at the intake phase.

Career criminal cases are differentiated from other felonies in this stage. The selection process involves clerical screening according to the selection criteria and a final decision to designate a case "career criminal" by the program Chief.

Knox County

In Knox County the great majority of felony arrests are made by the Knoxville Police Department (KPD). For career criminals in this study, 82.8 percent were arrested and referred by the KPD, 7.4 % by the Knox County Sheriff, the remainder by other metropolitan area police agencies. In large part, police-prosecutor interaction in the jurisdiction is between the KPD and the office of the District Attorney General.

Intake in Knox County is initiated by arrest and booking. The initial charges in a case are filed in General Sessions Court on the basis of a police arrest warrant (or through citizen's complaint). Thus, in the normal procedure, prosecutorial discretion will not be exercised in the initial

filling. Daily arrest sheets are sent to the office of the Attorney General where, in routine case processing, they are assigned to General Sessions Court attorneys for preliminary hearing preparation.

Career criminal case processing in Knox County provides a strong departure from the regular intake process, particularly in the early years of the program. Vertical representation was "the foundation" of the initial LEAA-funded program in Knox County. An aggressive use of this policy meant early involvement in cases, something not possible with the existing patterns of horizontal representation (e.g., separate lower and upper court prosecutors). To facilitate early intervention the career criminal unit established close involvement with the KPD and the Knox County Sheriff's Office. Unit personnel made presentations and did training in career criminal program procedures before local law enforcement agencies. A clear and consistently applied strategy of the Knox County program was close informal involvement with law enforcement.

As part of this involvement, a unit attorney was available on call 24 hours a day. The attorney was to provide advice and assistance to law enforcement. In practice, the Knox County unit responded to law enforcement by becoming involved in the earliest stages of case development. On call attorneys were regulars at the KPD station house, and became involved with law enforcement in several large "sting" operations. A strong informal network of communications developed between law enforcement and the CCU in Knox County. In the early years of the program this network was a prime element in the intake of career criminal cases. Career criminal attorneys were informed of

cases at arrest, and became involved in developing the case well before the prosecutor's office would have been informed under regular procedures.

In addition to on-call involvement with law enforcement, the Knox County program installed several screening devices that focused on intake. The first screening of cases took place with law enforcement. The KPD and Knox County Sheriffs Office provided initial screening of all cases to determine whether they met the two prior felony rule. Law enforcement screening was originally accomplished in two phases, by individual officers and by staff in the case preparation rooms that aid officers in preparing paperwork for cases. Eligible cases identified by law enforcement are routed directly to the career criminal unit for consideration.

A second screening was accomplished in the prosecutor's office. The career criminal unit secretary reviews the daily arrest records (computerized) for career criminal eligibles that have not been referred. All cases identified as eligible are then referred to the unit chief for final acceptance as a career criminal case.

The intake process for career criminals in Knox County can depart dramatically from regular procedures. If CC attorneys are notified of a case at arrest they will be involved in charging decisions before the initial filing of a warrant. If the case is identified through later referral or screening, CC attorneys will be involved prior to preliminary hearing. The key to early intervention in Knox County was close communication with law enforcement, a strategy that was feasible because of the predominance of two law enforcement agencies and the modest size of the jurisdiction. Reliance on close communication, however, had further implications.

First, the close relations with law enforcement offers one explanation for the discrepancies between the actual crimes prosecuted in Knox County program and those targeted in selection criteria (see previous section). Law enforcement saw career crime as primarily a property crime problem. A close working relationship with the Career Criminal unit encouraged the unit to accept cases in that category. Second, ties with law enforcement were largely dependent on particular CCU personnel. Strong personal links between attorneys and detectives were established in the early days of the unit. This basis of communication is not institutionalized, and does not transfer easily when personnel change. As a result the intake process in Knox County has changed over time. The reliance on law enforcement initiated referrals has been replaced by daily screening of arrest records in the office of the District Attorney General.

Monroe County

The great majority of felony arrests in Monroe County are generated by the Rochester Police Department (RPD). Ninety four percent of the career criminals in this study were arrested by that unit. A small number of felony arrests are made by other municipal police agencies in the county. Following booking, felony arrests are docketed in City Court for arraignment on police charges. Arraignment will occur the following day.

In Monroe County the Career Criminal Bureau Chief is the screening officer for all felony arrests coming into the office. Each morning, the CCB Chief

reviews the City Court Docket listing all the prior day's arrests. He not only selects CCP cases, but assigns felony cases to prosecution units throughout the office. Selection criteria for CCB take precedence over all others in the jurisdiction. Cases are identified as career criminal and assigned to a prosecuting attorney the day after arrest.

Multnomah County

In Multnomah County the Portland Metropolitan Police are the most important arresting agency, accounting for 85.8 percent of the career criminal case arrests in the study sample. Intake procedures for felony arrests in the jurisdiction are decentralized. The day after a felony arrest, cases are delivered by police detectives to each prosecution unit in the office. The office is organized into a series of specialized bureaus, and police officers make the preliminary decision on which should receive the case.

Deputy Assistant prosecutors in each section review case files for "issuing", e.g., they determine what charges are appropriate for filing at initial arraignment in district court. They may issue charges within their unit responsibility, refer the case to another unit, or issue the case as a misdemeanor and send it to the District Court division of the prosecutor's office. Felony charges are filed in District Court at the defendant's initial appearance.

Career criminal cases are now issued in the same way as those in other units. Before Unit C and CCU were merged into the MVB, however, screening of CC cases was accomplished by a single person -- the supervisor of the unit.

Indeed, unit supervisors used their screening discretion to regulate the caseload of the unit. In the early implementation of the program, discretion was also used to reject very weak or problematic cases. Discretion in accepting cases as career criminal cases has been greatly reduced. The decentralization of screening to individual Deputies within the office has tended to increase adherence to the written criteria. No one person is in a position to exercise judgement.

Multnomah County utilizes the "federal model"[4] of initial charging. In this model prosecutorial involvement is maximized because police refer arrests to prosecutors before the initial filing decision. Police do not determine the charges upon which a defendant will be arraigned. This practice gives maximum prosecutorial influence on charging, and provides a convenient spot for CCP case screening.

Philadelphia

In Philadelphia, the only law enforcement agency of importance for felony arrests is the Philadelphia Police Department. Historically, the police were responsible for filing formal charges at the initial court appearance. However, since District Attorney Rendell took office, initial charging responsibilities have been transferred to the DA's office. Following a felony arrest and booking, cases are taken to the DA "charging trailer". Assistant District Attorney's review case files and determine the charges that will be filed at preliminary arraignment.

Career Criminal cases are initially identified at this point. CCU attorneys rotate 24 hour on-call duty to screen cases for acceptance into the unit. As a rule, the ADA will receive a telephone call from a police detective or from an ADA in the charging trailer. The CCU attorney reviews (via phone) the defendant's conviction record and the circumstances of the instant offense. He or she then makes an immediate decision whether to accept the case.

Under the Unit's vertical prosecution policies, ADA's are responsible for the prosecution of cases they accept into the unit. While the criteria for selection are clearly set forth, evidentiary quality and witness credibility may, in extreme cases, influence case acceptance. A check on individual screening is built into the system. The CCU Chief (or his designee) may review the arrest tickets of the past 24 hours and accept additional defendants. In practice, when an additional case is accepted it is usually because of new information (e.g., more criminal history information).

San Mateo

San Mateo County does not have a single police agency predominately responsible for felony arrests. The most important police agency is the San Mateo County Sheriff's Department, which made the arrest in 41.3 percent of the career criminal cases in the study sample. The majority of felony arrests in the county are made by local police agencies in the many small communities in the jurisdiction. The most important of these are San Mateo, Redwood City, South San Francisco, and east Palo Alto.

The Intake of felony cases in California involves review of charges by Deputy Attorneys assigned to Municipal Court. Prosecutors receive police arrest

reports, review them, and make the initial decision on filing charges at first arraignment.

Career criminal cases are identified and selected in the intake phase. Primary screening is accomplished by the supervising prosecutor in each of three branch Municipal Courts -- California's preliminary hearing courts. These supervisors are experienced superior Court prosecutors who are responsible for filing charges at the defendant's initial court appearance. They are also trained to apply California's selection criteria to filings and to refer them to the CCU.

In addition to this primary screening, a small number of cases enter the program through one of three alternative paths. Police may notify the Unit concerning a career criminal case, the Unit supervisor may pull in a case after the initial arraignment because a number of "pending cases" have been identified, or CC Deputies themselves may "shakeout" cases in Municipal Court that have gotten by the initial screening. The current supervisor encourages Unit deputies to make weekly trips to the Municipal Courts to go through cases and pick up cases that may have slipped through regular screening. In his estimation, this type of "aggressiveness" is important if the advantages of lowered caseload are to be realized. The usual career criminal case in the jurisdiction will be referred at intake, and will be vertically prosecuted through Municipal and Superior Courts. Though vertical prosecution has always been used on homicide cases in San Mateo, and has now been adopted by the rape unit, in standard office policy felonies are prosecuted horizontally.

Summary and Comparison

Intake provides the gateway to felony prosecution; and sets the stage for felony case processing in later phases. Several distinctions between the study jurisdictions stand out. First, prosecutors have differing levels of input into the initial charging decision. In Multnomah County, Philadelphia, San Mateo County and Cook County prosecutors are responsible for reviewing all police charges and filing initial charges for arraignment. In Dade County, Knox County, and Monroe County defendants are initially arraigned on police charges. Under normal procedures, prosecutors are not at all involved until a later stage. Indeed, in Dade County the prosecutor who will handle a felony case does not review it in detail until a week or more after arrest.

A second set of distinctions between jurisdictions concerns the point at which career criminal cases are targeted for selective treatment. In Philadelphia and Multnomah County career criminal cases are routinely identified and accepted into the unit as part of the standardized process of reviewing police charges before the initial court appearance. Vertical prosecution begins at initial intake in these jurisdictions. In Knox County early identification was dependent on police initiative. The first point of systematic prosecutor-initiated screening came through review of the prior day's arrests. Initial charges in these cases would be filed without identification as a career criminal, though cases would be assigned soon after the initial complaint in court. The Knox County program has increasingly relied on prosecutor-initiated selection as the informal network that facilitated police initiatives became less active.

In San Mateo County career criminal cases are flagged at the first court appearance, though law enforcement occasionally makes calls at or immediately following arrest. In Monroe County and Dade County career criminal selection takes place through review of arrest records sent to the prosecutor while arraignment is accomplished on police records. In these cases career criminal attorneys will not routinely be involved in the initial arraignment on charges. In Cook County career criminal ASA's are not aware of cases until the municipal court procedure is complete and cases have been assigned to felony courts. Thus, routinized intervention ranges from before initial court arraignment in Multnomah County and Philadelphia, to felony court assignment in Cook County.

Some of the differences in intake procedure are simply reflections of the organization of court procedures in the different jurisdictions. These differences can, however, have important implications for case processing. Among the most important of these can be the nature of information exchange between police and prosecutors. In this regard, there are several patterns. Knox County represents the extreme of close informal interaction between law enforcement and prosecution in a portion of the units cases. The unit was small, and unit attorneys were well known to detectives in the jurisdiction's two major police agencies. Unit prosecutors regularly did training for law enforcement, were available around the clock, and built close interpersonal ties with police agencies. The initial development of career criminal case information in Knox County involved mutual interaction between police and prosecutors.

Felony review in Chicago could, in some instances, provide interaction between prosecutors and law enforcement in the initial stages of case development, but this function was separated from career criminal identification. For many career criminal cases the involvement of felony review could be minimal.

In the remaining jurisdictions career criminal cases are, barring an exceptional circumstance, developed initially by law enforcement without direct prosecution involvement. If interaction with police for purposes of case development occurs, it will be at a later point in case handling.

THE ACCUSATORY PROCESS

With the exception of Florida, all of the study jurisdictions require that the felony accusatory process involve indictment and/or a preliminary judicial finding of probable cause if a prosecutor's information is used. Florida allows direct prosecutor's information in non-capitol crimes. The treatment of career criminal cases at the accusatory stage varies from no special procedures, to concentrated strategies for altering the accusatory process. In Cook County career criminals are not formally differentiated from other cases during the accusatory phase. In San Mateo and Dade County career criminals have been identified, but there are no specific strategies for handling them differently than other cases.

In the remaining jurisdictions, career criminals are subject to specific strategies of case handling at the accusatory stage. In Knox County, Multnomah County, and Philadelphia these strategies are designed to expedite

cases through the accusatory phase, to minimize attrition of prosecutable cases at this phase, and to bring cases into the felony courts with the strongest possible position for the state. In Monroe County the strategy is designed to bring early and positive case disposition. The following discussion describes the approach of each jurisdiction to the accusatory process.

Cook County

Illinois law allows defendants to be accused of felony crimes through grand jury indictment, through prosecutor's information after a preliminary hearing of probable cause by a Municipal Court judge, or through prosecutor's information if the defendant waives the right to a hearing. Prosecutor's information is the predominate mode, though grand jury indictments are not uncommon in serious felony crimes. The grand jury provides certain advantages for the prosecution of serious felonies. In particular, there is no court record of testimony that can be used to impeach later testimony that goes "off the paper" (differs from preliminary hearing testimony). In some instances it is advantageous to be able to admit hearsay evidence relying on witnesses reported to police officers.

In Cook County initial charges are filed by Municipal Court ASA's. Initial bond is set at this initial hearing. The Illinois Constitution provides bail for all offenses except murder, aggravated kidnapping, or treason. Among other factors, bail is to be set commensurate with the nature of the offense charged, and the past criminal acts and conduct of the defendant. Even though career criminal cases are not specifically flagged at this stage,

84.2% of the career criminal cases in the study were in custody from arrest to disposition.

Municipal Court ASA's also represent the state at preliminary hearings if a prosecutor's information is used, and at grand jury in grand jury indictments. Although Municipal Court ASA's do have the ability to resolve cases through accepting pleas, office procedures minimize the possibility that career criminal cases will be resolved in Municipal Court. Assignment to Municipal Court is an early step in the career path of prosecution attorneys in Cook County, and ASA's in these positions are not likely to accept pleas to any other than the top charge in serious cases. The high visibility of the ROC Courts helps ensure that young ASA's understand the seriousness with which qualifying cases are regarded. Consequently, it is very unlikely that career criminal cases will be resolved in Municipal Court.

Accusatory instruments used for Cook County career criminal cases in this study represented both major avenues available in Illinois. More than half (61.2%) of the cases were accused through prosecutor's information; the remainder (38.8%) were indicted through the grand jury. All but two of the grand jury indictments were returned against persons in custody.

In sum, Cook County does not have a separately articulated policy for accomplishing the accusatory phase for career criminal cases. The standard policies of taking serious or problematic cases to the grand jury means that close to forty percent of their career criminal cases come through the grand jury. Career criminal cases in Cook County are not specifically flagged during the intake and accusatory stages. However, the jurisdictions standard

procedures are designed to focus felony review on more serious cases, and to ensure felony accusation in these cases.

Dade County

The accusatory phase in Dade County is unique among our jurisdictions. The initial stages of accusatory in the state are routinized and relatively independent of the prosecutor's office. The Florida constitution guarantees bond as a matter of right on all crimes not punishable by the death penalty or life imprisonment. At the time of arrest, defendants may post the standard bond and gain release. If a defendant cannot make bond they must have an initial court appearance within 24 hours. This initial appearance accomplishes several things. First, the bond decision may be revised. Second, charges are initially recorded in court based upon the police report. Third, there may be a finding of probable cause by the magistrate on the basis of the police report. If the evidence on the report is inadequate, the magistrate may require a second hearing within three days to hear additional police testimony and make a probable cause determination. Once this initial determination has been made on the police record, the prosecutor may file an information directly in the Circuit Court.

When cases enter the prosecutors office they are scheduled for a pre-filing conference which will take place within 10 days. Pre-Filing Conference secretaries contact victims, witnesses, and police officers to schedule the conference. They also prepare a packet containing arrest forms, screening sheet, copies of notices and postcards to participants, sworn testimony forms, charge form, adult criminal history, and juvenile record (if any).

At the pre-filing conference, the attorney assigned to the case will

1. interview and take sworn testimony from police, victims, and witnesses;
2. determine what follow-up work needs to be accomplished in preparation for trial;
3. determine what charges, if any, are appropriate in the case;
4. determine amount and nature of any restitution; and
5. discuss possible negotiations, reasons for no actions or changes in police charges, and preferred dispositions with victims and police. If they disagree with proposed negotiations, they are to be cleared with supervisory attorneys.

In sum, the major involvement of the prosecuting attorney during the accusatory phase is in the pre-filing conference. This conference combines the functions of felony review and preliminary investigation of the case. At this point the prosecutor makes the decision whether to proceed on felony charges and file an information in their Circuit Court Division. Nearly all (98.6%) of Dade County's career criminal cases proceed through prosecutor's information.

Knox County

Tennessee's accusatory phase provides a contrast to the streamlined proceedings in Dade County. Tennessee law requires a complaint at first court appearance in General Sessions Court, a separate preliminary hearing before a magistrate to assess probable cause to send the case to the grand jury, and a grand jury indictment. Prosecutor's information may be used only if the defendant waives the right of indictment. Fewer than one in five (18.2%) of

the career criminal cases in Knox County proceed through prosecutor's information, the remainder are indicted.

