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EVALUATION OF
THE DISTRICT COURT PROSECUTOR PROGRAM
IN THE
COMMONWEALTH OF MASSACHUSETTS

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**EVALUATION OF
THE DISTRICT COURT PROSECUTOR PROGRAM
IN THE
COMMONWEALTH OF MASSACHUSETTS
December 7, 1973**

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This evaluation was performed under Contract SM 73-101 to the Commonwealth of Massachusetts Committee on Criminal Justice.

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PREFACE

The evaluation of the Massachusetts District Court Prosecutor Program was undertaken by the National District Attorneys Association at the request of the Massachusetts Committee on Criminal Justice.

The objectives of this evaluation included recommendations for improvements to the program in addition to findings and observations. This meant that both objective and subjective analysis of the program had to be performed during the evaluation and that personnel familiar with the operations and performance of lawyer prosecutors in the district courts had to be utilized as consultants.

To perform this evaluation the National District Attorneys Association utilized the services and expertise of ten prosecutors and/or assistant prosecutors throughout the United States and members of the staff of the National Center for Prosecution Management. The evaluation was supported financially by the Massachusetts Committee on Criminal Justice.

The project was organized, teams selected, 39 sites in Massachusetts visited, recommendations prepared and report finalized within a 3 month period. The close timing was requested by the Committee so that these recommendations could be considered within their funding constraints.

ACKNOWLEDGEMENTS

The National Center for Prosecution Management gratefully acknowledges the following people, without whose assistance this evaluation could not have been possible.

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The Center also wishes to express its appreciation to the Massachusetts Committee on Criminal Justice staff members for their cooperation and assistance during the evaluation. Special thanks are extended to Messrs. Arnold Rosenfeld, Executive Director; Robert Cole, Director of Evaluation; and Philip Murray, Courts Specialist.

Special appreciation for his assistance is also extended to Beryl Cohen, Coordinator of the Massachusetts District Attorneys Association.

GENERAL CONCLUSIONS

It was the unanimous conclusion of the ten evaluation teams that the District Court Prosecutor program was a positive improvement to the criminal justice system in the Commonwealth of Massachusetts and represented an important first step needed for reform.

The District Court Prosecutor program is widely accepted by all components of the criminal justice system and is strongly endorsed by the National College of District Attorneys and the National District Attorneys Association.

SUMMARY OF RECOMMENDATIONS

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The following summary of recommendations is presented in this section in statement form. Within the text of the report each recommendation is substantiated through observations of the consulting teams and analysis of available data.

ADMINISTRATION OF THE PROGRAM

The District Court Prosecutor program has expanded rapidly in the three years of its existence. The task of administering this program is a difficult and complex one. In part this is due to the great variety in the complexion of the district courts throughout the Commonwealth. The evaluation teams recognize a need for more uniform policy guidance in regard to the operations of the District Court Prosecutors, a need for more complete and meaningful statistical procedures for management and planning; and an overwhelming need for more facilities and manpower to support the operating activities of the District Court Prosecutors.

The evaluation team recommends:

- . *That a study be undertaken to determine the facility requirements of the program in each of the district courts and within each district attorney's office.*
- . *That a study be undertaken which, coordinated with the facilities study, would determine manpower requirements in the district courts and district attorney's offices. The study would determine needs for attorney staff and support staff such as secretaries and para-legals.*
- . *That based on the study findings, budgets be developed for each district attorney's office regarding the needs of the District Court Prosecutor program administered by his office.*
- . *That a study be made to consider sources of revenue for continuing and expanding the program and that the Coordinator of the Massachusetts District Attorneys Association be utilized to provide assistance in this activity.*

- . That the reporting system be expanded and re-designed to meet the goals and objectives necessary to satisfy the operational, management and planning needs of not only the district attorney but the criminal justice community.
- . That a thorough review of all practices and procedures should be made to determine where the existing manual systems can support the requirements of an automated system. Where no manual systems exist, they must be developed prior to any automation.

THE DISTRICT ATTORNEY AND THE DISTRICT COURT PROSECUTOR

While the role of the District Court Prosecutor needs to be clarified, this task can only be done by each of the nine district attorneys. They should agree on the basic role of the District Court Prosecutor, and should also permit policy variations, which reflect the attitudes of the communities which elected them. Yet, it was observed that very few, if any, formal policies or operating guidelines have been provided to the District Court Prosecutor by the district attorney. In addition, the relationship of the District Court Prosecutor to the district attorney's staff in many instances, was found to be ambiguous. The role of the District Court Prosecutor Coordinators, who were in most cases District Court Prosecutors themselves, varied with each jurisdiction.

The evaluation team recommends:

- . *That the district attorney make a concerted effort to fully integrate the District Court Prosecutor Lawyers into his organizational structure; that the District Court Prosecutor position be considered the same as an assistant district attorney position, accorded the same respect, authority and responsibility as accorded to other lawyer prosecutors.*
- . *That prior to any integration of the District Court Prosecutor program into the district attorneys offices, a comprehensive study of the functions of the office (from intake to final disposition) be conducted to identify the areas of impact and change and to prepare the office for such change.*
- . *That the nine district attorneys establish a coordinating policymaking committee to develop minimum uniform procedures and guidelines for District Court Prosecutor activities. The Coordinator of the Massachusetts District Attorneys Association could be used to support and assist in this task.*
- . *That each individual district attorney establish formal written policies and procedures regarding the District Court Prosecutors and disseminate these guidelines to all his attorney staff. Included as part of the written policy and procedures, the policy of the district attorney with regard to full-time versus*

part-time District Court Prosecutor activity and the availability of the District Court Prosecutors to the court or the district attorney's office should be clearly stated.

- . That one of the guidelines state the district attorney's policy on negotiations which are consistent with his own and the community's philosophies, and that these policies be placed in writing for the use of the District Court Prosecutors and the assistant district attorneys.
- . That the District Court Prosecutor coordinator take an active role in coordinating District Court Prosecutor operations and ensuring that the policies and procedures of the district attorney are being implemented at the district court level.
- . That cooperation on the part of all elements of the district court system be sought to assure that the guidelines will be implemented and followed.
- . That one of the policies included in the guidelines be that District Court Prosecutors handle all preliminary hearings in felony matters, and that, at a minimum, case summaries be prepared by the District Court Prosecutor for each case which is bound over to superior court.
- . That the guidelines include a policy advocating early screening of cases by the District Court Prosecutor, including when possible the establishment of an intake screening system supported by adequate staff and facilities.
- . That a model screening project be designed, tested and evaluated for use throughout the Commonwealth.

RESOURCES AND TRAINING

It was observed by the evaluation team that in some districts the prosecution manpower provided to the District Court Prosecutor program was adequate for the caseload, but that in other areas there appeared to be a need for more attorneys and additional resources. It was also observed that there are few, formal training and orientation programs for District Court Prosecutors, even though the need is apparent.

The evaluation team recommends:

- . *That formal staffing patterns be developed by the district attorneys, including recruitment policies and standards.*
- . *That training and orientation programs be instituted by the district attorneys with the assistance of the Massachusetts District Attorneys Association Coordinator.*
- . *That the training resources available through the National District Attorneys Association, National Center for Prosecution Management and National College of District Attorneys be vigorously tapped by all members of the prosecutorial system including the District Court Prosecutors.*
- . *That the Massachusetts district attorneys and district attorney's coordinators utilize the resources of the National Center for Prosecution Management Technical Assistance Program to further assist the district attorneys and the District Court Prosecutor program.*

FUTURE IMPACT OF THE DISTRICT COURT PROSECUTOR ON THE CRIMINAL JUSTICE SYSTEM

The expansion of the District Court Prosecutor program, its integration into the district attorney's office and its potential for instituting changes in the entire criminal justice system was evaluated by the team. It is imperative that the agreement and cooperation of each agency be solicited whenever possible as changes are instituted which affect their activities. In many instances because of the long-range nature of implementing change, a formalized approach must be constructed. The evaluation team feels strongly that with the institution of the District Court Prosecutor program a first step has been made in the basic reform of the criminal justice system. The recommendations that follow are presented as the next steps which the team feels should be considered. The recommendations are not made lightly nor without recognition of the fact that many may take many years of substantial work to implement.

The evaluation team recommends:

- . *That the assistance of the district court judges be solicited in effecting judicial changes which will strengthen the authority of the district attorney at the district court level.*
- . *That the adversary system requiring District Court Prosecutor participation in all prosecutions (except minor traffic violations) be mandated in all instances where final jurisdiction lies with the district court.*
- . *That the assistance and support of the public defender organizations and the private bar be sought in support of needed court changes. Plea bargaining procedures, in particular, should be formalized and coordinated with defenders organizations.*
- . *That the role of the police prosecutor be examined especially with regard to channeling talents and expertise into a police liaison role. Those police officers who have courtroom experience can provide invaluable service in the areas of case preparation, witness subpoenaing, and coordination between courts and law enforcement agencies. A study be made and policy be issued regarding the feasibility or acceptability of utilizing the police prosecutor in*

the handling of minor traffic cases.

- . That uniform procedures and reporting systems for police agencies be established within each district to assure minimum information on which prosecutorial judgment can be exercised. Certain basic facts and details should be supplied uniformly to the prosecutor for screening of cases and to permit statewide collection of data. The "Model Report to the Prosecutor" under design by the National Center for Prosecution Management should be considered as an aid in this project.*
- . That the screening function be properly vested in the district attorney's office rather than with the clerk of the court. That the establishment of court rule or legislation, if necessary, be made to permit review of cases by district attorneys prior to issuance of warrants and the filing of charges.*
- . That the district court criminal division be given exclusive trial jurisdiction over certain misdemeanor crimes, and that it be required to sit as determiner of probable cause in all felony cases.*
- . That the district courts of the Commonwealth be made courts of record, with a full stenographic record of proceedings established. In addition, the trial de novo in the superior court should be abolished, and provision for appeal on the record of the district court guaranteed.*
- . That a legal decision "data-bank" be established in the office of the coordinator of the Massachusetts District Attorneys Association as a resource for the district attorneys and the District Court Prosecutors to improve the quality of justice and prosecutorial services to the Commonwealth.*
- . That a comprehensive study be made to determine the feasibility of establishing a unified state system of courts and special focus on the feasibility of establishing separate divisions of the district court for civil and criminal matters.*

EVALUATION OF THE DISTRICT COURT PROSECUTOR PROGRAM
IN THE COMMONWEALTH OF MASSACHUSETTS

I. INTRODUCTION

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CRIMINAL JUSTICE SYSTEM

The criminal justice system is well known as the traditional series of agencies that have formal responsibility to control crime; police and sheriffs' departments, judges, prosecutors and their staffs, defense offices, jails and prisons, and probation and parole agencies. It is an overt system, seen each day in operation, and customarily understood and referred to in crime and delinquency literature. But, there are broader implications of the term. For a system is merely a group of parts operating in coordination to accomplish a set of goals. Many public and private agencies and citizens outside of police, courts, and corrections are, or ought to be, involved in reducing and preventing crime, the primary goal of criminal justice. These agencies and persons, when dealing with issues related to crime reduction and prevention, plus the traditional triad of police, courts, and corrections make up the total picture of the system referred to as the criminal justice system.

Within the criminal justice system itself lie a number of internal conflicts. These sources of conflict are in the differing roles that police, courts, and corrections agencies play and that often put one part of the system in conflict with another. The Science and Technology report of the President's Commission on Law Enforcement and Administration of Justice defines the problem well:

Police, court and corrections officials all share the objective of reducing crime. But each uses different, sometimes conflicting, methods and so focuses frequently on inconsistent subobjectives. The police role, for example, is focused on deterrence. Most modern correctional thinking, on the other hand, focuses on rehabilitation and argues that placing the offender back

*into a society under a supervised community treatment program provides the best chance for his rehabilitation as a law-abiding citizen. But community treatment may involve some loss of deterrent effect, and the ready arrest of marginal offenders, intended to heighten deterrence, may be affixing a criminal label and complicate rehabilitation. The latent conflicts between the parts may not be apparent from the viewpoint of either sub-system, but there is an obvious need to balance and rationalize them so as to achieve optimum overall effectiveness.**

Members of the legal community, as well as the public, feel a concern over the manner in which our criminal justice system operates. Statistics showing crime rise, deplorable conditions and practices in courts and correctional institutions, and conflict between rehabilitation, punishment, and deterrence decisions cause a great deal of concern.

On an individual level, the criminal justice system frequently fails, yet there is no denying that it is successful on a mass scale. If it had truly failed, society would be completely shattered. Most people have had some contact with law enforcement agencies at some point in their lives; most, however, only see it in action in cases presented at the district court level.

In a large percentage of cases the respect for criminal justice institutions gained publicly is reduced by the contact citizens have as complainants, witnesses, defendants, or jurors. Often they are met with a mass production process, not always the most expeditious, nor appearing deliberative.

* President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Science Technology (Washington, D.C.: U.S. Government Printing Office, 1967), p. 53.

It is because of the conflict within the system and the role of the prosecutor within it that the National Center for Prosecution Management addresses itself to research and evaluation of particular prosecutorial needs.

II. BACKGROUND

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BACKGROUND OF THE DISTRICT COURT PROSECUTOR PROGRAM

It has been tradition in the Commonwealth of Massachusetts to use police officers as prosecutors in district courts. Although this system has not been authorized by statute or the judicial system, it has been established as an acceptable method for representing the interests of the government in the criminal process.

Under this system some courts allow the arresting police officer to represent the Commonwealth in the prosecution of the case in the district court. In other areas, the police departments may assign an officer full-time to the task of prosecuting cases. Many of these police prosecutors have had years of experience in the field, and have accumulated some trial expertise from subsequent years in the courtroom. Few, however, have law degrees or formal legal training.

In 1969 the Commonwealth of Massachusetts Committee on Criminal Justice, (hereinafter referred to as the Committee), with an LEAA grant, funded a pilot program to utilize lawyer prosecutors in district courts. Since its initial funding the grant for the DCP program has been renewed and expanded each year to the point where in 1972 it became statewide, and in 1973, 80 district court prosecutors covering all 73 district courts were funded. The distribution as of November 8, 1973, was as follows:

Suffolk District	16 DCPS;
Norfolk District	6 DCPs;
Middle District	8 DCPs;
Western District	9 DCPs;
Plymouth District	6 DCPs;
Southern District	9 DCPs;
Northern District	15 DCPs;
Eastern District	7 DCPs;
Northwestern District	4 DCPs;

The initial structure of the DCP program was designed to provide personnel in the form of lawyer prosecutors to try cases, and coordinators to administer manpower needs between courts within specific jurisdictions. In addition, a system for recording the activities of these individuals was put into effect so that meaningful data would be available in the future that would provide management information to the program and the criminal justice system.

The responsibility for hiring District Court Prosecutors and a coordinator is the responsibility of the individual district attorneys, however, the support funds are provided at this time through the LEAA grant. Ultimately if the DCP program is proven successful and its continuance is desired, funding responsibility will have to be assumed by the state legislature.

This evaluation addresses itself to this future need in addition to the present status of the program.

III. EVALUATION PROJECT

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EVALUATION PROJECT

In the Spring of 1973 the Committee requested the National District Attorneys Association to evaluate the DCP Program, using the management expertise of the staff of National Center for Prosecution Management and the professional expertise of members of the National District Attorneys Association. The evaluation was performed in accordance with the request of the Chairman of the Committee, Attorney General Robert H. Quinn. The purposes of the evaluation were to identify appropriate modifications to the DCP program; to suggest methods for improving its effectiveness, and to present documented discussion regarding the Commonwealth's support of the program as a permanent component of the District Attorney's offices.

It was desirable for this evaluation to obtain a thorough overview of the acceptance of this program by personnel within the criminal justice system and a feel for their level of support. This particular program, for evaluation purposes, had to be compared with other systems across the country to ascertain its effectiveness and identify positive and negative aspects of the operation.

Both objective and subjective analysis were required to formulate the correct conclusions concerning the value and effectiveness of the program. Raw data by itself, even if seemingly all encompassing in its representation, could not portray the abstract parameters that tie together human intuitive judgements generated through experience in a particular field.

The National Center for Prosecution Management was able to take these factors into consideration and due to the vast resources available and experience in the criminal justice system, formulate an evaluation plan that would accomplish the required objectives.

