Intake Screening:

A Proposal for Massachusetts District Attorneys

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The Center for Criminal Justice prepared this report on prosecutor intake screening pursuant to a grant from the Massachusetts District Attorneys' Association, Hampden County, and the Governor's Committee on Law Enforcement and the Administration of Justice. The report is in two parts. The first part deals with the general topic of intake screening and how it relates to the system of criminal justice in Massachusetts. This first section reviews how screening operates in other jurisdictions, sets out the advantages that screening offers, and describes the different options available in implementing screening and the policy considerations that surround them. It concludes with suggested changes in Massachusetts law to accommodate a prosecutor screening program.

The second part of the report deals specifically with intake screening as it would relate to one representative jurisdiction: the Springfield District Court and District Attorney's Office for the Western District. The information gathered in Springfield and the procedures recommended for it are intended to serve as a model for other jurisdictions around the Commonwealth. The specific work done in Springfield included statistical documentation of the flow of unscreened cases through the District Court and the Hampden County Superior Court, for a selected period of time. It also details the attendant witness costs for these cases. These figures provide a baseline against which the success of any subsequent

screening program can be measured. Beyond the statistical information, this section sets out a proposed plan for implementing screening in the Springfield District Court, which includes: a budget, an outline of an operating procedures manual, and examples of the forms that would be necessary to conduct a screening operation.

The opinions and conclusions expressed in this report are solely the responsbility of the Center for Criminal Justice, and should not be attributed to either Hampden County, the Massachusetts District Attorney's Association, or the Governor's Committee.

HOW SCREENING WORKS

The prosecuting arm of the Commonwealth of Massachusetts, with respect to the large majority of criminal cases arising in the state courts, is the District Attorney's Office. Except for a limited number of cases initiated by the Attorney General, the ten respective District Attorneys are required by statute to represent the Commonwealth in criminal cases in the Superior Courts. Each District Attorney is given the discretion to appear in cases in the District Courts as well; and a concerted effort to extend the advantages of a professional lawyer prosecutor to this level of the judicial system has resulted in a District Court Prosecutor Program functioning in most District Courts.

Thus, by in large, the District Attorney's office has both authority and control over prosecuting the flow of cases through the pipeline of the criminal justice system at the District Court and Superior Court levels. However, the operation of this system in Massachusetts has up to now not provided the District Attorneys with the opportunity to control what cases enter into the pipeline in the first place and how they are cast at the initial charging stage. This opportunity, which would involve the District Attorney in the processing of a criminal complaint in the crucial stages prior to the formal initiation of criminal

proceedings, is embodied in the concept of screening.

Prosecutor Screening is the rule, rather than the exception in most of the country.[1] The general pattern of the American system of criminal justice provides to the prosecutor not only control over a criminal case as it is sheparded through the courts, but also control over the initial decision to bring a criminal charge in the first place.[2] Providing input by the prosecutor at this point in the system has several distinct advantages. For these cases which belong in the courts, thorough preparation and efficient case management can be assured. For those cases which do not belong in court, a mechanism is provided to screen them out at a stage when it is most efficient to do so. The exercise of discretion in order to screen a case out of the criminal justice system is not a novel concept even in Massachusetts. Policemen exercise screening authority every day in deciding whom to arrest and whom to let go. Magistrates exercise this authority in deciding whether to authorize the granting of a complaint or not, and judges screen out felony cases for which there is no probable cause. The exercise of this type of discretion is not new in Massachusetts; vesting it in the District Attorney; though, is a new idea.[3]

Two police officers observed three men acting in a suspicious manner on a poorly lit street on the early evening. The officers kept them under surveillance and formed a suspicion that the three were looking to rob one of the infrequent pedestrians on the street. After 30 minutes, the three entered the vestibule of an apartment building where the officers could not follow them without being seen. The officers approached them and asked them to identify themselves and explain why they were in the vestibule. One man stated that a friend lived in the building and gave a name that appeared on one of the mailboxes. The other two men looked nervous, and one officer noticed a suspicious bulge in the belt of one of the two. He patted the man down and felt a hard object. He withdrew a gun from the man's belt and placed all three under arrest for attempted breaking and entering in the nighttime and for carrying a dangerous weapon. They were booked on these charges at the station and taken the following morning to the courthouse lockup. On arriving at the courthouse, the arresting officer went directly to the screening room of the District Attorney's office, bringing with him a copy of his arrest report and the criminal records of the three suspects. After checking in at the receiving desk, the officer was directed to one of the screening Assistant District Attorney who reviewed the documents and interviewed the officer. The Assistant District Attorney determined there was no legally sufficient case against the two men arrested without the gun, and did not authorize a complaint as to them. A brief statement concerning the reasons why no complaint would be sought was placed in the District Attorney's file on each of these cases and the men were released. A copy of the Assistant District Attorney's statement was routinely forwarded to the police department involved. The Assistant District Attorney did authorize the officer to seek a complaint for carrying a dangerous weapon/second offender, against the third man; and a file was begun on this case which would form the basis for all future prosecution actions. Included in that file was the screener's description of the evidence in the case, along with an estimate of the strength of the case, and a notation that there would most likely be a motion to suppress filed by the defense; a copy of the police report; a copy of the defendant's criminal record; a list of all witnesses, including whether any experts would be needed and whether subpoenas should be issued;

a notation of what days the arresting officer would not be available; and a recommendation on bail. The Assistant District Attorney present at arraignment was given this file. After arraignment, the file was logged in at the District Attorney's office and relevant information recorded in records and placed on calendars and tickler files in order to keep track of upcoming hearings. The file is eventually routed to the Assistant District Attorney to whom the case is assigned.

This example is a substantially accurate account of how one case went through the screening process in a large urban jurisdiction. There are, of course, other models; however this example can serve to illustrate the advantages of a screening program.

In order to demonstrate the advantages that a prosecutor screening program can offer, it is important to understand how screening would fit into the current system of criminal procedure in Massachusetts. There are presently three major routes by which a criminal case is initiated in the Commonwealth. The most common one is for a police officer to seek a complaint after he had made an arrest without a warrant. In this situation, the defendant is either held in custody prior to his arraignment or has been released at the police station. The arresting officer or a designee from the Police Department seeks a complaint, on the morning after the arrest, from a magistrate, usually a court clerk. The second method is for a private citizen to seek a criminal complaint against another citizen. Before a complaint is authorized under these circumstances, however, a magistrate, again usually a court clerk,

will hold a hearing to determine if the matter is serious enough to warrant the initiation of criminal proceedings. In the third route, like the second, there is no arrest prior to the initiation of a formal criminal case. However, unlike the second, it is not a private citizen but either the District Attorney or the police department that seeks to begin a criminal proceedings through the use of a grand jury indictment or a complaint as the case may be.