As a consequence of the multiple decision points, the Tennessee accusatory procedure could allow excessive time to lapse prior to arraignment in Criminal Court. Expediting cases through the accusatory stage was a major objective of the procedures adopted in the Knox County unit. To accomplish this objective, the unit emphasized:

1. early intervention in cases through 24 hour response to police calls,
2. prosecutorial involvement in filing initial complaints,
3. immediate scheduling of preliminary hearings, and
4. aggressive use of direct presentments to the grand jury if the defense delays preliminary hearing past 31 days.

In cases initiated by police at arrest, vertical prosecution by the unit is complete. In other cases vertical prosecution begins at the point of identification, usually prior to preliminary hearing.

The major strategy applied at the accusatory phase in Knox County is case expedition to ensure that cases arrive in Criminal Court with minimal time lapse. Close involvement with law enforcement and vertical prosecution are emphasized to maximize early familiarity with the case and early case development.

Monroe County

New York law, like Tennessee, requires that all felonies be indicted unless the defendant waives that right. If indictment is waived, the defendant may be accused via preliminary hearing and prosecutor's information. Though not mandatory, the usual procedure is to determine probable cause for indictment at a preliminary hearing, and then move for indictment in the grand jury. Nearly three fourths (74.3%) of Monroe County's career criminal cases have been indicted.

Monroe County is unique among the study jurisdictions in focusing a great deal of career criminal prosecution effort on the accusatory stage. Many of the special case handling procedures adopted in the program are intended to resolve cases before they are filed in felony court (in New York felonies may be tried in either County Court or Supreme Court). Special handling of career criminal cases begins early. Initial bonding decisions in New York are made at Municipal Court arraignment, and New York law has several provisions that work against pre-trial release of career criminals. First, bail may not be ordered in a Class A felony case (maximum sentence of life imprisonment) or if the defendant has two prior felony convictions. Further, a court may not order bail in a felony case until the prosecutor has been given an opportunity to be heard and until it has been furnished a police report concerning the defendant's prior criminal history (Criminal Procedure Law Sections 530.20, 530.40).

When making a discretionary bail decision, the court must consider:

1. the defendant's character, reputation, habits, and mental condition;
2. employment and financial resources;

3. family ties and length of residence in the community;
4. criminal record;
5. previous record of court appearances or flight to avoid prosecution;
6. record of previous adjudication as a juvenile delinquent;
7. probability of conviction, given the weight of evidence against the defendant, or, if on appeal, the merit or lack of merit of the appeal;
8. the sentence which may or has been imposed upon conviction.

If they are aware of the case, the Career Criminal Unit attempts to have a unit attorney at arraignment to ensure that the court is aware of salient bonding considerations. A unit attorney will be present at bail review hearing which will take place within 5 days. Ensuring that the defendant is in custody is a particularly important concern in the Monroe County program not only to ensure the safety of the community, but because it provides an incentive to plead.

A second policy at the accusatory stage is to attempt to bypass the Municipal Court preliminary hearing and present directly to the grand jury within 48 hours after arraignment. Career Criminal Unit attorneys determine the charges that will be taken to the grand jury. The unit also made use of a unique "open discovery" policy early in the prosecution of a case. The policy meant that the state made its entire case available to defense at a very early point, almost always before preliminary hearing or grand jury presentment. The "open discovery" policy was very important. In strong state cases they gave another very real incentive for the defense to negotiate and settle the case.

The final element in specialized handling of career criminal cases in the accusatory phase was an early plea negotiation policy. From initial arraignment until the case is arraigned in felony court there is a "standing offer" of a one step reduction in top charge (e.g., from class b to class c) and a negotiated agreement on sentence. If, however, the case is arraigned in felony court without a guilty plea, the unit has a firm policy of accepting no negotiated pleas. If a plea is not offered prior to felony court arraignment, there will be no plea negotiations. This policy is strengthened by the fact that in pleas offered prior to felony court arraignment the judge must accept the entire settlement including sentence, but that the prosecutor has little effective input into sentence in felony court.

Thus, career criminal case handling at the accusatory phase in Monroe County is consciously designed to produce a guilty plea prior to felony court arraignment. The policy combines expedited case handling, early and complete vertical representation, open discovery, and an early plea negotiation policy. The incentives to settle early are reinforced by a firm policy against any plea negotiation after felony arraignment.

Multnomah County

In Oregon felony accusations may be made either by indictment or by prosecutor's information following a preliminary hearing finding probable cause. Initial arraignment is made on charges "issued" by prosecuting attorneys, and bond is set at that point. The Multnomah County program does

not attempt to resolve cases in the accusatory phase, but it does handle career criminal cases differently than most felonies.

Specifically, career criminal cases are indicted while the typical felony procedure is preliminary hearing and prosecutor's information. The great majority (84.3%) of career criminal cases in Multnomah County were indicted. The policy has several rationales. Most importantly, a thorough grand jury presentment allows the attorneys to develop familiarity with a case at an early stage. In the words of one attorney, "it can be like conducting a mini trial." Victims, witnesses, and police officers can be interviewed in person, and their performance on the stand assessed. After the grand jury presentment the prosecuting attorney will have a strong sense of the strengths and weaknesses of their case.

The grand jury policy has other advantages. The procedural advantages of not having an official transcript for impeachment of later testimony obtain, and the prosecuting attorney can maintain more control over the scheduling of the procedure than might be true in preliminary hearings where continuances are common. While the office always had a strong preference for indictment in career criminal cases, the use of the grand jury by the unit has become universal. A recent court case (the Friedlander decision) has ruled that differential use of the grand jury for categories of cases is permissible, but that the criteria for differentiating must be clearly developed and uniformly applied.

Philadelphia

Pennsylvania has allowed the grand jury to be abolished in several of the state's large urban counties, including Philadelphia. Accordingly, all felony cases in Philadelphia proceed through preliminary hearing and prosecutor's information. Career criminal cases go through the same steps as other felonies in the jurisdiction, but they are separately identified.

CCU case arraignments and preliminary hearings are all heard in one courtroom. This court handles felony preliminaries for CCU and other major felony cases. The judge at initial arraignment is informed that a defendant has been accepted for prosecution in the career criminal unit. This is considered in making bonding decisions and almost no CCU defendants gain pre-trial release. Vertical prosecution begins at preliminary hearing, and, except for unavoidable substitutions, is complete. With the exception of assignment to a single courtroom, and vertical prosecution, career criminal case prosecution is not exceptional in the accusatory phase.

San Mateo County

California felony accusatory can be accomplished by indictment or by prosecutor's information. In the latter case charges must be those listed on an order of commitment from a magistrate following preliminary hearing or be supported by the evidence presented at preliminary hearing. If a defendant pleads guilty to felony charges, they can be accused through a prosecutor's complaint. In practice, the grand jury is rarely used. The great majority (88.6 %) of San Mateo County's career criminal cases proceeded through prosecutor's information or complaint.

Since the majority of case screening is accomplished as charges are being reviewed for initial arraignment, CCU attorneys are not usually present. There is little unit input into bond decisions made at this step. However, in making bonding decisions, California judges are required to consider: a) the seriousness of the crime, b) the defendant's prior record, and c) the probability that the defendant will appear. Career criminal defendants rarely gain pre-trial release under these criteria. The unit has not focussed energy on bonding decisions because, in the words of the unit supervisor, it "hasn't been a problem."

Vertical prosecution by unit attorneys usually begins at preliminary hearing. Thus, career criminal attorneys are involved in Municipal Court proceedings. The unit's visibility in Municipal Court is also increased by regular (ideally weekly) visits by unit attorneys for the purpose of identifying cases that may have slipped through screening at initial arraignment (e.g., unit attorneys may have knowledge of eligible defendants even though eligibility on the basis of the rap sheet is unclear). This kind of aggressive pursuit of cases is encouraged because it reflects positively on the unit's image before other members of the criminal justice system.

Summary and Comparison

The study jurisdictions manifest distinct approaches to managing career criminal cases in the accusatory phase.

- i. Monroe County is unique in applying a concerted strategy to create strong incentives for the defendant to accept a negotiated plea prior to arraignment in felony court. In

this jurisdiction major efforts in career criminal prosecution apply at the accusatory phase.

2. More commonly, programs have developed methods of expediting the accusatory phase and advancing cases to felony court with maximum preparation. In Multnomah County the unit utilizes direct presentation to the grand jury; the Knox County program utilizes early intervention and an expedited preliminary hearing; Philadelphia has a designated Municipal Court for career criminal accusations.
3. In other jurisdictions career criminal cases are identified during the accusatory phase, but no special procedures (other than an increased level of attention and effort) are in place. Dade County and San Mateo County exemplify this approach.
4. Finally, in Cook County career criminal cases are not identified until the end of the accusatory phase. Beyond the recognition of their seriousness by Municipal Court prosecutors, career criminal cases are not selectively prosecuted at this stage.

The degree of emphasis on the accusatory phase in some jurisdictions can be related to the requirements of local criminal justice systems. Generally, there is less specific attention to the accusatory phase where the system has already simplified accusation, or in which the procedure is highly regularized. In Dade County the development of the pre-filing conference and the use of direct information to felony court already gives the prosecutor a high degree of control in the accusatory phase. In San Mateo County prosecutor's information is exclusively used, and in Cook County the program is a regularized element in a large, bureaucratized prosecution office.

Those jurisdictions with the greatest emphasis on the accusatory phase are also those with the most complex accusatory procedures, allowing prosecutors more options in case handling and the defense more options for delay. Thus Monroe County, Knox County and Multnomah County all try to simplify or expedite the accusatory options in career criminal cases.

1. Jacoby, op cit., 282

2. The ten steps used here to describe the progress of felony cases through the criminal justice system have been adapted from Dahmann and Sulaman, op cit., p.

3. Jacoby, op cit., 287

4. W.F. McDonald, H.H. Rossman, and J.A. Cramer, Police-Prosecutor Relations In the United States; Final Report, Washington D.C.: Institute of Criminal law and Procedure, Georgetown University Law Center, December, 1981

SECTION 6

CASE MANAGEMENT AND PROCESSING: TRIAL AND CASE DISPOSITION

The heart of felony prosecution lies in felony court deliberations concerning guilt or innocence. These proceedings begin with felony court arraignment and end with a case disposition. The events that constitute this central component of case processing are a mix of formal procedure and informal cooperation and negotiation. These events are constrained by several important factors including felony court structure, procedures, and resources; the defense bar; and the nature and strength of the case itself. Felony court proceedings for career criminal cases in each jurisdiction will be described within the following topical areas.

The Courtroom Workgroup. Decisions concerning the disposition of felony cases are not made within a single organization. The felony decision process involves representatives of several organizations. Decisions concerning felony cases are individual decisions -- every case has its own features and requires deliberation on its individual merits. In the felony courts, decisions about cases proceed through the interactions of a limited number of actors -- what Eisentadt and Jacoby^[1] call a "courtroom workgroup." The most important actors in the felony court workgroup are the prosecutor, the defense attorney, and the judge. The extent and nature of interactions between these members will vary between jurisdictions, and even between individuals. They can be an important influence on the options available to a prosecutor in pursuing a case. The defense bar, and particularly the procedures for providing public defense, constitute an important influence on the disposition of felony cases.

Nature and Strength of the Case. Analyses of prosecutorial performance frequently overlook or underemphasize a basic reality of any prosecution. Cases differ in terms of their quality -- their triability. Selection criteria and procedures will have some impact on these characteristics of cases, and the triability

of a case must be a major factor in the strategies a prosecutor uses to gain a favorable disposition. The quality of career criminal cases will be an important factor in the way they are prosecuted.

Plea Negotiation. A well-documented and controversial fact of the criminal justice system in the U.S. is reliance on negotiated guilty pleas in the disposition of felony cases. Indeed, one of the major aims of the LEAA career criminal program was to eliminate or limit plea negotiation. A major finding in the MITRE evaluation of LEAA programs was that limitations on plea negotiation could be the primary source of leverage for career criminal prosecutors. Policies concerning plea negotiation must be a central focus for description of felony court procedures.

Mode of Disposition. The end of the procedure for determination of guilt or innocence will be a case disposition. The disposition decision can proceed in several ways. It may be a prosecutor's decision to drop a case or not to proceed; a court decision to drop charges; a bench verdict; a jury verdict; or a guilty plea. The prevalence of different modes of disposition will be a final descriptive indicator concerning trial and disposition in the jurisdictions.

Cook County

In Cook County the selective prosecution of career criminals is formally initiated with the assignment of cases to Felony Trial Courts. Prior to assignment by the presiding judge, the criminal history of each felony defendant is reviewed by court clerks. If cases meet eligibility criteria, they are assigned to one of four designated Repeat Offender Trial Courts (ROC); other cases are randomly assigned to other Felony Trial Court wings.

The numbers of felony trial courts in Cook County have more than doubled since the ROC courts were initiated in 1978. The opening of new courts at the Cook County Jail location and the opening of several new courts in suburban areas of Cook County has increased the number of felony courtrooms from 13 in 1978 to the current 33. The expansion of Court resources has stemmed and

reversed the trend toward more crowded court dockets. Currently, the typical felony courtroom will have from 130 to 150 active cases on the docket.

The wing organization of the Felony Courts with 12 Assistant State's Attorneys (ASA's) assigned to each wing of four judges means that the number of cases on a judge's docket will determine the caseload of the ASA's in that wing. A target for career criminal caseloads has been to keep ROC court dockets at 100 or fewer active cases. When the caseload moved above that level a fourth court was added in 1981. Current active caseloads are again topping 100 and there is discussion of adding a fifth court.

The designated ROC courts mean that four of 33 felony trial judges will handle all career criminal cases in Cook County. ROC court judges are selected and appointed by Chief Judge Fitzgerald, who emphasizes the importance of having the finest trial judges available in these courts. He selects ROC judges for their skill and experience in trial, and their quality is acknowledged by prosecutors and defense bar alike.

The Courtroom Workgroup

The courtroom workgroup in Cook County is much more well-defined than in many jurisdictions. The wing organization of the Courts focuses small groups of ASA's and defense attorneys in individual courtrooms. The assignment of ASA's to a court has been described above. A similar organization applies to the defense bar.

The great majority of career criminal defendants in Cook County are represented through public defense. Public defenders in Cook County are

employees in a division of the State's Attorneys office. The Public Defenders office is organized parallel to the prosecutor's office with 4 Assistant Public Defenders (APDs) assigned to each felony court wing. Thus the defense also handles only career criminal cases in those courtrooms, though there are far fewer APD's per courtroom than prosecuting attorneys.

The coordinated organization of courts, prosecutors, and public defense in the Cook County system means that career criminal trial and disposition takes place within small, stable courtroom workgroups. Strategies for prosecution and defense are shaped by knowledge of "their" judge and other members of the work group. In this setting the expectations of workgroup members, particularly the judge, will be critical in shaping prosecution strategies. Indeed, the management of cases in the Cook County career criminal wing reflects strong reliance on knowledge of the courtroom workgroup.

The Cook County program is, for example, the only program in the study that does not utilize vertical prosecution. As expressed by one program supervisor, vertical prosecution is not as important as thorough knowledge of "your" judge.

I could know a case thoroughly, know all of the witnesses by name, and it wouldn't help if I don't know my judge. The important thing is to know the judge, to know what he thinks is important, what annoys him most, and what he wants to know.

Thus cases are not assigned to an individual attorney. Original workups on cases (unless they are of particular importance) are typically carried out by the junior ASA of the courtroom team (the "third chair"). Assignment of cases is determined by the senior "first chair" in the team.

A "team" approach is used in the units with two ASA's working together on each case. In major cases both ASA's may be present at trial. The team approach also exemplifies the importance of the courtroom workgroup in Cook County. Cases are frequently discussed among team ASA's, and other ASA's in the unit. One of the most frequently mentioned positive aspect of the team approach was that it built camaraderie and morale among ROC court ASA's.

While some cases are represented by private defense lawyers, the defense is typically provided by APD's who are also regulars in each courtroom. Public defenders also expressed identification and familiarity with their judge. The ROC court concept was accepted by public defenders in Chicago, something that was not as evident in many other jurisdictions. At later points in the analysis further indications of defense involvement in the courtroom workgroup will be assessed.

Nature and Strength of the Case

Selective prosecution has been used to target cases that are particularly difficult to prosecute, such as homicides, organized crime, or drug trafficking. Career criminal selection is not based on the difficulty of prosecuting a case, but on the characteristics of the defendant. This focus raises important questions concerning the ways in which focussed prosecution can be used to "strengthen" the evidentiary base of career criminal cases.

Indeed, one of the perceptions of ASA's in the ROC wing was that the cases they typically handled were not particularly difficult to prosecute. This perception had several bases. First, the very fact of focussing the caseload

on certain target offenses was perceived to be advantageous. As stated by one ASA:

The evidence and the defense strategies for any one crime type are limited -- and predictable. You learn to anticipate what is necessary to gain conviction in a robbery, and the tactics the defense is likely to use.

The homogeneity of the caseload is an advantage in case preparation. Second, the targeted crime types are often straightforward in evidence. Armed robberies and assaults, for example, usually involve eyewitnesses.

The evidentiary base for ROC court cases reflects Cook County's emphasis on violent crime against persons. Table 6-1 displays several indicators of the evidentiary basis for ROC Court cases.

In nearly 9 of 10 ROC court cases the defendant has been identified as the person who committed the crime by at least one eyewitness. However, positive identification rests on one witness in just over half of the cases. In almost half of the cases (44.4%), the only eyewitnesses were the victims. In over one half of the cases (55.2%) the defendant was arrested in the proximity of the crime.