METHODOLOGY

The Committee, recognizing the variance in the District Court Prosecutor program operation in different jurisdictions, recommended that the evaluators visit at least 30 court sites and each of the 9 district attorney's offices within the Commonwealth to obtain a comprehensive overview. Site selection of the representative courts was the responsibility of the Committee, since they had previously derive a topology of offices and could ensure a representative sample of offices to be visited.

The evaluation time period was extremely brief, from September 7 to December 7, 1973 because of the Committee's deadline for completion of the final report by December 7, 1973. Yet during this time 10 evaluation teams were created and 9 district attorneys' offices and 30 court sites were visited.

The National Center for Prosecution Management organized teams of consultants, soliciting the aid of acting prosecutors throughout the United States who had demonstrated expertise and outstanding performance in previous assignments and studies for the Center. In addition, consultants and staff members from the Center complemented the teams in the areas of management and administrative analysis of the program.

Each team (ten teams in all), consisted of at least one prosecutor and one National Center for Prosecution Management staff member. The teams were scheduled so that there would be two main groups covering the Commonwealth at two different times. The first group performed the initial analysis and identified specific areas for detailed studies, based upon information and data gathered, while the second and largest group covered the larger number of sites and in some cases specialized in analyzing specific functional areas as well as performing the overall analysis. A period of 3 weeks was allocated between visiting teams, so that the results of the first week of visits could be analyzed and distributed to the second group.

Certain criteria were examined and compared to select the proper team for the site to be visited. Wherever possible the team was exposed to as much variance as possible for the courts to be visited. However, where the urban system existed such as in Boston, prosecutors experienced with large scale, high volume operations were scheduled as members of the primary team to perform the evaluation. Conversely small community operations were a primary concern for the acting prosecutors familiar with that type of system.

To obtain as comprehensive a picture as possible, the evaluating teams were asked to interview as many personnel as feasible within the criminal justice system who would represent the most accurate cross section of activity and influence on the District Court Prosecutor Program. Specifically this covered the following personnel within each court jurisdiction.

- . The Clerk of the Court
- . Public Defender and Defense Attorneys
- . Judges
- . Individual District Court Prosecutors
- . The District Court Prosecutor Coordinators
- . District Attorney
- . Police Prosecutors
- . Probation Officers

A questionnaire was developed and modified after the first team visits to be used as a guide by the teams, so that consistency within the scope of the evaluation would be possible.

A sample of the questionnaire containing some of the questions is included in Appendix C. The teams were asked to use these merely as a guide and not to limit their observations to answer specific questions.

In addition, information packages containing materials describing the Massachusetts Court System, some statistics relating to activity and a description of the DCP Program were supplied to each team member.

Once the site visits were completed, the team members prepared individual reports that were submitted to the National Center. The reports were analyzed and recommendations formulated into an outline to be

discussed in a debriefing session.

A meeting of all evaluators was held in Washington where team members analyzed the outline; discussed the scope and progress of the program and made recommendations for improvements and/or modifications to the system. Meanwhile the statistical data provided by the Governor's Committee was analyzed by the National Center for Prosecution Management staff and prosecutor consultants to ascertain its effectiveness as a management tool representing the activity of the DCP in district court.

The recommendations and findings presented in this report are based upon the analysis resulting from the available data and the information gained by each team through the visits and analysis of the additional data provided by the Committee.

After discussion of the general findings, the DCP program evaluations focus on the role of the District Court Prosecutor, who he is or should be as an entity, the relationship between the DCP and the District Attorney with regard to the District Attorney's integration of this function into his office; the administration of the program, its needs and requirements; and finally the areas of impact of this program on the criminal justice system if it is considered as a first step in the basic reform of the criminal justice system of the Commonwealth of Massachusetts.

For an inventory and detailed description of the District Court Prosecutor program, the reader is referred to the "Survey of Police Prosecutorial Practices in Massachusetts District Courts" which does an excellent job in presenting these details and was a valuable source of information for the evaluators. This report should be read as background to the program and this evaluation.

IV. FINDINGS AND RECOMMENDATIONS

GENERAL FINDINGS

GENERAL FINDINGS

While the District Court Prosecutor program has been generally accepted, there is a wide dichotomy of views regarding its degree of acceptability. In one instance a senior police prosecutor told a team that he did not know what he would have done without this program. He indicated also that he had a good personal relationship (a factor that the teams found throughout interviews was crucial) with the prosecutor and that he wanted to see the continuance of the program.

In interviews by team members the police prosecutors saw potential for good in the program but had many reservations and chief among them were the following: one - not enough time was spent by the District Court Prosecutor in preparing his cases; two - the District Court Prosecutor did not have the interest in the case the police prosecutor had and thus reduced charges too often; three - there was not enough communication between the District Court Prosecutor and the police prosecutor. Even among the police prosecutors, however, the majority view was that the District Court Prosecutor system is one that is needed. While there are problems in the system, it was felt these problems could be worked out.

It should be noted that the level of acceptance varied with the function of the person interviewed. In practically all interviews the only elements of the criminal justice system expressing any reservations about the District Court Prosecutor program were the police prosecutors.

It became quite clear, that in some instances, police prosecutors, particularly those permanently assigned to a given court over an extended period of time, have by virtue of their "on the job" training, gained considerable experience and background in the functions of prosecution. Only through good performance on the part of the District Court Prosecutor, and a true need for his knowledge has he been successful in performing effectively to replace the experienced police prosecutor.

The district court judges in general no longer feel obligated to assist either the police prosecutor or, in some limited cases, the assistant city solicitor in the presentation of their cases at trial. Judges in some jurisdictions underscored this as one of the immediate successes of the District Court Prosecutor program. Under the pre-existing systems, a police officer, in most cases, did not have legal training, and often times became confused in the fine points of the law. The District Court judge at that point intervened and helped the police office with his case presentation. Private citizens, in the court room as defendants, often times felt that the weight of the criminal justice system was definitely slanted against them when both the police officer and the judge took a position contrary to that of the defendant. Currently however, there is a true adversary system present with a skilled trial attorney representing the interests of the Commonwealth and, more frequently than not, a skilled defense attorney representing the interests of the defendant. This allows the District Court judge the impartiality on which his position and title is necessarily based.

It was observed that different views existed on the subject of case preparation by the prosecution. In areas where the city solicitor prepared and prosecuted the cases and, in some instances, where the police prosecutor continues to try cases, some personnel felt that the introduction of the District Court Prosecutor has resulted in better case preparation.

Reasons advanced for this particular proposition were as follows: When as assistant city solicitor had the responsibility for all prosecutions in the district courts, he necessarily spread his time among as many as twenty or thirty cases a day in trying to prepare for them. The fact that the assistant city solicitor was part-time and had only a few minutes before each case in which to prepare, supported this conclusion. With the advent of the District Court Prosecutor program, more manpower was provided to divide up these cases and therefore necessarily

gained considerable experience and background in the functions of prosecution. Only through good performance on the part of the District Court Prosecutor, and a true need for his knowledge has he been successful in performing effectively to replace the experienced police prosecutor.

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resulted in better and more thorough case preparation. Therefore, the District Court Prosecutor was viewed in some instances as a definite need due to the fact that more manpower is required. However, in these circumstances, with the increase in number of cases and motions, it is difficult to imagine what would be the situation today from a standpoint of case processing and backlog if more "manpower" had not been made available.

Many judges and others within the criminal justice system feel that acceptance of the District Court Prosecutor program was slow in coming to the Commonwealth but that now its acceptance is virtually unanimous among judges. It was one judge's view, however, that the public at large was manifestly unaware of the existence of the District Court Prosecutor system and yet the district court is doubtless the one arm of the Massachusetts criminal judicial system with which most of the public in the state have their only contact. Another interviewer expressed the opinion that the public and the legislature don't appear really to be interested in massive court reform.

Even though there are many views concerning the District Court Prosecutor program, very few were critical. Most of the teams were impressed at the amount accomplished by the District Court Prosecutor with the resources available to him.

Within this framework of general acceptance of the District Court Prosecutor program and in order to strengthen and improve this vitally important program, the following portions of this report address specific problem areas and observations and corresponding recommendations for improvements to the system.

ADMINISTRATION

ADMINISTRATION OF THE PROGRAM

The District Court Prosecutor program has expanded rapidly in the three years of its existence. The task of administering this program is a difficult and complex one. In part this is due to the great variety in the complexion of the district courts throughout the Commonwealth. The evaluation teams recognize a need for more uniform policy guidance in regard to the operations of the District Court Prosecutors, a need for more complete and meaningful statistical procedures for management and planning; and an overwhelming need for more facilities and manpower to support the operating activities of the District Court Prosecutors.

Given a set of established conditions, no matter their basic infirmities, a system can be made to function by application of diligence and tolerance. Over the years the police, the prosecutor and the judges have energetically devoted themselves to compensate for deficiencies in the system. The public and the legislative body, have on the other hand, learned to accept and live with the inadequacies. Thus has developed a judicial tradition. So long as participants act with vigor and recipients acquiesce, most machinery will function to fulfill the needs for which it was created.

The District Court Prosecutor program has fortunately been operated by personnel who have been diligent in the execution of their duties. However, it is important that significant areas be examined and improvements made, if the program is going to continue in the future.

FACILITIES

The evaluation team recommends:

THAT A STUDY BE UNDERTAKEN TO DETERMINE THE FACILITY REQUIREMENTS OF THE PROGRAM IN EACH OF THE DISTRICT COURTS AND WITHIN EACH DISTRICT ATTORNEY'S OFFICE.

One of the principle problems noted by the majority of District Court Prosecutors interviewed was the lack of physical facilities available to District Court Prosecutors. The observations of the prosecuting attorney consultants

substantiated this point of view.

It was noted that in one jurisdiction the state of facilities available to the District Court Prosecutors in each of the Courts visited varied considerably from none at all (e.g. District Court Prosecutors "practice out of their brief cases") to one very small office. The lack of adequate facilities at or near the Court can be a severe hardship to any lawyer, particularly, as one prosecuting attorney consultant noted, "one whose whole professional life is spent in, or immediately available to, the Courts.

The need for a place to discuss cases with defense attorneys police and witnesses should be self-evident and such facilities are absolutely necessary to the proper administration of any prosecutorial office.

The need for professional facilities is particularly acute given the fledgling nature of the District Court Prosecutor program. District Court Prosecutors must be provided office space to eliminate the feeling they are transients.

Another important consideration in providing a "place to live" for the District Court Prosecutor is the increase in effectiveness resulting from greater availability to personnel within the system. One main area of improvement, as noted by the consultants, would be an increase in availability of the District Court Prosecutor to as much as 24 hours a day in some jurisdictions. Interviewed persons indicated there should be a full-time office for the District Court Prosecutor where police can reach him. The judges and the police prosecutors interviewed all stated that one common failing of the District Court Prosecutors (although not a universal one) was that there was not enough preparation and not enough consultation with the police. The police felt that this could be overcome if there was a regular office with regular hours during which they could meet with the District Court Prosecutors. Even though the District Court Prosecutor tries to make himself as available as possible, communication is discouraged when one has to try to determine which hall the District Court Prosecutor has designated as his office for that day. One consulting team referred to the District Court Prosecutors as "Corridor Commandos" whose cases sometimes never come in from the hallway. One consultant upon examining a large high volume

court commented: "The courthouse was no doubt a magnificent building in its day, but its day indubitably is long gone. The memories of the past, certain to awe a visitor, are repelled by the dark, crowded hallways with a din and turbulence that accentuates the uncertainty of what is occurring inside the courtroom.

The two District Court Prosecutors here are indeed heroic figures. They operate totally alone, lacking any support services. The hallway is their sanctuary. Armed with a handwritten sheet of paper with the District Court Prosecutor cases selected for the week, the district attorney elbows his way through the crowd, lining up his witnesses for the first case. This occurs a few minutes before the court session begins. Moments later a bailiff marches down the corridor loudly announcing the arrival of the judge and the crowd falls back toward the walls making way for his honor. The police prosecutor operating out of a small room off the corridor is meanwhile recording the presence of police witnesses signing in for the day. A loudspeaker periodically blares out the location of each of the sessions.

The District Court Prosecutor's trial sheet bears the case number, last name of the defendant, the trial court, full name of arresting officer and the charge. It is not a pre-printed form and space is not provided for disposition or comment. The 8 to 10 cases chosen each day are divided between the two prosecutors. The remainder of the approximately 40 cases on the calendar are prosecuted by the police. About 10 are handled by the police prosecutor and the balance by the arresting officers. Police witnesses generally are in or about the police office room. The area outside the courtrooms is a melee with state witnesses, defendants and lawyers milling about. No special space is provided for witnesses. The crowd is at its peak for the opening cases and movement is difficult until the docket begins to clear. Cases are not scheduled at specific hours to avoid the mass appearance of witnesses at one time.

The District Court Prosecutor is in and out of the courtroom, talking to witnesses, going from one courtroom to another, responding to queries from police officers and generally struggling to keep afloat. Inside the courtroom the judge makes a valiant effort to conduct a proper adversary proceeding. On the surface he succeeds. He is assisted in this greatly by the presence of the District Court Prosecutor. Considering that this is not a court of record it is most difficult to maintain high

standards. Lacking court reporters who transcribe proceedings (unless used by private counsel) and minus appeals on the merits of the district court testimony there is little opportunity to rise above the old "Justice of the Peace" concept."

It was felt that in many situations where statements were made concerning greater availability of the District Court Prosecutor, it was not the fact that the District Court Prosecutor was not in the area which caused the lack of availability, but that there was no definite means of communication through a central location (readily available office). Facilities then, becomes an initial step toward organization, and for those jurisdictions that are handicapped through lack of office space, the prime consideration should be the obtaining of adequate facilities to support the prosecution function.

The evaluation team recommends:

THAT A STUDY BE UNDERTAKEN WHICH, COORDINATED WITH THE FACILITIES STUDY, WOULD DETERMINE MANPOWER REQUIREMENTS IN THE DISTRICT COURTS AND DISTRICT ATTORNEY'S OFFICES. THE STUDY WOULD DETERMINE NEEDS FOR ATTORNEY STAFF AND SUPPORT STAFF SUCH AS SECRETARIES AND PARALEGALS.

This study will be helpful to the entire District Court Prosecutor program, but particularly with respect to the role of the District Court Prosecutor in the larger District Courts. As one consultant noted, manpower requirement projections during the initial stages were fairly accurate as applied to the smaller courts. These Courts appear at this time to have a reasonable case load per District Court Prosecutor which would adequately allow for full implementation of the program. In the larger courts visited, however, it appeared that there are not enough District Court Prosecutors and support staff to cover the caseload adequately. Police prosecutors must still prosecute, not by virtue of any particular desire to perform this function, but merely for lack of District Court Prosecutor personnel. Likewise, particularly in the larger courts where District Court Prosecutors are not available in adequate numbers, it is felt that supportive staff such as interviewers and secretarial staff should be provided in order to allow for full service to the courts by the available District Court Prosecutors.

The lack of sufficient numbers of attorneys and support staff in the District Court Prosecutor program caused one consultant to comment that, "the present system is in danger of developing inefficient procedures and methods for utilization of personnel that could easily become a way of life. The Committee could greatly assist by establishing a realistic ratio of support personnel to prosecutors which would have the effect of supplying sufficient prosecutorial coverage."

Another consultant went so far as to say that in his opinion, "It appears that the only roadblock still in the way of total implementation of the system of District Court Prosecutors is sheer lack of numbers of authorized personnel."

Therefore, improvements could be made in the methods of determining the distribution of lawyers within the District Court Prosecutor program to satisfy manpower requirements, but more importantly great strides forward can be made through the use of paralegals, part-time law students, etc. within the program. Such functions as case preparation, interviewing and other related duties can be handled by part-time help thus increasing considerably the preparation of cases and alleviating many problems currently associated with the lack of preparation on the part of the District Court Prosecutor. Two part-time law clerks, for example, can easily triple the effectiveness of one District Court Prosecutor.

Another recommendation under this category is in the area of budgets. The initial consideration at the beginning of the program was obviously filling the need for prosecuting attorneys without any significant consideration for other factors that go to make up an operational function. In the preparation of budgets, it is necessary to consider all cost factors associated with a function and distribute the funds to satisfy these factors.

The evaluation team recommends:

THAT BASED ON THE STUDY FINDINGS, BUDGETS BE DEVELOPED FOR EACH DISTRICT ATTORNEY'S OFFICE REGARDING THE NEEDS OF THE DISTRICT COURT PROSECUTOR PROGRAM ADMINISTERED BY HIS OFFICE. .

