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**THE EFFECTIVENESS OF SELECTIVE PROSECUTION  
BY CAREER CRIMINAL PROGRAMS**

**EXECUTIVE SUMMARY**

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## SELECTIVE PROSECUTION: LESSONS FROM CAREER CRIMINAL PROGRAMS

The local prosecutor plays the central role in determining who will be charged in the nation's criminal courts and how vigorously charges will be pursued. This critical contribution has made prosecution a favorite target for attempts to improve the administration of justice. Selective prosecution is one important tool that prosecutors may consider implementing in their local offices. By focusing efforts on a group of cases that have been "targeted" by the office, scarce prosecutorial resources can be effectively allocated.

The ultimate objective of this report is to provide information of pragmatic utility to local prosecutors and criminal justice policy makers interested in establishing or improving selective prosecution programs. To provide the broad information base appropriate to this end, the research has focused on the organization and case management procedures developed by career criminal programs in seven jurisdictions systematically selected for their differences. The report does not address the traditional question of evaluation studies -- "do selective prosecution programs work?" Rather, it has addressed questions of direct relevance to the practicing prosecutor -- "what makes selective prosecution work?"

The decisions necessary for designing and implementing a selective prosecution program are addressed at two levels. First, the study has identified several major distinctions in the approaches that local prosecutors have adopted in the study jurisdictions. These major differences involve:

- Program objectives
- Selection criteria
- Program organization
- Program management

Decisions in each of these areas have pervasive implications for how the program will operate, and what it is likely to accomplish.

Second, the report presents and discusses the more detailed strategies that prosecutors have adopted to achieve their program objectives. These strategies focus on case management decisions concerning selected cases at:

- Intake
- Accusatory
- Trial and disposition

Local realities such as caseloads, available personnel, and funding opportunities must shape individual programs. However, an understanding of the issues and considerations addressed here will provide a foundation for the prosecutor's decisions.

### WHY SELECTIVE PROSECUTION?

Selective prosecution is not a new approach to maximizing prosecutorial efforts. Special units for the prosecution of homicide, sexual assaults, drug offenses or other crime categories are common. The last decade has brought widespread application of selective prosecution to habitual felons popularly referred to as "career criminals." Career criminal programs are consistent with the tradition of selective prosecution, but represent a unique variant.

Career criminal prosecution departs from other forms of selective prosecution primarily because it focuses on specific kinds of offenders rather than specific kinds of offenses. Career criminal prosecution is selective in the sense that it represents enhanced prosecution of persons targeted for special attention. Generalization to other types of programs must remain suggestive. The rationale behind selective prosecution of specific crimes is that they require focused attention because they are particularly heinous in the public eye, pose unique legal or evidentiary problems, require intensive investigation, or require particularly sensitive treatment of victims and witnesses. By contrast, the underlying rationale for career criminal prosecution focuses on the threat posed by the defendant, rather than the prosecution requirements of the crime. Their fundamental rationale is that an identifiable group of offenders represents a particular criminal threat to the public because of their persistent and frequent criminal behavior.

The experience of seven established career criminal programs provides a basis for the following discussion. Information was gathered through extensive field visits to each program, personal interviews with over 150 prosecutors, judges, law enforcement officials, and defense attorneys, and detailed statistical analysis of 2,234 career criminal cases.

#### What Are Career Criminal Programs?

The selective prosecution of career criminals is a broadly used tool to improve prosecution. In the summer of 1983, approximately 100 career criminal programs were

active in 30 of 50 states. Local career criminal programs originally received their major impetus from federal (Law Enforcement Assistance Administration) funding which dispersed approximately \$30 million to 128 local jurisdictions between 1975 and 1980. The persistence of career criminal programs after termination of federal funding attests to the local popularity and perceived importance of the program. Indeed, among 87 local programs surveyed in this study, some 15 percent have been initiated since 1980. Selective prosecution of career criminals continues to attract the interest of local prosecutors after a decade of experience.

The original LEAA program concept was simple. Career Criminal Programs were defined by a limited set of guidelines. They were to:

- establish independent organizational units within the prosecutor's office;
- staff units with experienced attorneys, and enhance clerical and investigative support;
- reduce caseloads;
- adopt vertical prosecution and policies to eliminate or limit plea bargaining; and
- develop explicit selection criteria for identifying and selecting career criminal cases.

Within these guidelines local prosecutors were free to tailor programs to suit their local jurisdictions.

The survey of programs operating in 1983 illustrated the diversity in local application of the selective prosecution concept. All programs target some subset of their criminal caseload for an enhanced level of effort in prosecution. The intent of this selection is to identify particularly dangerous and frequent criminal offenders. However, beyond this core similarity, prosecutors have taken a variety of paths in creating selective prosecution programs. With the exception of vertical prosecution, adopted by nearly all programs, existing programs show little consensus on applying any of the stipulations in the original LEAA guidelines, and they have adopted additional innovations of their own. There is no simple answer to the question: "what is a career criminal program?" -- case selection, program organization, and case management are accomplished in different ways according to jurisdiction.

### **Seven Jurisdictions: A Basis for Program Design**

Given the variety in local approaches to selective prosecution of career criminals, a

study of available alternatives for prosecutors required a close look at examples of different types of programs. Following the national survey of career criminal programs, and preliminary site visits to twelve local programs, seven jurisdictions were selected for detailed study. Table 1 identifies the study jurisdictions and provides approximate figures on program activity in 1982.

**TABLE 1**  
**SELECTED PROGRAM SUMMARY**

<b>Program</b>	<b>Year of Origin</b>	<b>Number of Attorneys</b>	<b>Annual Caseload</b>	<b>% of Felony Caseload</b>
Cook County Illinois	1978	13	850	8%
Dade County Florida	1975	N/A	1000	15%
Knox County Tennessee	1981	2	100	12%
Monroe County New York	1978	3	60	5%
Multnomah County Oregon	1976	5	650	14%
Philadelphia Pennsylvania	1979	7	240	3%
San Mateo County California	1978	4	190	9%

These study sites were systematically selected to represent the diversity that characterizes career criminal prosecution in metropolitan areas across the nation. Very small programs (fewer than 2 attorneys), were not considered for selection. Programs range in age from over eight years (Dade County) to under three (Knox County). They prosecute from as few as 60 cases per year (Monroe County) to more than 800 (Cook and Dade Counties). They are staffed by as few as 2 attorneys (Knox County) and as many as 12 (Cook County), and they operate within seven different states across the country. This diversity provides the essential base for identifying effective applications of selective prosecution policy under differing conditions.