As can be seen, it is only with the third route, and at that only when the District Attorney's office conducts the investigation, that there is a built in role for the prosecutor prior to the initiation of criminal proceedings. In any of the other routes, by the time the case reaches the District Attorney's office, crucial opportunities for making legal judgments about the most appropriate charge on which to proceed, or for interviewing witnesses and securing evidence in preparation for a trial may have been lost.

Since the large majority of cases arrive at the starting gate of the criminal system after an arrest has been made (the first route), the operation of a screening program and the advantages it offers will be examined primarily in that context.[4]

REASONS FOR SCREENING

Prosecutor screening can save time and money and make the system of criminal justice operate more fairly and more efficiently.[5] These consequences result from the effects that screening has with respect to cases that are screened out as well as cases that continue on in the process.

Many cases that presently arrive at the complaint stage of the criminal justice system after an arrest has been made simply do not belong there.[6] Police decisions to arrest are often made in haste, under the pressure of an impending disturbance, with no relevant background information on the suspect, and with an insufficient understanding of the legal requirements which limit the type of evidence that may be used to obtain a conviction.[7] Both by training and inclination, there is little incentive for a police officer not to prosecute those he arrests.[8]

Thus, arrests both good and bad arrive at the doorstep of the courthouse. As the doorkeeper, a prosecutor may screen a case out for a number of reasons. First, there may not be enough evidence to establish in the prosecutor's mind the degree of guilt necessary to continue the prosecution.[9] No crime may in fact have been committed, or there may not be enough evidence to link the defendant to an established offense. Second, although the prosecutor is convinced of the defendant's guilt, there may not be sufficient

legally admissable evidence to warrant obtaining a complaint.[10] Witnesses necessary to the prosecution may be unwilling to cooperate and the District Attorney may judge that prosecution would be futile even taking into account the use of subpoenas. In other instances, the case may rest upon evidence which is the result of a search unquestionably unconstitutional under current standards. Third, although a prosecutable case exists, the District Attorney may decide in the exercise of his discretion that the interests of justice would not be served by prosecution.[11] The President's Commission on Law Enforcement and the Administration of Justice has noted:

> Among the types of cases in which thoughtful prosecutors commonly appear disinclined to seek criminal penalties are domestic disturbances; assaults and petty thefts in which victim and offender are in a family or social relationship; statutory rape when both boy and girl are young; first offense car thefts that involve teenagers taking a car for a short joyride; checks that are drawn upon insufficient funds; shoplifting by first offenders; particularly when restitution is made; and criminal acts that involve offenders suffering from emotional disorders short of legal insanity.
>
> In addition, a large proportion of the cases in criminal courts involve annoying or offensive behavior rather than dangerous crime. Almost half of all arrests are on charges of drunkenness, disorderly conduct, minor assault, petty theft, and vagrancy. Many such offenders are burdened by economic, physical, mental, and educational disadvantages. In many of these cases effective law enforcement does not require prosecution.[12]

The President's Crime Commission,[13] the National Advisory Commission on Criminal Justice Standards and Goals,[14] and the

American Bar Association Standards Relating to the Prosecution Function[15] all recognize not only that such discretion is a legitimate feature of prosecution, but see it as a necessary function of the system.

Criminal laws are typically drafted with a broad sweep. It is a very shortsighted view which insists that every criminal law be fully policed and prosecuted. The office of an elected District Attorney is an appropriate place in the system to make judgments weighing the need to prosecute on the one hand and mitigating circumstances on the other.[16] This type of discretion is going to be exercised whether the District Attorney does it or not, either by the police or by the courts. A District Attorney, by virtue of his training, the fact of his public accountability, and his role as chief prosecuting officer, is the proper person to make such decisions.[17]

The real question is not whether such discretion should exist, because it already does; but rather how to ensure that this discretion is exercised fairly, in a consistent manner. Standardized screening policy within a District Attorney's office, monitored by the District Attorney, can insure that this is so. The American Bar Association Standards Relating to the Prosecution Function have recommended, as criteria to guide the exercise of a prosecutor's discretion in charging:

> 3.9 Discretion in the charging decision.
> (a) In addressing himself to the decision whether to charge, the prosecutor should first determine whether there is evidence which would support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his discretion are:

(i) the prosecutor's reasonable doubt that the accused is in fact guilty;
(ii) the extent of the harm caused by the offense;
(iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;
(iv) possible improper motives of a complainant;
(v) prolonged non-enforcement of a statute, with community acquiescence;
(vi) reluctance of the victim to testify;
(vii) cooperation of the accused in the apprehension or conviction of others;
(viii) availability and likelihood of prosecution by another jurisdiction.

(c) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his record of convictions.

(d) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in his jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(e) The prosecutor should not bring or seek charges greater in number or degree than he can reasonably support with evidence at trial.[18]

When a screening program operates with consistently applied guidelines such as these, it brings a measure of fairness to the entire area of discretion in the criminal justice system.

Perhaps a more self apparent advantage of screening, however, for cases that don't proceed to the complaint stage, is the money

saving that is involved. When weak cases and cases which don't warrant prosecution are removed from the docket, it eliminates the need for judges and other court personnel to devote their time to them. In this, as in any other profession, time saved is money saved. When civilian witnesses and police officers are not required to appear, it not only tranlates into savings on witness fees and police overtime, but allows civilians and police alike to use their time in more productive ways and not in waiting at court on a matter which will wash out of the system in any case.[19]

Screening cases out also benefits prosecutors in ways that result in indirect money savings. District Attorneys can devote their attention to those cases where the state's interest in prosecution is substantial. Conviction rates rise not only because weak cases are eliminated, but because it allows prosecutors to devote more time to the remaining, more important, cases.[20] The Philadelphia District Attorney's Office implemented a screening program which screens one third of the police arrests. Of the cases screened between August, 1971, to May, 1972, 67% of the cases which required preliminary hearings were bound over to the grand jury. In the unscreened cases, the percentages were far less: 53% and 43% respectively.[21]

Screening also offers significant advantages for cases that continue on to the complaint stage. Since screening by definition involves the prosecutor in the charging process, it provides the

advantage of having a trained professional making the decision about the most appropriate charge, or charges, to lodge against an individual. Neither police officers nor court clerks have the legal expertise of an Assistant District Attorney, nor are they able to make the type of judgments involved in applying prosecution policy about whether to charge a misdemeanor rather than a felony, or when to apply a second offender provision.

Screening has additional benefits beyond the selection of the charge. By providing an opportunity for the prosecutor to gather information about the case at the earliest possible moment, screening enables more effective trial preparation.[22] Witnesses can be interviewed while the facts are still fresh in their minds. The strength of a case can be evaluated while it is still possible to continue the investigation in order to obtain further evidence, evidence that may not be available later on. Special problems which may arise at trial can be identified at screening-such as challenges to the admissability of evidence, or the need for testimony-so that the eventual trail prosecutor can get a head start in preparing the case. The value of early preparation hardly needs to be emphasized.