The budgets should be standardized for all jurisdictions and bring into consideration such factors as personnel benefits (insurances, IFCA, etc.) and depreciation of equipment and furnishings as well as the direct line item expenses. Too often budgets are generated which do not reflect overhead type expenses and as a result no funds are reserved to replace worn out furniture and equipment.

The evaluation team recommends:

THAT A STUDY BE MADE TO CONSIDER SOURCES OF REVENUE FOR CONTINUING AND EXPANDING THE PROGRAM AND THAT THE DISTRICT ATTORNEY COORDINATOR BE UTILIZED TO PROVIDE ASSISTANCE IN THIS ACTIVITY.

This particular study would include not only the identity of various revenue sources but detailed justifications for expenditures.

MANAGEMENT REPORTING

All of the consulting teams observed the need for meaningful statistical information. It was observed that: The District Court Prosecutors, the District Attorney, the Clerk of the Courts, and probation officers have poor, if any, statistics on the types of cases they are handling, the number of people that come to the system, and the number of cases that are continued or disposed of short of trial. No statistics were ever presented which accurately depict the number of cases that are plea bargained or continued, versus the number of cases that actually go to trial. The opinions advanced by various members of the criminal justice system differed from as much as 90 percent of the cases tried to as low as 2 percent of the cases actually tried. Part of the problem relates to the particular system of continuances which is in effect in the Commonwealth of Massachusetts. Cases are regularly continued after a plea of guilty has been entered, or after a plea of not guilty has been entered. Some cases actually go to trial, while others are plea bargained to a lesser offense. However, the latter seems to be more of an extraordinary disposition of cases than the continuance process. The absence of statistics in this regard creates somewhat of a confusing

aura over the entire criminal justice system. It is recognized that the success or failure of any program is not necessarily reflected in raw statistical data. However, it is also recognized that before an accurate overview of any system can be obtained raw statistical data is necessary for any conclusion.

CURRENT INFORMATION SYSTEM

The current information system being utilized by the Committee can provide the base for management reports of the future.

The need for a program to collect and analyze data regarding the District Court Prosecutor's program was quickly recognized by the Committee on Law Enforcement and Administration of Criminal Justice. An automated system was designed and implemented to record the activity of the District Court Prosecutor program. Over 50,000 records were automated; covering the period of fiscal year 1973. These records and summaries of the data were made available to the evaluation team. Specifically the evaluation team was to examine the records and summary data and use them where necessary to assist in the evaluation of the program. In addition, the information gathering system itself was to be examined for its utility and value as an operational or management tool.

Statistical systems are a vitally important part of any program. To be successful they should be operationally useful while simultaneously providing necessary information for management, planning and evaluation. Too often the lower courts throughout the United States, (those handling traffic offenses, moving violations, misdemeanors and sometimes felony intake) have been ignored with regard to data collection and the development of statistical systems. It was encouraging to find that the Committee had recognized the value of such data collection and had incorporated the development and implementation of a statistical reporting system to District Court Prosecutor program requirements. (A copy of the report form is attached).

Such a system, so conceived, was directed toward those goals and objectives which define a successful system. The potential for operational use in areas such as case flow and control is present. By compiling the uniform information reported by District Court Prosecutors, the District Attorney has the potential capability of monitoring and administering the program as an integral part of his office and its functions. Finally, by collecting uniform statistics on a statewide basis, the potential exists for development of a statewide statistical reporting system which can be used for planning, budgeting and program development.

CASE REPORT: DISTRICT COURT PROSECUTOR

005417

COMMONWEALTH V. _____

ECP _____ JUDGE _____ COURT _____

POLICE DEPT. _____ ADULT (1) _____ JUVENILE (2) _____ DATE _____ / ____ / ____

DOCKET NO.	CHARGE	ACTION	FINDING	DISPOSITION
(15-19)	(20-23) (24)	(25)	(26)	(27) (28-29)
(30-34)	(35-38) (39)	(40)	(41)	(42) (43-44)
(45-49)	(50-53) (54)	(55)	(56)	(57) (58-59)
(60-64)	(65-68) (69)	(70)	(71)	(72) (73-74)

DEFENSE COUNSEL

- ☐ PRIVATE COUNSEL (1)
☐ PUBLIC DEFENDER (2)
☐ STUDENT COUNSEL (4)
☐ NO COUNSEL (5)

NEGOTIATION

WAS A PLEA _____ NO (1)
 NEGOTIATED? _____ YES (2)

APPEAL

☐ TO DIST CT
 6 MAN JURY (1)
☐ TO SUPERIOR
 COURT (2)

Action (choose one):

- GUILTY PLEA (1)
 TRIAL (2)
 CONTINUANCE (3)
 PROBABLE CAUSE HEARING (4)
 ADMISSION TO A FINDING (5)
 DEFAULT (6)
 NOLLE PROS (7)
 DEFENSE MOTION (8)
 OTHER (specify) (9)

Finding (choose one):

- NOT GUILTY (1)
 GUILTY (2)
 PROBABLE CAUSE (3)
 NO PROBABLE CAUSE (4)
 CONT. WITHOUT FINDING (5)
 DISMISSAL (6)
 DECLINE JURISDICTION (7)
 CONT. FOR FINDING (8)
 OTHER (specify) (9)

Disposition (choose one):

- PROBATION (NOTE TERM) (1)
 SUSPENDED SENTENCE (2)
 BIND OVER TO GRAND JURY (3)
 IMPRISONMENT (4)
 FINE (NOTE AMOUNT) (5)
 RELEASE (6)
 CONT. FOR DISPOSITION (7)
 FILED (8)
 OTHER (specify) (9)

PROGRAM COPY

Statistics can describe a program, analyze or monitor programs and project future workloads, trends or changes. While their value has been recognized in the design of the present system with considerable potential present for future automated management information, there unfortunately are factors present which limit the achievement of this potential. These factors are presented below for the Committee's examination. It is hoped that resolutions can be achieved so that the full potential of this first step can be reached.

Because the reporting responsibility was limited to the District Court Prosecutor (the police prosecutor activity was not reported) the data collected by the reporting system cannot be used to measure total district court activity and volume. It should be made clear that the data measure only District Court Prosecutor activity in specific areas in the district courts. Hence, it is not possible to compare police prosecutor activity with District Court Prosecutor activity. Yet the potential for obtaining a measurement of district court activity and volume at hand, an extension of the reporting system to all prosecutors (police and district prosecutor) would correct this limitation.

Again, because the reporting responsibility was limited to the District Court Prosecutor, approximately 40 percent of the records in the system show no disposition. It is felt that the primary reason for the absence of disposition data is due to procedures external to the reporting system. If a case is handled at any point in time by the District Court Prosecutor, a report is made to the system. If at the next court hearing, the police prosecutor handled the case, no report would be submitted. It is the belief of the evaluation team that the large percent of "unresolved" cases are due more to this procedure than to non-reporting on the part of the District Court Prosecutor. The latter may contribute to the 40 percent "unresolved" but to what degree, is difficult to ascertain at this time.

The system suffers from a lack of input, update and edit controls. The system was designed without input controls to test and evaluate how well the District Court Prosecutors would report. It seems apparent that they did not perform well. Table 1 shows the percent of reports submitted that were "completed" (that is: all information filled in on the form). The low completion rates indicate that an examination of this area is warranted.

TABLE 1

Completed Reports as a Percentage of
All Reports By Prosecutorial District

<u>District</u>	<u>Total Reports</u>	<u>Percent Completed</u>
<u>Total</u>	50,184	17.2
Suffolk	10,926	13.2
Norfolk	7,861	5.6
Middlesex	13,407	27.7
Western	2,922	14.8
Plymouth	2,146	13.5
Southern	4,356	24.2
Northern	3,554	11.0
Essex	1,734	13.7
Worcester	3,288	15.8

Source: DCP-2

Date: 7/1/72 to 6/30/73

Several factors influence what appears to be a lack of reporting or inconsistent reporting. The update information, available on a case has been discussed with regard to the scope of the reporting activity of the District Court Prosecutors versus the police prosecutors. However, the docketing system of the district court also hampers the updating of any statistical record keeping system. Docket numbers are assigned for each charge a defendant is to be tried on. This means that if from one incident a defendant is arrested on a breaking and entering, is carrying a gun, and has stolen property in his possession, these three charges, all arising from the same incident are identified in the district court by three docket numbers. This type of docketing by charge tends to give an inflated workload measure to the Court, limits the quality of analysis and in terms of statistical reporting limits the reliability of the data. Since charges may change, or be dropped, the problems of updating a charge-oriented file are more substantial than a defendant-oriented file and the analysis of results more difficult, particularly with regard to dispositions.

The National Center for Prosecution Management strongly recommends to all developers of reporting systems, that these systems be defendant-oriented. That one docket number be given to each defendant covering all the charges arising from the incident for which he was arrested. Hence a "true" workload statistic can be generated, file update is simpler, and the potential for generating an automated criminal history file is integral to the system. In addition, the value to the district attorney under this system lies in his ability to better control and monitor case assignment and workload for his assistants.

The evaluation team recommends:

THAT THE REPORTING SYSTEM BE EXPANDED AND RE-DESIGNED TO MEET THE GOALS AND OBJECTIVES NECESSARY TO SATISFY THE OPERATIONAL, MANAGEMENT AND PLANNING NEEDS OF NOT ONLY THE DISTRICT ATTORNEY BUT THE CRIMINAL JUSTICE COMMUNITY.

The very important first step has been taken. The revision and expansion of the system should be undertaken in a systematic and comprehensive fashion.

First, an agreement should be reached as to the minimum data elements necessary to be collected for automation. These data elements should (1) be useful to the District Court Prosecutors in terms of case assignment, workload measurements and case control, (2) be collected to meet the district attorney's needs in monitoring the activity in the district court, evaluating manpower and other support needs of the District Court Prosecutors in his jurisdiction and ensuring that his policies are being followed at the district court level, (3) meet the state legislative, executive and judicial requirements for state-wide information. Each item selected for collection should be evaluated in light of its utility as a statistic.

Basic decisions must be made regarding the concept of the system. Docketing procedures may have to be changed to establish a defendant based file. If such changes cannot be made, then alternate procedures might have to be formulated. Merely counting transactions about a case is not sufficient for describing or evaluating a system. Reasons for an action should be incorporated into any operational or management system. The number of continuances on a case is more valuable when the reasons are known than when presented as just a number. The reasons for a dismissal mean more to the district attorney than the fact that one occurred. Finally, decisions should be made regarding the utility of putting the PROMIS system into the district courts in the more urbanized areas of the Commonwealth. PROMIS was designed originally for a high volume misdemeanor court. It should be examined for its feasibility in some of the larger volume district courts.

The evaluation team recommends:

A THOROUGH REVIEW OF ALL PRACTICES AND PROCEDURES SHOULD BE MADE TO DETERMINE WHERE THE EXISTING MANUAL SYSTEMS CAN SUPPORT THE REQUIREMENTS OF AN AUTOMATED SYSTEM. WHERE NO MANUAL SYSTEMS EXIST, THEY MUST BE DEVELOPED PRIOR TO ANY AUTOMATION.

Once the manual systems are operating, the automation of the system becomes routine task. With regard to the current system, a revision and re-design may require extensive programming. This could only be determined after the planning and policy making stage has completed its task.

It should be noted that the imposition of a uniform reporting system on district attorney offices does not impose uniform prosecutorial policy on district attorneys. As publicly elected officials, their policies should reflect the community which elected them and the type of crime they deal with.

The second task of the evaluation team was to examine the data collected for its utility in evaluating the District Court Prosecutor program. Unfortunately, this task was complicated by many of the problems reported above. The fact that 40 percent of the cases were without a disposition, precluded an evaluation of the results of the cases handled by the District Court Prosecutor. Because police prosecutor activity was not reported, a comparative analysis was not possible between their dispositions and the District Court Prosecutor dispositions.

The statistics were summarized to the district attorney level and examined with regard to the findings of the evaluation team. Wide variations appear to exist in the District Court Prosecutor activity among district attorney districts. Whether these are due to the absence of coordinated overall policy, the extent to which the program was implemented or used in the jurisdictions, or other factors such as type of crime is difficult to state. However, the data showed that the average District Court Prosecutor spend 180 days in court, that he handled on the average 823 cases, and that each case consumed 1.5 hearings on the average before disposition.

This data of course is dependent upon what was actually reported by the District Court Prosecutor, the correctness of information, and the effectiveness of the edit routines in the computer programs.

In our observations it was clear that not all activity associated with the District Court Prosecutor function was represented by the statistical information. For example, when police prosecutors are utilized in the courts they frequently request the aid of District Court Prosecutors. This isn't recorded on the data sheets. The District Court Prosecutor may spend several hours in consultation on cases where he has had no record of his involvement. The statistics then might show that he has spent a longer average amount of time per case handled than is true since all cases haven't been included.

Forty-five percent of all the cases reported were disposed by penalty, 14 percent by referral (bound over as felony) and 9 percent continued without a finding.

The following tables summarize reported District Court Prosecutor activity. Within the constraints already discussed they are presented here to indicate how they should be improved to provide value to the District Court Prosecutor and the district attorney.

Table 2 computes the average number of court days per prosecutor. Table 3 shows the average number of cases per prosecutor. As it is presented here they are too broad a measure for valid interpretation. Without further analysis, one does not know whether the variation is due to:

1. the policy of the court requiring District Court Prosecutors to be present in court for all offenses including traffic (which could account for a large number of court days),
2. the role of the District Court Prosecutor vis-a-vis the police prosecutor. If such a role is that of legal advisor to the police prosecutor, then little court delay activity would be noted.

3. or other factors that would increase or decrease District Court Prosecutor appearance in court, such as complexity or type of cases handled, type of crime, etc.

It is apparent that policy and procedures affect measurements and should be stated in order to provide the capability for evaluation.

TABLE 2

Average Number of Court Days
Per Prosecutor by Jurisdiction

<u>District</u>	<u>Average Number of Court Days</u> <u>Per Prosecutor</u>
All Districts.....	180
Suffolk.....	208
Norfolk.....	189
Middlesex.....	236
Western.....	113
Plymouth.....	144
Southern.....	193
Northwestern.....	169
Essex.....	140
Worcester.....	123

Source: DCP-2
Date : 7/1/72 - 6/30/73

TABLE 3

Average Number of Cases Per Prosecutor
by Jurisdiction

<u>District</u>	<u>Average Number of Cases</u> <u>Per Prosecutor</u>
All Districts.....	823
Suffolk.....	780
Norfolk.....	1310
Middlesex.....	1219
Western.....	487
Plymouth.....	429
Southern.....	871
Northern.....	1185
Essex.....	347
Worcester.....	548

Source: DCP-2

Date : 7/1/72 - 6/30/73

Statistics regarding the actions and dispositions by charge as exemplified by tables 4 and 5 show:

1. the weakness of a charge reporting system (one does not know the final disposition of a defendant's case),
2. the inability to give meaning to the disposition data because of unknown policy decisions (to plea bargain or not),
3. the limits to the evaluation of activity because no reasons are attached.
4. in Table 4 the disproportionately high number of continuances (probably because of problems with file control and update) perhaps causing the other actions to be inaccurate.

Table 6 shows the percent of cases classified by type of crime and jurisdiction. This type of summary becomes important because it describes part of the environment within which the prosecutor works. Other important data which should be captured ^{1/} are (1) the demographic characteristics of the District, (2) type of court and (3) resources available to the prosecutor, e.g., budget.

Police charging procedures should be examined for their impact on those offenses which are most subject to interpretation (in this case crimes against morals and order).

A data collection system without including reasons as an integral part cannot satisfy the needs of any operating program nor provide insight into the quality of such an endeavor.