## ORGANIZING A PROGRAM: MAJOR CHOICES

The research underlying this report made it clear that existing discussions of how to organize and manage selective prosecution programs have only scratched the surface. The guidelines provided by LEAA, for instance, provide almost no help in adapting general guides to specific jurisdictions. Local prosecutors, however, must make detailed decisions about program organization and procedures, and they must make them in local criminal justice systems that are different in ways which have important implications for their programs. These decisions can be divided into "major choices" that determine the overall direction and organization of a program and "detailed choices" regarding criteria for making the many specific decisions that face an attorney while prosecuting a case. The following sections address some of the most important "major choices" that should be considered in designing or improving programs for selective prosecution.

### Program Objectives

A first step in any program planning is to set some priorities concerning what the program is intended to achieve. It has been commonly accepted that career criminal programs have the immediate objectives of increasing conviction rates, increasing incarceration rates, increasing sentence lengths, increasing pre-trial detention, and reducing disposition times. Other selective prosecution programs may have their own immediate goals -- sexual assault units, for example, may place victim satisfaction at a priority. The more general and long-term objectives of selective prosecution, however, are less clear.

The following program objectives were all cited by respondents in the seven study jurisdictions.

- Crime Reduction. The reduction of crime through incapacitation -- crimes that are prevented because high-rate offenders are incarcerated. While crime reduction is a highly appealing objective, it was not seen as a realistic primary objective in the study programs. The reasons are several.

First, incapacitation effects depend upon attaining lengthy prison terms that are, in fact, served. In many jurisdictions, the prosecutor's ability to insure lengthy sentences is limited (e.g., release dates may be largely determined by a corrections agency). Second, incapacitation objectives depend upon accurately identifying those offenders who will in the future commit a large number of crimes if at liberty. While researchers have identified statistical relations between personal characteristics of offenders and high-rate criminal behavior, the patterns are not strong enough to accurately identify individual high-rate offenders. Furthermore, the personal information used by researchers for prediction purposes may not be available to prosecutors.

- Public Relations. A second objective in selectively prosecuting career criminals may be demonstrating to the public that there exists a strong commitment to crime prevention. By singling out serious repeat offenders for special prosecution, programs can visibly demonstrate society's outrage at their behavior. Selection criteria can be designed to include types of crime that are of particular concern to a community. Residential burglary, for instance, is a prime target of many programs. The local popularity of career criminal programs, and the broad public attention provided many programs (such as Cook County) attest to their ability to convince some people that the system can work.
- Office Management. Prosecutors may adopt selective prosecution programs to enhance their ability to effectively manage their offices. Selective prosecution provides a means of setting office priorities and can provide a means for testing innovative practices. In several of the study jurisdictions, practices that were successful in the career criminal unit have been adopted elsewhere in the prosecutor's office. Selective prosecution programs can also boost office morale by providing a setting in which attorneys have the support necessary to more thoroughly prosecute cases. In one of the study jurisdictions, the unit supervisor acknowledged that he treats assignments to the unit as a reward.
- Performance Improvement. The most commonly mentioned program objectives are concrete improvements in prosecution outcomes. Attorneys would often state the program's purpose in terms such as: to "identify the dangerous repeat offender and try them as swiftly as possible," or to "get the real 'bad actors' off the street," or to "try and convict proven criminals." These immediate objectives relate to those aspects of case outcome that a prosecutor may feel the greatest ability to affect, and are a common focus of attention. It is the immediate impacts on pretrial release, conviction rate, and sentence that are the focus for most programs.

The experience of the study jurisdictions, however, demonstrates that appropriate and feasible performance objectives must be carefully identified. It is important to recognize that performance objectives often represent "tradeoffs" in relation to each other. 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 unacceptable. Table 2 summarizes three common performance measures across the seven programs and illustrates the tradeoff phenomenon. Jurisdictions that demonstrate strong performance on one measure (e.g., Monroe County on conviction rate) often demonstrate significantly weaker performance on another (e.g., Monroe County on top charge convictions or state prison incarceration).

**TABLE 2**  
**SUMMARY OF PERFORMANCE OBJECTIVES**

	Cook	Dade	Knox	Monroe	Multi- nomah	Phila- delphia	San Mateo
Conviction Rate (all cases incl. dismissals)	79.1	81.7	90.8	91.5	93.0	75.3	94.8
Top Charge Conviction Rate (all cases)	68.8	NA	71.7	68.2	79.0	69.1	82.0
State Prison Incarceration Rate (all cases)	73.3	48.8	86.7	66.8	68.3	70.8	62.8

These performance measures will be discussed further in later sections. The important point for planning program objectives is to recognize that a simple goal of maximizing all performance outcomes is not realistic. Carefully planned objectives must recognize the necessary tradeoffs in prosecution and consider exactly which performance objectives take priority.

Selective prosecution programs can be adapted to a number of objectives. Selecting objectives and ordering priorities is a first step in planning a realistic and effective program. Subsequent discussion of program organization and procedures will reference implications for differing program objectives.

#### **Selection Criteria**

For any policy of selective prosecution, the fundamental defining attribute must be the criteria used to identify targeted cases. While criteria for some selective prosecution policies (e.g., homicide, sexual assault) may be straightforward, selection in career criminal programs is typically complex. The lack of consensus on how to identify career criminal offenders is evident in criteria adopted by local programs. The variety of approaches to selection is evident in Table 3, which provides a summary of selection criteria in the study programs.

Selection criteria in career criminal programs vary primarily along three dimensions: (1) target crimes, (2) characteristics of the defendant (predominately criminal history),

TABLE 3

SUMMARY AND COMPARISON OF SELECTION CRITERIA  
FOR CAREER CRIMINAL PROGRAMS

	<u>Cook County</u>	<u>Dade County</u>	<u>Knox County</u>	<u>Monroe County</u>	<u>Multnomah County</u>	<u>Philadelphia</u>	<u>San Mateo County</u>
<u>TRIGGER FOR CC CONSIDERATION</u>	Offenses	Criminal History/ Discretion	Discretion/Offenses	Offenses/multiple prior for any offense	Criminal History/ Offenses	Offenses	Offenses
<u>TARGET OFFENSES</u>	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 and criminal mis- treatment	1) Robbery 2a) Murder b) Rape c) Inv. deviant sexual intercourse d) Burglary (occupant dwelling) e) Aggravated assault (serious bodily injury, non-domestic)	1) Arson 2) Burglary 3) Health and Safety 11351 Drugs 4) Health and Safety 11352 5) Grand Theft 6) Receiving Stolen Property 7) Robbery
Sufficient for Selection	No	No	No	No	Yes, for vehicular assault and homicide, robbery 1, burglary 1, ex-con with firearm, unlawful posses- sion of weapon, theft 1		Yes, if multiple (3) current offenses
<u>CRIMINAL HISTORY</u>							
Priors Criteria	1) 2 prior felony convic- tions 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 convic- tions within previous 10 years minimum OR 2) 2 misdemeanors plus 1 felony	1) 2 prior felony convic- tions within the last 10 years	1 prior/multiple priors for any offense	1) 2 prior felony convic- tions OR 2) 1 prior felony con- viction and defendant on parole or on pro- bation 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) 1 felony conviction in last 10 years for serious, violent felony, OR 3) 2 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
<u>OTHER CASE CHARACTERISTICS</u>	None	Defendant's relationship w/ victim (do not accept domes- tic cases)	Important cases at Director's discretion	(Discretionary) Harm to victim, extent and nature of past offenses evidential 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
<u>CHANGES</u> (what/when, broadened or narrowed)	No	Yes, narrowed	Yes, broadened informally	No	Yes, broadened	Yes	No
<u>DISCRETION</u>	Low	High	High	High	Moderate	Low	Low
<u>SCOPE</u>							
Offense	Narrow	Broad	Narrow	Broad	Broad	Narrow	Narrow
Criminal History	Narrow	Broad	Broad	Broad	Broad	Narrow	Narrow