Screening also enables a District Attorney's office to establish a system of case management.[23] A screening program generates the type of case file that provides a sound basis for future prosecution actions. The police report; lists of witnesses

with addresses, phone numbers, and available dates; the criminal record of the defendant; the screener's summary of the evidence as well as his assessment of the case's strength and identification of any problems which might arise; these are all made available in a convenient form by screening.[24] By providing this type of information, screening also enables a District Attorney's office to maintain statistics which can keep track of the progress of cases through the stages of the court system in order to monitor the effectiveness of the office.[25] Since effective screening requires a well thought out system for dealing with the information gathered about each case in an efficient manner, implementing screening will carry the benefits of standardized procedure over to the later stages of prosecuting a case.

Screening also allows the District Attorney's office to concentrate its resources where they are needed most.[26] One of the most cogent reasons for screening is that it enables the prosecutor to identify priority cases: those crimes where the nature of the offense and the history of the offender require special treatment.[27] Without such a capability, all cases of Breaking and Entering, for example, may appear equally as serious to a Distict Attorney's office. Screening, though, may reveal that some such cases involve especially egregious facts or a repeated offender; cases which should be identified for prompt disposition. Many jurisdictions that employ a formal screening program include as one component, a

process to identify these priority cases.[28] The process may entail either a subjective judgment by the screening Assistant District Attorney, or a numerical rating system that weighs the facts of the offense as well as the history of the defendant. If a case then qualifies, it is assigned to a special division of the District Attorney's office whose members shepard it through the courts to a quick resolution, often by immediately presenting the case to the grand jury.

A final reason for screening applies equally to cases that are screened out as well as those left in. That reason is improved communication between the police department and the prosecutor's office.[29] Since one main goal of the police in fighting crime is providing the prosecutor with the raw information necessary to obtain convictions, the closer the contact between the two agencies the better the mutual understanding will be. When cases are screened out, the arresting officer will be able to interact first hand with the Assistant District Attorney, a process that inevitably will lead to some discussion of why the arrest won't support a complaint. This type of feedback is often lacking when a case is dismissed at a later stage. The police department will have a record of why cases are turned down, and can respond through its internal policies and training programs. When cases are approved for a complaint, the early contact between the police officer and the prosecutor's office provides a built in capability for further investigation if needed, as well as an opportunity to coordinate

available dates for police, civilian witnesses, and trial assistants.

On the whole, screening offers a broad range of advantages. Each District Attorney in the Commonwealth should seriously consider its implementation. At the very least, in order to document its benefits, one form or another of screening can be begun on a trial basis: screening only one day a week, or only arrests from one police department, or only for serious cases.

Once a committment to implement screening has been reached, a decision must be made as to which model of screening will be used. A discusssion of the different models follows.

CHOICES IN TYPES OF SCREENING

The essence of all screening models is that after an arrest, but prior to the authorization of a complaint, an Assistant District Attorney reviews each case and must approve further processing if the complaint is to be sought. The screener evaluates the merits of the case; determines the proper charge, if any; and begins to prepare the case for efficient prosecution. Beyond this skeleton description, screening can vary widely depending on where it is done; the information that is provided to the screener; the information that the screener places into the file; the options that the screener has available after reviewing a case and the policy considerations surrounding these options; who performs screening and how it is supervised and evaluated.

Location

A screening program can be located in the police station itself, the District Attorney's office, or the courthouse.[30] To a large extent, the question of where to place the screening operation will depend on what facilities are available in each place; how many Assistant District Attorney's are going to be used; and how wide spread the jurisidiction is in terms of the locations of police stations, courthouse, and prosecutor's office.

Sufficient physical facilities are absolutely necessary to the proper functioning of an efficient screening unit. There must be space available for proper channeling of incoming police officers and civilian witnesses, space for individual Assistant District Attorneys to conduct interviews,and space for clerical personnel to deal with the reports and files that are generated by a screening program. These space requirements are discussed as they apply to a specific jurisdiction (Springfield) in a later section; they remain one of the most important determinants of where to locate the screeners.

Since screening must occur someplace between the location of the arrest and that of the courthouse, questions involving the number of screeners and the size of the jurisdiction will, in addition to the question of space, determine where the operation is located. Obviously, an Assistant District Attorney cannot ride in every patrol car. However, the more Assistant District Attorneys there are available to screen, the wider they can be spread. Location of police stations is also a factor. For example, in the jurisdiction of a single District Court, several different towns each with their own police station might all contribute more or less equally to the criminal caseload. If these towns are widely separated, there are manpower drawbacks in choosing police station screening as opposed to courthouse or prosecutor's office screening. On the other hand, in an urban jurisdiction where most of the arrests in a given court orginate from one or two station houses, a screening unit might more profitabley be situated there.

Although screening can operate at any of these three locations, there is an advantage in having the screeners work as closely as they can with the police, and be accessible to the police as early in the process as possible. Not only is screening more efficient when it occurs soon after an arrest when events are still fresh in witness' minds and evidence still available, but screeners who are in close contact with police can render advice on ongoing investigations, draft search warrants, and ensure that the results of an interrogation or lineup will stand up in court.

The existing police department practices with respect to the arraignment in District Court will also be a factor in deciding where to locate a screening operation. Optimally, screening requires that the Assistant District Attorney and the arresting officer get together at some point prior to the stage when a criminal complaint is sought. If existing police department practice has each officer seek his own complaints from the District Court Clerk's office, very little changes have to be made in police procedure for the officer to stop first at a District Attorney's screening room. However, there are police departments which delegate the responsibility to seek all complaints to one particular officer who has no personal knowledge of the cases beyond the information that is contained in the arrest report.[31] In these circumstances, requiring arresting officers personally to come down to a screening room located in the courthouse or the District Attorney's office not only will represent a substantial

change in police department practice, but will require a large additional expenditure for police officer overtime.

Since one of the advantages of screening is that it saves costs in avoiding unnecessary court appearances by police officers and civilian witnesses in cases which do not merit prosecution, some of that savings may be lost in jurisdictions such as these by requiring police officers to appear at the courthouse or District Attorney's office after the end of their shift. Station-house screening may be a more viable method to reduce unnecessary police overtime in those jurisdictions where the arresting officer does not personally seek the complaint.