^{1/}

See First Annual Report of the National Center for Prosecution Management, 1972

TABLE 4

Percent of Cases by Action on Charge
and by Jurisdiction

	All Actions	NE	GP	TRL	CONT	PCH	ATF	DEF	NP	DM	OTH
All Districts	100.0	0.4	3.0	35.8	39.4	7.3	6.3	5.3	1.6	0.7	0.1
Suffolk	100.0	0.4	0.2	33.0	42.7	10.2	4.6	8.2	0.1	0.4	0.1
Norfolk	100.0	0.3	0.5	29.7	53.8	3.6	5.3	6.2	0.1	0.2	0.0
Middlesex	100.0	0.2	2.8	46.0	29.5	6.0	9.0	3.6	1.6	0.8	0.0
Western	100.0	0.6	9.5	23.3	42.3	11.7	1.7	7.6	1.8	1.2	0.0
Plymouth	100.0	0.2	0.7	32.2	43.4	8.8	8.2	4.4	0.5	1.2	0.0
Southern	100.0	0.3	3.4	38.0	31.3	6.0	13.8	2.8	3.2	0.7	0.1
Northwestern	100.0	0.2	13.4	18.7	46.4	3.4	2.8	5.0	9.7	0.1	0.0
Essex	100.0	0.3	4.3	48.0	29.2	7.8	4.0	4.0	0.8	1.6	0.0
Worcester	100.0	1.6	2.0	40.7	35.1	13.5	1.1	4.5	0.1	1.1	0.0

KEY

NE : No Entry
 GP : Guilty Plea
 TRL: Trial
 CONT: Continued
 PCH: Probable Cause Hearing
 ATF: Admission to a Finding
 DEF: Defense Motion
 NP : Nolle Prosequi
 DM : Dismissed

Source: DCP-2
 Date: 7/01/72 - 6/30/73

TABLE 5

Percent of Cases Disposed by Type of Disposition
and Jurisdiction

<u>Districts</u>	<u>Percent Distribution by Type of Disposition</u>							
	Total*	Penalty	Refer	Nolle	Dismiss	Not Guilty	Cont. w/o Finding	No Cause
All Districts	100.0	45.4	14.6	3.4	14.3	10.4	9.6	1.9
Suffolk	100.0	30.8	21.6	0.3	14.4	8.0	20.0	4.6
Norfolk	100.0	45.8	10.3	0.3	15.9	16.1	10.2	1.3
Middlesex	100.0	56.9	11.4	0.8	10.5	11.4	7.7	1.3
Western	100.0	38.2	23.5	3.8	20.3	7.2	5.3	1.8
Plymouth	100.0	42.8	22.3	1.6	11.8	14.2	5.6	1.7
Southern	100.0	46.8	11.0	6.6	16.5	11.6	6.2	1.2
Northwestern	100.0	37.4	3.9	25.4	27.1	2.5	3.5	0.1
Essex	100.0	52.7	12.6	2.2	11.7	14.9	5.0	0.1
Worcester	100.0	46.5	24.4	0.1	8.1	7.8	10.4	2.6

* Figures may not add to 100.0 due to rounding

Source: DCP-3

Date: 7/1/72 - 6/30/73

TABLE 6

Percent of Cases Classified by Type of Crime
and Jurisdiction

Percent Distribution by Crime Type

<u>Districts</u>	Total	Person	Property	Morals	Order	Other
All Districts	100.0	12.2	21.2	23.5	42.6	0.2
Suffolk	100.0	27.2	22.3	18.9	31.2	0.0
Norfolk	100.0	8.8	19.8	29.4	41.9	0.0
Middlesex	100.0	9.1	19.2	24.3	47.2	0.0
Western	100.0	3.7	15.1	19.8	61.2	0.0
Plymouth	100.0	13.8	20.2	24.2	41.7	0.0
Southern	100.0	6.8	20.0	22.5	50.3	0.4
Northwestern	100.0	3.8	15.2	19.8	61.2	0.1
Essex	100.0	8.4	21.8	26.7	43.1	0.0
Worcester	100.0	10.1	29.3	21.1	39.4	0.1

* Figures may not add to 100.0 due to rounding

Source: DCP-3

Date : 7/1/72 - 6/30/73

RECORDKEEPING TOOLS

Case Files

It was observed that in some jurisdictions visited, misdemeanor case materials were organized into individual file folders containing support information and District Court Prosecutor notes. This is a must if the District Court Prosecutor is to be properly prepared for case presentation at trial.

The actual case file folder not only serves to gather together pertinent papers, but if utilized properly becomes a valuable recording tool regarding useful information concerning the case, and can supply valuable statistical data on a uniform basis. The National Center for Prosecution Management has designed a model case file folder for use in district attorneys offices that can be modified for use by the District Court Prosecutor program. A manual is available that describes the minimum data elements required and procedures for use and adoption of the model to specific jurisdictions.

The use of such a standardized folder provides automatic guidance in the processing of cases, (by assisting in the organization of line activities) and the efficient following of case processing procedures. Standardized forms and required minimum data elements allow for uniform case processing, review of established district attorney legal policy, and creates a statistical base for uniform data gathering and review.

Police Report Form

Probably one of the most important additions to the program would be the design, development and implementation of a uniform police report form. This particular form, after initial design and approval, should be utilized by the various police agencies and completed by the District Court Prosecutors or para-legal assistant and inserted into the case folder.

Utilization of this type of form is important in many ways. It provides necessary base line information to support the initial charge decision, and it serves as a guide in the subsequent collection of information and preparation of the case (e.g., criminal history, ID numbers, witness lists and testimony).

* "Minimum Standards for The Design and Use of A Prosecutor's Case Jacket", National Center for Prosecution Management, Washington, D.C., copyright 1973.

In many jurisdictions across the country this information form has been designed in enough detail so that it can be utilized as the official police report. This is the ideal situation for the Commonwealth of Massachusetts. However, a comprehensive police report form should be standardized with the cooperation of the police agencies and District Attorneys in order to serve as a reliable prosecutor information form.

In summary then, there are several factors to be considered in the administration of the District Court Prosecutor program any one of which would greatly benefit the case processing system.

A comprehensive study should be undertaken to address the subject of facilities, manpower distribution and budgets. The current statistical reporting system should be modified and expanded so that it becomes a management tool for the individual District Attorney office and thirdly a complete manual information system should be designed and implemented from case file development through information reporting forms.

THE DISTRICT ATTORNEY AND THE DISTRICT COURT PROSECUTOR

THE DISTRICT ATTORNEY AND THE DISTRICT COURT PROSECUTOR

While the role of the District Court Prosecutor needs to be clarified, this task can only be done by each of the nine district attorneys. They should agree on the basic role of the District Court Prosecutor, and should also permit policy variations, which reflect the attitudes of the communities which elected them. Yet, it was observed that very few, if any, formal policies or operating guidelines have been provided to the District Court Prosecutor by the district attorney. In addition, the relationship of the District Court Prosecutor to the district attorney's staff in many instances, was found to be ambiguous. The role of the District Court Prosecutor Coordinators, who were in most cases District Court Prosecutors themselves, varied with each jurisdiction.

The evaluation team recommends:

THAT THE NINE DISTRICT ATTORNEYS ESTABLISH A COORDINATING POLICYMAKING COMMITTEE TO DEVELOP MINIMUM UNIFORM PROCEDURES AND GUIDELINES FOR DISTRICT COURT PROSECUTOR ACTIVITIES. THE COORDINATOR OF THE MASSACHUSETTS DISTRICT ATTORNEYS ASSOCIATION COULD BE USED TO SUPPORT AND ASSIST IN THIS TASK.

The evaluators were most fortunate to have had the opportunity of meeting with Chief Justice Franklin N. Flaschner during the week of October 8-12, 1973. At that time he expressed a great deal of satisfaction in and support of the District Court Prosecutor program. He expressed pleasure in the growth of the program to date.

As it presently exists, the Chief Justice felt that the structure of the District Court Prosecutor as an independent arm of the district attorney's office is not adequate. Mention was made of the fact that the nine districts, each having its individual coordinator, operate under different policies as set by the district attorney.

Individual District Attorneys set the policy for the jurisdiction which they cover, but within these jurisdictions there is a great deal of variation in policy and procedure. In some situations, where a District Court Prosecutor does substitute as prosecutor for a neighboring district, or where he is transferred to a different jurisdiction, specific responsibilities are detailed. Yet, overall there is little policy established statewide, or for that matter from district court to district court. It is apparent that where District Court Prosecutors are regularly present, particularly in the more active district courts, they are called upon to handle the more serious felony cases and in some instances, all except the lowest grade traffic offenses. In other district courts, the District Court Prosecutor select these cases, usually the most serious or intricate, leaving the balance to the police prosecutor. In other instances, by virtue of general agreement between the District Court Prosecutor and the police prosecutor, each handles an equal number of the more serious cases.

If a basic uniform policy and procedure could be compiled by a policy-making committee composed of the nine district attorneys, standardization of practice would be insured. This could be developed in the same manner as a Prosecutors Procedures handbook is developed. The procedure would be consonant with the American Bar Association Standard 2.5 which states:

"(a) Each prosecutor's office should develop a statement of (1) general policies to guide the exercise of prosecutorial discretion and (2) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient and effective enforcement of the criminal law.

"(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in a handbook of internal policies of the office."

As a result of the committee meetings:

The evaluation team recommends:

THAT EACH INDIVIDUAL DISTRICT ATTORNEY ESTABLISH FORMAL WRITTEN POLICIES AND PROCEDURES REGARDING THE DISTRICT COURT PROSECUTORS AND DISSEMINATE THESE GUIDELINES TO ALL HIS ATTORNEY STAFF. INCLUDED AS PART OF THE WRITTEN POLICY AND PROCEDURES, THE POLICY OF THE DISTRICT ATTORNEY WITH REGARD TO FULL-TIME VERSUS PART-TIME DISTRICT COURT PROSECUTOR ACTIVITY AND THE AVAILABILITY OF THE DISTRICT COURT PROSECUTOR TO THE COURT OR THE DISTRICT ATTORNEY'S OFFICE SHOULD BE CLEARLY STATED.

The administrative policy controls set by the district attorney concerning the role of the District Court Prosecutor Coordinator varies from jurisdiction to jurisdiction. Many of the District Court Prosecutor Coordinators were in doubt as to whether or not the policy they followed and enforced upon the District Court Prosecutors in a particular jurisdiction was that of the District Attorney.

Any action taken by assistants, or any member of the district attorney's staff is a direct reflection upon the district attorney himself. Confusion over policy or procedure within the courtroom, can only hinder the effective performance of the district attorney in carrying out his responsibility to the community. Very often the only contact the citizenry may have with the process of the law is the lower court level. For this reason the actions which take place should be treated with as much dignity as that of the superior court. In order to facilitate this, standardization of procedure must be consistent with those policies set by the district attorney.

These policies should be clarified in terms of every aspect of the district attorney's office. Included in this are such areas as screening, pre-trial conferences, plea bargaining and negotiation, discretion, investigative processes and information reporting, and all other major decision making areas.

The guidelines to be followed should be based upon American Bar Association Standards 2.5, 3.4, 3.3 and the National Advisory Commission on Criminal Justice Standard 12.8.

2.5 Prosecutor's handbook: Policy and Guidelines and Procedures as previously cited in the preceeding recommendation.

3.4 Decision to Charge (Screening)

"(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

"(b) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted.

"(c) Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required to present his complaint for prior approval to the prosecutor and prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury."

12.8 The Prosecutor's Investigative Role

"The prosecutor's primary function should be to represent the State in court. He should cooperate with the police in their investigation of crime. Each prosecutor should also have investigatorial resources at his disposal to assist him in case preparation, to supplement the results of police investigations when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

"The prosecutor should be given the power, subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

"The office of the prosecutor should review all applications for search and arrest warrants prior to their submission by law enforcement officers to a judge for approval; no application for a search and arrest warrant should be submitted to a judge unless the prosecutor or assistant prosecutor approves the warrant."

3.3 Uniform Plea Negotiation Policies and Practices

"Each prosecutor's office should formulate a written statement of policies and practices governing all members of the staff in plea negotiations.

"This writtent statement should provide for consideration of the following factors by prosecuting attorneys engaged in pleas negotiations:

"1. The impact that a formal trial would have on the offender and those close to him, especially the likelihood and seriousness of financial hardship and family disruption;

"2. The role that a plea and negotiated agreement may play in rehabilitating the offender;

"3. The value of a trial in fostering the community's sense of security and confidence in law enforcement agencies; and

"4. The assistance rendered by the offender:

a. in the apprehension or conviction of other offenders;

- b. in the prevention of crimes by others;*
- c. in the reduction of the impact of the offense on the victim; or*
- d. in any other socially beneficial activity.*

"The statement of policies should provide that weaknesses in the prosecution's case may not be considered in determining whether to permit a defendant to plead guilty to any offense other than that charged."

The traditional role of a part-time district attorney has impeded full prosecutorial control and direction in the criminal justice system. As a result, many normal functions of a full-time district attorney are fragmented and are housed in other state agencies. This, in fact, makes it very difficult for the district attorney to have any meaningful impact on this system of criminal justice.

For example, the discretion of whether or not to file a criminal charge is primarily left to the police and the clerk of the court. Although the clerk of the court is in fact an attorney in most cases, there nevertheless occurs the problem of differing viewpoints or opinions regarding charging policy. The filing of cases is a prosecutorial function and should be controlled by the prosecutor under his policy. Filing decisions should not be those of the police or clerk of the court, no matter how qualified they may be. This is clearly supported by American Bar Association Standard 3.5 Decision to Charge (Screening), as previously cited in this recommendation. In addition, there is reference to the decision to institute criminal proceedings, establishing standards and procedures for same, and where the complaint should be presented.

If at least one full-time District Court Prosecutor were present at every district court, the acceptance level would be improved substantially. However, it would still be most beneficial to the entire judicial process if police liaison personnel could be assigned to the District Court Prosecutor office by the larger and more active law enforcement agencies. The use of police liaison personnel would expedite court cases and reduce some of the administrative staff requirements. Police liaison officers could also serve as a cohesive line of communication with the police departments.

If the District Court Prosecutor is compared to the public defender, further dimension can be given to the exploration of the part-time vs. full-time issue. Public defenders are full-time, receive higher salaries and usually have larger staffs. The public defenders have replaced court appointed members of the private bar. The new aggressiveness on the part of the defense counsel should be matched by the representative of the Commonwealth. To ensure this the district attorney must make a decision concerning his approach to the full or part-time staff. District Court Prosecutor responsibility is in many instances a full-time job, and it is treated as such. Many expressed a desire to take the responsibility of the District Court Prosecutor as a full-time job only if equally compensated. Reference is made to the American Bar Association Standard 2.3.

2.3 Professional Standards

"(a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.

"(b) The offices of chief prosecutor and his staff should be full-time occupations.

"(c) Professional competence should be the only basis for selection for prosecutorial office. Prosecutors should select their staffs on the basis of professional competence without regard to partisan political influence.

"(e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of the peers in the private sector."

While it is true that District Court Prosecutors are permitted limited private practice, the rules with regard thereto preclude their engaging in any criminal practice or any type of practice which might conflict with their official duties. Generally private practice is maintained as a necessary outside source of income.

In addition, the district attorney's policy regarding the availability of the District Court Prosecutor to the district attorney's office or the court must be articulated. Several police officers have expressed a desire to have the District Court Prosecutor available on a 24 hour basis. They have also expressed a desire to have the District Court Prosecutor available for clarification of the finer points of law during trial. This would prevent interruptions of a hearing by the judge in order to make such clarifications, and constitute a more professional atmosphere within the courtroom. The policy of availability, regardless of what it may be, should be included within the district attorney's written policy guidelines.

The evaluation team recommends:

THAT ONE OF THE GUIDELINES STATE THE DISTRICT ATTORNEY'S POLICY ON PLEA NEGOTIATIONS WHICH ARE CONSISTENT WITH HIS OWN AND THE COMMUNITY'S PHILOSOPHIES, AND THAT THESE POLICIES BE PLACED IN WRITING FOR THE USE OF THE DISTRICT COURT PROSECUTORS AND THE ASSISTANT DISTRICT ATTORNEYS.

The District Court Prosecutors should be given the responsibility and authority to negotiate pleas within policy guidelines. This type of discretion tends to decrease the number of trials and permits more professional attention to those cases that should be prosecuted.

Plea bargaining at the district court level does not appear to be in great use by the prosecutor. The court itself, with its unique trial de novo opportunity lends itself to negotiation. The judge, in his sentencing

capacity is, in essence, selecting a penalty aimed at persuading the defendant that the risk of appeal provides less brighter prospects than accepting the sentence imposed. Since the district court trial need only be an exercise for the defendant there is no need to commit himself to a guilty plea when the trial may free him. In any event there is little time in the process permitting the prosecutor and the defense lawyer to discuss a case, let alone seriously consider the value decisions which should be made in a negotiated plea. Presumably cases bound over to the superior courts are reviewed for plea taking by those prosecutors.