and (3) degree of discretion in applying criteria. The seven study programs demonstrate contrasting approaches along each dimension.

Target Crimes. Most career criminal programs select particular offenses for prosecution. Among the seven study programs, only Dade and Multnomah Counties have used selection criteria that allow most felony offenses to be labeled career criminal cases. The typical program will only consider specified offenses for selection, though the exact charges vary widely. Cook County, Philadelphia, and Knox County exemplify criteria designed to select serious, often violent crimes. With slight variations, these programs prosecute robberies, sexual and other assaults (against strangers), homicide, and residential burglary.

The remaining programs apply criteria that allow less violent, personal crimes to be selectively prosecuted -- e.g., various forms of larceny. One rationale for these less restrictive criteria is that lesser "property" crimes often form the basis of highly active criminal careers. The statewide California program, implemented in San Mateo County, specifically excludes personal violent crime like homicide, assault, and rape because these crimes are likely to receive focused attention without career criminal status.

Criminal History. Some advocates of career criminal programs have argued that selection should consider various personal characteristics of offenders -- such as drug use and juvenile record -- which are statistically related to frequent criminal behavior. In fact, very few programs systematically consider any criteria other than adult criminal history. To be most useful, selection information must be readily available, reasonably accurate, and must not engender controversy concerning the appropriateness of its use. Adult criminal histories meet these requirements; other suggestions for personal data do not.

Table 3 details the criminal history criteria for the study programs. Some general distinctions can be made. First, most of the programs have fairly broad minimum criteria for criminal history -- two or fewer prior felony convictions of any type. Cook County and Philadelphia are notable for their more "narrow" criminal history criteria -- requiring more priors, specific categories of past conviction, and/or specifying criminal history requirements according to the instant offense.

Second, several programs include criteria other than prior convictions as indicators of criminal history. These include reducing the required number of priors if the defendant is on felony bond (Cook County) or probation/parole (Multnomah County); considering bond, probation, and parole as a selection factor (Monroe County); or allowing selection on the basis of multiple current offenses (Monroe County and San Mateo County). The purpose of these provisions is to make selection more sensitive to offenders who are currently involved in frequent crime and to ameliorate the fact that identifying career criminals simply through prior convictions insures that they commit a lot of crime prior to selection.

It does appear that programs with these "accelerating" provisions prosecute younger offenders. In Cook, Monroe, Multnomah, and San Mateo Counties, 43 percent, 60 percent, 46 percent, and 47 percent of program defendants were 25 years old or younger. The comparable figures for Dade County, Knox County, and Philadelphia are 30 percent, 37 percent, and 16 percent.

Discretionary Choice. Programs also vary in the degree of discretionary choice allowed within criteria. In Cook County, San Mateo County, Multnomah County, and Philadelphia criteria are strictly applied. In the remaining Counties, criteria provide a guide, but significant discretion is exercised in selecting cases. In Monroe County, evidentiary strength of the case is one consideration in selecting cases. Though criteria have narrowed, Monroe County also considered past arrests and injury to victims in the program's early years.

Individual programs balance these three dimensions of selection in different ways. However, the study jurisdictions demonstrate some broad patterns with important implications for designing selective prosecution programs. The most fundamental implication of selection criteria is that they produce caseloads with very different crime and defendant characteristics.

The Cook County and Philadelphia programs, for example, strictly apply very specific criteria that produce a caseload of violent crimes against persons (68 percent of Cook County cases and 57 percent of Philadelphia cases) and of defendants with long criminal histories (52 percent with three or more prior felonies in Cook County; 88 percent in Philadelphia). The jurisdictions with broad selection criteria and/or great discretion produce caseloads dominated by the more numerous property crimes. Burglary, theft, larceny, and fraud account for 60 percent of the program cases in Dade County, 59 percent in Knox County, 61 percent in Monroe County, and 57 percent in Multnomah County. San Mateo County targets property crimes which constitute 57 percent of the program caseload.

The distinction between programs that prosecute caseloads of different seriousness has pervasive implications for the way in which cases are perceived in the criminal justice system. Programs dominated by violent, personal crime (such as Cook County and Philadelphia) tend to have the following characteristics:

- The programs are perceived to be addressing crimes and defendants that are truly a serious threat to the community. The legitimacy of focusing prosecution efforts on these cases is generally accepted, and other courtroom actors (e.g., judges, defense attorneys) do not feel they are being asked to tolerate extraordinary procedures without justification.
- The defendants, because of past record and current offense, are typically at high risk. State prison terms, often lengthy, are almost assured with conviction.
- Violent assaultive crimes can be difficult to prosecute. Willingness and credibility of witnesses can be crucial; defense attorneys may be more willing to go to trial; cases often require careful attention, and lower caseloads are justified.

- Prosecutors will be handling what are usually considered the most interesting and important criminal cases. The status of the program is legitimized.

Caseloads with a high proportion of property crimes carry different implications.

- The most persistent criticism of career criminal programs by interviewees was that a portion of their cases 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 individuals (e.g., judges, defense bar) can make discretionary decisions affecting case outcome, they may discount the extraordinary procedures of the prosecutor and follow their own preferences. In Monroe County, as one example, defense attorneys reported that for relatively minor property crimes, the court would almost always make a "standard" sentence available for pleas even though prosecutors refused to negotiate sentence after felony arraignment.
- While property crimes are not necessarily less challenging than personal crimes, interviewees noted that many career criminal cases are not difficult to prosecute. A large proportion of the property cases (particularly theft) in our sample involved defendants caught in the act, or with stolen goods in their possession. The proportion of less challenging cases in the program affects the morale and status of the unit, and means that significantly lower unit caseloads may not be justified.