With respect to physical evidence, the most frequent types of physical evidence were stolen goods in the possession of the defendant (40.7% of all cases) and belongings (including weapons) of the defendant associated with the crime (41.5% of all cases).

TABLE 6-1
EVIDENTIARY FACTORS — COOK COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	97	26.6
Pursued from Scene	39	10.7
In Proximity	65	17.9
Not in Proximity	<u>163</u>	<u>44.8</u>
	364	100.0
Positive Identification by Witness		
None (no witness)	35	9.7
One	183	51.0
Two	94	26.2
Three or more	<u>47</u>	<u>13.1</u>
	360	100.0
Witness Characteristics		
Stranger to Defendant	163	45.3
Acquaintance	37	10.3
Victim	<u>160</u>	<u>44.4</u>
	360	100.0
Tangible Evidence*		
Fingerprint Impressions	61	16.5
Blood, Hair, Semen, etc.	43	11.7
Stolen Goods	150	40.7
Weapons, Tools, Belongings	153	41.5
Other Physical Evidence	88	23.8

* Rate based on % of total career criminal cases. N=369

This evidence profile demonstrates that in the great majority of cases there is at least one eyewitness positively identifying the defendant. The program's focus on violent personal crime is reflected in the fact that witnesses are frequently victim(s) with no corroborating strangers viewing the crime. The prevalence of eyewitnesses substantiates the claim of ASA interviewees that they focus a lot of case preparation time on personally contacting, interviewing, and preparing witnesses for court. It also substantiates their observation that the two wing investigators were most useful in locating witnesses and serving subpoenas.

Plea Negotiation

ROC Court prosecutors have no special policies concerning the negotiation of guilty pleas. The determination of what constitutes a reasonable settlement is primarily that of the ASA, or team, prosecuting the case. However, the extensive prior records of career criminal defendants mean that they will not receive the concessions that defendants with lesser records might. ASA's also observed that the lower caseload and greater trial readiness of the unit contributes to a higher standard in plea negotiations.

Since the implementation of determinate sentencing law, plea negotiations have focussed on an agreement to the sentence that will be specified by the judge. Illinois law (110 Illinois Annotated Statutes Section 402) prohibits a judge from initiating plea discussions. If the parties reach a tentative plea agreement which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed, or that specific charges will be dismissed, the trial judge may hear the tentative agreement and indicate whether he will concur in the proposed disposition. This requirement creates an opportunity for interaction within the courtroom workgroup that is resolved in different ways. Some judges are more willing to listen to unresolved proposals for negotiation and resolve differences themselves. Others are reluctant to become involved in substantive discussion. Again, the importance of workgroup interactions come to the fore in the prosecution of career criminals in Cook County.

Mode of Disposition

Decisions on guilt or innocence for career criminal cases in Cook County are primarily reached through guilty pleas or bench trials. Specifically, just 10.6% of the cases in the study sample were dismissed or discontinued by the prosecution, and only 6.8% were resolved through jury trial. Pleas of guilty accounted for 49.9% of the case dispositions and the remaining third (32.8%) of the caseload was resolved through bench trial.

This distribution of dispositions has remained fairly stable throughout the history of the ROC courts. There has been just a slight tendency for the ROC courts to conduct fewer jury trials and more bench trials. In comparison to the dispositions of other felony cases in the jurisdiction, however, the ROC courts display a strong contrast. Table 6-2 compares 1983 ROC court dispositions with total felony dispositions in Cook County.

TABLE 6-2
MODE OF FELONY CASE DISPOSITION - 1983

	Jury Trials	Bench Trials	Guilty Pleas	Dismissals/ Discontinuances	Total
ROC Courts	4.3 %	35.8 %	51.9 %	7.9 %	809
All Felonies	2.1	20.7	67.3	9.8	14,217

The ROC courts accept far fewer guilty pleas than other courts. A small part of this discrepancy is accounted for through increased jury trials, but by

far the most important explanation is the significantly greater tendency for ROC cases to be resolved through bench trials.

This strong use of bench trials is probably due to two factors. First, bench trials are granted at the request of the defense, and the tendency to request them should reflect perceptions of advantage to the defendant. Three explanations were reflected in interviews with ASA's and APD's. First, the stiff penalties facing ROC defendants reduce the inclination to plea bargain. Second, in a jury trial career criminal defendants face the possibility of having past criminal history made known to the jury if they take the stand. In some instances this will reduce the incentive to go to jury trial. Finally, the willingness to accept a bench verdict demonstrates the strong trust in the courtroom workgroup that characterizes ROC courts. In the words of one attorney, the use of bench trials demonstrates the defense bar's faith that "ROC judges hold the state to a high standard of evidence."

Dade County

Dade County is the eleventh of twenty Florida judicial districts. The District has fifteen felony courtrooms in its Criminal Division. Career criminal cases are assigned to divisions according to crime type just as any other felony case in the jurisdiction.

The Courtroom Workgroup

Vertical prosecution is used throughout the Dade County office; the attorney conducting the pre-filing conference will handle the case through all County

Criminal Court appearances. ASA's are assigned to specific courtrooms, as in Cook County. The courtroom workgroup is organized around a particular judge, but the court is not devoted to the homogeneous set of cases that characterized the ROC Courts.

The Public Defender in Dade County has provided defense services for 82.5% of the career criminal cases in Dade County. The Public Defender's office is a separate agency within the County criminal justice system. Between 1977 and 1978 the Public Defender had an LEAA grant to allow designation of two career criminal defenders for cases being prosecuted in the LEAA-funded Career Criminals unit. When the grant ended the PD no longer differentiated between the defense of career criminal cases and others. Current PD's observed that they "don't even ask" if a case has been designated career criminal.

Public defenders in Dade County are not assigned to specific judges. Therefore, the courtroom workgroup lacks the stability and focus of the ROC courts. While prosecutors atune their expectations and behavior to their knowledge concerning "their judge", the focus of the ROC court workgroup is absent.

Nature and Strength of the Case

The Dade County career criminal caseload focuses on property crime -- 31% of their cases have been burglaries and 29% thefts or larcenies. Table 6-3 profiles indicators of the evidentiary base for Dade County.

TABLE 6-3
EVIDENTIARY FACTORS -- DADE COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	248	50.8
Pursued from Scene	55	11.3
In Proximity	50	10.2
Not in Proximity	<u>135</u>	<u>27.7</u>
	488	100.0
Positive Identification by Witness		
None (no witness)	67	14.3
One	219	46.7
Two	120	25.6
Three or more	<u>63</u>	<u>13.4</u>
	469	100.0
Witness Characteristics		
Stranger to Defendant	270	59.5
Acquaintance	21	4.6
Victim	<u>163</u>	<u>35.9</u>
	454	100.0
Tangible Evidence*		
Fingerprint Impressions	58	11.5
Blood, Hair, Semen, etc.	10	2.0
Stolen Goods	182	36.2
Weapons, Tools, Belongings	78	15.5
Other Physical Evidence	31	6.2

* Rate based on percent of total career criminal cases. N=503

The profile manifests some contrasts with the nature of evidence in Cook County where the caseload reflects crimes against persons. In Dade County nearly three quarters (72.3%) of the defendants were arrested in proximity to the crime; half (50.8%) were caught in the act and arrested at the scene. By far the most common type of physical evidence was the retrieval of stolen goods in the possession of the defendant (36.2% of all cases). These evidentiary characteristics are consistent with the property crime focus of the caseload. A large portion of Dade County career criminals, as defined in

the program, are shoplifters, thieves, or burglars. Frequently these types of defendants are caught in the act of committing their crime.

As in Cook County, there was at least one eyewitness positively identifying the defendant as the person committing the crime in the great majority (85.7%) of Dade County cases. Also as in Cook County, many (46.7%) of these eyewitness identifications are dependant on a single individual. Reflecting the public nature of many of these property crimes, more (59.5%) of the cases had eyewitnesses who were uninvolved observers who did not know the defendant. Still, in over one third (35.9%) of the cases there were no eyewitnesses other than victim(s).

Plea Negotiation

Florida law (Florida Rules of Criminal Procedure, Rule 3.171) indicates that, although the ultimate responsibility for sentence determination rests with the trial judge, counsel for both parties are "encouraged" to discuss and agree on pleas to be entered by the defendant. Upon hearing a proposed plea agreement, the trial judge must be sure the defendant understands all of his rights and how the plea will affect them, and must inform counsel of any factors that may prevent him from accepting the settlement. If the defendant then decides to withdraw the plea he may, and the offer can not be used as evidence in further actions on the case.

Policies of the Dade County State's Attorney recognize the appropriateness of plea negotiation when it is "in the interest of the state and the public" and provides a series of guidelines to help determine what negotiations are

appropriate. The guidelines apply differentially to various categories of felony, and career criminal cases may be affected by several guidelines under the selection criteria in effect during the period of study.

Guidelines are of two major types -- procedural and substantive. Procedurally, ASA's are to inform interested parties (victims, witnesses, police) of possible negotiated settlements and gain their reactions. If there are objections to proposed settlements they are to be cleared through supervising prosecutors. ASA's are also to inform interested parties of negotiated outcomes. Substantively, the guidelines set certain standards for sentence minimums to be negotiated in particular types of crime. These substantive guidelines focus on serious and violent crimes against persons, and burglary of a residence.

Most Dade County career criminal cases during the period of this study fell outside the crime types with substantive guidelines. However, the office policy on career criminal cases stipulated that ASA's should not "negotiate or reduce or no-action charges" in career criminal cases without approval of stipulated supervising prosecutors. The difficulty in these guidelines is that many career criminal cases involve charges that would typically be bargained, yet because of the career criminal status they are not to be negotiated without approval. Under some conditions (e.g., a judge pushing for resolution of the case) ASA's indicated that they may go ahead and act on their own in negotiating cases.

In 1981 Florida adopted a system of sentencing guidelines designed to increase equity of sentences for similar cases and for defendants with

similar criminal histories. These guidelines (discussed below) affected the opportunities for plea negotiation in Dade County. In particular, they increased the salience of negotiating charges rather than sentence, since the guidelines restrict the sentencing freedom of the judge.

Plea negotiation of career criminals in Dade County raises an important general consideration to which we will return at subsequent points in our analysis. The broad selection criteria and property crime focus of the program run counter to other office priorities, and, probably more importantly, to the norms and expectations of the courtroom workgroup. It is more difficult to take a "tough" negotiating position when the workgroup does not recognize that the case is sufficiently serious to circumvent the efficiencies of a negotiated solution.

Mode of Disposition

Three fourths of the career criminal cases in Dade County are disposed of through a guilty plea. Approximately one in 10 (9.2%) go to jury trial and a very small number (2.4%) are resolved through a bench trial. The remaining 15.9% are dismissed or discontinued. The relatively high rate of dismissals reflects the difficulties of getting witnesses to court in a transient population.

The pattern of career criminal case disposition in Dade County has not changed significantly with the major reorganization of the program that has taken place. During the period of LEAA funding of a separate organizational unit, 75.2% of the cases were resolved through plea, 2.0% through bench trial, 12.4% through jury trial, and 10.5% were nolle.

Knox County

Once bound over to the felony courts, cases are adjudicated in one of three felony courts (Divisions). Assignment is according to space on the docket. Career criminal cases are assigned exactly as other felonies and may be tried by any of the three Criminal Court judges.

The Courtroom Workgroup

By Tennessee Code Annotated (TCA) section 40-14-102, every person accused of any crime or misdemeanor whatsoever is entitled to counsel in all matters necessary for his defense. In the case of indigent defendants, the court shall appoint the public defender, or, in absence, a competent attorney. Knox County does not maintain a public defender's office and appointed counsel is drawn from a list of defense attorneys available for public defense. A total of 82.8% of Knox County career criminal cases were represented by appointed counsel.

The Courtroom workgroup for career criminal cases in Knox County is much less "court-focussed" than in Cook and Dade Counties. Prosecuting attorneys are not assigned exclusively to any one court, defense attorneys are appointed from a broad selection of attorneys in the county, and judges do not have selective caseloads. The only portion of the workgroup with an organizational focus on career criminal cases is the prosecution program. This fragmented organization has important implications. In order to expedite cases or to selectively apply case handling policies, prosecutors

must convince other courtroom actors, particularly Judges, that this case warrants special consideration. This consideration extends beyond making especially stiff sentencing recommendations; it also includes any selective case handling policies such as plea bargaining. In the Knox County program, unit prosecutors do not work with a courtroom workgroup that shares knowledge and experience concerning career criminal cases. In a real sense, they must justify departures from "typical" workgroup expectations on each case.

The need to influence expectations of other members of the workgroup was reflected in interviewee comments. Prosecutors noted that getting court dates was a "big problem" early in the program. A designated career criminal court was considered but not adopted because of resource constraints. From the court's point of view, judges expressed reservations about plea bargaining policies that are "engraved in stone," and expressed reservations concerning the prosecution of certain "career criminals" in cases that did not appear particularly serious to them. When cases are selected and policies determined by one member of the courtroom workgroup, and these policies effect the normal work procedures of other members, disagreement concerning the appropriateness of selective treatment in particular cases is not surprising. The principle may be accepted, but application is questioned in specific cases.

A final characteristic of the Knox County courtroom workgroup should be noted. Interaction between law enforcement and career criminal prosecutors provides a strong contrast to those jurisdictions in which these relations are highly formalized. In Cook County, for instance, police have personal

contact with felony review attorneys and see career criminal attorneys only months later as witnesses -- if at all. Law enforcement information comes to career criminal prosecutors primarily by way of written reports. In Knox County interaction between police and career criminal attorneys was direct and frequent, particularly during the early years of the program. Members of the initial career criminal prosecution team were well known to police and spent many hours at the police station aiding in case development. Career Criminal attorneys participated in police training programs and were active in large "sting" operations. Police detectives knew the attorneys well and voiced great respect for their skill and motivation as prosecuting attorneys. A career criminal attorney was on call 24 hours a day and would respond in person to law enforcement calls.

In a very real sense the early Knox County program was "law enforcement-centered" rather than "court-centered." The implications are important. First, the nature and amount of information flowing to unit attorneys will reflect a law-enforcement perspective on career criminals more than a court perspective. Police "street knowledge" concerning who is currently active, will be highly visible to prosecutors and may influence their decisions. The influence of law enforcement knowledge may be a strong explanation for the departure of the actual Knox County career criminal caseload from the formal focus on violent crime. Interviews with police detectives in Knox County demonstrated their concern with property crime as the most serious type of "career" involvement in Knoxville.

Second, close informal unit involvement with law enforcement may complicate interaction with other members of the courtroom workgroup. If, for example, police on the street define serious career criminals differently than courtroom actors, the prosecutor must become "translator" between the two sets of perceptions.

Case Strength and Development

Table 6-4 displays the evidentiary base for Knox County career criminal cases. The pattern has several notable characteristics. First, one half of the defendants were not arrested in the proximity of the incident. In contrast to Dade County, many Knox County career criminals were not caught in the act.

Knox County cases were also less likely to have positive witness identification of the defendant than those of either Cook or Dade County. Over one fourth of the cases (28.7%) had no eyewitness identification; another third (34.4%) relied on one eyewitness.

Knox County cases, therefore, rely relatively heavily on physical evidence that will support conviction of defendants arrested after the fact. The predominant forms of this evidence were stolen goods recovered from the defendant (54.4%), and identification of possessions of the defendant (weapons, tools, other belongings) in connection with the crime. The evidentiary base of Knox County cases reflects the preponderance of property crimes in that jurisdiction's career criminal case load.

TABLE 6-4

EVIDENTIARY FACTORS -- KNOX COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	27	25.5
Pursued from Scene	11	10.4
In Proximity	15	14.1
Not in Proximity	<u>53</u>	<u>50.0</u>
	364	100.0
Positive Identification by Witness		
None (no witness)	35	28.7
One	42	34.4
Two	22	18.0
Three or more	<u>23</u>	<u>18.9</u>
	122	100.0
Witness Characteristics		
Stranger to Defendant	102	86.5
Acquaintance	3	2.5
Victim	<u>13</u>	<u>11.0</u>
	118	100.0
Tangible Evidence*		
Fingerprint Impressions	15	<u>17.0</u>
Blood, Hair, Semen, etc.	7	6.1
Stolen Goods	62	54.4
Weapons, Tools, Belongings	40	35.1
Other Physical Evidence	33	28.9

* Rate based on percent of total career criminal cases. N=114

Plea Negotiation

Tennessee (Rules of Criminal Procedure, Rule 11) allows the district attorney general and the defense to reach agreement on a) moving for dismissal of charges, and b) recommend a specific sentence appropriate to disposition in return for a plea of guilty or nolo contendere to a charge or a lesser-included charge. Judges are not to be involved in discussions regarding the plea. Upon hearing a public "notice of agreement" on the settlement, the judge must inform the defendant of the court's acceptance or

rejection of the plea agreement. If the court rejects the plea agreement, the defendant may withdraw.

When initially established, the career criminal program adopted a formal plea bargaining policy.

The Career Criminal Unit will adopt a general policy prohibiting the plea bargaining of cases to a reduced charge in return for a plea of guilty by a career criminal. The experienced attorneys associated with the unit will scrutinize closely each case to assess its chances for successful prosecution. A decision to prosecute is tantamount to a decision not to settle the case by a plea to a lesser included offense.

This official policy precludes charge reductions, but does not proscribe dropping additional charges or agreements on sentence.