To be sure, police station screening may involve added costs for a District Attorney's office, as a screening Assistant District Attorney must be available at the station whenever arrests are brought in. At the very least, a screening Assistant District Attorney should be available at the end of every duty shift. There is another potential disadvantage to police station screening, noted by the National District Attorney's Association:

> Proper screening necessarily means rejection of certain cases which the police may want prosecuted. This is best handled in a place where the prosecutor dominates. The police control the police station, not the prosecutor. A police station screener is a police guest and therefore may often be tempted to give to the requests (or demands) of his hosts.[32]

Locating screeners in the District Attorney's office or in the courthouse has its own advantages. Chief among them is that the Assistant District Attorney's assigned to screening would also be available for other work during the time that screening is not going on. If considerations of physical space were equal, and if the police officers could as easily come to one location as the other, the choice between these two potential sites for screening would favor the District Attorney's office. By far the most common form of screening used throughout the country is that in which the prosecutor reviews police reports and in some cases, interviews witnesses in his own office.[33] Locating screening in the District Attorney's office enables centralization of records and takes advantage of existing facilities and staff available that are available. It is important to note that the National District Attorneys Association recommends that:

> A private room in the District Attorney's office provides the best environment for a well-thought-out decision on what should happen to a situation presented by a police officer or citizen who wants someone prosecuted.[34]

A final possibility on the question of location is the use of closed circuit television or some sort of audio communication link between the screeners and the police. This method would eliminate the need for changing police procedures and incurring substantial overtime costs in jurisdictions where the arresting officer does not seek his own complaints.

In terms of District Attorney manpower, such an electronic link would enable one screener located in the District Attorney's office to handle cases originating from a number of different police stations. The Philadelphia District Attorney's Office is currently using a closed circuit television linkup between their central office and several police precincts, with funds provided by LEAA.[35] Massachusetts District Attorneys, especially those in jurisdictions less urban than Philadelphia, should explore the possibility of federal funding for an electronic linkup used in screening; its potential would seem to offer advantages in widespread rural jurisdictions.

Information

In order to make an informed screening decision, a prosecutor must have basic information about the potential defendant and about the offense for which he was arrested. As for the former, the prior criminal record of the defendant is available by telephone to District Attorneys from the records of the Commissioner of Probation in Boston on a 24 hour a day basis. Any screening operation in Massachusetts thus would have access to the prior state record of all potential defendants. At a minimum, in order to bring a charge under the repeated offender provisions of certain statutes, this information is necessary. In addition, information

about a suspect's background is required in order to be able to flag for special attention those cases where the defendant presents a special danger because of his prior criminal history. Also, since the screening process provides the information that forms the foundation of future prosecution, the defendant's criminal record will bear on recommendations made by the screening Assistant District Attorney as to bail and plea possibilities as well.

Beyond these situations, a potential defendant's prior criminal record, or lack of one, can be relevant in making decisions about whether on a given set of facts to charge a misdemeanor or a felony; or whether to defer charging altogether in the exercise of the prosecutor's discretion. The scope of discretion of the Assistant District Attorney who performs the screening function and the relevance of the defendant's prior record will depend on the policies set down by the individual District Attorney. The choice of options open to a screener, and the question involved in setting screening policy are discussed later; the background of the defendant, though, is one area of legitimate concern.

The screener should of course know as many of the details as possible about the offense for which the suspect was arrested. An intelligent decision regarding whether or what to charge cannot be made unless the screening attorney understand the factual

basis of a police officer's request for prosecution. There are, however, a great variety of methods of providing that information, and they are discussed next.

The basic source of information available to a prosecutor about the arrest is contained in the police department's arrest report. The National Advisory Committee on Criminal Justice Standards & Goals had noted:

> The police report form is the single most important document in the prosecutor's case file. Prosecutors and their assistant rely on the police report to identify necessary witnesses, to familiarize themselves with the facts of the case, and to identify the problems that may arrive at trial. Since the police report form is the basic prosecutive document, it should be designed by the prosecutor to meet his requirements and not by the police based on their interpretation of the prosecutor's requirements.
>
> A well-designed report form should require police officers to detail all of the evidence which supports each element of the offense, the relevant surrounding circumstances, and all known witnesses and their addresses. In the absence of a structured form, police reports often omit important facts or the names of useful witnesses, to the detriment of the prosecutor at the time of trial.[36]

This again is another area where police cooperation is necessary in order to implement a successful screening program. The benefits of a properly designed arrest report, though, should appeal to police as well as prosecutors in terms of greater efficiency in investigating cases and more thorough trial preparation. A later section of this report contains a model arrest report designed for use in Springfield; it can be adapted to other jurisdictions as well. Any District Attorney considering implementation of a

screening program should examine the arrest report forms of the police departments in his jurisdiction to see if they contain all the information that is required to screen cases and assemble a file for prosecution. Where several different police departments within a single jurisdiction each have different forms, screening will be less efficient, simply because the necessary information will not be in the same place in every file. A uniform arrest report makes possible a standardized screening procedure for all cases regardless of which police department made the arrest. Standardization leads to easier monitoring of results, easier training, and economies of scale which can reduce costs.

Although police reports are a basic source of information, no authority on screening or any District Attorney's office currently engaged in screening recommends that prosecutors' decisions be based solely on documents such as police reports.[37] The best prepared arrest report is still a poor second to a personal interview between the arresting officer and the Assistant District Attorney; and it is certainly unrealistic to expect that every arrest report will be as meticulously prepared as a professional prosecutor would like. A personal interview not only enables the Assistant District Attorney to obtain a fuller picture of what happened and what evidence exists, but also allows the interchange that is necessary in those cases where the police must be required to conduct further investigation. It is questionable whether the costs of starting up a screening program would be justified if only

a review of arrest reports were contemplated without the possibility of a personal interview with the arresting officer.

Of course there is a greater cost involved in structuring screening to include a personal interview with the police officer than in just reviewing arrest reports. Personal interviews will involve arranging police officer schedules so that they are available to confer with Assistant District Attorneys, and paying police officer salaries for the time involved in the process. Where the arresting officers do not currently seek their own complaints, the cost may represent an initial increase over the amounts currently spent for police overtime. However, if the screening operation functions properly, the saving it reaps in the long run will more than offset the cost involved in setting it up.[38] Even so, although personal interviews will enable screening to operate more efficiently, and therefore ultimately to save a greater amount of time and money, consideration should be given to ways that the information required for screening can be gathered at a minimum cost. For example, in jurisdictions that have one police officer present all complaint applications from a single department, police station screening may represent a cost saving alternative. Another possibility would be to have each arresting officer be available to communicate with an Assistant District Attorney by telephone or radio during those morning hours when the Assistant District Attorney reviews the arrest reports as part of the day's screening operation.