The difficulty of enhanced prosecution for minor property crimes has been recognized in Dade County which recently reoriented its selection criteria to target violent, personal offenses.

### Program Organization

The typical model for organizing Career Criminal Prosecution units has been a separately funded unit with a separate staff. This "unit" organization was required for LEAA funded programs, partly to allow effective monitoring of grant moneys. Local programs, however, have modified program organization. The study jurisdictions reflect different approaches to both internal office organization and external ties to other agencies. Within the prosecutor's office, two organizational alternatives are evident.

Unit Programs adapt the traditional model of a separate organizational unit within the prosecutor's office. In some instances (e.g., California and New York), these units receive separate budgetary support from the state. In other instances, they are one of many specialized prosecution units in the office (e.g., Multnomah County). In any case, separate units have their own attorneys and support personnel.

Integrated programs identify and designate "career criminal" cases, but these cases are not handled by a separate organizational unit. Career criminal cases are assigned to attorneys in the office who carry an additional caseload. Dade County is the only integrated program among the study jurisdictions, though more than 15 percent of programs surveyed nationally use this type of organization. In Dade

County, career criminal cases are assigned to all felony attorneys as part of the normal felony assignment process.

Unit and integrated program organization each carry advantages and liabilities. Integrated programs require the least modification of office organization and are the most flexible in terms of caseload and allocation of resources (since no exclusive designation of personnel or other resources is necessary).

On the other hand, integrated programs require clear procedures and close monitoring if uniform performance is to be maintained. When selected cases are spread through the "normal" caseload, responsibility for enhanced effort is placed squarely on the individual attorney handling the case. In Dade County, the difficulty of maintaining program standards (e.g., no charge reductions) was exacerbated by the fact that selection criteria produced a large number of relatively minor property crimes. In the immediate pressures to settle these cases, attorneys sometimes felt it necessary to bypass program guidelines (such as approval of any charge reductions by a presiding deputy). In sum, integrated programs may have their greatest applicability in smaller jurisdictions where caseloads fluctuate, personnel use must be flexible, and cases are visible and easily monitored. Integrated programs may also be able to maintain program standards more effectively when selection criteria filter out minor property crimes.

Unit programs also carry advantages and liabilities. The more centralized organization facilitates standardization of procedures and monitoring of cases. Unit organization also has implications for morale and status of personnel in the program and in the regular prosecutor's office. Unit status does create a "team" atmosphere that fosters high morale within the unit; this enthusiasm was evident in most of the unit programs studied here. Again, high morale is most evident in those programs that selected serious crimes against persons. In early applications of career criminal programming, there was significant concern about possible negative effects on the morale and performance of non-unit attorneys. In the study jurisdictions, negative attitudes toward the unit were expressed by other attorneys only when it was perceived that the unit was selecting the strongest and most interesting cases, and passing others on to non-unit prosecutors. Indeed, Multnomah County has significantly reduced selection discretion in its program partly to reduce this external morale problem.

## Program Interactions

Prosecution of criminal cases involves a series of decisions by actors in law enforcement, the prosecutor's office, the defense bar, the courts, and corrections. The study jurisdictions manifest two contrasting approaches to organizing relations with other criminal justice agencies.

- Autonomous Programs utilize a separate organizational unit in the prosecutor's office, but this unit is not formally linked to separate organizational treatment of career criminals in other criminal justice agencies. Most local programs are organized in this way; Knox County, Monroe County, Multnomah County, and San Mateo County largely conform to this design.
- Coordinated Programs can also be built around a separate unit in the prosecutor's office, but coordinate the prosecution of career criminal cases with other criminal justice agencies, e.g., the courts, the public defender, or law enforcement. Programs may also be coordinated with law enforcement agencies, including involvement of unit attorneys in investigation of activities prior to arrest. The Cook County and Philadelphia programs are coordinated with the courts; career criminal cases are adjudicated in designated courtrooms. In Cook County this coordination extends to the public defender because that office is also organized in wings assigned to courtrooms. Coordination can be achieved in a variety of degrees and through different mechanisms. The Knox County program, particularly in its early years, was informally coordinated with law enforcement through extensive communication and joint projects (e.g., "sting" operations). More formal coordination exists between prosecution and law enforcement career criminal units exist in some jurisdictions, though none were included in this study. Monroe County has some element of coordination through state legislation that separately funds a "career criminal" public defense and separate "predicate" felon courts (which handle most career criminal cases).

The autonomous and coordinated options are not mutually exclusive. The Cook County and Philadelphia programs, for instance, are fully coordinated with the courts through designated career criminal courtrooms, but are not coordinated with law enforcement. In deciding whether to pursue an autonomous program or to seek coordination with other criminal justice agencies, the interest and cooperation of other agencies is crucial. Other design implications also should be weighed.

- Autonomous Programs are primarily a product of the prosecutor's office. Programs can be initiated and altered without explicit consent of other agencies; implementation is simplified. However, autonomous programs can become identified with a particular elected prosecutor or with particular individuals within the prosecutor's office. The program can be prone to discontinuity when personnel or other conditions change. Dade County, Multnomah County, and Knox County manifest this discontinuity among our jurisdictions; the programs have experienced major changes. Monroe County and San Mateo have been more stable, but have been maintained by state level funding programs.

- Autonomous programs contribute to flexibility in adjusting office procedures, adjusting selection, and determining caseloads. Autonomous programs carry disadvantages with respect to program acceptance and cooperation from other agencies. In particular, autonomous programs can be seen as a "tool" of the prosecutor that works to the hardship of other members of the courtroom workgroup. This perception can engender resistance in other members of the courtroom workgroup, and is exacerbated when caseloads are not perceived to be sufficiently serious for selective prosecution. Interviewees in Monroe County, Multnomah County, and Knox County manifested this sentiment to varying degrees. Again, in San Mateo County the fact that selection criteria and procedures are state-mandated ameliorated the perception that the program was a tool of the local prosecutor.
- Coordinated programs involve more than one agency in a common program. Therefore, they are more likely to require mutual agreement if policy changes are made. This may make program adjustment more cumbersome, but also contributes to continuity and stability. The Cook County and Philadelphia programs have been the most stable in the study jurisdictions, experiencing no major changes since initiation.
- Programs that are extensively coordinated, e.g., have worked out mutually acceptable criteria and procedures, are less likely to be seen as an exclusive tool of the prosecutor. This tendency will be greater to the extent that basic program decisions are not left to the discretion of the prosecutor. In Cook County, for instance, case selection is accomplished in the courts. Mutual involvement in the program means that coordinated programs are more likely to achieve legitimacy in the larger criminal justice system. The Cook County and Philadelphia programs were widely accepted among interviewees.
- Where coordination is less formalized, as in Knox County, program procedures may be modified to meet the mutual expectations of members of cooperating agencies. Close interaction with law enforcement personnel, who perceived organized property crime to be Knoxville's greatest crime problem, helps account for the discrepancy between the prosecutor's formal selection criteria, which emphasize violent crime against persons, and actual characteristics of the program caseload, which includes a large portion of property crime.