Under the District Attorney General in office at program initiation, CCU policy did not differ from office policy concerning felonies throughout the office, though the policy may have been more rigidly applied in CCU cases. The blanket policy against plea bargaining in the office was the source of negative comments by judiciary and defense attorneys, who saw it as unreasonably inflexible. Under the present Attorney General plea negotiation policies do not proscribe the acceptance pleas to lesser-included offenses, a policy that one criminal court judge referred to as "realistic." The movement away from a policy "proscribing" certain forms of plea negotiation has allowed similar latitude within career criminal cases.

In the development of plea bargaining policies within the Knox County office, career criminal cases have probably differed from other felonies primarily in the agreements that attorneys are willing to accept in terms of sentence.

Career criminal attorneys agreed that negotiations tend to focus on sentence, and that judges usually accept agreements struck by prosecutors and defense.

Mode of Disposition

Career criminal cases in Knox County are most often resolved through pleas of guilty. Over half (59.2%) of the cases in the study sample were pleas of guilty. The second most common mode of disposition was jury trial, with 21.7% of the sample cases. Bench trials are not frequently used in Knox County because they require agreement of both defense and prosecution. Bench trials were used in 14.2% of the sample cases. Finally, 5% of the unit cases were dismissed by prosecution or court.

The Knox County Career Criminal Unit (CCU) has undergone great changes in its four year history. The mode of case disposition has also changed significantly during the program's history. Table 6-5 compares case disposition in 1980/81 with 1982/83.

Initially the Knox County CCU took a high percentage of its cases to jury trial and accepted pleas of guilty in fewer than half the study cases. In the last two years of the program this distribution has changed dramatically with pleas of guilty being accepted in more than two thirds of the cases, and only one in ten going to jury trial.

TABLE 6-5
 COMPARISON OF CASE DISPOSITIONS --
 KNOX COUNTY 1980/81 AND 1982/83

	1980/81		1982/83	
	(n)	%	(n)	%
Guilty Plea	26	48.1	45	68.2
Jury Trial	19	35.2	7	10.6
Bench Trial	6	11.1	11	16.7
Dismissals	3	5.6	3	4.5

Monroe County

Felony cases in New York state can be heard in the Supreme Court which has original and general jurisdiction over all felony and misdemeanor cases, or to the County Court which holds concurrent jurisdiction over all felony matters. In Monroe County Career Criminal Bureau (CCB) cases may be docketed in any County Courtroom or Supreme Courtroom. "Judge-shopping" is not possible because cases are docketed on a "wheel."

There is some selective assignment of cases to specific courtrooms, though assignment is not specifically keyed to career criminal cases. Five judges, three in County Court and two in Supreme Court, hear only violent cases involving repeat offenders. These are not strictly career criminal courts because defendants need have only one prior felony conviction and many such cases are handled by units other than the CCB. Furthermore, the CCB caseload includes many non-violent crimes.

Monroe County's felony courts have been burdened by heavy case backlogs for many years. The crowded dockets are a clear influence in the CCB's orientation toward expeditious case processing.

The Courtroom Workgroup

The organization of felony courts and the procedure for case assignment precludes a court-focussed workgroup such as exists in Cook County. Cases are assigned to CCB attorneys independently of court docketing. The New York state system of judge assignment also reduces the continuity of the courtroom workgroup because judges are periodically rotated from other districts to accommodate crowded dockets.

As in other jurisdictions, the public defense system is the most important component of the defense bar for career criminal prosecutions in Monroe County handling 83.3% of the cases. The Public Defender in Rochester is an elected official who administers an independent office. The Monroe County Public Defender was instrumental in getting a public defender component attached to the state-wide Major Offenders Prosecution Program that picked up funding of Monroe County's CCB. The defense component of that legislation funded one position for a career criminal public defender.

The career criminal position in the public defender's office handles all non-violent career criminal cases. Violent career criminals are assigned to the Violent Offender unit of the defender's office. In both instances, career criminal cases are vertically defended, a policy that is seen as necessary to counter vertical prosecution of career criminal cases in those categories. While non-violent career criminal cases are selectively handled, the office emphasis is on violent crime. Violent crime defenders have a

lower caseload and violent career criminal cases go to those attorneys rather than the career criminal defender. In other words, violent crime is the dominant category in selective case handling.

The distinction between violent and non-violent career criminals was part of a complex set of perceptions of the CCB among Monroe County public defenders. First, defense attorneys questioned the appropriateness of selection criteria, observing that some unit cases involve relatively minor property crimes, which, in their judgement, do not warrant the specialized attention of the unit. One defender summarized this perception bluntly in commenting, "these are not career criminals." Defense attorneys also observed that the consideration of evidentiary strength in unit selection criteria means that they handle primarily "dead lock" cases.

The defense commented extensively on the degree to which special prosecution policies for career criminal cases affect their position in defending a case. Two themes were most prominent. First, the policy of expediting cases through pre-indictment offers made it difficult for them to establish a working relation with their clients. In their perception, pressure at the beginning of the process is difficult for them. According to one attorney

Think of the position it puts the PD in. The PD has to win the defendant's confidence, they have to prove themselves. It takes time to build confidence.

This is difficult when the attorney must immediately confront the defendant with a firm plea negotiation that must be accepted within a week or be withdrawn unequivocally.

A second set of observations concerned the perceived inflexibility of CCB policies. One concern was that the nature of pre-indictment offers (one step felony reduction) does not provide sufficient incentive to plead, particularly in less serious cases. A second concern was the rigid application of plea negotiation policies in: a) cases in which the defendant has only one prior felony conviction in a case with a relatively insignificant instant offense, and b) cases with truly habitual defendants in which there is relatively weak evidence. A major consequence of inflexible policy, in the eyes of defense attorneys, is "unnecessary" trials.

The courtroom workgroup in Monroe County, in contrast to Cook County, is fragmented. Career criminal cases may be adjudicated in any one of felony court rooms. The Public Defender selectively assigns career criminal cases into two different units in which they perceive differing degrees of severity. Differences in perceptions of appropriate selection criteria are institutionalized. While the defense may accept the notion of selective prosecution of appropriate cases, there is open concern about the application of the concept to much of the Monroe County caseload.

Case Strength and Development

Monroe County was the only jurisdiction within the analysis to explicitly include evidentiary strength in case selection procedures. Table 6-6 displays the evidentiary base for career criminal cases in the study sample.

TABLE 6-6

EVIDENTIARY FACTORS -- MONROE COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	100	43.1
Pursued from Scene	24	10.3
In Proximity	22	9.5
Not In Proximity	<u>86</u>	<u>37.1</u>
	232	100.0
Positive Identification by Witness		
None (no witness)	24	12.1
One	74	37.2
Two	55	27.6
Three or more	<u>46</u>	<u>23.1</u>
	199	100.0
Witness Characteristics		
Stranger to Defendant	134	67.0
Acquaintance	22	11.0
Victim	<u>44</u>	<u>22.0</u>
	200	100.0
Tangible Evidence*		
Fingerprint Impressions	61	28.4
Blood, Hair, Semen, etc.	20	9.3
Stolen Goods	114	53.0
Weapons, Tools, Belongings	90	41.9
Other Physical Evidence	50	23.3

* Rate based on percent of total career criminal cases. N=215

In the large majority (62.9%) of the Monroe County cases the defendant was arrested at or in the vicinity of the crime. Nearly 90% (87.9) of the defendants were positively identified by eyewitnesses as the person who committed the crime. Evidence in all of the jurisdictions relies heavily on eyewitness identification, but Monroe County stands out in having two or more positive eyewitness identifications in half (50.7%) of its cases. Furthermore, more than two thirds of the witnesses in career criminal prosecutions are strangers to the defendant.

In Monroe County the great majority of cases supported with physical evidence. In over half of the cases (53%) stolen goods have been recovered in the defendant's possession. In another 41.9% the defendant's belongings have been associated with the crime. These figures are comparable with other jurisdictions that have a large portion of property crimes in their caseload. In Monroe County, the percentage of cases with fingerprints or impressions as evidence (28.4%) is the highest among our sites.

Plea Negotiation

Monroe County is unique among our sites in using a standard charge negotiation offer as career criminal program policy. As described in the previous section, this offer is for a one step reduction in charge and is tendered only before felony court indictment. Once a case is in felony court, no plea bargaining is considered for career criminal cases.

New York's Criminal Procedure Law section 220.10 provides guidelines for pleas made "with both the permission of the court and the consent of the people." The guidelines set minimum lesser included offenses that may be accepted for given top charges, and they require a felony plea to a felony charge. New York law requires prosecutors to make sentence recommendations, but career criminal attorneys noted that these recommendations were not considered to be an effective tool for two reasons. First, New York sentencing law allows the prosecutor to affect sentencing significantly through charges and carries penalties for prior convictions. Second, judges can, and many do, arrive at sentencing decisions independently of the recommendation. The law does not bind judges to accept sentence agreements

arrived at through negotiation if a plea is accepted. Defense attorneys acknowledged that in many instances it is wise to pass up the CCB standard charge negotiation and directly talk to the judge concerning sentence.

In sum, neither charge negotiation nor sentence negotiation are important foci of discussion between defense and prosecution in felony court. The role of plea bargaining is to expedite convictions prior to indictment.

Mode of Disposition

Despite the expressions of displeasure with unit plea negotiation policies by the defense bar, just over three fourths (75.8%) of the Monroe County sample of career criminal cases were disposed of through a plea of guilty. Most of the remainder (17.2%) were jury trials. Only a very few were bench trials (3.3%) or dismissals (3.7%).

Multnomah County

Career criminal cases may be adjudicated in any of Multnomah County's fourteen Circuit Courts. A case will be originally assigned to an "arraignment" judge who will sit in the case up to the point of pre-trial conference. Arraignment judges are rotated on a regular basis, and receive cases on an availability basis. If the case is not resolved through a guilty plea at pre-trial conference it will be transferred to the presiding court for assignment to the first available trial judge.

The Courtroom Workgroup

The case assignment procedure in Multnomah County funnels Major Violator's Unit (MVU) cases to any of the felony courts. Though judges might know a case was an MVU case because of familiarity with the prosecutors, there is no further designation of those cases. Cases may also be handled by different judges at pre-trial conference for plea discussions and at trial.

Public defense was assigned to 90.6% of the cases in the Multnomah County sample of career criminal cases. Multnomah County provides public defense through contract to non-profit organizations of defense attorneys. The great majority of felony cases are defended through Metropolitan Public Defenders, the organization with the major county contract.

The PD typically receives a case at the first court appearance. Case handling is vertical. The office maintains a major case list which includes incidents like high publicity homicide or cases that present novel legal issues. Beyond this limited list, which does not target career criminals, there is no selective assignment of cases.

The organization of Multnomah County public defense creates a cohesive public defense bar. Defense attorneys perceive some definite impacts of MVB prosecution of career criminals on their task. The major theme of defender comments was that the inflexible application of special prosecution policies unnecessarily delays or constrains the "professional" and "reasonable" resolution of cases. Specifically, in the accusatory phase the defense believes exclusive use of the grand jury prevents the resolution of cases

through guilty pleas at preliminary hearing. Over ten percent of preliminary hearing accusatories produce this result. The result, in their opinion, is unnecessary trials.

Defense objections to the inflexibility of Major Violator Bureau's (MVB) procedures was heightened by their criticism of selection procedures. One defense attorney argued that MVB cases certainly are not "major cases" in terms of difficulty of prosecution. The inclusion of relatively minor property crime in the MVB caseload also brought criticism. In the words of one PD, "they squander their credibility on non-serious crimes."

Case Strength and Development

Table 6-7 profiles the evidentiary base for career criminal cases in Multnomah County. The great majority (85.9%) of cases have positive eyewitness identification of the defendant as the person who committed the crime. Nearly one half (46.6%) of the cases involve identification by a single person. In over half (51.9%) of the cases, eyewitness identification is by victims only.

The majority of career criminal cases were also supported with physical evidence. The most common, as in other jurisdictions, was the recovery of stolen goods in possession of the defendant (52.3% of cases).

TABLE 6-7

EVIDENTIARY FACTORS -- MULTNOMAH COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	67	20.2
Pursued from Scene	54	16.3
In Proximity	38	11.4
Not in Proximity	<u>173</u>	<u>52.1</u>
	332	100.0
Positive Identification by Witness		
None (no witness)	55	14.1
One	181	46.6
Two	98	25.2
Three or more	<u>55</u>	<u>14.1</u>
	389	100.0
Witness Characteristics		
Stranger to Defendant	181	45.1
Acquaintance	12	3.0
Victim	<u>208</u>	<u>51.9</u>
	401	100.0
Tangible Evidence*		
Fingerprint Impressions	71	17.2
Blood, Hair, Semen, etc.	13	3.1
Stolen Goods	216	52.3
Weapons, Tools, Belongings	158	38.3
Other Physical Evidence	157	38.0

* Rate based on percent of total career criminal cases. N=413

Plea Negotiation

The state of Oregon (Oregon Revised Statutes Section 135.835) does not bind the court to honor the terms of negotiated guilty pleas, except in the rarely used provision for a "judicial contract." Formally, trial judges are not to participate in plea negotiations, but they are to inform parties whether he will concur if the facts and sentencing are as represented to him. If the judge changes his mind, the defendant is to be allowed to withdraw his plea.

The primary forum for plea negotiation in Multnomah County is the pre-trial conference, a regular court date heard before conference judges in the "judicial center" rather than the ultimate trial judge. The defendant is present at the conference and can participate in discussions involving pleas. Judges are generally aloof from these discussions, but the degree of participation does vary. There is an official record of pre-trial conferences in which charge and sentence offers and discussions are recorded.

MVB policy on negotiations is "no charge reductions," requiring a plea to the top charge. There is some flexibility in dismissing additional counts or threatening to charge additional counts if there is no plea. Additional indictments may also be cleared through a plea to the top charge. These avenues are particularly viable in: a) minor property crime cases (e.g., forgeries), b) cases in which there was no violence, or c) cases in which the defendant agreed to restitution.

The no charge reduction policy has been particularly problematic for MVB cases involving first time residential burglaries, which fall within the units expanded selection criteria. In the words of one defense attorney

Saying 'we don't plea bargain burg 1's' has no credibility. Judges don't buy it. It is unjust and unfair -- terribly unfair to the first time young offender.

The strong reaction to these cases fosters resistance to the policy generally, and the current unit supervisor is developing a policy that relaxes the restriction in these cases.

Specifically, a first degree burglary may be reduced if:

1. A written request is made to the unit supervisor;
2. The defendant was a first time burglar with no priors as an adult;
3. The property stolen was of minor value;
4. There was no confrontation with the victim; and
5. There is an unstipulated polygraph test for prior burglaries.

It is standard procedure for the prosecutor to indicate acceptable sentence at the pre-trial conference. In most instances, MVB attorneys decline to make sentence offers at this point, indicating that they will wait for the presentence investigation (PSI). Unit sentence recommendations are made under an innovative policy utilizing written "sentencing letters." Career criminal sentencing recommendations are made through discussion and agreement by three unit attorneys. When an appropriate recommendation is agreed upon, all three attorneys sign the written recommendation which is transmitted to the sentencing judge.

Sentencing letters are designed to do several things. First, they provide a check on individual discretion. Second, they indicate the collective judgment of the prosecutors to the judge. Third, they provide a written statement of the reasons for the particular recommendation. This latter point may be particularly important if the letter asks for sentence enhancement because the judge must provide a written rationale in those

cases. The letter can provide this. On the negative side, interviewees expressed concern that the letters may appear "haughty" in some cases or be resented as a constraint on their role by some judges.

In sum, the Multnomah County unit emphasizes institutionalized plea bargaining policies. The policies in combination with unit selection criteria have engendered resistance in the courtroom workgroup, and are being modified under specific circumstances.

Mode of Disposition

The study sample of career criminal cases spans the eight year history of the program. When all cases prosecuted under the program are considered, 57% were resolved through pleas of guilty, 22.4% through jury trials, 15.2% through bench trials, and 5.4% were dismissed. However, there have been significant changes in the disposition of career criminal cases through the history of the program. Table 6-8 displays the trend.

In the early history of the program a minority of cases were resolved through pleas of guilty. Prior to 1980, 52% of unit cases were resolved through jury or bench trials. Attorneys observe that there is a tendency to accept bench trials in career criminal cases because of possible admissibility of prior record to impeach any testimony of the defendant.

TABLE 6-8

DISPOSITION OF CAREER CRIMINAL CASES -- MULTNOMAH COUNTY

	Pre-1979		1979		1980		1981		1982		1983	
	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%
Guilty Plea	15	42.8	33	49.2	35	53.9	44	58.7	44	66.7	42	82.3
Bench Trial	10	28.6	15	22.4	9	13.8	9	12.0	8	12.1	3	5.9
Jury Trial	9	25.7	19	28.4	19	29.2	16	21.3	10	15.1	6	11.8
Dismissed	1	2.9	0	--	2	3.1	6	8.0	4	6.1	0	--
TOTAL	35		67		65		75		66		51	

Throughout the history of the program, however, there has been a constant trend toward an increased number of guilty pleas. The dilution of program resources may have an important influence on this change in disposition mode.

Philadelphia

Philadelphia career criminal cases are prosecuted in one of three career criminal (CC) courts. Cases are assigned by random spin of the wheel and administered by a career criminal court administrator to achieve minimum "down time" for judges. The courts use a policy of "flip-flopping" so that cases can be shifted from one judge to another to accommodate changes in the docket. Therefore, a case can be heard before more than one judge.

