

MPI

113282

113282

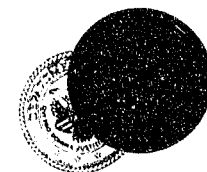
U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by  
Public Domain/NIJ  
U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.



National Institute of Justice

## Research in Action

James K. Stewart, Director

August 1988

# Prosecutors' national assessment of needs

by Hugh Nugent and J. Thomas McEwen

NCJRS

NOV 4 1988

ACQUISITIONS

Prosecutors report their caseloads are increasing in both volume and complexity, that more offenders are being prosecuted, and that there are more hearings and motions per case. Delays in processing continue to be problems. Increased emphasis on the victims of crime, particularly children, is prompting prosecutors across the United States to increase the number of victim-witness assistance programs in their offices.

This *Research in Action* provides further details on these results and many other findings from a survey conducted under the National Assessment Program (NAP), sponsored by the National Institute of Justice (NIJ).

The primary aim of the survey is to identify key needs and problems in local and State criminal justice systems. To accomplish this, the Institute contracted with the Institute for Law and Justice, Inc. to conduct a national survey of approximately 2,500 practitioners from a sample of 375 counties across the country.

Included were all 175 counties having populations greater than 250,000 and a sample of 200 counties having less than

250,000 population. Persons receiving surveys in each sampled county included the police chief of the largest city, sheriff, jail administrator, prosecutor, chief judge, trial court administrator (where applicable), and probation and parole agency heads.

A total of 225 completed surveys was received from local prosecutors, a return rate of 61 percent. The distributions of responses by county population and by region<sup>1</sup> are shown in Exhibit 1. The nationwide survey addressed five general areas: background data on the prosecutor's office, criminal justice system problems, caseloads, operations and procedures, and staffing.

### Background characteristics

The background questions asked for descriptive data on the size, resources, and responsibilities of the responding prosecutors.

The 1985 median felony caseload of these offices is 1,750 cases, and the median office budget is \$1.2 million. In response to a question on the financial resources available to their offices, 46 percent rate their resources as adequate, 45 percent as inadequate, and 9 percent as very inadequate.

### Criminal justice system problems

The prosecutors were asked to rank a series of criminal justice problems identified in 1983 in the first National

Assessment survey.<sup>2</sup> The problems involved the system as a whole, not just problems associated with prosecution. Exhibit 2 shows the average rankings. Prosecutors rank staff shortages as the most significant problem in their local systems. Prison crowding ranks second, followed by jail crowding. These three top ranked problems reflect an unfortunate combination of too many criminals and too few staff members to handle them.

Lack of coordination among criminal justice agencies ranks close behind crowding, followed by the public's lack of understanding of criminal justice agencies. Only a few respondents consider agency management or lack of staff skills to be significant problems.

The remaining sections of the survey—on caseloads, operations, procedures, and staffing—provided lists of potential needs and problems in each area. The prosecutors were asked to rate each item on a scale of 1 (not a problem or need) to 4 (major problem or need) according to degree of importance for their agencies. In the discussion that follows, the ratings of 3 and 4 have been combined as reflecting a general need or problem. The term "major problem" or "major need" indicates the highest rating of 4.

### Caseload

**Caseload contributors.** As reflected in Exhibit 3, over 90 percent of the prosecutors agree that an increased

The 1986 National Assessment Program, including this survey of prosecutors, was conducted for the National Institute of Justice by the Institute for Law and Justice, Inc., Alexandria, Virginia.