### Program Management

The heart of effective career criminal prosecution lies in the strategies and procedures used to prosecute individual cases. A major element in establishing case management procedures concerns the degree to which explicit and standardized decision rules or guides are established. Case management strategies in the jurisdictions can be broadly grouped into two "styles".

- Discretionary Case Management may establish objectives and guidelines for the prosecutor's decisions, but leaves detailed decisions about individual cases up to the professional judgement of the attorney responsible for the case. Cook County provides the best example of discretionary case management among the study jurisdictions. The program has no explicit rules regarding case

dismissals, charge negotiations, or sentence negotiations. The program has the clear intent of using the maximum feasible legal sanctions in selected cases, but the way to achieve this objective in individual cases is up to the attorney responsible for the case. The approach is summed up by the supervisor of the Cook County ROC court wing. "To effectively prosecute, select good attorneys, give them important cases, and let them use their judgment."

- Procedural case management seeks to insure the uniform application of program policy by mandating specific procedures within which individual attorneys are allowed little or no discretion. An example would be a policy that did not allow reduction of the top charge once it is filed in felony court. Procedural case management often includes requirements that any deviation from required procedures be reviewed and approved by a supervising attorney.

Again, discretionary and procedural case management styles are not mutually exclusive. For instance, a program may have highly specified procedures for charge bargaining, and leave sentence negotiation up to the individual attorney. Decisions about whether to adopt procedural or discretionary approaches should consider the following implications:

- The discretionary approach minimizes disruption of established behaviors in the courtroom workgroup, 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 prosecution programs. Prosecutors gain familiarity with a relatively homogeneous caseload and gain skills in prosecuting those cases. Greater trial preparation, and other advantages accruing to lower caseload or other resource management, will also apply.
- Discretionary case management styles carry the potential disadvantage of placing the burden for upholding stronger standards of prosecution on individuals. The importance of experienced and talented personnel is heightened. Since extraordinary procedures are not enforced, the prosecutor must depend on skill and an enhanced level of effort. The discretionary approach is less problematic in programs that carry caseloads involving obviously serious crimes -- as in Cook County and Philadelphia.
- Procedural case management limits the choices 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 could be advantageous if the usual interaction of the workgroup would seriously compromise the objectives of the program, and the prosecution is in a position to influence the desired outcome unilaterally. The recent California proscription on reducing or dropping charges may, for instance, affect sentence length in this determinate sentencing state.
- The procedural style does carry disadvantages. One of the most frequent criticisms of career criminal programs in this study was the lack of flexibility in case processing. Defense attorneys and, more importantly, judges often noted their displeasure with inflexible policies on plea negotiation. These comments were most evident with respect to Monroe County, Multnomah

County, the early years in Knox County, and the recent alterations in San Mateo County. Resistance to procedural case management is enhanced when the cases being prosecuted are considered to be of marginal seriousness. All four of the counties emphasize property crimes.

The foregoing discussion has focused on four major areas in which prosecutors must make decisions about designing selective prosecution programs. Program objectives, selection criteria, the organization of the program, and the approach to managing prosecutorial decisions all set the stage for the ways in which programs will be selectively prosecuted. Within these parameters, specific management decisions about how to prosecute target cases must be made. The following sections identify optional strategies for making prosecutorial decisions at each stage of a case's progress through the courts.

## STRATEGY DECISIONS:

### PROGRAM DETAIL

Detailed decisions about how to prosecute selected cases must be uniquely tailored to each local jurisdiction. Several components of the local criminal justice environment play a particularly important part in determining the limitations and opportunities for specific prosecution strategies.

- Court Procedures. Each of the seven jurisdictions operates under a separate state penal code. Penal codes carry quite different requirements for criminal procedures. Bail decisions, charging decisions, judicial responsibilities, assignment of defense counsel, etc., vary from state to state, and are further differentiated between localities. Specific court procedures must be carefully considered in identifying the best opportunities for meeting program objectives.
- Sentencing Law. State penal codes also create very different sentencing environments for local programs. A major factor concerns the degree of discretion the law allows in setting a sentence (determinate sentencing states, for example, require release dates within legislatively specified ranges for a given charge; indeterminate sentencing states provide less opportunity to influence the exact release date). Sentencing law may also contain specific provisions that allow prosecutors to enhance the sentences of repeat or violent offenders.
- Local Organization and Legal Culture. The way in which the local criminal justice system is organized and the standard operating procedures of the system also limit program options. If local law enforcement is fragmented between numerous agencies, for instance, it is difficult to involve law enforcement in case selection. Similarly, the typical and expected behaviors of different members of the courtroom workgroup (prosecutor, defense, and judge) affect program possibilities. If judges are accustomed to active involvement in plea negotiation, for example, it may be difficult for the prosecution to strictly limit negotiations.
- Nature of Caseload. Analyses of prosecution frequently overlook or underemphasize a basic reality of any prosecution. Cases differ in terms of their requirements for effective prosecution. In the study jurisdictions, programs that prosecute more personal, violent crimes tend to rely heavily on witnesses for evidence; the property crime programs tend to rely on immediate apprehension and physical evidence (such as possession of stolen goods).

These factors help determine the best use of program resources and optional approaches to decision rules. Two other overall considerations for planning program detail were evident in the study programs. First is the looming significance of selection criteria. Many of the limits and opportunities for effective prosecution follow directly from the nature of the cases selected into the program -- a proposition that will be evident in the ensuing discussion. Second, the optimal use of program resources depends

on identifying those points at which increased effort can significantly improve performance. This means that program efforts should be aimed at (a) those points at which prosecutor discretion can have influence (e.g., the important decisions are not being made by others), and (b) those points at which performance for the selected cases tends to need improvement (e.g., if it's not broken, don't fix it). Alternative strategies for prosecution decisions will be discussed at case intake, accusatory, and trial and disposition.

### **Intake**

Selective prosecution programs may have several specific performance objectives during the intake phase of case processing. The intake phase includes initial referral of the case (usually from law enforcement) and the initial court appearance, usually in a misdemeanor court. At this stage, selective prosecution programs may adopt strategies to ensure early intervention in the case, to accurately identify targeted offenders, or to minimize pre-trial release.