In addition to criminal records, police reports, and interviews with police officers, there remains one more important source of information for screening: civilian witnesses. Civilian witnesses need not be present for screening every case, where the arresting officer was an eyewitness to the crime would be one example. However, in certain cases where the victim's testimony will be necessary to secure a conviction, a personal interview at the screening stage will enable the Assistant District Attorney to assess the witness' credibility and desire to testify, both elements that are crucial to the prosecutor's evaluation of the case. Moreover, an interview with a civilian witness can serve as an opportunity to introduce him to the requirements of the criminal justice system as it relates to his case. Of course, the main benefit of interviewing a civilian witness at screening is to obtain his story concerning the crime. If necessary, a statement can be taken from the witness at screening which can form the basis for preparing the case for trial.[39]

Requiring the presence of civilian witnesses adds little to the cost of screening. This again is an area where police cooperation can benefit greatly, since the arresting officer in most cases is in a position to tell the civilian witness that he must appear at the prosecutor's office the following morning.

The benefits of having civilian witnesses present at screening are several. Chief among them is the ability to interview the witness while the events are still fresh in his mind. Already

mentioned is the ability to evaluate the credibility of the witness. If the witness presents a severe credibility problem, steps can be taken to bolster the Commonwealth's case by locating other witnesses or gathering additional evidence. One out of state jurisdiction will not prosecute a case if the victim is able to come to the screening room and does not show up. The particular District Attorney's office assumes in these cases that the victim wouldn't appear at trial either. Thus,the policy saves time and money by weeding out eventual dismissals at an early stage. Of course, where appropriate, subpoenas may be issued for a recalcitrant victim; this is again a matter that should be the subject of screening policy set down by the District Attorney. The same District Attorney's office sees another advantage to requiring the victim to be present at screening: they feel that if the defendant sees the victim at the arraignment, it gets across the message that the District Attorney means business. Where the civilian witness is needed only to testify to ownership of property or on the question of unauthorized use, the witness' presence at arraingment may enable the Assistant District Attorney to obtain a stipulation of that testimony from the defense counsel, and thus avoid future appearances (and future costs). Where the civilian witness will be required to testify at trial, screening can serve as an opportunity to coordinate available dates among the witness and the police.

On the whole, having civilian witnesses present at screening is a great advantage, and any District Attorney contemplating screening in his jurisdiction should try to incorporate it.

File Contents

Although the contents of the file in each case that leaves the screening room will be determined to a large extent by the type of information that is available to the screener, there are certain essential elements that should be generated by any screening operation.

The first two have been discussed in some detail: the police report and a copy of the defendant's criminal record. In cases where prosecution will not be authorized, there should be placed in the file a statement of reasons for the screener's action. A copy of this statement should be forwarded to the police department involved.

For cases that will be prosecuted, the file should contain a list of all necessary witnesses for the Commonwealth, their addresses and telephone numbers, and whether subpoenas should issue for their appearance at future proceedings. The witness list should specify which police officers must appear, and should also note the days that they are available to be in court.

The heart of all the information that screening provides for later stages of prosecution is the analysis of the case by the screener. Whether the assistant who screened the case will also try it, or whether it will be assigned to someone else, this preliminary step saves time and avoids problems later on. The screener's analysis should contain:[40]

---a short statement of the case

---a summary of the evidence that is available

ie-(what each witness can testify to; whether there is a statement by the defendant, what physical evidence exists, if there was a lineup or other identification.)

---what further evidence must be developed
ie-(whether a fingerprint or ballistics expert will be needed; whether a map or chart should be prepared)

---whether the police should be required to investigate further in order to strengthen the case

---a highlight of any particular problems that might come up
ie-(a questionable identification, a witness credibility problem, a possible constitutional challenge to a search)

---the screener's assessment of the overall strength of the case

---a recommendation on bail and possible plea negotiations

The screener's analysis can also be used to identify those cases which should receive special attention, either because of the nature of the offense or the nature of the defendant. A numerical scoresheet can be included in the file and the appropriate items checked off by the screener. If this sheet indicates a high enough score, it would be marked for special attention. The

National Center for Prosecution Management has a booklet which describes this type of scoresheet.[41] Instead of a numberical system, each screener can be given the option of marking a case for special attention based on his own judgment of the case. The capability that screening offers to identify priority cases leads in, quite naturally, to the creation of a special unit within the District Attorney's Office to handle these cases.

The amount of time that it takes to prepare a thorough case analysis has a bearing on how efficienlty screening can operate. In the morning hours before court opens when the bulk of screening is likely to be done, each Assitant District Attorney will have to deal with several different cases, creating an inevitable time pressure. The process of writing down on paper a complete case analysis presents a potential bottleneck in the system. There are three methods which can alleviate this problem.

The first is for the screener to dictate his case analysis into a tape recorder immediately after screening the case. The tapes can be transcribed by the clerical staff at a later time and placed into the file.[42] A second technique is to reduce as much of the case analysis as possible to the form of checklist, so that it can be easily and quickly filled out with only short descriptive phrases necessary to supplement the list. An example of this type of checklist, used in the Brooklyn District Attorney's office appears at the end of this section. While a checklist would still have to

be supplemented by a general description of the case, the narrative could be a lot shorter because many of the important facts would be described in the checklist. If checklists were used, forms would have to be prepared which listed those aspects of a case that are likely to come up. The last method of alleviating the time pressure is to have the Assistant District Attorney prepare the analysis of each case after all the days' screening has been completed.[43]

If the equipment and clerical personnel are available, the use of tape recorders, along with simple checklists, offers the most efficient means to obtain a complete and accurate case analysis. The checklist that follows is used by the District Attorney's office in Brooklyn, New York. It is an example of the type of form that would be necessary to streamline the screening operation.

PRELIMINARY ARREST INFORMATION

	NAME	SHIELD #	COMMAND
1. ARRESTING P/O			
2. PARTNER OF ARRESTING P/O			
3. FIRST P/O AT SCENE			
4. PARTNER FIRST P/O AT SCENE			
5. DETECTIVE ASSIGNED			

6. OTHER INVESTIGATORY POLICE DEPT. UNITS INVOLVED _____

7. EXACT LOCATION OF CRIME _____

A. PRECINCT OF CRIME _____ B. UF 61 # _____

8. EXACT LOCATION OF ARREST _____

A. PRECINCT OF ARREST _____ B. UF 61 # _____

9. SEARCH WARRANT INVOLVED # _____

10. COMMENTS: _____

IDENTIFICATION

1. DESCRIBE RELATIONSHIP OF C/W AND Δ _____

2. DESCRIPTION OF Δ BY C/W AT TIME OF CRIME _____

3. DOES Δ FIT ABOVE DESCRIPTION YES ☐ NO ☐

A. DESCRIBE DIFFERENCES _____

4. METHOD OF OUT OF COURT IDENTIFICATION :

	DEFENDANT	SCENE	PHOTO (Date)	LINEUP (Date)	SHOW UP (Date)
# 1					
# 2					
# 3					
# 4					