## Prosecutors' national assessment of needs

Exhibit 1  
Prosecutor respondents by county population

County population	Number	Percent
Less than 100,000	72	32
100-250,000	40	18
250-500,000	58	26
500-750,000	25	11
More than 750,000	30	13
Total	225	100 %

### By region

Region	Number	Percent
New England	12	5
Mid-Atlantic	45	20
Great Lakes	41	18
Plains-Mountain	24	11
Southeast	54	24
Southwest	21	9
Far West	28	12
Total	225	100 %

### Prosecutor activities and attorney assignments

Activity	Percentage of offices with activity	Median number of attorneys assigned
Screening unit	80	3
General felony caseload	96	9
Victim-witness unit	77	1
Career criminal unit	50	3
Misdemeanor cases	80	6
Child support collection	64	1
Other	77	3

number of child-victim cases contributes significantly to caseload problems. Although one may hope this reflects increased public awareness rather than increased victimization, these labor-intensive cases contribute disproportionately to caseloads.

Fifty-eight percent of the respondents indicate that the number of prosecutors has not kept pace with caseloads. Several factors may be contributing. For example, increases in motion hearings per case and motions filed per case are indicated by over 60 percent of

the respondents. In counties of 500,000 to 750,000 people, both these problems are cited as contributors by almost 80 percent of the respondents. An increase in the percentage of cases going to trial is also regarded as a significant contributor by 38 percent of the respondents.

Increased felony case complexity is rated as a caseload contributor by 61 percent of the prosecutors. A regional feature on case complexity is that slightly over 70 percent of the prosecutors from the Southeast rate increased

complexity as a caseload contributor. In contrast, only 27 percent of the New England prosecutors believe increased complexity contributes to caseload increases.

The population data show a strong correlation with the problem of delays of cases in court. Overall, 52 percent designate delays as caseload contributors. However, 77 percent of the prosecutors from the largest counties consider court delay to be a contributor to caseload problems, in sharp contrast to 35 percent of the smallest counties.

In survey responses to open-ended questions, many prosecutors report establishing special units to cope with increased caseload. These units include screening units, victim-witness advocate programs, career criminal programs, and major case units. Specific special positions include welfare fraud specialist, criminal case administrator, investigative aide, subpoena server, and liaison attorneys to law enforcement.

Many survey comments stress the importance of good communications with law enforcement agencies and with the courts. Easy access to prosecutors by law enforcement before arrest and preinvestigation before warrants issue are both mentioned as good procedures. Several respondents advocate regular meetings with the court. As a specific example of communications, one prosecutor mentions a superior court review program in which felony cases are referred to a superior court judge for discussion prior to preliminary hearings.

Diversion programs and early decision procedures also help relieve caseload problems. Among those identified are misdemeanor pretrial, juvenile diversion, DWI-deferred prosecution, and neighborhood mediation programs. One prosecutor has a 24-hour-decision policy on whether a case will be filed. Several emphasize the importance of getting early pleas to keep caseloads under control.

Organizationally, prosecutors frequently refer to vertical prosecution (in which one prosecutor is assigned responsibility for a case from intake to appeal). More often, however, trial teams, rather than individual prosecutors, handle cases as they proceed through a vertical system. One respondent recommends vertical handling to reduce caseloads in career criminal, sexual assault, and major narcotic vendor prosecutions.

The computer is a major factor in effectively controlling caseloads and keeping cases moving. Respondents identify computerized case management systems, computer-automated docket preparation, and docket call as effective in managing caseloads. In spite of the respondents' numerous successful efforts to reduce caseload problems, one prosecutor has a blunt solution: "More jails and prisons will reduce caseload."

**Court delay.** Prosecutors were also asked to indicate the degree to which each of seven factors contributes to court delay:

- Too many continuances.
- Poor case scheduling.
- Use of open courts for actions that could be completed in chambers.
- Delay in assignment of defense counsel.
- Poor procedures for notification of witnesses.
- Inadequacy of computer information system.
- Abuse of discovery.