The Courtroom Workgroup

Though the Philadelphia unit does not assign attorneys to a single courtroom, as in Chicago, the designation of CC courts provides a courtroom focussed workgroup. The CC judges are well known to both prosecution and defense attorneys, and their reputations mold expectations in their courtrooms. In particular, the judges are known for strong judicial philosophies and hard work. The courts have generally been known for stringent judicial sentencing. Indeed, a judge known for "leniency" in other felony courts is known to be a harsh sentencer in the CC courts.

The Public Defender Association, which provided defense for three fourths (76.3%) of Philadelphia's career criminal cases, uses a vertical defense posture throughout the office. A public defender is assigned to the Municipal Court that hears career criminal cases so that they can be picked up at preliminary hearing. If cases are designated career criminal after preliminary hearing, the PDA will be notified by the Career Criminal Unit (CCU) chief, or occasionally by the CC court administrator. Once identified, CC cases will be handled by either the Special Defense Unit or the Major Trial Unit.

Public Defenders routinely file motions challenging the CCU as unconstitutional, and an additional motion to sever co-defendants from the program. These have never been upheld. Outside these formal actions PDs do not object to the concept of specialized attention to recidivist offenders. As in other jurisdictions, the defense did question the application of the concept in specific cases. With Philadelphia's stringent criteria, however, the concern was not with "lightweight" cases. Rather, concern was expressed

about the individualized selection of cases by CC attorneys. PD's also expressed reservations about what they saw as the close relationship between the Court and the DA program. One respondent called the program "legitimized judge-shopping".

In sum, vertical handling of career criminal cases in the CCU, designated courts, and in two units of the Public Defender's Association provides continuity to the Philadelphia courtroom workgroup. However, there are important contrasts to the courtroom-focused workgroup in Cook County. In Cook County both prosecutors and public defenders receive career criminal cases as a result of court assignment to ROC judges. ROC judges themselves are assigned by the chief judge and are selected as demanding and skilled trial judges. In Philadelphia, CCU attorneys screen cases for intake and there is a perception among defense attorneys that the prosecution may be somewhat advantaged before the CC courts. Put differently, ROC courts in Cook County are not perceived to be a "tool" of the prosecution, in Philadelphia there is some perception that this may be the case. The courtroom workgroup is not as cohesive in Philadelphia as in Cook County.

Case Strength and Development

Table 6-9 profiles the evidentiary base for career criminal cases in the Philadelphia sample. As might be expected in a caseload dominated by crime against persons -- particularly robberies -- more than 90% (90.8%) of the Philadelphia sample involved eyewitness identification of the defendant. In more than half the cases (53.1%), identification was by a single witness, and in 40% of the sample identification depended upon the victim(s).

TABLE 6-9

EVIDENTIARY FACTORS -- PHILADELPHIA

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	65	28.3
Pursued from Scene	38	16.5
In Proximity	43	18.7
Not In Proximity	<u>84</u>	<u>36.5</u>
	230	100.0
Positive Identification by Witness		
None (no witness)	22	9.2
One	127	53.1
Two	52	21.8
Three or more	<u>38</u>	<u>15.9</u>
	239	100.0
Witness Characteristics		
Stranger to Defendant	117	48.2
Acquaintance	28	11.5
Victim	<u>98</u>	<u>40.3</u>
	243	100.0
Tangible Evidence*		
Fingerprint Impressions	7	2.6
Blood, Hair, Semen, etc.	14	5.2
Stolen Goods	117	43.8
Weapons, Tools, Belongings	65	24.3
Other Physical Evidence	25	9.4

* Rate based on percent of total career criminal cases. N=267

As in other jurisdictions, the most common type of tangible physical evidence in the Philadelphia caseload was recovery of stolen goods in possession of the defendant, followed by recovery of the defendant's possessions in connection with the crime. However, with the exception of Dade County, tangible physical evidence was present in fewer Philadelphia cases than in other jurisdictions.

Plea Negotiation

The Philadelphia CCU does not rigidly prohibit plea negotiation, and Individual Assistant District Attorneys (ADA's) are ultimately responsible for all aspects of trial preparation, including plea offers. However, plea offers are generally restricted to pleas to top charge, with incentives being offered with respect to additional charges or sentence. ADA's may agree to dismiss non-merging additional charges or to agree to concurrent sentencing for additional charges. Reportedly, this is not done with respect to firearms charges which carry a mandatory five year sentence enhancement upon conviction. ADA's may also negotiate sentence directly within the legislated range.

Even though the concessions ADA's are willing to make are reportedly not great, several incentives work toward the tendering of pleas of guilty. First, if there are multiple charges that may be sentenced consecutively, the prosecution will typically offer a "package deal" to which the defendant may plea. If the package is not accepted, each incident will be charged and tried separately. Hence it is in the defendant's interest to plea early.

A second reported incentive rests on the sentencing reputations of CC judges. ADA's report that they do not make sentence recommendations to the CC bench in trial cases because they are not "necessary." However, they will negotiate sentences in guilty pleas and include this sentence recommendation as part of the agreement. While Pennsylvania Code Title 234, Rule 319,

prohibits judges from participating in plea negotiations preceding an agreement, judges must ascertain the conditions of an agreement once it is concluded, and indicate whether they will concur. If the conditions are not accepted, the plea is withdrawn. Thus, a negotiated guilty plea may provide a guarantee of a sentence below the maximum that could be handed down by a CC Judge.

Mode of Disposition

Philadelphia career criminal cases, in the aggregate, have been resolved through pleas of guilty less frequently than those in any other study jurisdiction. Fewer than half (43.6%) of the cases in the study sample have been resolved through a plea of guilty. Another 21.2% have gone to jury trial, and 23.2% have gone to bench trial. Finally, 12% were dismissed or removed from the docket by prosecutors or court.

The relatively large number of bench trials, despite perceived incentives to avoid them, may reflect the traditional use of bench trials as a "slow plea" in that jurisdiction.

San Mateo County

San Mateo County has five Superior Court judges that hear all felony cases in the jurisdiction. Career criminal cases are assigned in the same manner as other cases in the jurisdiction and may be tried in any of the five.

Courtroom Workgroup

The San Mateo courtroom workgroup concerning career criminal cases is not court-focussed. Individual attorneys are not assigned to specific judges,

nor does case docketing funnel career criminals into designated courts. Still, the relatively small number of courtrooms in the jurisdiction allows familiarity with differing judicial practices.

The California Constitution (Article 1, Section 15) provides every defendant the right to counsel in all criminal causes. Indigent defendants have the right to appointed counsel, though the mechanism for appointing public defense is left to individual jurisdictions. In San Mateo County, public defense is provided through the Private Defender's Panel (PDP). The PDP is a non-profit organization that compiles and maintains a list of private attorneys available for court-appointed defense. When appointed defense is required the court notifies the PDP, which provides the next available name in their rotation. Court-appointed attorneys defended 92.2% of the career criminal sample cases.

The makeup of the defense bar is based on the PDP's recruitment to the list, and in San Mateo it is common for former prosecuting attorneys to go into the defense bar. Indeed, the original supervisor of the CCP unit is now a defense attorney. Interviewees noted that the court-appointed defense system in San Mateo tended to foster a "club" atmosphere. Even though cases are assigned to private attorneys according to availability, many of the attorneys know other workgroup members well.

Defense criticisms of the Career Criminal Program tend to be divorced from the local personnel partly because the program is defined through state legislation rather than local initiative. Nevertheless, defense attorneys

and judges did express the opinion that the program's policies were sometimes too inflexible, and that recent changes in state law had made them less so (see subsequent sections). According to one defense attorney, "to eliminate the ability of professional people to use their judgment doesn't make sense."

Another characteristic of the San Mateo courtroom workgroup concerns the characteristics of personnel recruited into the program. Selection criteria for the California program focus on property crime, and tend to produce cases that often are not particularly difficult to prosecute. In the early years, the unit would bring in the most serious cases they could justify under the selection criteria -- e.g., a rape or homicide in which a robbery could be charged. More recently, however, criteria have been applied less "aggressively" and these serious crimes are routed to other parts of the office. The nature of this caseload complicates the unit's "elite" status. Unit attorneys receive augmented salaries and have reduced caseloads (both required by the state program). They do not receive the most difficult or legally challenging cases.

Because many career criminal cases are straightforward to prosecute, the current program supervisor places a very high premium on initiative and aggressiveness on the part of unit personnel. In one supervisor's words, "if you're not a go-getter you might be tempted to take it easy." An important characteristic of unit attorneys is motivation and creativity. Effective unit attorneys will, for instance, regularly visit their municipal court to help identify career criminal cases that may not be obvious on the basis of initial screening.

Case Strength and Development. Table 6-10 profiles the evidentiary base for career criminal cases in the study sample. Several characteristics of the San Mateo cases are notable. Fewer of the San Mateo defendants were arrested at or in proximity to the scene of the crime than in any other jurisdiction. More than half (52.1%) were arrested not in proximity to the crime; only one in five (20.2%) were arrested at the scene. There were no witnesses providing positive identification in one fifth (20.5%) of the unit's cases; in another 39.1% of the cases identification depends upon a single witness.

TABLE 6-10
EVIDENTIARY FACTORS -- SAN MATEO COUNTY

	n	%
Proximity of Arrest to Crime Scene		
At the Scene	67	20.2
Pursued from Scene	54	16.3
In Proximity	38	11.4
Not in Proximity	<u>173</u>	<u>52.1</u>
	332	100.0
Positive Identification by Witness		
None (no witness)	64	20.5
One	122	39.1
Two	70	22.4
Three or more	<u>56</u>	<u>18.0</u>
	312	100.0
Witness Characteristics		
Stranger to Defendant	186	62.8
Acquaintance	16	5.4
Victim	<u>94</u>	<u>31.8</u>
	296	100.0
Tangible Evidence*		
Fingerprint Impressions	60	17.4
Blood, Hair, Semen, etc.	17	4.9
Stolen Goods	192	55.8
Weapons, Tools, Belongings	157	45.6
Other Physical Evidence	50	14.5

* Rate based on percent of total career criminal cases. N=344

The great majority of San Mateo's career criminal cases were supported by physical evidence. In more than half the cases (55.8%), stolen goods or property was retrieved in possession of the defendant. In another 45.6%, belongings of the defendant were retrieved in connection with the crime. Useable prints or impressions were taken in nearly one fifth (17.4%) of the cases. The profile of evidence in San Mateo, and the prominence of physical evidence, reflects the large portion of the caseload that involves burglary (44%).

Plea Negotiation

The activity of plea negotiation is fully defined in California Penal Code Sections 1192.5-7. When the California career criminal program was initially implemented, the primary effect of the penal code was to guarantee terms of a negotiation to the defendant. The statutes allow a plea agreement to specify the punishment and "the exercise by the court thereafter of other powers legally available to it." The court must inform the defendant if it approves the agreement. If the court reconsiders, the defendant will be permitted to withdraw his plea.

Within these statutory provisions, the original state-level career criminal program required that local units develop policies to prohibit or limit plea bargaining, but no blanket prohibition was mandated. Thus, throughout most of the program history reflected in the San Mateo sample, plea bargaining was limited but not eliminated.

Plea negotiation practices in the unit were developed within the jurisdiction's traditional practice regarding plea agreements. Practice in the County had focussed on charge bargaining; prosecutors would discuss charge reductions and dismissals in return for a guilty plea. Sentence negotiations were usually limited to the "conditional plea", a guarantee that the defendant would not be sentenced to state prison upon a plea of guilty. Some Superior Court judges would only consider "conditional pleas" with respect to sentence agreements, though acceptance of sentence agreements can vary between judges.

Within this tradition, unit attorneys might negotiate pleas for two major reasons: a) to "guarantee" a sentence to a defendant when they are willing to plea to what the deputy believes is a reasonable maximum; or b) to gain a conviction in a case with evidentiary problems. In this application, unit plea bargaining policy focussed more on using individual judgement appropriate to the gravity of career criminal cases rather than setting rigid limitations on the judgment of individual attorneys.

Recent revisions in California law have limited the prosecutor's discretion in plea bargaining. Reauthorization legislation for the California career criminal program in 1982 imposed much stricter plea negotiation guidelines on local units that accepted state funding. Specifically, career criminal cases are to require a plea to every count charged or go to trial. Attorneys may still negotiate pleas if the state's case is in jeopardy, but they must justify their agreement in writing. Proposition 8, an omnibus criminal justice ballot initiative passed by the voters in 1982 applied similar

restrictions to a list of serious felonies contributing to an atmosphere less conducive to the use of plea agreements. According to one CC attorney, judges are much less willing to listen charge discussions, sometimes demanding pleas to counts that will have no effect on sentence.

California has formalized plea bargaining to insure the protection of a defendant who forfeits the right to trial for charge or sentence concessions. In the early years of the San Mateo career criminal program, attorneys used the plea negotiation process within limitations commensurate to their perception of the seriousness of career criminal cases. Since 1982 the state penal code has been modified to reduce the prosecutor's discretion in plea bargaining and restricts opportunities for plea agreements in career criminal or serious felony cases.

Mode of Disposition

Pleas of guilty have been the mode of disposition for the great majority of serious felony crimes in California, and San Mateo's career criminal cases have not been an exception. More than eight in ten (82.9%) of the sample cases have been resolved through guilty pleas; a larger percentage than in any other jurisdiction. Just over 10% (11.6%) of the sample went to jury trial; just 3.8% were dismissed; and 1.7% went to a bench trial. Bench trials are used very infrequently in the state.

The recent changes in state laws regarding plea negotiation have not been in effect long enough to impact many career criminal case dispositions. However, dispositions of 1983 cases differ sharply from the steady pattern of former years, suggesting at least an immediate impact of the changes on case disposition. In 1983 the percentage of sample cases resolved through jury trial rose to 27.8% and the proportion of pleas declined to 66.7%.

Sentencing

The final court action in felony cases is sentencing -- judicial determination of the sanction to be imposed in a given case. Sentencing law takes a variety of forms among the states, and has been the object of widespread reforms during the past decade. In most states, including most of the study jurisdictions, these reforms have been designed to constrain or guide the discretionary decisions of prosecutors, judges, and/or corrections (i.e., parole boards). The primary objectives of these limitations have been to increase sentence equity -- the application of similar sentences for similar crimes and for defendants with similar criminal histories; and proportionality -- the application of sentences with a severity proportional to the seriousness of different crimes and the criminal histories of different defendants. In the study jurisdictions these objectives of sentencing law are manifest in determinate sentencing reforms, probation disqualifiers, sentencing enhancements, or judicial sentencing guidelines.

Sentencing law and corrections policy can have important effects on the opportunities or limitations confronting prosecutors. The nature of these laws may lessen the influence of prosecutors on sentence length, for example,

EXHIBIT 6-1

Illinois Sentencing Law Summary

**CLASSIFICATION OF OFFENSES AND SENTENCES
Under The
UNIFIED CODE OF CORRECTIONS**

Classification	Sentence
Murder	Imprisonment Minimum: 20 years Maximum: Life Parole term: 3 years
Class X Felony	Imprisonment Minimum: 6 years Maximum: 30 years Parole term: 3 years
Class 1 Felony	Imprisonment Minimum: 4 years Maximum: 15 years Parole term: 2 years Fine: \$10,000 or greater amount stated in offense
Class 2 Felony	Imprisonment Minimum: 3 years Maximum: 7 years Parole term: 2 years Fine: \$10,000 or greater amount stated in offense
Class 3 Felony	Imprisonment Minimum: 2 years Maximum: 5 years Parole term: 1 year Fine: \$10,000 or greater amount stated in offense
Class 4 Felony	Imprisonment Minimum: 1 year Maximum: 3 years Parole term: 1 year Fine: \$10,000 or greater amount stated in offense
Class A Misdemeanor	Imprisonment For any term less than 1 year Fine: Not to exceed \$1,000
Class B Misdemeanor	Imprisonment Up to 6 months Fine: Not to exceed \$500
Class C Misdemeanor	Imprisonment Up to 30 days Fine: Not to exceed \$500
Petty Offense	Imprisonment: None Fine: Not to exceed \$500 (or lesser amount stated in the statute)
Business Offense	Imprisonment: None Fine: Amount stated in offense.
Probation	Felony: Up to 4 years / Misdemeanor: Up to 1 year Petty or Business Offense: Up to 6 months

by placing release decisions in the hands of corrections officials. On the other hand, determinate sentencing laws, mandatory sentencing, or other means of decreasing post-conviction sentencing discretion may provide prosecutors with important tools to influence ultimate sentences.

In this section the sentencing laws of each study jurisdiction will be reviewed. The review will briefly summarize: a) the overall structure of felony sentencing provisions in the jurisdiction, b) any provisions for enhancing sentences for repeat or serious offenders, and c) the role of corrections in decisions concerning release dates.

Cook County

On February 1, 1978, Illinois sentencing law was fundamentally revised. The state enacted new determinate sentencing legislation allowing judges to designate a determinate sentence within permissible ranges set by the legislature. These ranges are set according to a classification of offenses displayed in Exhibit 6-1.

Within certain limitations, the judge may also choose from a variety of alternative sentences including probation, periodic imprisonment, conditional discharge, fine, or restitution. However, the defendant is not eligible for probation or conditional discharge if convicted of a class 2 felony or above (or a series of lesser specified felonies including residential burglary), and had been convicted of a class 2 or greater felony in the last ten years. Neither is an offender eligible for probation or conditional discharge if they committed a class 1 felony while on probation or conditional discharge for another felony.