	C/W	WITNESS	WITNESS
A. IDENTIFYING WITNESS			

5. COMMENTS _____

CONFESSIONS/ADMISSIONS/STATEMENTS

	YES	NO
1. WAS THE DISTRICT ATTORNEYS OFFICE NOTIFIED	☐	☐
2. DID AN ASS'T D.A. TAKE STATEMENTS	☐	☐
A. NAME OF A.D.A. _____		
3. DID THE Δ MAKE ANY STATEMENTS	☐	☐
4. WERE MIRANDA WARNINGS GIVEN PRIOR TO STATEMENT	☐	☐
5. TO WHOM WAS STATEMENT MADE _____		
6. DID P.O. RECORD STATEMENT ANY PLACE	☐	☐
7. DATE STATEMENT MADE _____		
8. WHERE WAS STATEMENT MADE _____		
9. STATEMENT (Describe in detail any statement made by a Δ, inculpating or exculpating, specifying which Δ said what) _____		

10. COMMENTS _____

SEARCH AND SEIZURE

1. TYPE OF S & S		PROPERTY
A. INCIDENTAL TO A LAWFUL ARREST	☐	_____
B. HOT PURSUIT	☐	_____
C. SEARCH WARRANT	☐	_____
D. CONSENT	☐	_____
E. EXIGENT CIRCUMSTANCES	☐	_____
F. STOP AND FRISK	☐	_____
G. INVENTORY SEARCH	☐	_____
H. TRAFFIC CHECK	☐	_____
I. OTHER	☐	_____

2. PLACE PROPERTY RECOVERED _____
3. LOCATION: OPEN VIEW ☐ HIDDEN ☐
4. ADA'S OPINION: LAWFUL ☐ UNLAWFUL ☐ QUESTIONABLE ☐
5. DESCRIBE S & S (INCLUDING REASON FOR ADA'S OPINION) _____

D. POSSESSORY CRIMES (Weapon; Drugs; Sale of Drugs) Circle Appropriate Crime(s)

1. Type of Weapon _____

A. Serial # _____ B. Voucher # _____

2. Is It A 'Per Se' Weapon Yes ☐ No ☐

A. If No, Was There An Intent To Use _____

3. Was Weapon Recovered Yes ☐ No ☐ From Δ ☐

4. Type of Drug _____

5. Quantity of Drug _____

6. Does Δ Have Prior Section 220.00 Arrest ☐

7. Comments _____

Options and Policy

---The need for screening policy

The two primary options open to a screener are either to authorize the police officer to seek a complaint, or not. There are, however, variations on each theme. If prosecution is authorized, it can be for the same offense that the police required; for a more serious charge; or a less serious charge; or charges may be sought in addition to any of the foregoing options. Moreover, the screener

can request additional investigation by the police in order to strengthen a case even after the complaint is issued. If the screening Assistant District Attorney decides that no complaint will be sought, he may base his decision either on the fact that no prosecutable case exists, or even though a conviction could be obtained, use his discretion in applying the best interests of justice. Even in these cases where the screener decides there will be no prosecution, different options are available: a complaint may in fact be sought only to have it dismissed at the arraignment at the Commonwealth's request; no complaint may be sought whatsoever and the defendant let free; or the process of seeking a complaint may be deferred, either with no conditions or pending the completion of a pre-trial diversion program by the defendant.

How many of these options remain open for a screener and when each of the options should be applied, are questions that must be answered in the policy set down by the individual District Attorney. Without an articulated policy, either written or not, uneven standards will be applied, with the result that defendants in the same situation may be treated differently.[44] Fundamental fairness as well as the necessity for maintaining a coherent office policy require that the charging process be consistent. Of course each screening assistant must be permitted to use his own judgment. There are, however, specific areas of policy that are appropriate for the judgment of the District Attorney himself.

The type of subjects appropriate for screening policy can vary widely. In Los Angeles, for example, the District Attorney's Office has an extensive screening program which aggresively seeks to distinguish between cases which should go forward as felonies as opposed tc misdemeanors.[45] In 1971, policy directives were issued

> dealing with the handling of felony complaints for which the Penal Code specifies a possible alternative felony or misdemenaor sentence. Basically, the directives set up criteria by which complaints for offenses carrying such alternative sentences can be rejected as a felony and handled as a misdemeanor if the suspect involved has not had any prior conviction for an offense punishable as a felony.
>
> Specific criteria are defined for six different offenses. The rejection criterion for possession of dangerous drugs is ten pills or less; for possession of marijuana, five cigarettes or less; and for bookmaking, no forgery, the criterion is whether or not the police indicate any reasons that would make a misdemeanor charge inappropriate. All complaints of unlawful sexual intercourse are to be handled as misdemeanors if the suspect has not been previously convicted of an offense punishable as a felony.[46]

In another jurisdiction, the District Attorney's Office has a policy concerning house burglaries. These are to be treated as felonies unless the case is an extremely weak one, or there are extenuating circumstances, such as a prior relationship between the defendant and the victim.

The examples of policy given above represent responses to problems that do not necessarily exist in other jurisdictions. However, every jurisdiction has certain problems of its own which will crop up in screening, and which should be dealt with in a

consistent manner. Once these areas are identified, they can be translated into an office policy.

Policy need not be highly structured, like the 10 pill cutoff point in the Los Angeles District Attorney's Office. It can simply offer general guidelines, and note the type of extenuating circumstances that may be taken into account, as with the policy on house burglaries. The choice between tightly structured policy and general guidelines depends in large part upon the experience of the people doing the screening. Obviously, more latitude can be given to more experienced screeners.

Whether highly structured or not, screening policy is necessary to the proper operation of a prosecutor screening program. The power of a District Attorney to decide when to prosecute is a quasi-judicial power.[47] It should be exercised on a fair and consistent basis. This requires that screening decisions be uniform insofar as practical. Uniformity is possible only when guidelines or rules are available to the people who make the decisions. The creation of policy provides this guidance.[48]

Fairness is only one byproduct of setting policy. Another is the help it provides to inexperienced screeners. With an articulated office policy, new screeners can make decisions without having to check them out with a supervisor. Office policy can also provide the basis for training new Assistant District Attorneys and for reacting to emerging problems through changes in the charging process. The need for policy guidelines can be seen in the discussion

that follows concerning decisions to prosecute and decisions not to authorize prosecution.

-----prosecution options

> A police officer was driving his own car on the way home from his tour of duty. He was not in uniform. He saw three women jostling someone on the street and then observed them begin hitting their apparent victim. He pulled his car over and confronted the group, identifying himself as a police officer. The victim and two of the women ran off, but the third woman began cursing the officer and without any provocation hit him in the head with her handbag. The handbag was quite heavy, was made of metal and had sharp corners and ornamental spikes protruding from all sides. The officer was deeply cut just above his eye and later required 17 stiches. In restraining the woman and placing her under arrest, the officer was hit several more times, and received additional, though superficial, wounds. The woman was placed under arrest for Assault with Intent to Murder or Maim.