Over 65 percent of the respondents believe that excessive continuances are primary reasons for court delay. Once again, there are clear differences in the answers by population, with the smallest counties having the least trouble and the largest counties the most. Regionally, prosecutors from New England, the Southwest, and the

## Exhibit 2 Criminal justice system problems

### Most serious

- |   |                                       |
|---|---------------------------------------|
| 1 |                                       |
| . |                                       |
| . |                                       |
| . |                                       |
| . |                                       |
| 2 |                                       |
| . |                                       |
| . |                                       |
| . |                                       |
| . | < Staff shortages (35%)               |
| 3 |                                       |
| . | < Prison crowding (24%)               |
| . | < Jail crowding (15%)                 |
| . | < CJ agency coordination (14%)        |
| . |                                       |
| 4 |                                       |
| . | < Public's lack of understanding (9%) |
| . |                                       |
| . |                                       |
| . |                                       |
| 5 |                                       |
| . | < Agency management (3%)              |
| . |                                       |
| . | < Lack of staff skills (2%)           |
| . |                                       |
| 6 |                                       |

### Least serious

Note: The number in parenthesis is the percent of respondents who ranked the problem as the most significant

Far West cite continuances as a problem more often than the rest of the Nation.

Poor case scheduling is considered a court delay contributor by 44 percent of respondents and inadequacy of computer information systems by 41 percent. The Southwest prosecutors report scheduling as a contributor to court delay more frequently than other regions (71 percent with 48 percent calling it a major contributor). In contrast, only 26 percent of the Southeast respondents feel scheduling is a problem.

The prosecutors' narrative answers indicate many frustrations with the problem of continuances, as illustrated below:

- "Allow no continuances in superior court."
- "My policy is to oppose continuances."
- "Conduct status conferences and allow only short continuances when granted."
- "Require written memos to supervisors when the state requests continuance."
- "At arraignment, defendants are given 10 days to hire attorney or be interviewed for appointed counsel; if they don't, they are arrested again."
- "Institute cutoffs for guilty pleas."

Many courts control the delay problem by having the court administrator schedule cases by strict docket control or by an individual calendaring system. One prosecutor takes the lead himself as outlined in the following sequence: (1) prosecutor provides prompt discovery, (2) court schedules prompt pretrial and trial, (3) prosecution refuses to plea bargain on trial day, and (4) same prosecutor handles from start to finish.

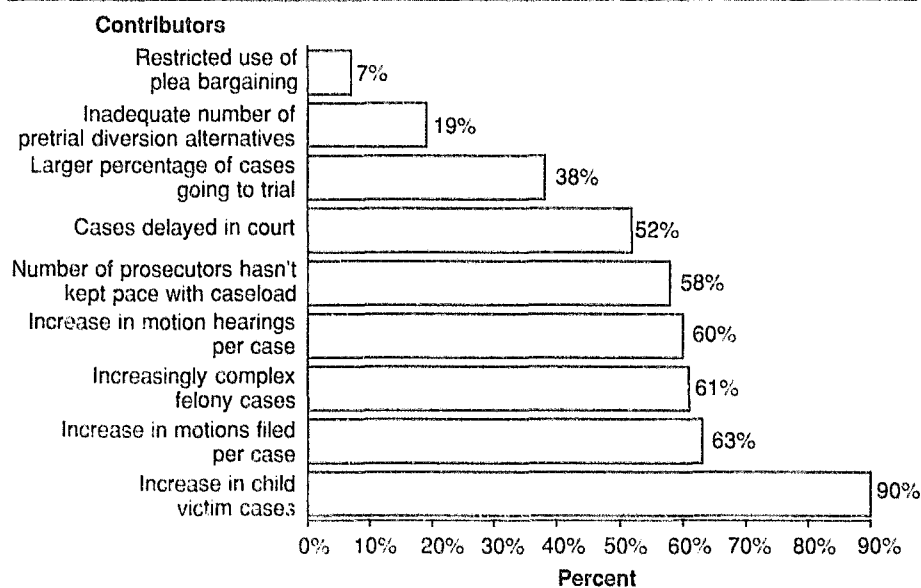
Some of the same answers regarding caseload management reappear in discussions of how court delay has been reduced. These include ongoing discussions with the judiciary to resolve problems, bimonthly meetings of all criminal justice agencies, and computerization.