Illinois law is restrictive concerning the imposition of consecutive sentences, a condition that was mentioned frequently by Deputy Assistants in the prosecutor's office. The court shall not impose a consecutive sentence unless, having regard to the nature of the offense and the history and character of the defendant, it is of the opinion that such a term is required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record. Furthermore, consecutive sentences shall not be imposed for offenses which are committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective. The latter provision has been the subject of conflicting court interpretation, and presents a "grey area" to prosecutors.

Sentence Enhancements

As part of its determinate sentencing reforms, Illinois adopted a Habitual Offender Law that requires a "natural life" sentence for all offenders adjudged to be "habitual offenders." An habitual offender is defined as any person who has been twice convicted of a class x felony or a felony in another state with the elements of a class x felony, and is again convicted of a class x felony. Both prior convictions must have occurred within 20 years of the current conviction. Habitual felon status is not charged during the trial stage, but is determined through a post-conviction hearing. Evidence is prima facie and does not have to be proven beyond a reasonable doubt before a jury.

In addition to the habitual felon law, judges may impose fixed sentences in an "extended range" beyond the normal legislated sentence. These ranges may be justified by one of two conditions. First, the judge may find the criminal act to exhibit "exceptionally brutal or heinous activity indicative of wanton cruelty." Second, extended ranges may be imposed when the defendant has been convicted of a prior charge equal to or more serious than the instant offense within the past ten years.

Finally, a person over 21 years who is convicted of a class 1 or class 2 felony, after having been twice convicted of any class 2 or greater felony in Illinois, shall be sentenced as a class X offender. The prior convictions must arise from separate transactions.

Corrections and Release

Illinois' sentencing revisions modified parole provisions to a system of mandatory supervised release (MSR) that imposes conditions similar to probation. The offender serves a determinate sentence minus good time, and a 1, 2, or 3 year term of MSR depending on felony class.

The Illinois Department of Corrections (IDOC) sets policies concerning early release on good conduct. The basic legislated "good time" provision is one day good time for each day of good conduct credit. However, the Director may award additional good conduct credit in specific instances, and recent use of this provision has sparked controversy. In their 1982 planning document, the agency emphasized that "the most pressing problem facing the IDOC continues to be an increasing institution population ..." Prison admissions increased

167 percent between 1973 and 1981, and the IDOC followed a policy of "maintaining its prison population within the current bed space capacity through the use of meritorious good time and forced release." Concern over early release policies prompted the Cook County State's Attorney to release an October, 1983 report strongly criticizing IDOC prison release policies and proposing to lessen prison populations through reducing intake with diversion and community placement.

Summary

Cook County prosecutors do have a number of opportunities to influence sentences through penal code provisions for enhancements. Within Cook County practice, career criminal prosecutors saw the greatest opportunities to ensure long sentences in the aggressive use of class x sentencing provisions for repeat offenders, and the habitual offender statute. Opportunities for arguing consecutives were perceived as limited, and extended terms must be sparingly recommended to remain credible.

One of the major factors limiting the prosecutor's effect on sentence length in Cook County is IDOC discretionary release policy. ROC Court attorneys routinely send letters to corrections requesting that the defendant's career criminal status be considered in making release decisions, emphasizing any aggravating factors in the case, and asking that the responsible ASA be informed of any release decision so that the office can have input to the decision. Prosecutors expressed little confidence that their opinions had any effect. In the words of one ASA, "I see career criminal defendants released prior to a period that would be reasonable under the most liberal policies."

Dade County

Felony sentences in Florida fall within legislated ranges according to crime classifications set forth in F.S.A. 775.081. Felony classifications are: a) capital felony, b) life felony, c) felony of the first degree, d) felony of the second degree, e) felony of the third degree. Judges set a presumptive term within the ranges set by the legislature. Because of concern about sentencing equity in the state, a Sentencing Commission was established to create a statewide system of sentencing guidelines. The guidelines, implemented in 1983, specify the presumptive sentence to be applied by a judge in cases scored by seriousness of the primary charge, additional charges, the defendant's criminal history, and severity of injury to victim(s). A presumptive term and a narrow discretionary range are provided in the "sentencing grid." A judge is permitted to impose a sentence within the range without having to make a written explanation. However, the guidelines emphasize that departures from presumptive term should be avoided unless there are clear and convincing reasons for aggravating or mitigating the sentence.

Sentence Enhancement

Prior to the recent adoption of sentencing guidelines, judges could fix presumptive release dates within a broad range of acceptable sentences. Prosecutors could recommend lengthy terms for serious cases such as career criminals. This tool is curtailed under the guidelines.

Corrections and Release

The "Objective Parole Guidelines Act of 1978" specifies criteria for parole release in Florida until July 1, 1978. The Act envisions movement toward the elimination of parole in the state and eliminates the use of parole in releases based on "gain time" or "meritorious gain time." Parole is granted only after specified periods of incarceration to persons meeting a series of criteria defined to insure that parole is in his own welfare and the welfare of society.

Section 944.275 of the F.S.A. authorizes the Department of Corrections (DOC) to grant deductions from sentences in the form of "gain time" to provide incentive for satisfactory prison behavior and participation in productive activities. Basic gain time is granted at the rate of ten days per month and is based on satisfactory behavior; incentive gain time is granted at 20 days per month for participation in training or other positive activities; meritorious gain time rewards exceptional behavior with grants of 1 to 60 days additional gain time.

Summary

Throughout most of the history of career criminal prosecution in Dade County judges exercised considerable sentencing discretion within broad ranges. In some instances prosecutors were able to influence sentence through recommendations, but the effectiveness of recommendations depended upon the individual judge.

The adoption of sentencing guidelines has decreased the variability between judges, but prosecutors have not responded uniformly. The guidelines require

Florida does have an Habitual Felon Law (F.S.A. 775.084). The statute defines an habitual felony offender as a defendant that has been convicted of a felony in Florida or another state. The prior conviction must have been after his eighteenth birthday and the current offense must have occurred within five years of the prior conviction or the defendant's release from incarceration for that prior conviction. If the court finds the defendant to be an habitual offender, the extended term shall be:

1. In the case of a felony of the first degree, for life;
2. In the case of a felony of the second degree, for a term of years not exceeding 30;
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

Though the criteria are straightforward, the Florida Habitual Offender statute is procedurally complex. The determination of habitual offender status is made in a separate hearing after conviction. The court must determine not only whether the status applies, but if it is necessary for the protection of the public to sentence the defendant to an extended term. Before the proceeding the court must obtain a pre-sentence investigation (which is not routinely prepared in Dade County), and all evidence must be presented in open court with full rights of confrontation, representation, and appeal. The prosecution must prove that the defendant has a qualifying prior conviction, and that it has never been pardoned or set aside in any post-conviction proceeding.

that judges factor prior convictions into the sentencing grid, thus insuring some proportionality in sentencing based upon criminal history. However, prosecutors felt that in many instances the guidelines constrained judicial sentences that would have been more severe. The procedural complexity and standards of proof for the Habitual Offender Act deterred its use by prosecutors. Respondents perceived the necessary preparation to be time-consuming and the necessary proof difficult to ensure.

Knox County

Since passage of the Criminal Sentencing Reform Act of 1982, (Tennessee Code Annotated (TCA) Section 40-35-211), Tennessee judges must impose determinate sentences according to two ranges. The ranges are defined in Section 40-35-109 as follows:

Range I: not less than the minimum sentence provided by the law, and not more than the minimum plus one-half the difference between the minimum and the maximum sentence.

Range II: not less than the minimum plus one-half the difference between the minimum and maximum sentence, and not more than the maximum sentence provided by law.

Range I is applied for "standard" and "especially mitigated" offenders and Range II is for "persistent" offenders or an "especially aggravated" offense. The "standard" offender is neither persistent, aggravated, nor mitigated. The "especially mitigated" offender has no prior felony convictions and no prior misdemeanor sentences equal to or greater than six months, or where the court finds other mitigating circumstances. The "especially aggravated" offenses include a felony resulting in death or

bodily injury, or involving threat of either, where the defendant has previous convictions for a felony which resulted in death or injury as well as felonies committed while on conditional release or escape status. The "persistent offender" must have received two or more prior felony convictions.

Judges impose all sentences except for verdicts on offenses where death is a possible sentence, when a jury imposes sentences which are imposed by a jury. For multiple sentences, the judge determines whether the sentences run concurrently or consecutively. Unless court ordered and justified, multiple offenses run concurrently.

Sentence Enhancements

Sentence enhancement may be applied for the "persistent offender"; as defined by TCA 40-35-106 as the offender who has received two or more prior felony convictions within the five years immediately preceding the commission of the instant felony, or four or more felony convictions within the last ten years. Time spent in prison is not included in these calculations.

The "especially aggravated" offense, specified by TCA 40-35-108, includes a felony resulting in death or bodily injury; or involving threat of either, to another person, where the defendant has previously been convicted of a felony that resulted in death or bodily injury; a felony during which the defendant willfully inflicted serious bodily injury on another person or the actions of the defendant resulted in death or serious bodily injury to other than the intended victim; or felony committed while the defendant was on any form of

release if the release is related to a prior felony; or a felony committed while on escape status or while incarcerated on a felony, if the instant felony results in death or bodily injury for another person.

Both "persistent" and "aggravated" convictions result in Range II sentencing, fixed by the court.

The Tennessee Habitual Criminal Act as delineated in TCA 39-1-801 defines the habitual offender as any person who has been convicted three times for felonies, not less than two of which were among an enumerated list of crimes of violence, drug violations, sex offenses, and most property crime except for petit larceny. When charged as an habitual offender, previous criminal history records shall be admissible evidence as proof of habitual criminality. When the indictment charges a defendant for felony and being an habitual criminal, the trial judge must ask the jury whether they find the defendant guilty of both charges or simply the instant felony.

When convicted of an enumerated felony as an habitual felon, a life sentence is imposed. Subsequent to an appellate ruling in 1978, it was determined that the fourth felony triggers application of the Habitual Offender Act rather than the third, which had been a previous interpretation.

In the 1982 Sentencing Reform Act sentence enhancements are provided, based on two sentencing ranges. Range II is the more severe sentencing and "persistent offenders" must be sentenced within Range II.

In addition the court must consider "enhancement factors" which include previous criminal convictions, a series of aggravating circumstances,

concerns for injuries suffered by the victim, indication of absence of conscience, or possession of a deadly weapon during commission of the offense.

Corrections and Release

Defendants are not eligible for probation if they have been convicted of two or more felonies for which the maximum sentence allowed by law is greater than 10 years imprisonment; for first and second degree murder, some sexual crimes, robbery with use of a deadly weapon, burglary, and some drug offenses, or cases for which the minimum sentence exceeds 10 years.

Release on parole depends on the prisoner's eligibility status. TCA 40-35-501 defines categories of eligibility. Mitigated offenders are eligible after serving 20% of their sentence; standard offenders are eligible after serving 30%; for offenders receiving Range II sentences, 40% of the sentence must be served; and if sentenced as an aggravated and a persistent offender 50% of the actual sentence must be served. Once eligible, parole is determined by the Board of Parole based on guidelines set forth in TCA 40-35-503. Offenders sentenced as habitual offenders must serve at least 30 years of the sentence before they are eligible for parole.

Provisions for good time credit were revised in September 1981. Prior to the change, good time and honor credits were applied. Since the new system, prisoners may earn credit based on behavior and good conduct. Maximum allowable credit depends on prisoner classification which is derived on the basis of time in prison and disciplinary offenses committed in prison. Commission of disciplinary infractions may result in loss of credit.

Summary

Tennessee sentencing law includes provisions that allow past criminal behavior to be used to enhance sentences. Career criminal attorneys in Knox County have made aggressive use of the Habitual Offender law. The law requires extensive paperwork, e.g., the acquisition of certificates of conviction, but the unit has instituted a procedure for filling this need in eligible cases.

Similarly, the revisions in Tennessee law have provided an explicit basis for using prior criminal history to place an offender in "Range II". In the words of one attorney, "the law played right into the prosecutors' hands because we can use priors".

Monroe County

New York Penal Law 70.00 mandates indeterminate sentencing for felony convictions. The sentencing judge must impose a minimum and a maximum sentence, which are statutorily defined by class of felony as follows:

	<u>Maximum Sentence</u>	<u>Minimum for</u>
Class A	Life	A-I 15-25 years
Class B	25 years	A-II 3-8 years and 4 months
Class C	15 years	B-C violent offenders, 1/3 the maximum
Class D	7 years	all other felonies,
Class E	4 years	from 1 year to 1/3 the maximum

There are additional specifications for violent felony offenders and second felony offenders which delineate a maximum range up to the maximums listed above by Class.

Under Section 70.25 the court may specify whether multiple sentences run concurrently or consecutively. Multiple sentences run concurrently unless otherwise specified. Sentences must be concurrent for offenses committed through a single act. A sentence must be consecutive to an undischarged sentence if the new sentence is imposed pursuant to specifications on second and persistent offenders. Multiple sentences should also run consecutively if the individual commits a violent felony offense while released on bail pending sentencing for a felony conviction, unless the court finds mitigating circumstances.

Sentence Enhancement

New York's sentencing structure for habitual offenders categorizes two types of second time felons and two types of persistent offenders.

1. Second Felony Offenders: Convicted of a felony (other than a Class A-1 felony) for which sentence was imposed not more than 10 years previous to the instant offense. (Prior convictions are referred to as predicate felony convictions.) If found guilty as a second felony offender, the following indeterminate ranges apply:

<u>Felony</u>	<u>Maximum</u>	<u>Minimum</u>
Class AII	Life	6-12 1/2 years
Class B	9-25 years	1/2 the maximum
Class C	6-15 years	1/2 the maximum
Class D	4-7 years	1/2 the maximum
Class E	3-4 years	1/2 the maximum

2. Second Violent Felony Offenders: Convicted of a violent felony offense after previous conviction of a violent felony within the previous ten years. The prescribed ranges by Class for a conviction as a second violent felony offender are:

<u>Felony</u>	<u>Maximum</u>	<u>Minimum</u>
Class B	12-25 years	1/2 the maximum
Class C	8-15 years	1/2 the maximum
Class D	5-7 years	1/2 the maximum
Class E	4 years	1/2 the maximum

3. Persistent Felony Offenders: Convicted previously of two or more felonies and had received a sentence between one year imprisonment and death, and the defendant was imprisoned prior to committing the instant felony. If the court determines the defendant to be a persistent felon, it may impose a sentence for a Class A-1 offense, for which the maximum is life and the minimum is 15-25 years.
4. Persistent Violent Felony Offender: Convicted previously of two or more violent felonies. Once found by the court to be a persistent violent felon, the sentence imposed must be indeterminate with a maximum of life, and a minimum of 10-25 years for Class B, 8-25 years for Class C, and 6-25 years for Class D felonies.

Felony offenders and persistent felony offenders are not eligible for probation, intermittent imprisonment, or conditional discharge. For other offenders, these sentences may be applied and later revoked by the court. In some instances, probation or conditional discharge may be applied to class A-11 and Class B felonies in exchange for turning State's evidence.

Corrections and Release

The New York State Board of Parole uses procedures and guidelines for paroling decisions. Among the factors to be considered are (1) aggravating and mitigating factors; (2) prior criminal record, and (3) previous adjustment to probation, parole, or confinement.

Life sentences require a 15 or 20 year minimum, such as multiple (third or fourth) felony convictions. Penal Law 70.40 leaves parole at the discretion of the Board, and prisoners become eligible for consideration after having served the minimum or the aggregate minimum for multiple consecutive sentences.

Credit for good time in prison may be applied against the maximum, not to exceed one-third of an aggregate term.

Summary

New York sentencing law directly banks the minimum sentences in their indeterminate sentencing ranges to past felony convictions and violence. In this context the Monroe County CCU has focussed its policies on expediting cases and maximizing convictions. In the words of one prosecutor using prosecutorial influence on sentence "is not a particularly important objective -- the law takes care of that".

Multnomah County

By statute (ORS 137.120) sentencing in Oregon is indeterminate with a fixed maximum. There are established maximum terms felony classes as follows:

Class A	Maximum	20 years
Class B	Maximum	10 years
Class C	Maximum	5 years
Unclassified Felonies	Other, according to specific offense	

Felonies may also be punishable by fine up to \$100,000. There are other

special sentencing provisions for felonies committed by a "dangerous offender" and there are enhancements for use of a firearm during commission of a felony.

Multiple sentences run consecutively unless ruled otherwise by at least four members of the State Board of Parole.

Sentence Enhancements

Oregon's Habitual Criminal Act was repealed and replaced in 1971. The new sections 161.725 and 161.735 are unique in that they focus on propensity for future criminality or personality disorders rather than the defendant's prior convictions. The statute provides that the maximum of an indeterminate term for a dangerous offender is 30 years. Dangerousness may be determined on the grounds of propensity related to severe personality disorders as well as previous felony conviction.

The procedure for determining dangerousness requires a presentence investigation and a psychiatric examination whenever the court has reason to believe the defendant to fit the criteria. The results are presented at a presentence hearing unless the hearing is waived by the district attorney and the defendant. Previous convictions used as prima facie evidence must meet specific requirements of documentation and/or testimony. Sentence enhancement for use of a firearm during commission of a felony includes imposition of specific minimum terms of 5 years for the first conviction, 10 years for the second conviction and 30 years for the third conviction. The court may suspend sentence or impose a lesser term for a first offender with mitigating circumstances.