When confronted with this set of facts, a screener obviously would authorize prosecution. There are, however, several criminal offenses that could conceivably apply, and it is the function of screening for the Assistant District Attorney to make the appropriate choice. Of course, every screening assistant must be familiar with the statutory elements of each criminal offense. But within the statutory framework, there is a large amount of play. This play calls for the exercise of the prosecutor's discretion, and is the area where office policy can provide guidance.

The most obvious choices for the screening Assistant District Attorney in this situation range in terms of seriousness from

A & B (ch. 265, § 13 A), to A & B on a police officer (ch. 265 § 13 D), to A & B DW (ch. 265 & 15 A), to Assault with intent to murder or maim (ch. 265 § 15). The first two are misdemenaors, and the latter two are felonies outside the District Court's jurisdiction. In addition, there may conceivably be a prosecution with respect to the assault that the police officer observed before he got out of his car. Any of these options may call for the Assistant District Attorney to require additional investigation be conducted in order to bolster the Commonwealth's case.

The choice of what charges eventually to authorize will depend on a combination of factors: the relevance, if any, of the defendant's prior record; the facts of the offense; the probability of a conviction; and the existence of any special problems in the community with respect to this type of crime or the area in which the crime was committed. The weight to be given each of these factors can either be left entirely to the individual Assistant District Attorney, or can be guided by an office policy. For example, if assaults on police officers are considered a pressing problem, the District Attorney's office may chose to respond to it by charging the most serious offense supportable in each case, even if it means bringing a Superior Court action in a case where the probable result will be a misdemeanor conviction that could have been disposed of in a District Court. As another example, the District Attorney's office may consider the lack of

a criminal record a relevant factor under these circumstances, in deciding to bring a misdemeanor rather than a felony complaint. It may become a matter of policy whether or not to charge A & B on a police officer when the officer is not on a duty shift. General guidance should be available to screener's concerning the weight to be given the various factors that determine what charge they should eventually authorize.

-----nonprosecution options

The need for policy guidance is even more important when the screening decision concerns whether to authorize criminal charges at all rather than deciding upon the most appropriate charge. Here the alternatives involve weighing more controversial elements, and the consequence of the decision is often more drastic. A screener is faced with different problems, though, when the nonprosecution option is chosen because of the exercise of discretion in the interests of justice rather than because of the lack of prosecutable case.

(i) exercise of presecutor's discretion

> Two police officers responded to a call that a fight was going on in a neighborhood bar. When they arrived, two men were fighting in the middle of the room. They separated the men, who were both drunk, but one of them broke away and hit the other with his fist. The officers arrested him for assault and battery. The next morning, the officers came to the screening room together with the victim, who explained that the

> defendant was his brother-in-law and the fight was over the fact that the victim owed somemoney he was supposed to have paid back. The victim does not want to see his brother-in-law prosecuted. The defendant has no prior record. No complaint is sought in this case.

There are instances where even though the arrest would support a conviction, the interests of justice would be served by not bringing a complaint, or by having the complaint dismissed at arraignment. This option is appropriate where the fact of the arrest itself acts as a sufficient law enforcement device and the nature of the offense and the background of the defendant don't require any formal action by the court.

The type of discretion that is involved in the prosecutor's making this decision is a common feature of other parts of the criminal justice system in Massachusetts. For example, most of the types of cases where the exercise of the prosecutor's discretion would be called for originate with private complaints rather than police arrests. Under current procedure, these cases are screened before the prosecutor is ever involved, by a magistrate's hearing[49] where the same sort of screening concerns exist. Another example can be found after cases get into court, when judges exercise this type of discretion in deciding to permit the defendant to participate in pre-trial intervention programs.[50] Thus, if a Massachusetts District Attorney's office never exercises its discretion in this area, other agencies in the system exist which would take up the slack. However, responsible use of this power

is consistent with the role of a prosecutor and should be used when appropriate.[51]

The exercise of this type of discretion is the one area which requires the highest degree of control by the District Attorney.[52] Decisions on what type of case should not be prosecuted because of the interests of justice properly belong to an elected District Attorney. He is the official whom the people have designated to represent their interest in deciding how the criminal laws should be prosecuted.[53] Conscientious delegation of this power, however, requires that the District Attorney make known to the screening assistants his view of the weight to be given the various factors that are relevant to a decision not to proceed. There are several factors that have been recognized as relevant to decisions to use this power:

-contrary to legislative intent
-antiquated statute
-victim requests no prosecution
-immunity
-de minimus violation
-present confinement on other charges
-pending conviction on other charges
-highly disproportionate cost of prosecution
-impact of proceedings on the accused and his family[54]
-improper motives of the complainant

Each individual District Attorney should decide what weight, if any, should be given to these factors, or whether there should be additional considerations.

There is no one correct view of how broadly this discretion should be exercised. One District Attorney may give wide leeway to his screening assistants in terms of their authority to refuse prosecution in such cases, and another may feel that only in extraordinary circumstances should a prosecutable case not go to court. The traditional justification for a broad exercise of discretion is twofold. One, the decision to prosecute involves the judgment that it is in society's interest to proceed in the individual case, and that judgment belongs to the prosecuting authorities and not the judiciary.[55] Two, screening these cases out before the complaint issues will avoid the costs involved in setting the judicial process into motion.[56] The use of this power is legitimate,[57] and should not be overlooked.

If a case is deemed appropriate for the exercise of the prosecutor's discretion, the matter need go no farther than the screening room. The complaint would not be authorized and the defendant let go unconditionally. If there is a need to put the matter on the public record, the complaint can be issued and the Assistant District Attorney can ask the judge to dismiss it at the arraignment. A third possibility in these cases is for the issuance of the complaint to be deferred. This option is used by prosecutors in other jurisdictions who make use of screening to implement some sort of deferred prosecution, conditioned on the defendant's completion of a pre-trial intervention program.[58]

Pre-trial intervention already exists in Massachusetts, with no significant built in role for the District Attorney.[59] It would serve little purpose for a District Attorney's office to duplicate the organizational structures that already exist in the area of pre-trial intervention. Screening could play a role, though, in providng information for the District Attorney's office on which to base a judgment about whether to recommend a pre-trial intervention program for a defendant who has already been arraigned.

(ii) lack of a prosecutable case

When the reason that prosecution is declined is not due to the exercise of the prosecutor's discretion, but rather to the lack of a prosecutable case, the options open to the screener are fewer and involve less of a role for office policy.