**Victim-witness programs.** Of the 225 surveyed, 174 prosecutors (77 percent) have victim assistance programs. The median number of employees assigned to such programs is three.

Most prosecutors (about 90 percent) indicate that their victim assistance programs usually involve child abuse, child sexual abuse, rape, and other sex

## Prosecutors' national assessment of needs

Exhibit 3  
Caseload contributors



offenses. Exhibit 4 shows the offenses most commonly involved in prosecutors' victim-witness programs.

The prosecutors most frequently cite notifying victims and witnesses of court dates as the main responsibility of their victim assistance programs. This service, which is provided by 91 percent of the programs, enhances the prosecution effort since case outcomes frequently depend on the evidence victims and witnesses provide.

Other key responsibilities include notification of case disposition (89 percent), providing printed materials (87 percent), referring victims to counseling and social service agencies (86 percent), and notifying victims of the status of the investigation (83 percent). Exhibit 5 summarizes the primary responsibilities of the program.

In narrative answers about successful victim-witness programs, the respondents describe a variety of creative and effective approaches to program operation. Prosecutors frequently refer

to assigning specific responsibilities within the office, using trained professionals from other agencies, and using volunteers. The need for victim-witness programs is evident in the following observation:

Victims often feel left out or forgotten by the criminal justice process without practical advice or support. Our attorneys have heavy caseloads and can't always spend as much time with a person as that victim needs.

The following comments reveal the diverse services and activities that such programs perform:

• "Coordinators perform the following functions: (1) notifying victims, (2) gathering and processing restitution information, (3) working with victims and witnesses on selected cases, and (4) coordinating with community groups."

• "Witness notification; preparing witnesses for trial; helping victims understand the system; providing crime compensation information,

support, and guidance; making referrals to community resources; ensuring transportation, particularly for the elderly."

• "The witness return program provides free hotel, airfare, and per diem, courtesy of local businesses."

• "The child sexual abuse program includes an advocacy center, video taping in the prosecutor's office by a trained M.A. psychologist, expedited hearings, coordination with law enforcement, and direct grand jury presentations."

• "We developed a coloring book for children who are victims/witnesses involved in the court process."

### Operations and procedures

**Diversion and sentence alternatives.** Respondents were asked to indicate the degree to which they feel their court systems need each of the following diversion and sentencing alternatives:

- Drug diversion programs.
- Alcohol diversion programs.
- Other pretrial diversion programs.
- Intensive probation.
- Community service programs.
- Work-release jail programs.
- Restitution.
- Short-term community incarceration.
- Conditional dismissal (e.g., suspended proceedings).

Only two of the alternatives are cited as needs by a majority of respondents: restitution (59 percent of respondents) and intensive probation (55 percent).

At the other extreme, 62 percent of the respondents rate conditional dismissal as not needed at all. Only 27 percent report needs for drug diversion programs and other pretrial diversion programs. However, Southeast respondents cite a need for drug and alcohol diversion programs more than the rest of the country.

### Pretrial and accusatory problems.

Respondents were asked to rate the degree to which they face each of 13 different pretrial and accusatory problems:

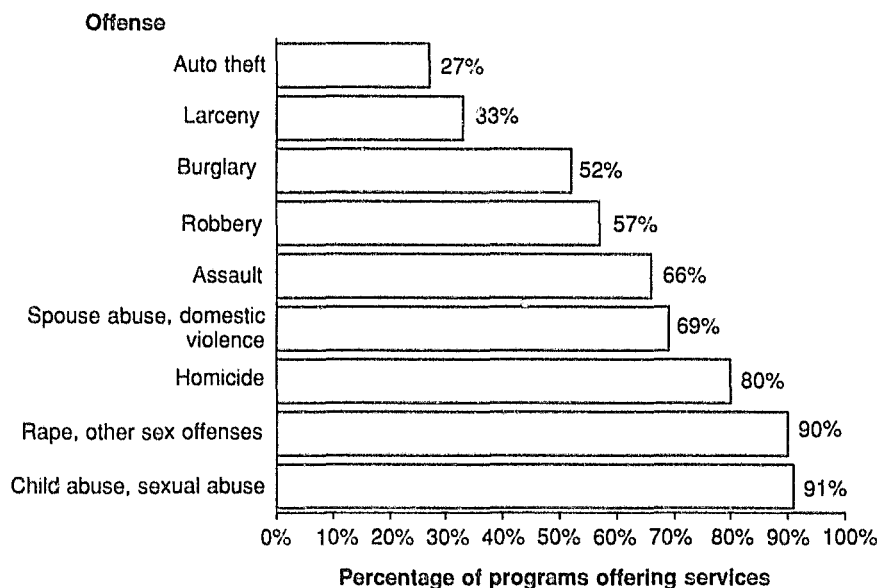
- Delay in receiving arrest information, preventing effective early screening.
- Inadequate police preparation of crime reports.
- Lack of adequate review with law enforcement on search warrants.
- Inadequate details by police of proof supporting arrests.
- Victim and other witness preparation.
- Inaccurate name and address information for witness.
- Early information on defendant background.
- Inadequate police training related to obtaining confessions.
- Assignment of defense counsel.
- Motions procedures.
- Lack of formally accepted procedures for plea negotiations.
- Lack of pretrial conferences.
- Continuance policy.

The two most common problems (see Exhibit 6) cited are inadequate police preparation of crime reports (66 percent) and obtaining early information on defendant background (58 percent). The Southwest has the most difficulty obtaining early information on defendant backgrounds (75 percent). In contrast, only 29 percent in the Mid-Atlantic region cite this as a problem.

Inadequate details by police of proof supporting arrests is considered a problem by 50 percent of respondents. But the extent of the problem depends on where the prosecutor's office is located. Respondents in large counties report the problem half as frequently as those in smaller jurisdictions. Respondents in Plains-Mountain and Mid-Atlantic States have less problems receiving details from police than the rest of the country. Only 30 percent in

Exhibit 4

### Offenses commonly involved in victim-witness programs



these regions identify this as a problem, compared to 50 percent nationwide.

The least significant problems are lack of formally accepted procedures for plea negotiations and lack of pretrial conferences, rated as problems by less than 10 percent of respondents. Other problems deemed of little significance include lack of adequate review with law enforcement on search warrants (a problem for 23 percent of the respondents) and assignment of defense counsel (a problem for only 14 percent).

**Courtroom procedures.** Prosecutors were asked to consider which of these six specific court procedures are problems in their systems:

- Trial continuance procedures.
- Calendaring system.
- System of voir dire.
- Management of victim-witness appearances.
- Procedures for victim impact sentencing.
- Courtroom security procedures.

Fifty-one percent of the respondents consider trial continuance procedures a problem, with 19 percent rating it a major concern. Consistent with the other data on court delay, continuance problems appear to be more serious in large counties. Next most frequently cited are calendaring systems, with 48 percent acknowledging a problem.