Correction and Release

The sentencing judge may release a convicted felon on probation for a period determined by the court, or via granting a temporary release when the sentence imposed is less than one year. Sentence may be reimposed if conditions of probation are violated.

Parole eligibility is dependant on the minimum term of imprisonment (up to one-half the maximum), unless at least four Board members vote an exception. Offenders convicted of aggravated murder are ineligible for parole.

Within the first six months of confinement, the parole eligibility date is set subsequent to a parole hearing and interview. However, the Board is not permitted to set a parole date for prisoners with particularly violent or otherwise dangerous offenders, nor those with two or more previous convictions for Class A or Class B felonies, or diagnosed as having a severe personality disorder. Parole release requires a parole plan and dangerous offenders are required to undergo a psychiatric exam, as frequently as every two years if periodically considered for parole.

Sentences may be reduced by accumulating good time credit for good conduct. Good time credit allowances are determined by the term of the offender's sentence, with credit for every day in work or educational programs. Offenders sentenced with enhancement for firearm possession are ineligible for parole until the minimum term is served.

Table 6-11 below, presents a summary for California sentence enhancements.

TABLE 6-11

CALIFORNIA SENTENCE ENHANCEMENTS

Section	Classification	Enhancement (yrs)	Year Enacted
667	Habitual Criminals	5	1982
667.7	Certain Habitual Criminals	Life term (not an enhancement)	1981
667.6	Multiple Sex Offenders	5	1979
667.5	Prior Prison Terms	1 or 3	1976
1170.1 et seg	Uniform Determinate Sentencing Act	Limitations on aggregation of enhancements	1977
12022 et seg	Firearm use, destruction of property, bodily injury during a felony	1, 2, 3, or 5	Various years

Corrections and Release

Violent felony offenders and those with two prior felony convictions are prohibited from receiving a sentence of probation; unless the court specifies circumstances regarding the interest of justice to be served. Probation is

also prohibited for most serious felonies, crimes involving a firearm, and for various narcotics offenses.

Parole eligibility and release dates are established by the nine-member Board of Prison Terms. Among the factors considered for determining eligibility and release is past criminal history. The Board uses statutory guidelines for parole decisions and conditions of release. Prisoners sentenced to life must serve at least seven years before they are eligible for parole.

Good time may reduce a prison term up to one-third for good behavior, at a maximum rate of four months for each eight months served. Credit may be lost due to particular disciplinary infractions, and additional time gained due to participation in specific programs, activities.

Summary

California law is unique among the study sites because of the specificity of sentencing options. Judges have limited sentencing options within fixed terms for specified charges or enhancing conditions. Discretion is retained for probation or other sentence alternatives, but these will rarely apply in career criminal cases.

The multiplicity of sentence enhancements tied to specific case characteristics can provide the prosecutor with strong plea negotiating leverage, and ostensibly allows sentencing proportional to the characteristics of the crime.

Conclusion

The preceding discussion traces the specific strategies that local prosecutors have developed for prosecuting career criminal cases at the trial, disposition, and sentencing stages. These strategies are shaped by the nature of the caseload in each jurisdiction, the expectations of the courtroom workgroup, and the opportunities and constraints provided by court procedures and penal codes in each jurisdiction. In the next section, the outcomes of these strategies will be profiled at important decision points within case processing.

1. Felony Justice Boston: Little Brown, 1978

SECTION 7

CAREER CRIMINAL CASE OUTCOMES

The incremental nature of felony case processing has been emphasized throughout this report. The overall outcome of a case depends on a series of decisions made by different individuals or groups of individuals. The decisions relevant for assessing career criminal prosecution programs begin with screening and selection of cases for prosecution and extend to disposition and sentencing. The "outcomes" of career criminal cases are the cumulative product of these decisions. Several implications follow.

1. The series of decisions that shape the outcomes of career criminal cases are made within changing groups of actors. Pre-trial release decisions are made in a lower court, and may or may not involve the career criminal prosecutor. Charging decisions, plea negotiation decisions, trial dispositions, and sentencing decisions are all made within different groups. In many situations, the prosecutor is in the position of trying to influence decisions that are primarily under the control of others. In other instances, concurrence between individuals is necessary for a decision. In either case, the expectations of others are a constraint on the actions of the prosecutor. If the prosecutor takes inflexible positions, influence on the actions of others may diminish rather than increase.
2. Even though they frequently involve different groups of actors, decisions in criminal case processing are not independent. Decisions at one stage affect or even determine decisions at another. Perceptions of the consequences of a jury trial influence the incentives to plead. Perceptions of corrections decisions alter the incentive to influence judicial sentencing decisions. Denial of pre-trial release may influence the incentives for a defendant to gain a quick disposition of his case. Thus, decisions at one stage may be undertaken partly with an eye to influencing decisions at another stage.
3. Several objectives may be relevant at each decision point, and these objectives will often represent tradeoffs --

maximizing one may require concessions in another. Most obvious is the tradeoff between gaining convictions and maximizing sentence. If one is willing to grant sufficient concessions in sentence, conviction rates could approach 100 percent. The necessary concessions in sentence, however, would be suboptimal. Similarly, suboptimal allocations of resources -- time and staff -- will result if specific objectives are pursued too zealously.

4. The expectations of actors and the probabilities of decision tradeoffs at each decision point will vary according to the characteristics of each case. For example, an extremely violent offense involving a defendant who has a history of jumping bail is not likely to gain pre-trial release. Similarly, an armed robbery with four willing and competent eyewitness identifications does not represent much of a risk at trial.
5. The results of decisions at various points in criminal case prosecution are cumulative. Conviction rates, prison sentences, and sentence length are not discrete independent measures when considering the outcomes of all cases in a program caseload. The aggregate period of incarceration resulting from a program is determined by the product of SP , the number of state prison sentences and L the average sentence length ($SP \times L$). Maximizing the cumulative effect can not be accomplished by focussing on one of these factors without considering corresponding changes in the other. Similar interactive effects occur between the outcomes of discrete decisions throughout felony case handling.

Prosecutors must formulate their prosecution strategies and make decisions concerning individual cases within a decision process that has the above characteristics. Analyses that ignore the complexity of this process are not likely to yield information of much use to prosecutors or policymakers. Thus analyses that judge program success or failure on the basis of discrete indicators of decision outcomes at each decision point may not recognize the tradeoffs that face the prosecutor at that point, or the effects on other actors in the decision situation.

TABLE 7-1

PRE-TRIAL RELEASE

	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%
CAREER CRIMINAL CASES														
Pretrial Release or Custody:	(329)	(100.0)	(338)	(100.0)	(56)	(100.0)	(158)	(100.0)	(405)	(100.0)	(250)	(100.0)	(339)	(100.0)
In Jail	277	84.2	214	63.3	44	78.6	124	78.5	236	58.3	200	80.0	246	72.6
ROR	9	2.7	20	5.9	--	--	6	3.8	46	11.4	11	4.4	56	16.5
Release on Bond	41	12.5	72	21.3	6	10.7	24	15.2	54	13.3	33	13.2	34	10.0
Released to Third Party	--	--	29	8.6	--	--	1	.6	16	3.9	--	--	--	--
Returned to Prison/Parole Revoked	1	.3	--	--	5	8.9	--	--	29	7.2	3	1.2	2	.6
Other	1	.3	3	.8	1	1.8	3	1.9	24	5.9	3	1.2	1	.3
	Chicago		Miami		Knoxville		Rochester		Portland		Philadelphia		San Mateo	
NON-CAREER CRIMINAL CASES														
Pretrial Release or Custody:	(151)	(100.0)			(53)	(100.0)	(31)	(100.0)	(241)	(100.0)	(133)	(100.0)	(176)	(100.0)
In Jail	99	65.6			13	25.0	12	38.7	99	41.2	80	60.1	61	34.7
ROR	7	4.6			5	9.6	8	25.8	73	30.3	7	5.3	60	34.1
Release on Bond	44	29.1			30	57.7	5	16.1	28	11.6	41	30.8	53	30.1
Released to Third Party	--	--			--	--	4	12.9	27	11.2	--	--	--	--
Returned to Prison/Parole Revoked	--	--			4	7.7	--	--	5	2.0	--	--	--	--
Other	1	.7			--	--	2	6.5	9	3.7	5	3.8	2	1.1

This section of the report profiles decision outcomes at several key decision points in the prosecution of career criminal cases. These outcome profiles further define the case handling strategies developed within each study jurisdiction. The following subsections describe the outcomes of pre-trial release decisions, dispositions, and sentencing. Implications of program outcome profiles will be discussed in the final section of the report.

Pre-Trial Release

In each study jurisdiction there is an opportunity for pre-trial release of defendants with the exception of a few specified crimes (e.g., capital offenses). However, there are a number of reasons for career criminal programs to minimize the attainment of pre-trial release for defendants in their cases. First, the underlying presumption that defendants identified as career criminals have a high probability of being high rate offenders dictates that pre-trial custody may have an incapacitation effect. Second, given the potential sanctions for career criminal cases, pretrial custody may be important to prevent failures to appear. Finally, pretrial custody may reduce the incentive for the defense to resist the expeditious resolution of case.

Table 7-1 profiles pretrial release status for both career criminal and non-career criminal samples in each jurisdiction. The proportion of career criminal cases that remain in custody in jail or through parole revocation ranges from a low of 63.3% in Dade County to a high of 87.5% in Knox County. Among the remaining jurisdictions, Cook County (84.5%), Philadelphia (81.2%), and Monroe County (78.5%) have near 80% of their defendants in custody prior

to trial. Multnomah County keeps 65.5% of its career criminal cases in custody, and San Mateo County 73.2%.

A comparison to the non-career criminal cases, which are matched to career criminal cases by charge and date of acceptance, demonstrates dramatically lower levels of pre-trial custody for those defendants. The difference between career criminal and non-career criminal cases is least in Cook County (18.9%), Philadelphia (21.1%), and Multnomah County (22.3%); greatest in Knox County (54.8%), Monroe County (39.8%), and San Mateo County (38.5%).

Outcomes of pretrial release decisions demonstrate several general points. First, the percentage of career criminal cases remaining in custody is near or above 80 percent in four of the seven jurisdictions. The percentage falls below two-thirds only in Dade and Multnomah Counties.

Second, in every case rates of pretrial custody are significantly higher for career criminal cases than non-career cases with similar top charges. In three counties the differential is near forty percent or more.

Third, rates of pretrial release reflect the nature of the caseload in each jurisdiction. Cook County and Philadelphia have caseloads dominated by violent crimes against people, a factor that weighs heavily in most release decisions. Accordingly rates of pre-trial incarceration are higher for non-career criminal cases in those jurisdictions than in others (65.6% and 60.1% respectively). In property crime jurisdictions the nature of the instant offense will not weigh heavily in bonding decisions, and the criminal history of the defendant will become more important to preventing pretrial

release. The programs with greatest differentials between career criminals and non-career criminals are property crime focussed.

Criteria for making bail decisions across jurisdictions are very similar. Seriousness of the instant offense, current release status, past criminal history, and the probability of failure to appear are standard criteria. These factors also characterize career criminal caseloads. It follows that normal bonding procedures should limit pretrial release for career criminals.

In San Mateo and Cook County, for instance, there is no emphasis on program input to the bonding decision, yet Cook County has the lowest pretrial release rate of all jurisdictions. Pretrial release rates for San Mateo County are much lower than for non-career criminal cases. The responsiveness of bonding decisions to career criminal case characteristics was reflected in the comments of many prosecutors. In San Mateo, one respondent observed "we haven't done much in that area. It doesn't seem to be a problem." A Cook County ASA noted that release rates were lower for his cases, and added "you would expect it given the nature of the cases." Multnomah County stands out in the relatively low pretrial custody rate and the relatively low differential between career criminal and non-career criminal cases. Prosecutors in that jurisdiction noted the difficulty of affecting bonding decisions.

The greatest opportunities for career criminal programs to impact bonding decisions occur in jurisdictions that focus case selection on property crimes. The strong differential between career criminal and non-career

criminal release rates in Knox County, where early intervention and pretrial custody were program emphases, suggests that efforts to ensure that career criminal case characteristics are considered in bonding decisions can be worthwhile. A Monroe County prosecutor emphasized the importance of bonding decisions in that program.

The key to career criminal prosecution is to get the judge to raise bail, to get the guy in jail, then he'll plead.

Case Dispositions

The most fundamental outcome of the trial and disposition phase of criminal prosecution is the decision concerning guilt or innocence. Table 7-2 displays data on conviction rates and modes of conviction in the seven jurisdictions. A guilty conviction means that the defendant plead or was found guilty of at least one charge. Dismissals are nolle prosequis or, in a few instances, cases that have been removed from the dockets without prejudice.

Overall conviction rates -- the percentage of all defendants that receive dispositions of guilty -- vary between a high of 94.8% in San Mateo County and a low of 75.3% in Philadelphia. In addition to San Mateo County, Multnomah County (93.0%), Monroe County (91.5%), and Knox County (90.8%) achieved overall conviction rates greater than 90%. Dade County had an overall conviction rate of 81.7%, and Cook County a rate of 79.1%.

San Mateo County and Monroe County achieved a large percentage of their guilty dispositions through pleas of guilty; the percentage of dispositions

TABLE 7-2

CAREER CRIMINAL CASE DISPOSITIONS

	Cook County		Dade County		Knox County		Monroe County		Multnomah County		Philadelphia		San Mateo County	
	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%
OVERALL CONVICTION RATE	285	79.1	372	81.7	109	90.8	193	91.5	372	93.0	183	75.3	326	94.8
GUILTY														
Plea	184	51.1	330	72.5	71	59.2	163	77.3	231	57.8	109	44.9	283	82.9
Bench Trial	80	22.2	7	1.5	15	12.5	4	1.9	57	14.3	32	13.2	5	1.5
Jury Trial	21	5.8	35	7.7	23	19.2	26	12.3	84	21.0	42	17.3	36	10.5
ACQUITTAL														
Bench Trial	41	11.4	18	4.0	2	1.7	3	1.4	5	1.3	27	11.1	1	0.3
Jury Trial	4	1.1	11	2.4	3	2.5	11	5.2	7	1.8	11	4.5	4	1.2
Dismissed	30	8.3	54	11.9	6	5.0	4	1.9	16	4.5	22	9.1	13	3.8
(Total n)	360		455		120		211		400		243		344	
Jury Trial Conviction Rate		84.0%		79.5%		88.5%		70.3%		92.3%		79.2%		90.0%
Bench Trial Conviction Rate		66.1%		28.0%		88.2%		57.1%		91.9%		54.2%		83.3%

through plea was higher in these jurisdictions than any other in the study. However, both Multnomah County and Knox County had fewer than 60% of their cases resolved through a plea of guilty. In those counties a high conviction rate (92.3% and 88.5% respectively) was maintained in a relatively large number of jury trials. Monroe County provided strong incentives to plea, achieved a high rate of guilty pleas, but achieved a more modest rate of conviction in jury trials (70.0%), the lowest among the study jurisdictions.

Dade County, Cook County, and Philadelphia had lower conviction rates, and the pattern of dispositions provides an explanation. In both Cook County and Philadelphia, bench trials are available and frequently used at the request of the defense. In both cases bench trial conviction rates are much lower (66.1% and 54.2% respectively) than jury trial rates. Thus a large part of the explanation for lower conviction rates lies in the higher rate of bench trials in those jurisdictions. The relatively high dismissal rates and lower jury trial conviction rates for those jurisdictions may reflect the nature of their caseloads which include more assaultive crimes against persons than other jurisdictions. The overall conviction rate in Dade County is reduced by a moderate number of bench trials in which there is a very high rate of acquittal, and by dismissals. Prosecutors in Dade County noted that many dismissals occur because transient victims of crime, e.g., tourists, are not available for testimony.

The rate of conviction to top charge -- the most serious charge filed in a case -- provides an indicator of the comparative strength of convictions. Table 7-3 displays a) top charge conviction rates for all convictions and b)

top charge conviction rates for all cases prosecuted in the program. The great majority of convictions in all programs were to the top charge. Rates range from 91.8% in Philadelphia to 74.6% in Monroe County.

TABLE 7-3
TOP CHARGE CONVICTION RATES
CAREER CRIMINAL CASE

	Cook County	Dade County	Knox County	Monroe County	Multnomah County	Philadelphia	San Mateo County
% of Convictions	87.0	NA	78.9	74.6	84.9	91.8	86.5
% of All Cases	68.8	NA	71.7	68.2	79.0	69.1	82.0

Philadelphia and Chicago displayed relatively low overall conviction rates, but display the highest levels of conviction to top charge. The serious crimes that dominate their caseload, and the relatively low levels of guilty pleas, may contribute to these high conviction rates. The lower top charge conviction rate in Monroe County, which has a very high rate of overall convictions, reflects their standard plea negotiation policies.

The second row in Table 7-3 displays the percentage of all program cases that resulted in a conviction to top charge. This figure is the product of overall conviction rate and the percentage of convictions that were convictions to top charge. All programs for which data was available returned convictions to top charge in more than two thirds of the cases

accepted for prosecution. The uniformly high rates were achieved because those programs that tended toward lower overall conviction rates achieved a large percentage of convictions to top charge. Similarly the jurisdictions with the highest conviction rates tended to have somewhat lower top charge rates. The result is a rather uniform high level in strength of convictions ranging between 68.2% level in Monroe County to 82% in San Mateo County.