The use of formal decision making creates the false impression that a smoothly operating system exists. Bypassing a chain of command and permitting the individual judgment to prevail on important decisions can create serious problems. Formal approval by senior District Court Prosecutors should be required for accepting lesser pleas and in any other special circumstances. Requests for approval should be made in writing on standardized forms. In the event this pre-trial review is not expedient, then a post-review report should be required of the prosecutor justifying his action. Maintaining such records will instill a sense of caution in new, inexperienced District Court Prosecutors and as well provide a record for any later inquiry of the event.

According to one District Court Prosecutor Coordinator, approximately 25,000 cases were handled by the District Court Prosecutors within his jurisdiction last year. He also indicated that appeals to the superior court for the first six months of the year decreased 35 percent over the comparable period last year. It was stated that cases held over for probable cause have decreased by 27 percent for the first time in ten years. Both the district attorney and Coordi-

nator attribute these impressive statistics to the fact that District Court Prosecutors in that area are given discretion and authority to dispose of cases by diversion and plea negotiation. Interviews with District Court Prosecutors and other personnel within this jurisdiction corroborated this statement. This authority should be extended to all District Court Prosecutors.

It was the feeling of one probation department that more recommendations for probation are made by the District Court Prosecutors than by the police prosecutor, generally as a result of plea negotiation. It was also their feeling that they would prefer to be consulted prior to a bargain settlement, inasmuch as they might have relevant information as to the defendant's background.

Along with the authority to negotiate please, the District Court Prosecutor should be equipped with formal district attorney guidelines. A uniform office policy will provide clarity and consistency within the district attorney's jurisdiction and supply the assistant district attorneys and the District Court Prosecutors with a reliable and systematic structure in which to execute plea negotiations. This is supported by the National Advisory Commission on Criminal Justice Standards 3.3, which states:

"Each prosecutor's office should formulate a written statement of policies and practices governing all members of the staff in plea negotiations.

"This written statement should provide for consideration of the following factors by prosecuting attorneys engaged in plea negotiations:

- 1. The impact that a formal trial would have on the offender and those close to him, especially the likelihood and seriousness of financial hardship and family disruption;*
- 2. The role that a plea and negotiated agreement may play in rehabilitating the offender;*
- 3. The value of a trial in fostering the community's sense of security and confidence in law enforcement agencies; and*

4. The assistance rendered by the offenders;
 - a. in the apprehension or conviction of other offenders;
 - b. in the prevention of crimes by others;
 - c. in the reduction of the impact of the offense on the victim; or
 - d. in any other socially beneficial activity.

"The statement of policies should provide that weaknesses in the prosecution's case may not be considered in determining whether to permit a defendant to plead guilty to any offense other than that charged.

"The statement of policies should be made available to the public.

"The statement should direct that before finalizing any plea negotiations, a prosecutor's staff attorney should obtain full information on the offense and the offender. This should include information concerning the impact of the offense upon the victims, the impact of the offense (and of a plea of guilty to a crime less than the most serious that appropriately could be charged) upon the community, the amount of police resources expended in investigating the offense and apprehending the defendant, any relationship between the defendants and organized crime, and similar matters. This information should be considered by the attorney in deciding whether to enter into an agreement with the defendant.

"The statement should be an internal, intra-office standard only. Neither the statement of policies nor its applications should be subject to judicial review. The prosecutor's office should assign an experienced prosecutor to review negotiated pleas to insure that the guidelines are applied properly."

Reference should also be made to the American Bar Association Standard 2.5 as previously cited under the first recommendation in this chapter.

THAT THE DISTRICT ATTORNEY MAKE A CONCERTED EFFORT TO FULLY INTEGRATE THE DISTRICT COURT PROSECUTOR LAWYERS INTO HIS ORGANIZATIONAL STRUCTURE; THAT THE DISTRICT COURT PROSECUTOR POSITION BE CONSIDERED THE SAME AS AN ASSISTANT DISTRICT ATTORNEY POSITION, ACCORDED THE SAME RESPECT, AUTHORITY AND RESPONSIBILITY AS ACCORDED TO OTHER LAWYER PROSECUTORS.

Since the District Court Prosecutor is performing similar duties to those of the assistant district attorney, his office should be viewed as part of the district attorney's office. In most jurisdictions in the United States where police prosecutors have not been in effect, the district attorney has jurisdiction in the lower courts. Since the addition of District Court Prosecutors has extended the Massachusetts district attorneys' jurisdiction, it seems reasonable that District Court Prosecutor positions should be incorporated into the district attorneys office.

One district attorney expressed some concern that in felony cases originating in the district court where a District Court Prosecutor has working knowledge of that particular case he is often unable to follow the case to superior court. Under some circumstances it may be advantageous to the district attorney if the individual District Court Prosecutor could pursue his case through the superior court. Current practice is for the District Court Prosecutor to disengage himself from that particular prosecution once it arrives at the superior court level. This often results in duplication of effort between the superior court trial attorney and the District Court Prosecutor.

Section 2.1 of the American Bar Association Standards for Criminal Justice relating to the prosecution function recommended by the American Bar Association provides *"prosecution authority should be vested in*

a public official. The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline." The commentaries relating to that standard should serve as a guide for the future of the District Court Prosecutor program. They point out that "the participation of a responsible public officer in the decision to prosecute and in the prosecution of the charge gives greater assurance that the rights of the accused will be respected than is the case when the victim controls the process. Almost all prosecutions of a serious nature in this country now involve a professional prosecutor."

The District Court Prosecutor should be afforded the same respect, authority, and responsibility as the district attorney's assistants. It is the district attorney's responsibility to integrate the District Court Prosecutor as an important division of his office. This should include the allowance of proper and necessary staff support and appropriate facilities development.

The evaluation team recommends:

THAT THE DISTRICT COURT PROSECUTOR COORDINATOR TAKE AN ACTIVE ROLE IN COORDINATING DISTRICT COURT PROSECUTOR OPERATIONS AND ENSURING THAT THE POLICIES AND PROCEDURES OF THE DISTRICT ATTORNEY ARE BEING IMPLEMENTED AT THE DISTRICT COURT LEVEL.

It appeared that in a few cases, the Coordinator was in regular and continual contact with the District Court Prosecutors assigned to the various courts within his jurisdiction. However, far too often, meetings are infrequent. Furthermore, Coordinator contact with district attorneys was also irregular.

Regularly scheduled meetings should be set with the District Court Prosecutor, Coordinators and the District Attorneys. In addition, the Coordinator should confer with the District Court Prosecutors at least every two weeks. This would provide a constant communications link between the three groups, and ensure the proper transmittal of office policies and procedures.

The evaluation team recommends:

THAT PRIOR TO ANY INTEGRATION OF THE DISTRICT COURT PROSECUTOR PROGRAM INTO THE DISTRICT ATTORNEYS OFFICES, A COMPREHENSIVE STUDY OF THE FUNCTIONS OF THE OFFICE (FROM INTAKE TO FINAL DISPOSITION) BE CONDUCTED TO IDENTIFY THE AREAS OF IMPACT AND CHANGE AND TO PREPARE THE OFFICE FOR SUCH CHANGE.

The proper implementation of the District Court Prosecutor program is one of grave importance in regard to the total analysis of the court system in the Commonwealth of Massachusetts. In order to effect a positive change, the task of broadening the district attorney's role, function, and outlook in regard to the program is a major concern.

District attorneys in the Commonwealth of Massachusetts do not think of case initiation at the district court level. Traditionally, their focus has been on the superior court level. The present District Court Prosecutor program as it exists in the Commonwealth today functions as an arm of the District attorney, but is not yet structured and integrated into the office. The impact of prosecutorial services at the district court level is potentially powerful enough to change the entire character of the criminal justice system. The use of screening and diversion programs, plea bargaining and other alternatives to prosecution, can affect the size and complexion of cases not only in the district courts but in the superior courts as well.

Thus, if the District Court Prosecutor program is to be integrated into the district attorney office, a comprehensive study should be made of all the impact on the criminal justice system. Not only is it necessary for the district attorney to know what changes will occur so he can assess his resources and capacity to support this function, but the elements of the criminal justice system should also be aware of the potential impact on the system.

The evaluation team recommends:

THAT COOPERATION ON THE PART OF ALL ELEMENTS OF THE DISTRICT COURT SYSTEM BE SOUGHT TO ASSURE THAT THE GUIDELINES WILL BE IMPLEMENTED AND FOLLOWED.

In many jurisdictions police prosecutors, judges, defense attorneys and other court personnel had nothing but the highest praise for the District Court Prosecutors. In one community not only did the District Court Prosecutor have an ongoing training program and training lectures set up for the police, but moreover, they had joined the Police Prosecutor's Association. The police prosecutors, themselves, were required to participate in continuing education courses in their field, including specialized courses at the local college.

Interviews conducted with district attorneys, assistant district attorneys, Coordinators and District Court Prosecutors indicated a unanimous belief that the program is professionally valuable and worthy of continued support and expansion.

Even the more experienced police prosecutors candidly conceded that they must seek legal advice from the district attorney or District Court Prosecutor in matters involving intricate questions of law. However, this is not unanimous. One consultant found that one District Court Prosecutor was infrequently called upon by the police prosecutor. Upon an interview with the police officers, they said they have difficulty contacting the District Court Prosecutors and more often talk to the police prosecutor or personnel in their own department for advice and assistance.

Members of the defense bar, as well as the judges and probation officers interviewed, indicated a preference for the current system over those in the past.

All of these elements of the justice community have an important impact on the criminal justice system. None of these, the district attorney included, can operate within the framework of the criminal justice system alone.

The success of the guidelines which the district attorney prepares depends upon the total cooperation of the court, police, probation officers, and the other elements within the system so that uniformity may be insured.

The evaluation team recommends:

THAT ONE OF THE POLICIES INCLUDED IN THE GUIDELINES BE THAT DISTRICT COURT PROSECUTORS HANDLE ALL PRELIMINARY HEARINGS IN FELONY MATTERS, AND THAT, AT A MINIMUM, CASE SUMMARIES BE PREPARED BY THE DISTRICT COURT PROSECUTOR FOR EACH CASE WHICH IS BOUND OVER TO SUPERIOR COURT.

There is still a great deal of police involvement in the trial process and in screening. In some courts the police function has simply shifted to that of an assistant district attorney. In some cases, the police prosecutor tries cases under the direction of the District Court Prosecutor; in other cases he simply assists in preparation; while in others he simply acts as a screener.

Occasionally problems do arise with respect to preserving the continuity of the handling of a case, as in such instances where one District Court Prosecutor handles one aspect of the case and another District Court Prosecutor handles another, or is called to substitute for the first who is unavailable for any one of a myriad of reasons. Accordingly, the authority of the District Court Prosecutor should be enlarged to allow them, where appropriate, to continue with the prosecution of all cases which originate in district court. Discretion should be given to the district attorney to decide when such follow-through would be appropriate.

Under the pre-existing system, very little information was provided to the district attorney regarding cases ultimately arriving in the superior court by a bindover from the district court. This has now been drastically changed with the arrival of the District Court Prosecutors and if the district court became a court of record, with exclusive trial jurisdiction over certain high misdemeanor crimes.

Because of the District Court Prosecutor program, and the availability for screening at an early point in the system, it is apparent that reductions are

occurring in the cases bound over to the superior court. In addition, there has been a significant reduction in the number of appeals to the superior court for purposes of trial de novo.

Table 7 shows that there appears to be significant alteration in the filings of criminal appeals and complaints at the district court level since the implementation of the District Court Prosecutor program. Whether this is because of the plea bargaining policy, improved prosecution, or mere presence of the program is difficult to say.

It is the Commonwealth and its citizenry which gain by having attorneys representing their interests at the inception of a criminal case. This recommendation does not exclude the recognition of the necessary and vital services that the attorney performs in addition as police legal advisor. It merely re-orders priorities and recommends moving the District Court Prosecutor from his present role as police legal advisor to that of representative of the Commonwealth in the Courts.

TABLE 7

Percent Increases in Criminal
Complaints Filed and
Criminal Appeals 1969-1973

<u>Year</u>	<u>Criminal</u> <u>Complaints</u> <u>Filed*</u>	<u>Percent</u> <u>Increase</u>	<u>Criminal</u> <u>Appeals</u>	<u>Percent</u> <u>Increase</u>
1969	574,400	--	11,319	
1970	446,075	--	13,541	+ 20%
1971	448,278	+9%	15,966	+ 18%
1972	528,777	+8%	17,867	+ 12%
1973	563,345	+7%	15,867	- 12%

* In every year but 1969 this figure excludes traffic which is the reason for the sharp drop.

It appears that from the inception of the DCP there has been a significant reduction in appeals and from 1971 to 1973 when the program was in full gear the trend has been affected considerably.

The evaluation team recommends:

THAT THE GUIDELINES INCLUDE A POLICY ADVOCATING EARLY SCREENING OF CASES BY THE DISTRICT COURT PROSECUTOR, INCLUDING WHEN POSSIBLE THE ESTABLISHMENT OF AN INTAKE SCREENING SYSTEM SUPPORTED BY ADEQUATE STAFF AND FACILITIES.

The consensus of the evaluators with regard to screening was that prosecutors must gain control of a case as soon after arrest as possible. Decisions as to charges to be filed, diversion prospects and pleas to be taken must be made early. Specific assignments for additional police investigation and/or legal research need be considered and investigated. Administratively, a file is established, reports are gathered, the case is categorized for further action and additional evaluations are made. This is intake, an area given small consideration in the Massachusetts system, but one which should be viewed as its most crucial point.

Presently, the formal screening and plea bargaining processes are rather rudimentary and have had little effect on workload.

In Massachusetts Courts, Superior and District, all screening of cases by assistant district attorneys and District Court Prosecutors is done between filing and trial. There is no provision in Massachusetts Law requiring review of criminal complaints by the prosecuting authority prior to filing with the court. Likewise, it was noted that applications for search warrants need not be approved by the District Court Prosecutor or district attorney (although this is sometimes done as a matter of mutual agreement). It would seem that the construction of something as technically complex as a search warrant should be left to the prosecuting authority who will have to live with the results of it at a later time in court.

District Court Prosecutors rarely see a police report prior to trial and even then they are quite often not made available by the arresting officer.

Some police departments in some jurisdictions do not use police reports, preferring the backs of envelopes, old stubs and journals. In some instances no type of police report is available to the prosecutor. The District Court Prosecutor's knowledge of the case is generally obtained by interviewing the lead or arresting officer on the case and the civilian witness involved. The prosecutor's witnesses are secured for him by the police.

Therefore, it is often true that the first meaningful contact with the case by the prosecutor doesn't occur until the day of the trial or probable cause hearing several weeks later. At that time because of the press of a usually heavy calendar, little time is afforded to thoughtfully screen cases and to utilize diversionary methods which are vital to a well run prosecutor's office.

The judges do not feel the District Court Prosecutor is properly involved in screening and complaints. It is their opinion that many cases would not reach the courtroom if adequate pre-complaint and pre-trial review were had by a District Court Prosecutor.

For example: The discretion of whether or not to file a criminal case against a defendant is primarily left to the police and/or the clerk of the court. Although the clerk of the court is in fact an attorney in most cases, there nevertheless occurs the problem of a different viewpoint or a different opinion as to the status of the criminal law. The clerks of court who were interviewed all indicated they did not necessarily have any expertise in the criminal law other than what was assimilated by them over the years. They did not routinely attend any type of continuous legal education programs in the area of criminal law. And of course they were not present in the court room when the various judges made ruling on legal issues such as search and seizure, admissibility of confessions, etc. The entire intake proceedings, e.g., the selection of type of charges to be filed and the wording

used in the complaint, is left entirely to discretion of the clerk of the court and/or a policeman.

This is at variance with the American Bar Association Standard 3.4 titled Decision to Charge (Screening) as stated earlier in this part.

The consensus of the teams was the District Court Prosecutor programs afford an excellent opportunity to begin an effective screening and plea bargaining system.

As one consultant stated: *"I also feel, and this is a fact I cannot emphasize enough, that screening must begin at the District Court level with the District Court Prosecutor. It cannot be done effectively without a full-time District Court Prosecutor and without cogent, complete and supervised guidelines from the district attorney himself."*

"The District Court Prosecutor is in an ideal position to engage in screening. If the district attorney's office is going to do any type of screening at all, the bulk of it is going to be done at the district court level. If this is done, of course, the District Court Prosecutor would be the one doing it and if the advantages of screening are to be felt, then such screening should be done at the district court level and not at the time when it reaches the superior court level. Part-time prosecutors without specific guidelines to follow - and often without extensive experience in the prosecutorial field - are not suited to do such screening."