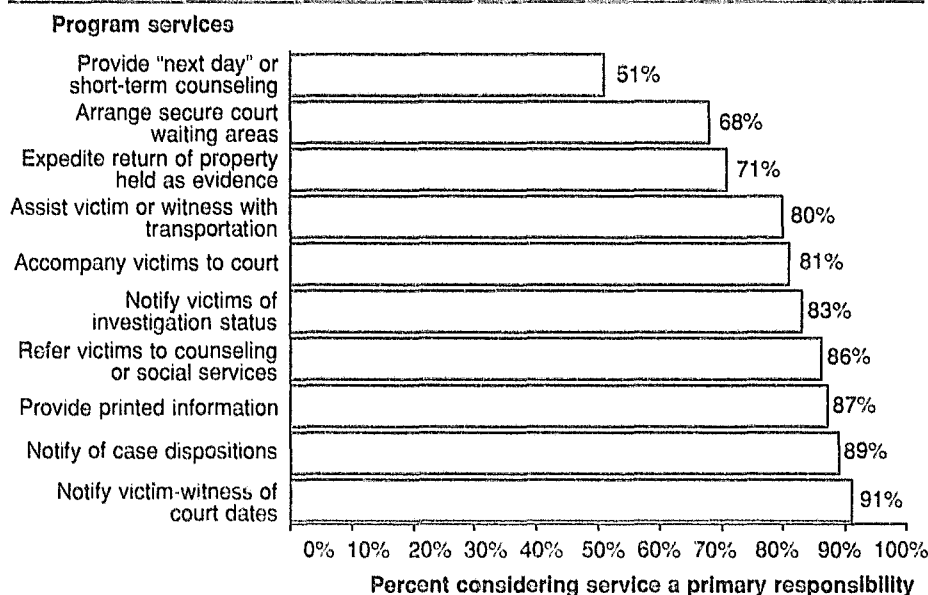
The four procedural areas least often cited as problems, in descending order of seriousness, are courtroom security procedures, procedures for victim-impact statements, the system of voir dire, and management of victim witness appearances. In an interesting regional variation, over half the prosecutors in the Far West state that the voir dire system is a problem, compared to 18 percent overall.

**Management information systems.** A question about management information produced widely varied responses. The prosecutors were asked to consider 13 specific information areas and to state the degree to which their offices need improvements:

- Original police charges.
- Plea negotiations.

## Prosecutors' national assessment of needs

Exhibit 5  
Primary responsibility of victim-witness program



- Dates of hearings.
- Prior criminal history of defendant.
- Victim-witness names
- Continuances.
- Arresting officer names.
- Defense counsel.
- Attorney schedule conflict.
- Bail-jail status.
- Speedy trial status.
- Pretrial diversion evaluation.
- Information on codefendants.

At the top of the prosecutors' list is the need for information on prior criminal histories of defendants. Two-thirds of the respondents cite a need for improved information on criminal histories, and one-third consider it a major need. Only in the Mid-Atlantic States do less than half the prosecutors (37 percent) report a need for this information. Information on codefendants, essentially a variation on prior history of defendants, is needed by 45 percent.

Needs to improve management information are cited to a lesser extent in the following areas: attorney schedule

conflicts (48 percent), continuances (40 percent), speedy trial status (34 percent), and bail-jail status (37 percent). Regional differences emerge in the topic of information about continuances, with 75 percent of the prosecutors in the Southwest citing this as a need compared to only 23 percent in the Mid-Atlantic.

Most narrative answers on management information refer to computer applications of one kind or another. Among the successful projects reported by the respondents are prosecutor management information systems, court calendaring systems, and online systems serving all agencies of the criminal justice system from arrest through sentencing and probation.

### Staffing and training

**Staffing.** As noted earlier, prosecutors view staff shortages as their most critical problem. Shortages are noted in the positions of attorneys (61 percent), investigators (57 percent), and clerical personnel (63 percent). To a lesser extent, they cite shortages for paralegals

(42 percent) and administrative staff (26 percent).

The survey asked for ratings on five recruitment problems:

- Low salaries.
- Poor image of prosecution.
- Shortage of qualified minority applicants.
- Court location.
- Civil service procedures.

The most frequently cited obstacle to successful staff recruitment is low salary, with 64 percent designating it a problem. A shortage of qualified minority applicants is considered a problem by 36 percent of the respondents. However, further analysis of the responses to questions show a strong correlation with county size. Only 16 percent of the respondents from counties under 100,000 people report shortages of qualified minority applicants, in contrast to 60 percent of counties over 750,000 people.

The two most significant retention problems are low salary increases and attorneys moving into private practice. Each problem is cited by about 66 percent of the respondents. Two other problems mentioned by about half the respondents are burnout and the lack of promotional opportunities.