Incarceration Rates

Incarceration rates have received special attention in the study of career criminal prosecution because of the implications for crime control through incapacitation. Table 7-4 profiles three measures of incarceration for the study programs. State prison incarceration rates are calculated in two ways. The first rate indicates the percentage of convictions that received sentences to state prison. The second indicates the percentage of all unit prosecutions that received sentences to state prison. In the second and third sections of the table, these rates are repeated for local jail incarcerations and for total incarcerations (state prison + county jail).

There is a great differential in state prison incarceration rates between jurisdictions. The percentage of convictions producing a state prison sentence ranges from 59.7% in Dade County to 95.4% in Knoxville. The relation between selection criteria and state prison incarceration rates is apparent. Philadelphia and Cook County, whose caseloads are dominated by violent personal crime, achieve state prison sentences in more than 90% of their convicted cases. Dade County, where the selection criteria capture a significant number of cases of minor economic crime such as shoplifting,

TABLE 7-4
 INCARCERATION RATES
 CAREER CRIMINAL CASES

	Cook County	Dade County	Knox County	Monroe County	Multnomah County	Philadelphia	San Mateo County
State Prison Incarcerations							
% of Convictions	92.6	59.7	95.4	73.1	73.4	93.9	66.3
% of All Cases	73.3	48.8	86.7	66.8	68.3	70.8	62.8
County Jail Incarcerations							
% of Convictions	2.5	31.9	1.0	22.8	14.0	4.4	17.5
% of All Cases	1.9	26.2	0.8	20.9	13.0	3.3	16.6
Total Incarcerations							
% of Convictions	98.6	91.7	96.3	95.9	87.4	98.4	83.7
% of All Cases	78.1	74.9	87.5	87.7	81.3	74.1	79.4

achieves state prison incarceration in 59.7% of convicted cases. San Mateo County, Monroe County, and Multnomah County, each with an emphasis on property crime, have between two thirds and three fourths of their convicted career criminals sentenced to prison. Knox County is an exception to the pattern. Though the program has a large portion of property crimes in its caseload, it achieves a very high level of state prison incarceration.

As a percentage of all career criminal cases, the rate of state prison incarceration between jurisdictions varies significantly. Knox County, with high conviction rates and a large percentage of state prison sentences for those convicted, sends 86.7% of career criminal defendants to state prison. Other programs emphasizing property crimes send a much smaller percentage of their overall caseload to state prison (e.g., Dade County, 48.8%; San Mateo County, 62.8%; Monroe County, 66.8%).

Table 7-5 displays the average length (in years) of the maximum prison terms to which career criminals were sentenced in each jurisdiction. Differences in sentencing law between jurisdictions prohibits any direct comparison of sentence maximums. However, some general observations can be made. These sentence lengths again reflect the differing severity of the crimes selected into programs. Philadelphia and Cook County display mean sentence maximums of 11.6 and 9.9 years respectively, reflecting their serious caseloads. Knox County also has an average maximum sentence of more than ten years per defendant.

TABLE 7-5

AVERAGE LENGTH OF MAXIMUM SENTENCES

CAREER CRIMINAL CASES

	Cook County	Dade County	Knox County	Monroe County	Multnomah County	Philadelphia	San Mateo County
Average (Mean) Length In Years	9.9	8.5	10.4	6.4	8.3	11.6	4.2
Average (Medium) Length In Years	6.0	5.0	10.0	4.0	5.0	10.0	4.0
Number of Sentence	(262)	(214)	(93)	(141)	(273)	(172)	(210)

Summary and Conclusion

This section provides an overview of several measures of case outcomes. The seven programs in this study have very different case loads and use significantly different strategies for achieving effective prosecution of career criminals. Despite these differences, the programs all achieved convictions (based on all cases accepted into the unit) in three fourths of their cases or more; they were all quite successful in getting convictions to the most serious charge in the case, and three fourths or more of the cases accepted into the program resulted in a sentence to some form of incarceration. As noted in Section 1 of this report, these are performance areas in which the selective prosecution of career criminals has consistently achieved high levels of performance.

The findings in this section cannot be interpreted meaningfully if individual measures are considered independently of each other. For example, Philadelphia demonstrates the lowest conviction rate among the jurisdictions, but has a very high percentage of convictions to top charge, a very high percentage of state prison sentences, and the longest average maximum sentence length of any jurisdiction. It would be inappropriate to consider conviction rate outside the context of these other measures.

The outcome measures also reflect the nature of the caseload in each jurisdiction. For example, the sentencing results of cases in most of the jurisdictions that focus on property crime suggest that in these cases the "stakes" are not as high as they are in the average case in Philadelphia, Cook County, or Knox County. Indeed in Dade County and San Mateo County the types of crimes being prosecuted will not result in a state prison sentence

for large proportions of convicted defendants. This difference in the seriousness of the crimes in the program is reflected in outcomes, and throughout the preceding discussions of case management and prosecution.

The overview of case outcomes concludes the description and comparison of selective prosecution of career criminals in seven jurisdictions. The concluding section of the report will outline the major implications of these findings for replicating and improving the implementation of career criminal prosecution programs.

SECTION 8

STRATEGIES AND IMPLICATIONS

The ultimate objective of this report is to provide information of pragmatic utility to local prosecutors and criminal justice policymakers. The design of the research and the design of this report have emphasized the environmental characteristics that constrain the decisions of prosecutors, and the details of case handling that make a program real. The report has not addressed the traditional question of evaluation studies -- "do the programs work?" Rather, it has addressed the question most salient to the practicing prosecutor -- "what makes the programs work?"

This section organizes the information in the report to meet the concerns of a prosecutor who is developing a strategy for establishing or improving selective prosecution of career criminals in his jurisdiction. Several assumptions underlie the approach.

1. Selective prosecution programs need to reflect the characteristics of the local criminal justice system. It is not possible to identify the ideal program applicable to all jurisdictions. Thus, what will be most helpful to local prosecutors is a discussion of the various program alternatives available to them, and the considerations that are appropriate in deciding among them.
2. Career criminal programs should be designed with objectives and procedures that are realistic given the role of prosecution in a particular criminal justice system. If, as in Oregon, a Parole Board has discretionary decision power over release, and its standards of release are more "lenient" than those preferred by the prosecutor, increasing length of sentence will not be a meaningful objective for the program.
3. Decisions in the prosecution of criminal cases involve tradeoffs between conviction, sentence, the use of resources, etc. The prosecutor must plan programs that are

reasonable within the necessary tradeoffs. Programs must be planned with an eye to the "whole" rather than one specific element (e.g., no plea bargaining).

4. Decisions in the prosecution of criminal cases are made by various members of courtroom workgroups. Career criminal programs must be planned so that they are workable within those workgroups. Unilateral decisions that significantly change the work of other members of the workgroup for reasons they do not accept will engender resistance.
5. Prosecutors must make numerous decisions that are based upon the particular characteristics of individual cases, and on the various "tools" they have available to them (e.g., sentencing law). Career criminal programs should be planned with the individual prosecuting attorney in mind. Policies that put the prosecutor in untenable or difficult positions will not be implemented with zeal.

The following discussion is premised on these assumptions and is organized in several parts. The first section addresses selection criteria; the second section addresses program design; and the third considers policy options at intake and accusatory, trial and disposition, and sentencing.

Selection Criteria

Selection criteria are the most fundamental element of any program to selectively prosecute career criminals. Past studies of selection criteria have focussed on their adequacy for identifying high rate offenders. Study results from this perspective have not been encouraging. Currently active high rate offenders are difficult to identify, the best prediction instruments produce large numbers of false identifications, and the data upon which they are based is not typically available to the prosecutor of a case. This criteria^{on} has not produced guidelines that are very helpful to prosecutors.

Still, this study documents the diverse ways in which local prosecutors select cases, and demonstrates that selection criteria strongly influence all that follows in the prosecution of career criminal cases. Rather than critique selection criteria for their failure to precisely identify recidivists, a salient critique for prosecutors could be based on the implications of selection criteria for subsequent prosecution of the case. This perspective will be adopted here.

Section 4 of the report identified several dimensions along which selection criteria can vary. The targeting of offenses varies from narrow to broad, past criminal history criteria may be more or less stringent, and discretion may vary. The ways in which each of these dimensions are defined has important implications for prosecution strategies.

Cook County, Philadelphia, and San Mateo County all have criteria that narrowly define crime type and criminal history. In all of these programs discretion is limited. The remainder of the programs select cases more "broadly", e.g., they can prosecute crimes less severe than burglary. They can also accept defendants with a wider variety of criminal histories.

The most fundamental implication of these selection criteria is that they produce caseloads with very different crime and defendant characteristics, engendering different perceptions in the criminal justice community. The Cook County and Philadelphia criteria produce caseloads characterized by violent offenses and defendants with long criminal histories. Several implications follow.

1. The programs are universally perceived to be addressing crimes and defendants that are truly a serious threat to the community. The legitimacy of focussing prosecution efforts on these cases is not questioned, and courtroom actors do not perceive that they must make extraordinary efforts without justification.
2. The cases have high "stakes." State prison terms, often lengthy, are almost assured with conviction. Defense may be inclined to go to trial in many of these cases unless there is significant incentive to plead.
3. Violent, assauitive crimes such as rape can be difficult to prosecute. Witnesses can be particularly crucial, and may require careful attention.
4. Prosecutors will be handling what are usually considered the most interesting and important criminal cases.

San Mateo County's criteria are narrow, but include burglary, grand theft, and receiving stolen property. The programs with broad selection criteria also produced caseloads with a high proportion of property crimes, sometimes relatively minor in nature. The implications mirror those of more serious caseloads.

1. The most pervasive implications of property crime programs relate to the ways in which the program is perceived by others in the criminal justice community. The most persistent criticism of career criminal units in the study interviews was that they prosecuted a portion of cases that were not serious enough to warrant selective prosecution. Other members of the courtroom workgroup can resent being asked to accommodate extraordinary procedures if they do not perceive sufficient justification. When other members of the workgroup can make discretionary decisions affecting case outcomes, they may be inclined to follow their own preferences. In Monroe County, for instance, defense attorneys reported that for relatively minor crimes, the court would almost always make a "standard" sentence available for pleas even though the prosecutors had a firm rule against plea negotiations for all CCU cases after felony court arraignment. Similarly, the sentencing results in San Mateo County suggest that judges use their

discretion to grant jail and/or probation sentences in relatively minor property crimes. In Dade County, one prosecutor noted that she would sometimes accept a plea settlement in minor career criminal cases even though official policy said they should be cleared with a supervisor. She found it untenable to anger the judge by delaying what appeared to be a very routine case.

2. A preponderance of relatively minor property crimes in the caseload also affects perceptions of prosecutors. Many of our interviewees noted that a lot of career criminal cases are not difficult to prosecute. A large proportion of the cases in the study sample involved defendants caught in the act, or with stolen goods in their possession. Knowledge that they will not get challenging assaultive cases can lower the morale of unit attorneys, or lower their incentive to follow procedures. The nature of the caseload, then, affects the incentive that good attorneys will have to serve in the unit. In San Mateo County good trial attorneys are assigned to the unit almost as a "break", rather than an opportunity to try challenging cases.
3. The nature of the cases also has implications for what the optimal caseload for career criminal attorneys might be. Routine property crimes generally require less time to prepare and try than violent crimes against people.

The implications of selection criteria are pervasive, and provide a base for making other design decisions in organizing a career criminal program.

Program Organization

The model for program organization under LEAA funding was a separate unit within the prosecutor's office. Local programs have modified this model to meet their local circumstances. Organization of the study programs has been grouped into three styles -- bifurcated, coordinated, or integrated. In planning a career criminal program, the strengths and weaknesses of these approaches should be noted.

1. Bifurcated programs utilize the original LEAA approach -- a separate unit within the prosecutor's office. The great majority of career criminal units are organized in this way. In bifurcated programs career criminals are treated separately by prosecutors, but not by other agencies in the criminal justice system. Several implications follow.
 1. Bifurcated programs have the advantage of being entirely controlled by the prosecutor's office. This means that programs can be initiated and altered without the explicit consent of other agencies. Implementation is simplified.
 2. Bifurcated programs also allow prosecutorial control over case selection and caseload.
 3. The design does carry several important disadvantages. Bifurcated programs can be seen as a "tool" of the prosecutor that works to the hardship of other members of the courtroom workgroup, thus engendering resistance.
 4. Bifurcated programs can become identified with a particular elected prosecutor, or with particular individuals in the prosecutor's office. As evidenced by several programs in this study, this design can be prone to discontinuity in program implementation.
2. Coordinated programs can also be built around separate units in the prosecutor's office, but coordinate the tracking of career criminal cases with other criminal justice agencies, e.g., the courts and/or the public defender. This model of program organization also carries advantages and disadvantages. Cook County and Philadelphia are coordinated programs; Monroe County is partially coordinated through the predicate felon courts and the special units of the public defender.
 1. Coordinated programs can be more cumbersome because they are not under the discretionary control of the prosecutor's office. Decisions concerning initiating and altering fundamental elements of the program can require joint decisions.
 2. The advantages are really the flip side of these disadvantages. The coordinated programs in this study are the most stable, experiencing no major changes since initiation.
 3. In Cook County and Philadelphia, the programs are accepted as legitimate by all members of the

courtroom workgroup. This acceptance is most enthusiastic in Cook County where the ROC courts were established through the judiciary. Coordinated programs are less likely to be perceived as programs designed by the prosecutor to further the ends of prosecution.

3. Integrated programs are based upon identifying cases as career criminal for selective case handling within the regular prosecutor's office. No separate unit is established. The approach has several advantages and disadvantages.
 1. Integrated programs require the least modification of office organization; and they are potentially the least demanding form of organization in terms of resources.
 2. Integrated programs place the responsibility for implementing differential case management procedures most squarely on the individual prosecutor handling the case. This may increase the susceptibility to having procedures altered in response to resistance from other members of the courtroom workgroup. This may be a particular problem if the program caseload includes relatively minor property crimes. In response to this problem, Dade County has recently revised its selection criteria to focus on serious, violent crime.

Case Management Procedures

The heart of strategies for effectively prosecuting career criminals cases lies in the procedures used in prosecuting individual cases. The programs in this study manifest various mixes of two overall approaches to determining the way in which individual cases will be prosecuted. On one hand, programs can take a "procedural" approach to making decisions about individual cases. This case management style seeks to insure the uniform prosecution of career criminal cases by setting specific procedural policies, e.g., no reduction of charges, sentence recommendation letters. The approach can be termed "professional". Rather than requiring specific procedures, guidelines and

objectives are set and specific decisions about cases are left up to individual prosecuting attorneys. The approach is summed up in a statement by the Wing supervisor of the Cook County ROC Courts.

To effectively prosecute, select good attorneys, give them important cases, and let them use their judgement.

Three of the study sites -- Multnomah County, Monroe County, and San Mateo County -- are predominately procedural in their case management policies. San Mateo County, however, did allow deputies greater individual discretion early in the program history. Cook County and Philadelphia are strong examples of the professional orientation to case handling. Dade County has procedural standards but allows exceptions with reasons. Knox County had certain strong procedural elements early in the programs history (e.g., no plea bargaining), but these have been relaxed to allow more individual discretion.

Some overall strengths and weaknesses can be discerned in each approach.

Procedural Case Management. Procedural case management limits the discretion of the individual prosecutor -- a strategy that has several implications. First, it renders the individual prosecutor less able to engage in the usual "give and take" of the courtroom workgroup. This can be advantageous if the usual outcomes of this process would seriously compromise the objectives of the program. For example, one attorney in a jurisdiction that uses a procedural case management style noted that it was very useful to be able to tell the defense that he had no option to negotiate a typical charge reduction because of unit policy.

There are real disadvantages of these policies, however. One of the most consistent criticisms of career criminal programs in this study was a lack of flexibility in case processing. Defense attorneys and, more importantly for case outcomes, judges often noted their displeasure with inflexible stands on plea negotiation. Again, this displeasure was most evident when the seriousness of the case being prosecuted was perceived to be marginal. This type of displeasure led the Multnomah County program to develop a procedural exception to their no plea bargaining policy for certain crimes.

The utility of formal procedural approaches can only be assessed through examining the tradeoff between what is to be gained and the resistance of other members of the courtroom workgroup. For instance, if judges are able and likely to acknowledge sentence agreements directly with the defense, an inflexible stand against negotiations can simply deprive the prosecution of an effective voice. If, however, the prosecutors decision will translate directly into the desired result (e.g., mandatory sentencing) then a procedural policy might make a real difference in outcomes.

Professional Case Management. The professional approach to case management also carries assets and liabilities. It minimizes disruption of established behaviors in the courtroom workgroup, thereby engendering less resistance from other members. Though the approach does not specify the decisions to be made by prosecutors, it does retain many other advantages of selective programs. Prosecutors gain familiarity with a relatively homogeneous caseload, and gain skills in prosecuting those cases. As noted by one respondent, you come to anticipate what the defense will be, and how to

counter it. There are certain advantages to focus itself. Any advantages accruing to vertical prosecution, lowered caseload, or other resource enhancements, will also apply.

The major disadvantages to a professional approach are that the individual prosecutor must uphold stronger standards of prosecution in individual cases. This may be easier to accomplish in coordinated programs, and in programs that carry caseloads involving serious crimes.

The above discussion provides some order to the myriad of policy alternatives facing the designers of programs to selectively prosecute career criminals. The comparative analysis in this report emphasizes that choices among these options must be made within the context of particular criminal justice systems, and with consideration to the types of cases that are prosecuted in a particular program. The findings summarized above can provide guidance to the local prosecutor concerned about how to improve public policy through the selective prosecution of career criminals.