Pre-Indictment Intervention. The importance of special procedures for ensuring early intervention by the program depends on the adequacy of normal procedures for case intake in the jurisdiction. Prosecutors have differing levels of input into the charging decision. Cook County and Philadelphia are examples of jurisdictions in which police quickly contact prosecutors after arrest for review of felony charges and requests for investigation follow-up. In these jurisdictions, there was little need for special procedures to achieve earlier contact with law enforcement. Indeed, Cook County prosecutors have such faith in their felony review process that they do not use vertical prosecution; the ROC court attorneys do not receive cases until they have been assigned in felony court. In Philadelphia, deputy prosecutors in the "charging trailer" identify target cases and notify program attorneys through a 24 hour hot line. The normal intake procedure in Multnomah County also ensures early prosecutorial involvement; each morning's arrest tickets are delivered to appropriate units in the prosecutor's office for charging decisions. Thus the career criminal unit receives arrest tickets for potentially eligible cases. In San Mateo County, Municipal Court prosecutors review policy charges before filing and notify the career criminal unit of eligible cases. Normal procedures in each of these investigations allow easy attainment of early intervention. Dade, Knox, and Monroe Counties present a more complex problem at intake. Under normal procedures defendants are initially arraigned on police charges and prosecutors are not at all involved until a later point. Indeed, in Dade County the attorney who will prosecute a case does not review it in detail until a week or more after arrest. Knox County has placed a great emphasis on getting extraordinarily early involvement in career criminal cases, primarily through close coordination with police and a 24 hour on-call system. Monroe County has made the career criminal unit the review unit for assigning cases throughout the office. By reviewing arrest tickets the day after arrest, the unit can intervene early.

Dade County has not developed special procedures for early intervention in career criminal cases, and a high percentage (20 percent or more) of cases are dropped

before filing because the case is too weak to sustain charges. The problem is exacerbated in Dade County by the fact that police do not automatically focus attention on the relatively minor property crimes that are common in the career criminal caseload. When normal procedures delay prosecutorial involvement, particularly if targeted cases are property crimes, program planning should emphasize procedures for early intervention.

Accurate Selection. Selection is determined not only by formal criteria, but also by the way in which the selection decision is made. Programs differ in terms of who makes the decision, what information is considered, and how much discretion is exercised. The selection process is also influenced by the degree of centralization in the case intake process. The following considerations are important in planning the intake process:

First, it is important to determine whether centralized review of all felony arrests is feasible. In Cook County, Monroe County, Dade County, and Philadelphia all felony cases can be reviewed at the arrest ticket stage or at felony court assignment. Review at a single point facilitates uniform selection.

Centralized selection is combined with very low discretion in Cook County where very explicit information from criminal histories is applied by court clerks. Eligible cases are assigned to ROC courts. This highly standardized selection procedure contributes strongly to the effective consideration of the Cook County program. There is a high level of consensus that selected cases "belong" in the program. Monroe County represents centralized selection with great prosecutorial discretion. A broader range of information about a case, including strength of evidence, may be considered in selection. There is less consensus among the courtroom workgroup that the resulting cases warrant selective prosecution, and defense attorneys are more inclined to resist special prosecution efforts.

In the remaining counties, case referral is decentralized among office units or municipal courts. Selection procedures require more monitoring, and all programs in these jurisdictions utilize multiple channels for referrals (e.g., police or other prosecutors may refer cases to unit prosecutors). Since decentralization makes it impossible for one individual to review cases, Multnomah County allows individual unit attorneys to apply criteria which are explicit and use only criminal history information. San Mateo County selection is done primarily by presiding attorneys in the Municipal Courts. This decentralized selection is feasible when criteria are explicit and information routinized.

Knox County represents a unique case in which great discretion is allowed and review is not centralized. The unit works closely with law enforcement, and police have strong input into case selection. Selection information is not clearly specified, and police knowledge of active offenders effects selection. One result is strong law enforcement support of the program, though maintenance of effective interaction requires constant personal effort.

The exact configuration of selection procedures depends on procedural opportunities in the jurisdiction and program objectives. As noted above, selection procedures can impact the degree of consensus regarding selective prosecution in the courtroom workgroup and the degree of involvement that other agencies have in the program.

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, pre-trial custody may be important to prevent failure-to-appear. Finally, pre-trial custody may reduce the incentive for the defense to resist the expeditious resolution of a case.

The importance of extraordinary efforts to limit pre-trial release and increase bail depends upon (a) local procedures for determining pre-trial release, and (b) the nature of the program caseload.

Criteria for setting pre-trial release include past conviction and the seriousness of the offense in all cases. Special efforts to affect release decisions are less crucial when caseloads contain a large portion of serious, violent offenders. Cook County, for instance, makes no special program effort at bail hearings, yet 85 percent of program cases do not achieve pre-trial release. Philadelphia holds 81 percent of program cases in pre-trial custody.

Programs with a large portion of property crimes typically achieve lower pre-trial custody rates, but offer greater opportunities to prevent release through special effort. Knox County and Monroe County, have career criminal prosecutors bring all relevant information to the attention of magistrates at bail hearing. Knox County keeps 88 percent of program defendants in pre-trial custody; Monroe County 79 percent. Both figures represent rates much higher (55 percent and 40 percent respectively) than for non-program cases with the same charges.

Dade County and San Mateo County do not make special efforts to prevent pre-trial release in program cases. They detain 63 percent of program defendants in Dade County and 73 percent in San Mateo. In property offense programs, efforts to increase pre-trial custody can be fruitful.

### Accusatory

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 the felony courts. The central issue is the determination of probable cause to take a defendant to trial on felony charges. Selective prosecution programs can adopt a number of performance objectives at the accusatory stage, including (a) expediting the accusatory phase, (b) facilitating case preparation, and (c) quick case resolution. Again, the nature of formal accusatory requirements strongly influences strategy options.

Cook County is the only study program that has no program involvement at accusatory. However, criteria for ROC (Repeat Offender Courts) court selection are clear and well known; municipal court attorneys refrain from any negotiated settlements in

those cases. All other programs utilize vertical prosecution, and career criminal attorneys handle accusatory.

- Expedited Procedure. In jurisdictions with complex accusatory requirements, career criminal units are more likely to develop specific policies. Tennessee requires both a preliminary hearing and grand jury indictment. The career criminal unit focused attention at this stage to move cases as quickly as possible. To accomplish this objective, the unit emphasized:
  1. Early intervention in cases through 24 hour response to requests from police,
  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.

When accusatory procedures can excessively delay case progress, as in Knox County, special attention is necessary to expedite case management and prevent deterioration of case strength that commonly occurs over time.