**Responses to staffing needs.** The prosecutors were asked to describe specific projects or activities to solve staffing problems. Money answers appear in all categories—staff shortages, recruitment, retention, and training. One prosecutor puts it succinctly: "The whole issue is \$." Because money comes from State and local legislative bodies, many emphasize the need for good relations with those bodies, although one describes it as "fighting with the Board of Supervisors."

Two answers more specifically identify what information needs to be presented



to funding bodies to receive positive responses to staffing problems:

- "Maintain accurate caseload data to support the proposed increase in personnel."
- "Develop hard data to justify the pay increase."

Although still constrained by fiscal realities, some respondents suggest that better tracking and reporting procedures might contribute to achieving more satisfactory staffing levels.

Recruiting ideas include the following:

- "Recruit third-year law students at major law schools."
- "Establish and use summer intern check programs."
- "Increase the focus on minority recruitment."
- "Hire attorneys before they pass bar examination."

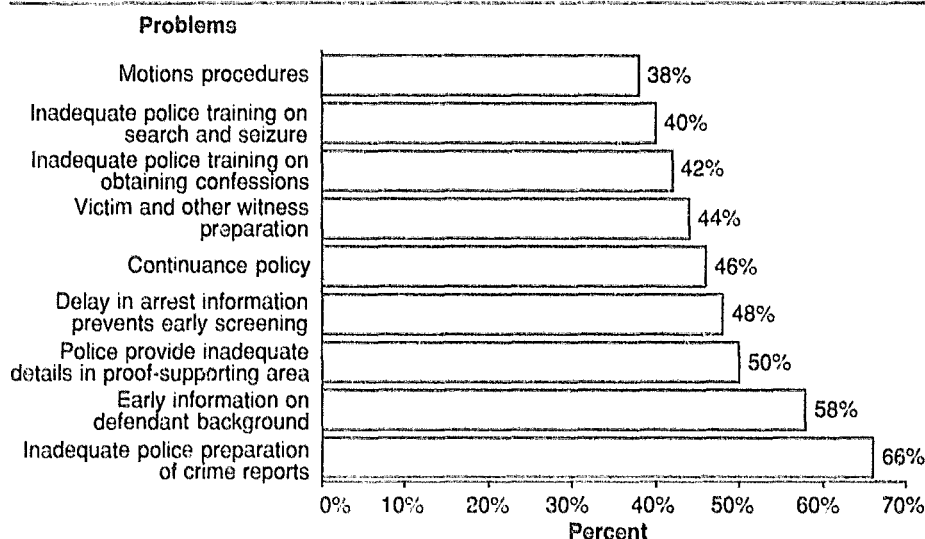
Other approaches to augmenting staff include summer law clerks and law student interns as allowed by a change in local rules.

Competitive salaries, better benefits, and regular rotation to other assignments repeatedly emerge as necessary to retain staff. Creative ideas for incentive programs include:

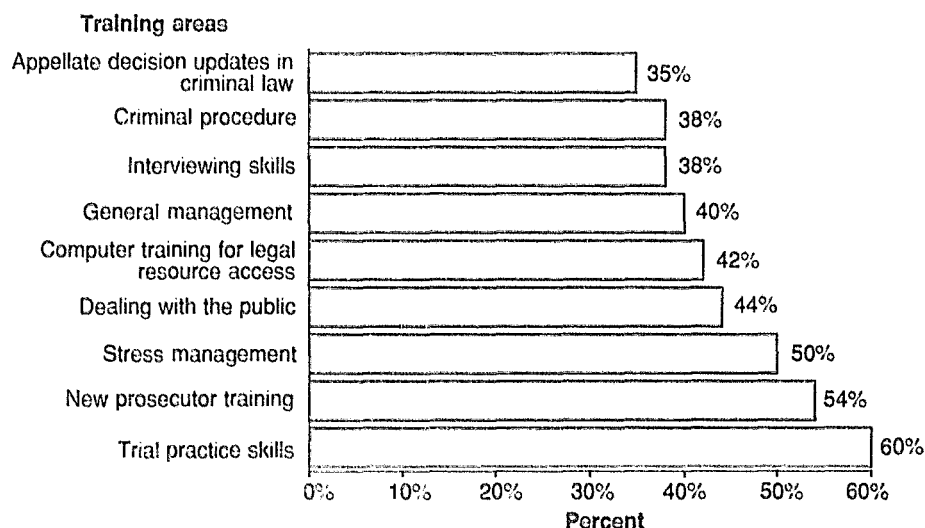
- "Eight-week sabbatical after 4 years service, and 6-week sabbatical every 3 years thereafter; all in addition to regular vacation."
- "Pride awards semiannually with wide recognition; regular evaluation; and promotion evaluation committee."
- "Pay incentive for complaint screening on weekends."
- "State law allowing use of funds from hot check fees to supplement prosecutor salaries."