The problem of the backlog in superior courts might in part be approached by permitting an intake unit at the district court level to initiate plea negotiation prior to sending cases to the superior courts. Since both sides are now fully aware of the case's potential, this would be the appropriate time to resolve the matter, thereby avoiding unnecessary litigation. To strengthen the prosecutors' negotiating hand, the district attorney could, by official-rule, establish a cut-off time beyond which all plea negotiations would cease. This time might coincide with the period which the intake unit is reviewing it prior to submitting the file to superior court.

The evaluation team recommends:

THAT A MODEL SCREENING PROJECT BE DESIGNED, TESTED
AND EVALUATED FOR USE THROUGHOUT THE COMMONWEALTH.

In implementing this recommendation, substantial consideration should be given to both the problems involved in such an undertaking and the full, conscious expression of the ends sought. Such careful planning necessitates the construction of a model which can then be tested and evaluated. The persons carrying on this evaluation must seek opinion for all parts of the Commonwealth and must attempt to make the model as adaptable as possible, to meet the needs of all parts of the Commonwealth without sacrificing the legally desirably uniformity.

In summary, then, the role of the District Court Prosecutor should be carefully examined and analyzed in light of his impact on the prosecutorial function. The potential importance of his role at intake with regard to screening, plea bargaining and on the caseload of the courts is well recognized. The use of his discretionary power in this area is of primary importance and worthy of being developed and tested as a model program for the Commonwealth.

The district attorney has the opportunity to make major changes in prosecution services and in the criminal justice system. By recognizing the full potential and scope of the District Court Prosecutor program, he can provide policy and direction to the most important intake point in the system.

He can as well, make major procedural change to smooth the transfer of cases from the lower court to the higher court. In the process, as each component of the criminal justice system performs his proper role the district attorney can become the major innovator.

RESOURCES AND TRAINING

RESOURCES AND TRAINING

It was observed by the evaluation team that in some districts the prosecution manpower provided through the District Court Prosecutor program was adequate for the caseload, but that in other areas there appeared to be a need for more attorneys and additional resources. It was also observed that there are few, formal training and orientation programs for District Court Prosecutors, even though the need is apparent.

The evaluation team recommends:

THAT FORMAL STAFFING PATTERNS BE DEVELOPED BY THE DISTRICT ATTORNEYS, INCLUDING RECRUITMENT POLICIES AND STANDARDS.

It was indicated that there were many, well qualified candidates available for the District Court Prosecutor program. One resource is a result of a recently enacted no fault insurance law. This recruitment possibility, and the existence of six major law schools in the greater Boston area - Harvard, Boston University, Boston College, Northeastern, Suffolk and New England, provide resources which should be tapped to the fullest extent possible. The future success of the District Court Prosecutor program and the development of a para-legal cadre as well as future District Court Prosecutor assistants is dependent upon early program development.

The use of para-legals or senior law students would allow increased District Court Prosecutor time for case preparation and presentation. Legal research and witness processing are two important areas in which a law intern can be utilized.

Consideration might also be given to the creation of a law student-prosecutor program wherein senior law students under the supervision of assistant district attorneys prosecute lesser misdemeanor offenses. Such

a program exists for some defenders in Massachusetts and law student use and availability should be considered for supervised prosecution purposes. In some cases, law clerks are presently being used to great advantage for interviewing police and preparing files. The duties they perform are absolutely essential to orderly prosecution and even greater use can be made of their talents. In very few courts visited were senior law students permitted to represent the government. Since adequate staffing is a problem, the hiring and certifying of selected senior law students for supervised trial work would augment the staff at a minimum financial cost.

Within the formal staffing patterns developed, an organized structure should exist which would facilitate interest in career prosecution. Reporting responsibilities should be outlined and performance review procedures established.

THAT TRAINING AND ORIENTATION PROGRAMS BE INSTITUTED
BY THE DISTRICT ATTORNEYS WITH THE ASSISTANCE OF THE
MASSACHUSETTS DISTRICT ATTORNEY'S COORDINATOR.

Prosecution at the district court level would improve with better training programs. A majority of District Court Prosecutors are relatively recent admissions to the Massachusetts bar, and necessarily lack the expertise gained by trial experience. In order to compensate for this an in-depth training program should be developed to insure proper adjudication of cases at the outset.

The presence of District Court Prosecutors in the courtroom uplifts the quality of justice in a variety of ways. The proceedings take on an adversary legal posture. The rules of evidence, case law and formalized procedure turn a discussion into a court of law. Judges are able to maintain an objective air and demand appropriate standards of evidence. The government and the defense can properly test their legal theories.

Each of the participants forces the other to follow prescribed legal patterns so that the results are not likely to be based on whim or happenstance.

It was observed in some instances that even with lack of trial experience District Court Prosecutors were better able to conduct a more professional and equitable trial due to training in points of law, legal issues and technical practices. They were more adept at cross-examination, gaining admissibility of evidence, and arguing before the court. This in turn results in more confidence in the criminal justice system by both the police and the public. Developments in the law, particularly during the past decade, dealing with the rights of defendants, constitutional issues and interpretation requires a trained lawyer prosecutor. In the Commonwealth of Massachusetts most recently, the case of Myers vs. Commonwealth has mandated full probable cause hearings as a result of which proceedings in the district court are prolonged. It is no longer sufficient for a police prosecutor to merely present a few basic points to support a bindover to the Grand Jury. This decision is evidence of the changes made regularly within the Commonwealth, and points of law such as these must be passed on to members of the prosecution bar. This type of information dissemination should be incorporated into the training program on a regular basis.

It was observed that previous training programs have been left up to the discretion of the District Court Prosecutor Coordinator. In too few of the jurisdictions the District Court Prosecutor Coordinator conducts an "in-house" training program for new District Court Prosecutors regularly. They are required to attend weekly District Court Prosecutor meetings, and monthly district attorney's meeting. It is unfortunate that this practice is not uniform, and it should be extended to the entire Commonwealth. In most cases there is an obvious lack of training, and presently the new District Court Prosecutor is virtually left on his own to pick up the training as he performs his trial duties. In this manner, many of the training issues are learned the hard way, after mistakes have been made.

As part of the training program, the trial team approach should be explored.

This program should be initiated with the assistance and cooperation of the Massachusetts District Attorney Prosecutor Coordinator. In this way not only would there be a standardization of training throughout the State, but also an open line of communication with District Attorneys, District Court Prosecutors, District Court Prosecutor Coordinators, Police, and the Massachusetts Committee on Criminal Justice.

THAT THE TRAINING RESOURCES AVAILABLE THROUGH THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, NATIONAL CENTER FOR PROSECUTION MANAGEMENT AND NATIONAL COLLEGE OF DISTRICT ATTORNEYS BE VIGOROUSLY TAPPED BY ALL MEMBERS OF THE PROSECUTORIAL SYSTEM INCLUDING THE DISTRICT COURT PROSECUTORS.

The National District Attorneys Association has numerous services available for prosecutorial assistance. Under the leadership of Executive Director, Patrick F. Healy, and Executive Officers and committees, the National District Attorneys Association has maintained a high standard for identifying and fulfilling prosecutorial needs. The evaluation team highly recommends using the National District Attorneys Association resources available whenever possible.

The National College of District Attorneys was conceived by the National District Attorneys Association in 1969. Since that time the National College has been firmly and successfully established as the primary training academy for the nation's prosecutors.

The goals of the National College are:

- . To increase the confidence of the prosecutor in his ability to cope with the challenges and opportunities of his office.
- . To increase the knowledge and skills of its students.
- . To increase the professionalism of prosecutors.
- . To enhance the prestige and respect due the office of prosecutor.
- . To afford an opportunity for the exchange of information and experience among prosecutors.

The basic program of the National College is its four-week Career Prosecutor Course, a resident program conducted twice annually at the Bates College of Law, on the campus of the University of Houston. The thrust of the career course is the presentation by experienced prosecutor faculty of those unique features inherent in the prosecutor's role in the criminal justice system. The curriculum is primarily concerned with the art and science of prosecution rather than with basic legal skills which the National College believes should be offered at the local or state level.

The time has come when untrained and unprepared prosecutors must be replaced by highly trained and well prepared career prosecutors. In an era of rising crime and increasingly more complex social problems, the need for such training, skills and full-time commitment has never been greater. Again, the evaluation team highly endorses this valuable resource, and recommends taking the fullest advantage of the resources they have made available.

The National Center for Prosecution Management is sponsored by the National District Attorneys Association, National College of District Attorneys, and the Institute for Court Management. It is the function of the National Center for Prosecution Management to perform research and provide assistance in the area

of ongoing and significant prosecutor management problems. The resources available through the National Center for Prosecution Management are comprehensive and interdisciplinary. It is the evaluation team's recommendation that this source of assistance be utilized to its fullest extent.

THAT THE MASSACHUSETTS DISTRICT ATTORNEYS AND DISTRICT ATTORNEY'S COORDINATORS UTILIZE THE RESOURCES OF THE NATIONAL CENTER FOR PROSECUTION MANAGEMENT TECHNICAL ASSISTANCE PROGRAM TO FURTHER ASSIST THE DISTRICT ATTORNEYS AND THE DISTRICT COURT PROSECUTOR PROGRAM.

One of the services provided by the National Center for Prosecution Management is a program of Technical Assistance. Included within the program are both in-depth studies of specific prosecutor problems and short-range problem identification. Evaluations and recommendations are based upon the findings made by prosecutor consultant evaluation teams.

V. FUTURE IMPACT OF THE DISTRICT COURT PROSECUTOR
PROGRAM ON THE CRIMINAL JUSTICE SYSTEM

FUTURE IMPACT OF THE DISTRICT COURT PROSECUTOR ON THE CRIMINAL JUSTICE SYSTEM

The expansion of the District Court Prosecutor program, its integration into the district attorney's office and its potential for instituting changes in the entire criminal justice system was evaluated by the team. It is imperative that the agreement and cooperation of each agency be solicited whenever possible as changes are instituted which affect their activities. In many instances because of the long-range nature of implementing change, a formalized approach must be constructed. The evaluation team feels strongly that with the institution of the District Court Prosecutor program a first step has been made in the basic reform of the criminal justice system. The recommendations that follow are presented as the next steps which the team feels should be considered. The recommendations are not made lightly nor without recognition of the fact that many may take many years of substantial work to implement.

JUDICIAL ASSISTANCE AND IMPARTIALITY

The evaluation team recommends:

THAT THE ASSISTANCE OF THE DISTRICT COURT JUDGES BE SOLICITED IN EFFECTING JUDICIAL CHANGES WHICH WILL STRENGTHEN THE AUTHORITY OF THE DISTRICT ATTORNEY AT THE DISTRICT COURT LEVEL.

One immediate benefit recognized by the District Court Prosecutor program was the renewed impartiality on the part of district court judges in regard to the Commonwealth's presentation of its case at trial.

Prior to the institution of the District Court Prosecutor program, judicial intervention and assistance to police prosecutors in regard to points of law during trial was commonplace.

Private citizens involved with the criminal justice system often witnesses the lack of the adversary system in the lower courts. It was recognized that the three part system was heavily weighted toward assisting the Commonwealth and the police prosecutor in the presentation of its case.

With the advent of the District Court Prosecutor program a true adversary system develops - with skilled trial attorneys representing the interests of the Commonwealth and renewed judicial impartiality. Only with the continuing support of the judiciary for this program can the impartiality and respect for the bench be restored and confidence developed - toward an effective and impartial criminal justice process in the lower courts of the Commonwealth of Massachusetts.

RESTORATION OF THE ADVERSARY SYSTEM

The evaluation team recommends:

THAT THE ADVERSARY SYSTEM REQUIRING DISTRICT COURT PROSECUTOR PARTICIPATION IN ALL PROSECUTIONS (EXCEPT MINOR TRAFFIC VIOLATIONS) BE MANDATED IN ALL INSTANCES WHERE FINAL JURISDICTION LIES WITH THE DISTRICT COURT.

However, this statement must be tempered with the judge's view of lack of judicial finality which favored non-exclusionary rulings of evidence and increasing convictions due to the trial de novo appeal.

This view is presented to emphasize defense attorney and public defender views that the police prosecutor is often not held to strict rules of evidence and law by district court judiciary. This is due primarily to police prosecutor's lack of legal knowledge and expertise and traditional judicial support.

COURT CANON OF ETHICS

Finally, some observations should be made concerning standards of professional conduct and conflict of interest. District Court Prosecutors should avoid the appearance or actuality of conflict of interests with respect to official public duties. Furthermore, this conduct should be guided

by standards of professional conduct. The Canons of Ethics and Rules and Guidelines handed down by the courts with jurisdiction over the conduct of attorneys serve as a very clear standard for professional conduct. Attorneys are not only ethically subject to those standards, but may be disciplined for violation thereof.

No such standards, Canons of Ethics or Guidelines for the conduct of police prosecutors, have been demonstrated. While it is true that District Court Prosecutors are permitted a limited private practice, the rules with regard thereto preclude their engaging in any criminal practice or any type of practice which might conflict with their official duties.

With regard to police prosecutors, it should be noted again that, particularly where the police prosecutor is the arresting officer, he may be viewed by the public, as merely an extension of the police department and not an impartial administrator of justice who must, and can reasonably remain objective.

CONTINUED

1 OF 2

The evaluation team recommends:

THAT THE ASSISTANCE AND SUPPORT OF THE PUBLIC DEFENDER ORGANIZATIONS AND THE PRIVATE BAR BE SOUGHT IN SUPPORT OF NEEDED COURT CHANGES. PLEA BARGAINING PROCEDURES, IN PARTICULAR, SHOULD BE FORMALIZED AND COORDINATED WITH DEFENDERS ORGANIZATIONS.

An interview with county defenders supports the finding that the District Court Prosecutor tends to be more objective than police prosecutors in the court and that a better quality disposition generally results therefrom. Furthermore, defenders indicate that in their experience District Court Prosecutors are more authoritative with respect to legal arguments than police prosecutors and further, that the defense bar and the judiciary generally feel more "at home" dealing with lawyers in the courtroom rather than police officers.

It should be noted here that one area in which it was expressed that the police prosecutor is in a more advantageous position than the District Court Prosecutor is with respect to the ability of the police prosecutor to have a rapport with arresting officers in obtaining information regarding an issue. As a result he is in a better position to obtain factual information in the case, which may not be as readily available to the District Court Prosecutor. This will be discussed further in regard to the role of the police prosecutor as a court liaison officer.

Negotiated Pleas

It was also observed that many district courts, public defenders and the private bar were enthusiastic in their endorsement of the District Court Prosecutor program in regard to negotiated pleas. It was felt generally that police prosecutors don't have the objectivity necessary to properly prosecute a case due to the subjective and vested interest in each case brought by them before the court.

Judges generally observed that police prosecutors rarely agreed to negotiated pleas and when a plea was agreed upon, it was simply an acceptance of the defense offer. This was due in large part, to the feeling by police prosecutors that they were lacking in the

technical knowledge to negotiate. As a result, when pleas could not be agreed upon large numbers of cases were appealed to the superior court for trials de novo. Further, and more specifically plea negotiations have had in certain crime classifications an impact on the 6 and 12 man jury de novo trials in district and superior courts. Apparently a bargain for a plea of guilty leaves the defendant in a position of being psychologically satisfied with the disposition.

All persons interviewed revealed an improvement in the superior court backlog principally because of increased negotiated pleas.

The quality of prosecution has improved at the district court level so that the defense bar is aware of the evidence which can be marshalled against their client and are in a better position to make a judgment concerning the success of an appeal.

Finally, it was found that in regard to police prosecutor response to the issue of negotiated pleas, in those areas where there were complaints, it was police prosecutor feeling that they should be consulted prior to negotiated pleas of guilty.

The evaluation team recommends:

THAT THE ROLE OF THE POLICE PROSECUTOR BE EXAMINED ESPECIALLY WITH REGARD TO CHANNELING TALENTS AND EXPERTISE INTO A POLICE LIAISON ROLE. THOSE POLICE OFFICERS WHO HAVE COURTROOM EXPERIENCE CAN PROVIDE INVALUABLE SERVICE IN THE AREAS OF CASE PREPARATION, WITNESS SUBPOENAING, AND COORDINATION BETWEEN COURTS AND LAW ENFORCEMENT AGENCIES. A STUDY BE MADE AND POLICY BE ISSUED REGARDING THE FEASIBILITY OR ACCEPTABILITY OF UTILIZING THE POLICE PROSECUTOR IN THE HANDLING OF MINOR TRAFFIC CASES.