- Facilitating Case Preparation. Oregon allows accusation to proceed either through preliminary hearing or grand jury. The Multnomah County program has established a procedural requirement that all career criminal cases be taken to the grand jury to enhance early familiarity with the case, to provide early victim contact, and to initiate early follow-up investigation. Program attorneys frequently cited the exclusive use of the grand jury as the single most important element in helping them improve case preparation.
- Case Resolution. Finally, Monroe County has established elaborate procedural requirements at the accusatory stage. The case management procedures adopted in the unit are designed to resolve cases before they are filed in felony court. The unit requires open discovery in all cases, and the entire prosecution case is made available to the defense at an early stage, usually before preliminary hearing or grand jury indictment. In strong state cases, the policy provides an incentive for the defense to negotiate the case. The program prosecutes a preponderance of strong cases because of its selection criteria. The unit also uses an early plea negotiation policy at accusatory. From initial arraignment until the case is arraigned in felony court, there is a "standing offer" of one step reduction in top charge (i.e., one felony class) and the possibility of a negotiated sentence. If, however, the case is arraigned in felony court without a guilty plea, the unit has a firm procedure of accepting no negotiated pleas. The 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 the prosecutor has little effective input into sentence in felony court. The policy trades off quick convictions and sentence certainty against a possible reduction in sentence.

The policies that the study jurisdictions apply at accusatory exemplify the ways in which particular procedural opportunities can be utilized to achieve specific performance

objectives. In jurisdictions with simplified accusatory procedures, few special procedures were applied. However, in jurisdictions with complex accusatory procedures, programs with a procedural orientation developed various procedures designed to expedite accusatory or resolve cases at that stage.

### **Trial and Disposition**

Career criminal prosecution usually culminates in felony court deliberations concerning guilt or innocence. Beginning with felony court arraignment and ending with disposition and sentence, the events that constitute this phase are a mix of formal procedure and informal cooperation and negotiation. The practice of plea negotiation, for instance, exemplifies the latter. Exact procedures and decision responsibilities during trial and disposition vary by local jurisdiction. Selective prosecution units may pursue a number of specific performance objectives at trial and disposition, including (a) greater trial preparedness, (b) limited plea bargaining, (c) high conviction rates, and (d) increased state incarceration.

- Trial Preparedness. One of the most often cited advantages of selective prosecution programs is an enhanced ability for the prosecutor to successfully go to trial. For each of the study jurisdictions the willingness to go to trial was an important component of their program policies. Even though Monroe County provides incentives to plead at accusatory, once a case is in felony court the policy is to plead with no concessions or go to trial.

Several elements of selective prosecution programs contribute to trial preparedness. Career criminal attorneys frequently cite vertical prosecution -- assignment of a case to a single attorney from intake to disposition -- as the critical factor in improved trial preparedness. The advantages are clear -- more knowledge of the case, continuity in contact with victims and witnesses, and first-hand knowledge of the case's court history (e.g., how witnesses performed in accusatory proceedings). Among the study jurisdictions, all but Cook County utilized vertical prosecution. However, once in the felony courts, Cook County cases are prosecuted by a "team" of attorneys. This system promotes continuity and discussion of career criminal cases. Vertical prosecution is the most widely adopted and acclaimed policy for career criminal prosecution nationwide.

Reduced caseloads are a second important factor contributing to trial preparedness. In most of the study jurisdictions, career criminal attorneys spend more time in trial than attorneys in other units. Many prosecutors noted that a lower caseload does not mean a lower workload when trial rates are high. Attorneys in the study programs also utilized time freed up by lower caseloads to work more closely with victims and witnesses. This use of time is most important in programs emphasizing serious, violent crime. In Cook County and Philadelphia, for example, more than 50 percent of the cases relied on positive identification by a single witness, most often the victim.

A third program element contributing to trial preparedness is the assignment of investigators. The special use of investigators varied between the study jurisdictions. Cook County, for example, utilized the standard two investigators per court wing; Multnomah County has an experienced and highly skilled investigator assigned especially to the unit; and both Knox and Monroe Counties rotate active local law enforcement officers through the office as investigators. Investigators also emphasized different functions. Most commonly they were utilized to track down witnesses, reinforce continuous contact with witnesses, and serve subpoenas. In other instances, investigators had more specialized roles. Multnomah County's experienced investigator plays a major role in preparing evidence (e.g., photos, diagrams) for trial. In Monroe and Knox Counties, the practice of utilizing active law enforcement personnel on temporary (e.g., one year) assignment enhances close interaction with law enforcement. This close interaction is particularly important in programs that emphasize property crimes, in which the adequate development of physical evidence depends on careful police work. Knox County's success in prosecuting organized property crime (e.g., burglary rings) is the product of this cooperation.

Trial preparedness does not mean that a high percentage of cases will actually go to trial. Indeed, the actual trial rate in a unit depends on several factors, including plea negotiation patterns in the jurisdiction (next section), and the nature of the case load. Indeed, two of the jurisdictions with the lowest trial rates emphasized property crime (Dade County, 9 percent; San Mateo County, 11 percent). In Cook County, the number of jury trials (7 percent) was minimized through the defense's ability to request bench trials (33 percent). In the other jurisdictions, the percentage of jury trials was Knox County, 22 percent; Monroe County, 17 percent; Multnomah County, 22 percent; and Philadelphia, 21 percent.

- Limited Plea Negotiations. The appropriate degree and nature of limitations on plea negotiations depends upon the nature of the caseload, legal provisions for plea negotiation, and typical plea negotiation practice in the jurisdiction.

Among the study jurisdictions, Cook County and Philadelphia represent a discretionary approach to limiting plea negotiations. They have no firm procedural restrictions on plea negotiations. Individual attorneys are ultimately responsible for all aspects of case preparation, including plea offers. In Cook County, the serious nature of cases, a reduced caseload, and an orientation to trial preparedness contribute to a "tough" negotiating position in the unit. The unit's "team" approach to prosecution means that difficult decisions about a case are typically discussed with other attorneys. In Philadelphia there is general acceptance of a standard for requiring a plea to top charge, though there is no formal ban on charge reductions. Even though guilty pleas are the most common form of case disposition in each jurisdiction, their plea rates are the lowest of the seven jurisdictions (47 percent in Philadelphia; 52 percent in Cook County).

Among the study jurisdictions, Cook County and Philadelphia also recorded the highest rates of conviction to the charge filed in a case (87 percent and 92 percent).

Successful utilization of a discretionary approach is probably greatly enhanced when program caseload is oriented to violent, personal crime and by the consensus on selective procedures that is present in a coordinated program.

The remaining study jurisdictions applied more procedural approaches to limiting negotiations, usually prohibiting charge reductions in return for a plea. However, outcomes were very dependent on the local context.