The following comment aptly describes the staff retention challenge as extending beyond salary concerns:

**Exhibit 6**  
**Pretrial and accusatory problems**



**Exhibit 7**  
**Staff training needs**



We have determined that regardless of salary scales, better morale, an officewide spirit of cooperation, and concern for each and every lawyer create an environment which has motivated lawyers to remain with the office.

**Training.** The most frequently cited training needs (see Exhibit 7) are trial practice skills (60 percent), new prosecutor training (54 percent), and

stress management (50 percent). Other needs cited are for training in dealing with the public (44 percent), computer training for access to legal resources (42 percent), and training in general management skills (40 percent). The least critical training needs include statutory updates (cited by 25 percent), laws (23 percent), and appellate



## Prosecutors' national assessment of needs

decision updates in criminal law (35 percent).

The suggestions on training identify a wide variety of well-known techniques including in-house training; manuals; newsletters; and participation in local, State, and national training programs. However, one unexpected answer reflects an innovative response to training needs:

Legislature established a training fund to provide 50 cents as court costs in each criminal and traffic case for district attorney to use as a training fund for attorneys.

### Summary

The majority of prosecutors believe the number of staff attorneys has not kept pace with caseloads, that a higher percentage of cases are going to trial, and that there are more motions filed per case. Some of the responses that prosecutors use in these problems include the establishment of special units (e.g., screening units, career criminal programs, and major case units), special positions (e.g., welfare fraud specialist and investigative aides), more early-decision procedures, and use of computers for case control and movement.

Excessive continuances and poor case scheduling are mentioned as two main reasons for court delays in processing cases. Both problems are much more likely in large counties than in small counties. Further, both problems are more frequent in the Southwest than in other parts of the country.

The number of victim-witness assistance programs has increased in the last few years; 77 percent of the prosecutors have such a program. The cases handled usually include child abuse, sex offenses, homicide, domestic violence, and assault. Services usually offered are court date notifications, case disposition notifications, printed information, referrals, notification of investigation status, accompaniment to court, and transportation.

### Notes

1. New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Mid-Atlantic: District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania. Great Lakes: Illinois, Indiana, Michigan, Ohio, Wisconsin. Plains-Mountain: Iowa, Kansas,

Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Colorado, Idaho, Montana, Utah, Wyoming. Southeast: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia. Southwest: Arizona, New Mexico, Oklahoma, Texas. Far West: Alaska, California, Hawaii, Nevada, Oregon, Washington.

2. The 1983 National Assessment Program Survey was conducted for the National Institute of Justice by Abt Associates, Inc., Cambridge, Massachusetts.

*Points of view or opinions expressed in this publication are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

*The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.*

NCJ 113326

U.S. Department of Justice  
National Institute of Justice

Washington, D.C. 20531

Official Business  
Penalty for Private Use \$300

BULK RATE  
POSTAGE & FEES PAID  
DOJ/NIJ  
Permit No. G-91