That except in cases involving minor traffic violations police prosecutors should be phased out of the adversary system, recognizing that there are some highly qualified and experienced full-time police prosecutors. In all other instances, especially where the arresting officer acts as prosecutor, this should be discontinued as quickly as possible.

That experienced police officers be assigned in the district court to work together with the District Court Prosecutor as a liaison to the police department and coordinator of police activity insofar as it related to the prosecution function; and that any police personnel so assigned be thoroughly conversant with court practices procedures.

There is a general belief by the judiciary that there is a place in the judicial system for prosecution by police prosecutors in minor offense cases, primarily in the traffic violation category.

It would be most beneficial to the entire judicial process if police liaison personnel could be assigned to District Court Prosecutor office by the larger and more active law enforcement agencies. The use of police liaison personnel would continue to expedite court cases and eliminate much need for administrative staff by the District Court Prosecutor if continued in the areas of case preparation, witness notification, and subpoenas. It would also serve as a cohesive line of communication with police department attitudes in regard to bad crimes and bad offenders, and create a channel for reporting issues for training purposes.

The evaluation team recommends:

THAT UNIFORM PROCEDURES AND REPORTING SYSTEMS FOR POLICE AGENCIES BE ESTABLISHED WITHIN EACH DISTRICT TO ASSURE MINIMUM INFORMATION ON WHICH PROSECUTORIAL JUDGMENT CAN BE EXERCISED. CERTAIN BASIC FACTS AND DETAILS SHOULD BE SUPPLIED UNIFORMLY TO THE PROSECUTOR FOR SCREENING OF CASES AND TO PERMIT STATEWIDE COLLECTION OF DATA. THE "MODEL REPORT TO THE PROSECUTOR" UNDER DESIGN BY THE NATIONAL CENTER FOR PROSECUTION MANAGEMENT SHOULD BE CONSIDERED AS AN AID IN THIS PROJECT.

The development of the police liaison role will significantly aid in channeling this information through the system. Decisions should be made in regard to information requirements (minimum data elements) and sources for each step in the processing of the case by the District Court Prosecutor and District Attorneys and policy and procedures should be developed and formalized with regard to the issuance of such information. Planning should also be begun toward the development of a review system for these procedures.

Consideration should be given to automated information interagency link-ups on a state level once a manual information system has been developed and proven workable.

A direct result of uniform procedures and reporting system development for police agencies would be better case preparation, witness selection and notification, and case tracking and reduced caseload in regard to "bad cases" actually getting into the system. This will be discussed in greater detail in the part following on screening.

In addition, uniform forms design by District Attorneys with the District Court, the Clerk of the Court, and various police agencies will provide efficiency in data collection and review. This is the keystone to better case processing in all the courts of the criminal justice system. This involves considerable interagency responsibility and can be promoted by regular meetings with heads of the police agencies involved, judges,

Clerks of the Courts and others whose input will determine the integrity and usefulness of the information collected.

In addition, policy decision on this level will lend the necessary authority to the procedures established and key the responsibility for the following of these policies and procedures.

Secondary to uniform procedures and reporting systems design is the establishment of policy in regard to District Court Prosecutor case file development and handling. In addition, a police advisory on responsibility can be developed which will provide reporting back to police agencies in regard to "bad cases" coming into the system.

The evaluation team recommends:

THAT THE SCREENING FUNCTION BE PROPERLY VESTED IN THE DISTRICT ATTORNEY'S OFFICE RATHER THAN WITH THE CLERK OF THE COURT. THAT THE ESTABLISHMENT OF COURT RULE OR LEGISLATION, IF NECESSARY, BE MADE TO PERMIT REVIEW OF CASES BY DISTRICT ATTORNEYS PRIOR TO ISSUANCE OF WARRANTS AND THE FILING OF CHARGES.

Improvements in our system of dispensing criminal justice begins more readily at the top of the structure, with the lower rungs of the court system getting only minimal attention. This is paradoxical since the vast majority of citizen experience is with traffic and misdemeanor courts. The tendency to give priority to reforms in higher courts is due, no doubt, to court decisions based on the premise that greater miscarriages of justice are likely to occur in the higher courts where heavier penalties may be imposed.

The trend in court reform over the past decade has been heavily weighted toward protecting the rights of the individual. Each statute or decision affording additional protection for the accused has created a corresponding responsibility for the prosecutor. Many of these prosecutorial requirements relate to procedural trial matters and others involve pre-trial administrative attention. This means that the prosecutor must be involved in the processing of the case at the earliest practical time.

It is of a bygone era for the office of public prosecutor to focus solely on the trial aspect of cases docketed in the higher trial courts. Considering the growth of diversionary programs and the development of plea bargaining, the trial itself is no longer the major forum in which justice is dispensed. Most of the proceedings that concern prosecutors occur at stages of intake far below the trial level. There, they influence, among other things, the caseloads eventually calendared in trial court; the filing of proper charges; the gathering of necessary evidence; and the disposal of cases through non-trial proceedings. Manpower devoted to screening the intake flow at the district court level can be expected to exert maximum impact on the greatest number

of cases at the earliest possible time. Providing community support for changes in the district court offers the likelihood of producing more significant and lasting results than in other segments which perhaps attract greater public attention.

Therefore, intake screening and case evaluation can be considered a key function of the district attorney and that point in time when he must exercise his discretionary authority to charge or not to charge.

The entire criminal case processing system is linked into this key discretion and the efficiency and quality of criminal justice is based on this authority.

A major finding of this study is that screening must begin at the district court level with the District Court Prosecutor. And that it cannot be done effectively without a full-time District Court Prosecutor and staff and without cogent, complete and supervised guidelines from the district attorney himself.

Currently, the key person appearing in the criminal justice system is the court clerk who handles the screening of cases. The District Court Prosecutor has very little input as to those cases put into the system. Consequently, little control can be exercised over the docket or the ranking and presentation of cases by priority. If screening exists it occurs after complaint but before trial. The possibility at this time for the District Court Prosecutor to impact on the quality of cases getting into the system is minimal and cannot be developed without district attorney control of intake of cases into the criminal justice system.

Directly linked into the development of an effective screening system is the ability to assess district attorney policy in regard to case processing, development of trial techniques and district attorney and court control of the quality of cases going into the upper courts.

Effective screening of cases brings about greater reductions, dismissals and nolle pros. In general, it was indicated that there was greater police prosecutor resistance to reductions initiated by the judiciary and to the acceptance of lesser pleas, than when a case is handled by District Court Prosecutors. This is true particularly where the case is not of the quality to warrant prosecution in the Superior Court.

In addition to improving the quality of cases going into the system, district attorney screening allows for feedback to the various police agencies on significant points of law and legal issues which affect police work. And simultaneously provides a forum for District Court Prosecutor/police communication on any number of relevant issues. This aspect of screening cannot be minimalized.

Finally as the initiation point of a case into the system the screening unit can provide a collection base for early case processing statistics and information as discussed in the part on information and reporting systems.

Screening provides a mechanism for review of legal policy and allows for district attorney decision making to reflect current community attitudes and mores as well as providing an early point in the system for screening out or diverting those cases not suitable for criminal processing.

Long-range results include better quality prosecutions for those cases which got into the system; better quality and fewer cases going to the higher courts and increasing effectiveness of the manpower, facilities and fiscal resources available to criminal justice processing.

The evaluation team recommends:

THAT THE DISTRICT COURT CRIMINAL DIVISION BE GIVEN EXCLUSIVE TRIAL JURISDICTION OVER CERTAIN MISDEMEANOR CRIMES, AND THAT IT BE REQUIRED TO SIT AS DETERMINER OF PROBABLE CAUSE IN ALL FELONY CASES.

In the Commonwealth of Massachusetts most recently, the case of Myers vs. Commonwealth has mandated full probable cause hearings. As a result proceedings in the district court are prolonged and it is no longer sufficient for a police prosecutor to merely present a few basic points to support a bindover to the Grand Jury.

It has been observed that in the district court system as a result of limited jurisdiction the judges, District Attorneys and District Court Prosecutors treat

the criminal justice system as a part-time operation. Part of the problem is that the district courts are at the bottom of the judicial ladder in Massachusetts as courts of limited jurisdiction whose decisions are without substance since they can be re-tried de novo.

Private counsel seem to reflect the general laissez-faire attitude of the bench and bar in Massachusetts concerning the existing system. The criminal bar seems to have a vested interest in maintaining the present trial de novo system.

To ease this situation and in lieu of appeal by trial de novo it is recommended that appellate processes be made available on the record in the district court, such appeals being handled essentially by brief on a settled record to some other higher court.

With the development of exclusive trial jurisdiction over certain high misdemeanor crimes, docketing of cases and the setting of time certain for trial can be done on a reliable basis.

The district courts should explore the possibility of setting time certain for some of the cases which will probably be tried. Witnesses, lawyers and police need not stand around for hours waiting for an opportunity to have cases heard if time certain docketing were used. This is also a better allocation of the District Court Prosecutor's time as well as the court.

With only minor exception, all those interviewed indicated that cases tried on any specific day were given a time certain for 9:00 a.m., in some instances, this meant as many as twenty to thirty-five cases. This jams the courtroom and the hallways with defendants, police officers and lawyers. This results in lengthy delay for attorneys, citizens and police. In turn this delay creates a cost burden on the system, by way of either overtime or subpoena fees, by increased attorney's fees and certainly by the loss of wages to a citizen who must sit and wait for hours before his case is heard by the court.

The district court criminal division should sit as the determiner of probable cause in all felony cases so as to provide a comprehensive review of all matters considered for higher court processing at the earliest point possible in the system.

Hand-in-hand with determining probable cause is the creation of exclusive trial jurisdiction for the lower court over certain misdemeanor crimes. Attendant to this is the abolishment of the trial de novo at the higher court and the establishment of a lower court of record.

The evaluation team recommends:

THAT THE DISTRICT COURTS OF THE COMMONWEALTH BE MADE COURTS OF RECORD, WITH A FULL STENOGRAPHIC RECORD OF PROCEEDINGS ESTABLISHED. IN ADDITION, THE TRIAL DE NOVO IN THE SUPERIOR COURT SHOULD BE ABOLISHED, AND PROVISION FOR APPEAL ON THE RECORD OF THE DISTRICT COURT GUARANTEED.

Ultimately the Commonwealth of Massachusetts must consider whether they can afford the luxury of a trial de novo as an appeal.

There is no reason why the district court (providing the proper legislative enactment) could not handle all matters at the trial level involving certain criminal cases. It should be set up so that the defendant either pleads guilty, has a trial by court or a trial by jury. In the instances where he has a trial by jury then he would appeal directly to the Supreme Judicial Court of Massachusetts.

This is especially important in light of the Massachusetts Supreme Court case on July 17, 1972 (Myers vs. Commonwealth) which has held that in a fact a probable cause hearing can be a full trial. This is based on statutory interpretation and the statute should be changed. Once changed there could still be the usual probable cause hearings, but following such a hearing the matter should go on for the one and only trial allowed. The defendant would have a choice, as indicated above, of a trial by court or a trial by jury, but once he had that trial, there would be no trial de novo upon appeal.

At the point of development of the court of record where all proceedings are codified, the trial de novo should be abolished providing for an appeal on the record of the district court. The success of these programs is directly linked into previous discussions regarding exclusive trial jurisdictions being established at the

lower court level and the district court determining probable cause on all felony matters.

The evaluation team recommends:

THAT A LEGAL DECISION "DATA-BANK" BE ESTABLISHED IN THE OFFICE OF THE COORDINATOR OF THE MASSACHUSETTS DISTRICT ATTORNEYS ASSOCIATION AS A RESOURCE FOR THE DISTRICT ATTORNEYS AND THE DISTRICT COURT PROSECUTORS TO IMPROVE THE QUALITY OF JUSTICE AND PROSECUTORIAL SERVICES TO THE COMMONWEALTH.

The materials to be generated by various prosecutors offices throughout the Commonwealth, District Court Prosecutor offices, and all the established courts of record.

In addition, the Massachusetts District Attorneys Association and the regional planning agency could coordinate and input current legal issues, court decisions, points of law and recent legislative changes affecting criminal justice processing in the Commonwealth of Massachusetts.

These materials could be lodged into a data bank and eventually automated for immediate retrieval of pertinent information.

The evaluation team recommends:

THAT A UNIFIED STUDY BE MADE TO DETERMINE THE FEASIBILITY OF ESTABLISHING A TIERED SYSTEM OF COURTS WITH SEPARATE DIVISIONS OF THE DISTRICT COURT FOR CIVIL AND CRIMINAL MATTERS.

The District Attorney currently has no impact over the civil aspects of county government. These functions are done independently outside the District Attorney's office by other attorneys. Many times civil remedies and criminal remedies go hand in hand especially in certain organized crime violations.

Non-support cases are handled by the municipal prosecutor even though there are criminal penalties for the crime of non-support.

In the area of juvenile law, most efforts are totally ineffective as it relates to the juvenile offender. The District Attorney has no role whatever in juvenile offenses, this matter being relegated to the municipal prosecutor. Oftentimes the same offenders in the juvenile system will end up as recidivists in the adult courts.

Interviews with the chief probation officers and other members of the probation department in one district generally reflects that more information is available to the probation department for the purposes of preparing pre-sentence recommendations from the police prosecutor or the arresting officer, then from the District Court Prosecutor. Furthermore, under the practice prevailing today, the police prosecutor, in the person of the police juvenile officers, prosecute the bulk of juvenile cases. The District Court Prosecutors prosecute juvenile cases generally only when requested by the police in serious matters or where it is apparent that the juvenile may ultimately be charged as an adult defendant.

A study should be undertaken to determine the feasibility of establishing a tiered system of courts with separate civil and criminal divisions within the current District Court System.

As can be seen, the handling of these matters currently is haphazard and without established policy or procedure. A review of the role of the District Court Prosecutor and the District Attorney in the exclusive handling of criminal matters should be directly related to a study with regard to the part-time nature of the District Court Prosecutor program and the attendant exclusion (due to private civil practice) from any organized processing of civil matters in the lower courts.

The evaluation team recommends:

THAT THE DISTRICT COURT PROSECUTOR STAFF SHOULD BE INCREASED.

There are no accurate statistics which indicate the number of hours that a judge may spend in court actually trying cases. It was hard to identify whether or not there was a maximum effort being offered by the various District Court Judges. However, it was expressed by people within the criminal justice system in Massachusetts that District Court Judges are simply not busy on a full eight hour day. This contributes to the backlog of cases and generally to the inefficiency of the system. Although there was a split of opinion as to whether or not any more cases are actually being prosecuted with the advent of the District Court Prosecutor program, the fact still remains that there is still a concern for case backlog.

The District Court Prosecutor office has to be provided with additional professional personnel, and equally as important, administrative personnel, together with clerical and stenographic support. The value of such administrative help can be clearly demonstrated where district attorneys have in addition to District Court Prosecutors, provided from their own staff, additional assistant district attorneys to operate in the District Court Prosecutor program in an administrative capacity. Furthermore, there is general agreement that the exercise of a calendar control by the District Court Prosecutor has aided and more effectively expedited the business of the court.

BIBLIOGRAPHY

BIBLIOGRAPHY

Studies Dealing With The General Topic of Prosecutorial Standards

ABA Project on Standards for Criminal Justice.
Standards Relating to The Prosecution Function and
the Defense Function, Approved Draft, 1971.

The Commonwealth of Massachusetts, Office of Executive
Secretary. Sixteenth Annual Report to the Justices
of the Supreme Judicial Court, Pub. Document No. 166,
June 30, 1972.

National Advisory Commission on Criminal Justice Standards
and Goals. Courts, 1973. Washington: Government
Printing Office, 1973.

National Advisory Commission on Criminal Justice Standards
and Goals. Criminal Justice System, 1973. Washington:
Government Printing Office, 1973.

National Center for Prosecution Management Publications in Related Areas

Reports:

"A Manual Statistical System to Measure Case Flow in a
Prosecutor's Office", Joan E. Jacoby, Executive
Director, Washington, D.C. 1972.