In Knox County the predominate program policy has been a proscription on reducing the top charge. Even though many cases are non-violent property crimes, they were typically supported through cooperation with law enforcement (e.g., the unit participated in several "sting" operations). Judges in Knox County are reluctant to involve themselves in plea negotiations. In these circumstances, only 59 percent of the unit's cases are resolved through pleas and 79 percent of convictions are to the top charge. Where judges are not involved in negotiations (legally and by accepted practice), procedural guides on plea bargaining may be highly effective.

The Multnomah County program has a similar policy prohibiting charge reductions. Judges in that jurisdiction do not typically involve themselves in charge reduction, though they are more likely to consider sentence negotiations from the defense. The program resolves only 58 percent of its cases by plea and achieves top charge convictions in 85 percent of all convictions. Again, judicial non-involvement enhances prosecutors' leverage.

Where plea negotiation is regularized and the caseload emphasizes the types of cases typically negotiated, effective implementation of procedural limits may be more difficult. Dade County office policy stipulated that in career criminal cases attorneys should not "negotiate or reduce on no-action charges" in career criminal cases without approval of stipulated supervising attorneys. Interviewees reported difficulty in holding to this guideline within the context of an integrated program and a caseload with many charges that would typically be negotiated. Three-fourths of Dade County's cases are resolved through a guilty plea.

The San Mateo County program has operated under contradictory influences regarding case disposition. While the California statewide career criminal program originally required that local units "limit" plea bargaining, no prohibition was mandated. Within a tradition that regularized charge negotiation and "conditional pleas" (no state prison stipulations), pleas remained common in unit cases. Pleas of guilty were entered in 83 percent of career criminal cases in San Mateo.

When California's statewide program was renewed in 1982, requirements for plea negotiation policy were strengthened. The law now prohibits dropping charges for guilty pleas in career criminal cases, with very limited exceptions. In 1983 the percentage of jury trials in San Mateo's career criminal cases rose to 28 percent, and the number of pleas dipped to 67 percent. State intervention changed the local environment.

The experience of the study jurisdictions suggests that plea negotiation policies must recognize the extent to which other courtroom actors (i.e., judge and

defense) affect negotiations and the degree of consensus concerning the appropriateness of selective procedures for the program caseload.

- Conviction Rates. Table 2 has dramatized the degree to which conviction rates often represent a tradeoff with other disposition outcomes. While Cook County and Philadelphia, for instance, have relatively low overall conviction rates (for these programs), they have high charge conviction and incarceration rates. It is also clear that a high rate of guilty pleas can contribute to a high overall conviction rate. The two study programs with the highest plea rates (San Mateo County 83 percent and Monroe County 76 percent) also have two of the highest overall conviction rates (95 percent and 92 percent respectively).

The degree to which selective prosecution policies emphasize conviction rates must depend upon program objectives, local procedures, and the nature of the caseload. For example, the New York and California penal codes both limit the prosecutor's ability to influence sentence once a conviction is achieved. Both penal codes also significantly increase sentence length on the basis of prior convictions. In this environment, some respondents indicated an emphasis on gaining convictions because the defendant would face significantly longer sentences if convicted again. In other jurisdictions, maximizing conviction rates may assume less priority than trying to take difficult and serious cases to trial.

- State Prison Incarceration. State prison incarceration is a function of the rate of state prison sentences and their length. Procedures designed to affect prison length reflect (a) program caseload, (b) sentencing law, and (c) who makes discretionary decisions affecting sentence.

Among the study jurisdictions, the relation between targeted offenses is apparent. Philadelphia and Cook County, with caseloads dominated by violent personal crime, achieve state prison sentences in more than 90 percent of their convictions (94 percent and 93 percent, respectively). When caseloads are very serious, gaining a conviction to the top charge may virtually insure a strong sentence at disposition.

In most property crime programs the picture is different. Dade County, where selection criteria capture relatively minor property crime such as shoplifting, has difficulty gaining prison sentences. San Mateo County (66 percent), Monroe County (73 percent), and Multnomah County (73 percent) emphasize property crime and gain prison sentences in two-thirds to three-fourths of convictions. In San Mateo County many program defendants receive sentences of county jail plus probation. This outcome is consistent with the county tradition of negotiating guilty plea for a recommendation of no state prison term. Given the historical ability of judges to make the opportunity for no state prison clear to the defense, there may have been little that prosecutors could do to alter this result.

State sentencing law also affects the opportunities to influence state prison incarcerations. In states where prison terms for specific crimes are narrowly defined (e.g., New York and California), sentence is impacted through gaining conviction to the most serious charge and using "enhancing" provisions such as prior felony convictions. In states where judges exercise greater latitude in

sentencing options, prosecutors may have more direct influence on sentence at disposition. The Multnomah County program, for instance, has adopted a unique approach to sentence recommendations. Any recommendation, even in the case of a guilty plea, is presented in a "sentencing letter." The recommendation is made after discussion among three unit attorneys who all sign the letter. The recommendation is accompanied by a written rationale. The letter is intended to give the prosecutor's recommendation more credibility, and the rationale may be of use to judges who must justify in writing sentences which are outside of sentencing guidelines.

"Habitual felon statutes" may provide a tool for enhancing state prison incarceration, but are not always used. Florida, for instance, has an enhancing statute for multiple repeat felons, but it was not used in the Dade County program. The statute has elaborate requirements for priority prior convictions, and the integrated Dade County program did not allow sufficient time to pursue the statute. The Tennessee Habitual Criminal Act, on the other hand, allows criminal history records as evidence and stipulates a life sentence upon the fourth felony conviction. The statute was frequently used and produced life sentences in more than 5 percent of unit cases.

Finally, sentence at disposition does not dictate the sentence that will actually be served. In states where parole boards exercise great control over release dates (e.g., Illinois and Oregon), programs have adopted procedures for notifying parole boards of the defendants career criminal status and presenting arguments against release.

## Conclusion

The experience of career criminal programs demonstrates the variety of options through which selective prosecution programs may be implemented. The greatest contribution of this study has been to identify the many different stages at which prosecutors can take steps to affect the outcomes of career criminal cases. At each of these stages alternative actions have been identified, along with some of the considerations that may recommend them. The study provides the first systematic description of the rich set of policy options that may be used to design and implement programs for selective prosecution of career criminals.

Prosecuting a criminal case involves a series of decisions about charging, pre-trial release, probable cause, trial preparation, plea negotiations, disposition, and sentence. Objectives and procedures for making these decisions are crucial to the successful design of a selective prosecution program. However, appropriate objectives and procedures depend on the opportunities offered in the local criminal justice environment. Each program must be tailored to these local opportunities.

This report has not recommended the "best" way to design a selective prosecution program because this "best" way does not exist. What should be useful for designing or

improving selective prosecution programs is an explanation of alternatives developed in existing programs and a discussion of the considerations that are important for choosing among them. Hopefully, this foundation will help design and implement stronger programs for selective prosecution.