"Minimum Standards for the Design and Use of a Prosecutor's
Case Jacket", Joan E. Jacoby, Executive Director,
Washington, D.C. 1973.

"Snapshot-Spin Around: A Technique to Measure Capacity and
Overload in a Prosecutor's Office", Joan E. Jacoby,
Executive Director, Washington, D.C. 1972.

"A System for Manual Evaluation of Case Processing in a
Prosecutor's Office", Joan E. Jacoby, Executive Director,
Washington, D.C. 1972.

Manuals:

"Managing Case Files in the Prosecutor's Office", NCPM/NDAA,
Washington, D.C. 1973.

"The Prosecutor's Screening Function: Case Evaluation and
Control", NCPM/NDAA, Washington, D.C. 1973.

APPENDICES

DISTRICT COURTS VISITED

SUFFOLK DISTRICT

Boston Municipal
Dorchester
Roxbury
Chelsea
West Roxbury

NORTHERN DISTRICT

Woburn
Newton
Cambridge
Waltham
Lowell
Farmington

EASTERN DISTRICT

Gloucester
Lynn
Lawrence
Salem

NORFOLK DISTRICT

Stoughton
Dedham
Quincy

PLYMOUTH DISTRICT

Plymouth
Hingham
Brockton

SOUTHERN DISTRICT

New Bedford
Fall River

MIDDLE DISTRICT

Worcester
Fitchburg
Westborough

WESTERN DISTRICT

Holyoke
Springfield
Palmer

NORTHWESTERN DISTRICT

Northampton

DISTRICT ATTORNEYS, DISTRICT COURT PROSECUTORS, AND DISTRICT COURT PROSECUTOR COORDINATORS OF MASSACHUSETTS AS OF NOVEMBER 9, 1973.

<u>DISTRICT</u>	<u>DCP</u>	<u>DCP</u>	<u>COORDINATOR</u>
Garrett Byrne, DA SUFFOLK	Artesani Falbo Furolo Horton Joyce Kara Mahoney Maiona	McIntyre Moscardelli Mulligan O'Rourke Reynolds Salisbury Sheriff Sullivan	Lou Sabadini
John Droney, DA NORTHERN	Adams Brennan Burke Codinha Fischer Hasenstab Hurley	Lyons Noone O'Connell Oulton Steinburg Walker (As of 11/9/73- two vacant positions)	Jack Bowers
John Burke, DA EASTERN	Flemming McCarthy O'Connor O'Sullivan	Perrone Schlichte Tully	Miles Schlichte
George Burke, DA NORFOLK	Harrington Hoffman Kirby	LaPoint Masterson Tiernan	Jeff LaPoint
Stanley Littlefield, DA PLYMOUTH	Fayad Flanders Gilmore	O'Malley McLaughlin Murray	Bill O'Malley
Philip Rollins, DA SOUTHERN	Balderson DelVecchio Healy Jones Leonard	Long Schwartz White Wynn	Richard Paul

<u>DISTRICT</u>	<u>DCP</u>	<u>DCP COORDINATOR</u>
William Buckley, DA MIDDLE	Adamciak Cournoyer Lynch McEvelly	Moriarty Rusel Sullivan Wallace
Matthew Ryan, DA WESTERN	Boylan Carduff Kelly Maraishi McDonough	Meagher Mulcahy Pessalano Roberto
John Callahan, DA NORTHWESTERN	Dunphy Hassan McGuane McMahon	Frank Collins

SAMPLE GUIDELINES FOR INTERVIEWS

The following guidelines were developed for use by the evaluation teams in conducting interviews with District Court and District Attorney personnel. The questions were designed to assure some uniformity among the teams in content of the interviews, and to provide a basic reference guide for the teams in their questioning. They do not represent an exclusive list of every topic discussed during the interviews nor do they reflect the totality of discussions and observations made during the evaluation.

SAMPLE GUIDELINES FOR INTERVIEWS

DISTRICT COURT JUDGE

1. Who handles more cases before the judge - Police Prosecutor or District Court Prosecutor?
2. Has the role of the judge been changed by use of a DCP?
3. Does trial run more smoothly or effectively with a DCP than with a police prosecutor?
 - a) Do DCP's seem better prepared and more capable than police prosecutors?
 - b) Are police prosecutors in need of aid from the bench more often than DCP's (i.e. must judge take a more active role in proceedings, questioning witnesses, etc, with Police Prosecutors?)
 - c) Are there any citizen complaints about being tried by a police officer?
4. Has there been any change in judges workload since the initiation of the DCP program?

- a) Has the average time spent on a trial increased or decreased?
 - b) Has there been an increase or decrease in defense motions before the bench?
in prosecutor's motions?
 - c) Has there been a greater number of pleas taken under the DCP system than the Police Prosecutor system? Any difference in the handling of plea discussions?
5. What types of cases seem better suited for DCP than Police Prosecutor? for Police Prosecutor than DCP?
- a) % of cases which require greater legal background for effective adjudication? types of cases?
 - b) Is the workload being shared by DCP's and Police Prosecutors in the most effective manner? (i.e. are DCP's handling the cases requiring the more legal expertise and are Police Prosecutors handling the more routine cases requiring less legal background?)
6. Subjective analysis of DCP program by judge.
- a) Has it been an improvement?
 - b) Does judge prefer to try a case handled by a DCP rather than Police Prosecutor?
 - c) Has it effected judges role in any way not covered in previous questions?
 - d) Any suggestions for improvement on system from judges viewpoint?

DISTRICT COURT PROSECUTOR

1. What percentage of total District Court caseload is handled (tried or screened) by DCP?
2. What types of cases do DCP's routinely handle? (traffic, minor misdemeanors, serious misdemeanors, etc.)
 - . What types of cases seem to necessitate a legal background and/or trial experience?
3. What criteria do DCP's use for determining how much involvement they will have with a case?
 - . Who decides whether a case will be handled by a DCP rather than a Police Prosecutor? District Attorney, DCP Coordinator or DCP?
4. Docket Control - is there input by DCP?
 - a) Does DCP set priority for cases to be tried?
 - b) Does DCP have any input in docketing procedures?
5. What % of DCP's time is spent on motion work?
 - . How does this compare with Police Prosecutor?
6. Plea Negotiations - role of DCP?
 - a) Is DCP authorized to negotiate pleas?
If so, is it subject to final DA approval?
 - b) How many cases do not go to trial because they are plead out? % of total caseload?
 - c) How many cases are set for trial and then plead out?

- d) What procedure is used for pre-trial conferences with defense?
 - 1) How soon after charges are filed is contact made?
 - 2) Is a deadline used for plea discussions before trial date?
- 7. Has there been any reduction in the number of cases going to trial since he came on board?
- 8. Do more cases seem to be forwarded to Superior Court? Any increases or decreases in trial de novo?

DCP COORDINATOR

1. How are DCP's chosen?
 - a) What are the recruitment procedures?
 - b) What background and job qualifications are sought?
 - c) % DCP's with trial experience? % with police background?
2. Is a training program provided for DCP's?
 - . If so, who administers it and how comprehensive is it?
3. How is policy guidance communicated to DCP's?
 - a) Does coordinator meet regularly with DA to formulate policy?
 - b) How often (regular or occasional) does coordinator meet with DCP's?
4. How is performance of DCP's evaluated?
 - a) Are statistics of % of District Court cases handled by DCP's kept? conviction rates? etc.? If so, what have these statistics shown, thus far?
 - b) Or is evaluation completely subjective?
5. How does DCP coordinator view his position, the role of the DCP program, and the effectiveness of this program?
6. Any comments by DCP coordinator not specifically covered in previous questions? suggestions for improvements?

DISTRICT ATTORNEY

1. What is the relationship of the District Attorney to the DCP program?
 - a) How often does DA meet with DCP coordinator?
 - b) How often does DA meet with DCP's? Regular or occasional meetings?
 - c) Are DCP's included in staff meetings?
2. Are there any written guidelines or policy statements for district court cases and operations?
 - . Are these guidelines prepared by DA? with DCP input?
3. How is DCP performance evaluated? are there any evaluative tools for measuring DCP effectiveness or is their performance evaluated on a purely subjective basis?
4. What is the DA's opinion of the DCP program?
 - a) Is it an improvement over Police Prosecutor system?
 - b) Has it affected DAs role in system (increased or decreased workload) as compared to Police Prosecutor system?
 - c) Does DA feel that DCP system has brought about more effective use of criminal justice system and more effective administration of criminal justice?
 - d) Any suggestions for improvement from DA's point of view?

5. Any comments about DCP system (and its relation to DA) not covered in previous questions?

- . Does DA feel that he has more control over docketing of cases now that cases flow through DCP rather than individual police officers?

COURT CLERK

1. Are there any statistics which might compare Police Prosecutor and DCP performance with regard to:
 - a) number of guilty pleas (no trials)?
 - b) number of reduced pleas?
 - c) grand jury volume?
 - d) referrals to Circuit Court?
2. Do case disposition statistics indicate a successful use of DCP's.
 - a) Do DCP's have higher conviction rate for cases which were handled by Police Prosecutor?
 - b) Case by type of crime--Is there any change in conviction rate on more serious crimes or on crimes which DA has set policy on?
3. Motions - effect of DCP's on volume of motions?
 - a) Have defense motions increased (or decreased) since DCP programs went into effect? prosecution motions?
 - b) What kinds of motions have increased or decreased?
4. How is docket prepared?
 - a) Does the DCP have any input in docketing procedure? the DA? the Police Prosecutor?
 - b) What is 'average' length of case time through the District Court?
 - . Has use of DCP's affected case processing time?

5. What is the procedure for subpoenaing witnesses?
 - a) Has use of DCP affected these procedures? (i.e. in general are more witnesses called now by DCP's than Police Prosecutors?)
 - b) Is there any waste of witness time when trial is cancelled or continued at last minute? Do such occurrences happen more often with DCP's or Police Prosecutors?
6. Has the use of the DCP program had a beneficial effort on District Court backlog? Has it contributed to a more efficient use of District Court resources than the Police Prosecutor's (in the clerk's opinion if statistics aren't conclusive).
7. Any comments about effectiveness of DCP vs. Police Prosecutor not specifically covered in previous questions?

DEFENSE ATTORNEYS

1. Is there a noticeable difference in the quality of case preparation in the new system?
2. What effect does the use of a DCP rather than a Police Prosecutor have on trial judge's role?
 - . Does judge take a more active role with a Police Prosecutor? (i.e. question witnesses, etc.)
3. Has the DCP program had any effect on defense workload? (i.e. must defense be better prepared to argue case against a DCP than against a Police Prosecutor?)
4. Does defense tend to make more (or less) motions since the advent of DCP program? Why?
5. Plea bargaining - any effect?
 - a) Does defense tend to plead out on a higher % of cases with DCP?
 - b) Do a greater or lesser % of cases go to trial with DCP than with Police Prosecutor?
6. Does public defender feel that DCP program in general, is an improvement over Police Prosecutor's?
 - . Does defense attorney prefer to argue case against DCP or Police Prosecutor? Why, if reasons haven't been gleaned from previous answers?
7. Any comments about the DCP program not covered by previous questions?

POLICE PROSECUTOR

1. Does Police Prosecutor feel that he has adequate legal background to handle motions, etc.?
 - . Does Police Prosecutor feel that DCP's should handle major misdemeanors and let Police Prosecutor handle traffic violations? Why? Why not?
2. What is Police Prosecutor's subjective analysis of DCP program?
 - a) Does he feel that it is worthwhile and effective? Why? Why not?
 - b) Has it had a beneficial effect on his functions in criminal justice system?
 - c) Any suggestions for improvement of system?

POLICE

1. Has DCP program increased or decreased workload for police?
 - a) How many police officers are assigned as Police Prosecutors?
 - b) Is this an increase or decrease from pre-DCP days?
 - c) How much time is spent in court now as compared with pre-DCP?
2. Has DCP presence had any effect on police training and expertise?
 - . Is there now more or less emphasis on "legal" considerations than before? (i.e. is there now more or less emphasis on ramifications of police activities on trials than pre-DCP?
3. What is DCP policy on screening of cases, investigation, preparation, etc., and how has it affected police procedures?
4. Police Support of DCP Program.
 - a) Do police generally feel that the DCP program is more or less effective than the Police Prosecutor system?
 - b) Why or why not?
 - . more guilty pleas - shorter sentences?
5. Subjective analysis of DCP?
 - a) Has it been an improvement?
 - b) Has it affected police in any ways not brought out in previous questions?
 - c) Any suggestions for improvement from police point of view?

PROBATION OFFICER

1. Has there been any difference in probation workloads between the two systems?
 - . Are there more guilty pleas, suspended sentences, defendants placed on probation now than when Police Prosecutors prosecuted?
2. What is the subjective evaluation of DCP program by probation officers?
 - a) Do they favor program?
 - b) Do they feel that defendants receive a "fairer shake" with DCP's than Police Prosecutors?
 - c) Any suggestions for improvement of system.

AMERICAN BAR ASSOCIATION AND NATIONAL ADVISORY COMMISSION ON
CRIMINAL JUSTICE STANDARDS AND GOALS, APPLICABLE TO THE
MASSACHUSETTS DCP PROGRAM

I. ABA Standards Relating to the Prosecution Function and Defense
Function

2.1 Prosecution Authority

Prosecution authority should be vested in a public official. The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.

2.3 Professional Standards

- (a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.
- (b) The offices of chief prosecutor and his staff should be full-time occupations.
- (c) Professional competence should be the only basis for selection for prosecutorial office. Prosecutors should select their staffs on the basis of professional competence without regard to partisan political influence.
- (e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.

2.5 Prosecutor's handbook; Policy Guidelines and Procedures.

(a) Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient and effective enforcement of the criminal law.

(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in a handbook of internal policies of the office.

3.4 Decision to Charge (Screening)

(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

(b) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted.

(c) Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required to present his complaint for prior approval to the prosecutor and the prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury.

Emphasis by the ABA on the role of the prosecutor in the screening process is reflected by Standards 1.1 and 1.2 of the National Advisory Commission on Criminal Justice Standards, Task Force on Courts.

II. National Advisory Commission on Criminal Justice Standards

12.5 Education of Professional Personnel

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All newly appointed or elected prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs

for new assistant prosecutors should be available in all metropolitan prosecution offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular in-house training.

12.8 The Prosecutor's Investigative Role

The prosecutor's primary function should be to represent the State in court. He should cooperate with the police in their investigation of crime. Each prosecutor should also have investigatorial resources at his disposal to assist him in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

The prosecutor should be given the power, subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

The office of the prosecutor should review all applications for search and arrest warrants prior to their submission by law enforcement officers to a judge for approval; no application for a search and arrest warrant should be submitted to a judge unless the prosecutor or assistant prosecutor approves the warrant.

3.3 Uniform Plea Negotiation Policies and Practices

Each prosecutor's office should formulate a written statement of policies and practices governing all members of the staff in plea negotiations.

This written statement should provide for consideration of the following factors by prosecuting attorneys engaged in plea negotiations:

1. The impact that a formal trial would have on the offender and those close to him, especially the likelihood and seriousness of financial hardship and family disruption;
2. The role that a plea and negotiated agreement may play in rehabilitating the offender;
3. The value of a trial in fostering the community's sense of security and confidence in law enforcement agencies; and
4. The assistance rendered by the offender:
 - a. in the apprehension or conviction of other offenders;
 - b. in the prevention of crimes by others;
 - c. in the reduction of the impact of the offense on the victim; or
 - d. in any other socially beneficial activity.

The statement of policies should provide that weaknesses in the prosecution's case may not be considered in determining whether to permit a defendant to plead guilty to any offense other than that charged.

The statement of policies should be made available to the public.

The statement should direct that before finalizing any plea negotiations, a prosecutor's staff attorney should obtain full information on the offense and the offender. This should include information concerning the impact of the offense upon the victims, the impact of the offense (and of a plea of guilty to a crime less than the most serious that appropriately could be charged) upon the community, the amount of police resources expended in investigating the offense and apprehending the defendant, any relationship between the defendant and organized crime, and similar matters. This information should be considered by the attorney in deciding whether to enter into an agreement with the defendant.

The statement should be an internal, intraoffice standard only. Neither the statement of policies nor its applications should be subject to judicial review. The prosecutor's office should assign an experienced prosecutor to review negotiated pleas to insure that the guidelines are applied properly.

END

7 discs/frames