> A police officer was patrolling on foot in an area where known drug addicts congregate. He saw a man that he suspected of having been previously convicted for sale of heroin. He asked the man to account for his presence in the area and got no satisfactory reply. Thinking the man had drugs hidden on his person, the officer patted him down. He removed the suspect's wallet and found inside one of the compartments, a small aluminum foil packet which he recognized to be the type of packet used to contain heroin. The man was placed under arrest for possession of a Class A controlled substance. When the officer was interviewed the morning following the arrest by the screening Assistant District Attorney, the screener refused to authorize a complaint on the grounds that the only evidence of the crime had been procured by an illegal search.

There will be times when a screener is confronted with a police arrest that simply does not support further prosecution. There may not be sufficient evidence to connect the defendant to a crime, or constitutional or evidentiary problems may prevent the presentation of a prosecutable case. It is the function of screening to weed these cases out.

The current state of the law as defined by the legislature and the courts will be the prime determinant of whether an individual case presents sufficient admissable evidence to justify prosecution. Although screening could conceivably authorize a complaint for every case where the arresting officer had probable cause, such a loose standard would defeat many of the purposes of pre-complaint screening. Cases which have no chance of proceeding to a conclusion that would support a guilty verdict should not leave the screening room. Not only would it be inefficient to continue such cases further in the process, but it would be contrary to widely held views of the ethics of the prosecutor.[60] Office policy in these cases is less a matter of weighing factors to be considered in the exercise of discretion than it is of making legal judgments about the sufficiency of evidence.

While office policy may thus have a relatively insignificant role when it comes to determining whether a legally sufficient case exists or not, it does play an important part in determining what means are used to abort the case at that point.

There are two methods to a accomplish this. One is simply not to authorize the police officer to seek a complaint, and to let the defendant go. The other is to obtain a complaint and request that it be dismissed by the judge at arraignment. The latter course of action has several advantages which recommend its use when special circumstances exist. By dismissing the complaint at arraignment and stating the reasons for the Commonwealth's actions in open court, the process of not prosecuting the case is made more visible, and is placed on the public record. There are situations where this method satisfies valid concerns. Such concerns are present whenever the case would be of more than usual interest to the community, or where a particular interest was shown by civilian witnesses who are present at screening. Individual District Attorney's offices may formulate other general guidelines as to the type of circumstances that require making the decision not to prosecute a public one.

Dismissing the complaint at arraignment also had advantages with respect to a defendant charged with a serious crime who would be prosecuted except for a technical failure of proof - such as when the only evidence was the fruit of an unconstitutional search or when the victim refuses to cooperate and the prosecutor feels that it would be futile to continue the case on that basis. Here, the process of having the complaint dismissed at arraignment may have a greater effect of impressing on the defendant the

seriousness of the matter than would merely releasing him with no court appearance.

The last type of situation that would require dismissing the complaint at arraignment is when a question arises concerning the arresting officer's possible civil liability for false imprisonment. A complete discussion of this issue appears later on.

Where these three situations do not exist, there is no need for screening to involve the added time and expense of obtaining a complaint for cases that won't be prosecuted. However, the District Attorney's Office should have a record of these cases, and the reasons why no complaint was authorized, if only to protect against future charges of improper conduct. Thus, the statements by the individual screener as to why no complaint was authorized should be complete with the underlying details and not just conclusory statements.

Personnel, Supervision and Evaluation

The typical staff of a screening operation is composed of inexperienced prosecutors.[61] This fact largely stems from the difficulty in attracting experienced attorneys for work which does not involve trial advocacy.[62] It is a practice, though, which has little to commend it other than the fact that salaries for a screening operation can be kept lower if inexperienced Assistant District Attorneys are used.

Several jurisdictions which conduct screening assign their highest paid and most experienced attorneys to the job.[63] Others use a combination of experienced and inexperienced staff.[64] Experienced prosecutors can more easily make an evaluation of the strength of a case and decide how it should proceed.[65] They are more likely to be able to maintain a smooth relationship with the police, both in handling cases that will not be prosecuted and those that require additional police investigation.[66] Since screening provides the foundation on which subsequent prosecution action rests, the better grasp a screener has of the requirements of the trial prosecutor, the better a screener he will be. Experienced Assistant District Attorneys are more likely to have the necessary overview of the process. A vivid example of the need to bear in mind the eventual trial prosecutor is the policy of one branch of the Los Angeles District Attorney's Office, which assigns

the screener as trial prosecutor for any notorious "turkeys" that he lets slip through the complaint room.[67]

Initiating a screening operation that utilized only inexperienced attorneys would not only deprive screening of the resources of the more experienced members of the District Attorney's Office but would create problems in terms of the need for intensive training and close supervision. Since the realities of funding levels and personnel preferences will likely lead to the necessity for screening to start up using some newly hired attorneys, the screening staff should be a mixture of new Assistant District Attorneys and those who already have trial experience at the District of Superior Court level. As it relates to the situation in Massachusetts, the generally recognized proposition that experienced Assistant District Attorneys should be involved in screening runs up against the typical division of a District Attorney's office into Superior Court and District Court staff. Superior Court attorneys are likely to have a wider range of experience than District Court prosecutors, as well as a better grasp of how serious felony cases fare at trial. The resource that Superior Court attorneys present for screening should not be dismissed out of hand. A limited form of rotation that permitted some regular exchange of Assistant District Attorneys between the two levels would enhance the quality of District Court screening, and by implication the entire process of prosecution that flows from it. Such

staff rotation would allow Superior Court Assistant District Attorneys to share their experience with other screeners and also give District Court prosecutors an opportunity to gain Superior Court experience which they could bring to bear in future screening decisions.

Having a mix of experience on the screening staff also makes the job of supervising the screening function easier. Since screening involves so many vital decisions about the cases that enter into the criminal justice system, there is a need to ensure that responsible judgments are made. With experienced personnel, close supervision is not necessary to accomplish this end. With new prosecutors, it is.

At a minimum, there should be one Assistant District Attorney who is in charge of the screening operation at all times. This Assistant District Attorney should be responsible for answering any questions that come up on the part of police officers who dispute a decision made by a screener on a particular case. The supervisor should also be available to render advice to the less experienced screening assistants.

Administrative matters such as assigning cases that have been approved for prosecution to an Assistant District Attorney for trial or hearing in the District Court can also be handled by the supervisor of screening. If there exists a sufficient number of District Court prosecutors, the screening supervisor can institute a procedure for the screening assistant to try all the cases that

he screens. This would streamline the process of case preparation, since witnesses would not have to be reinterviewed by a trial prosecutor in addition to the screener's interview.

It is important to note that Assistant District Attorneys assigned to screening can also try cases in the District Court. As is demonstrated in the second half of this report, even one of the busiest District Courts in the Commonwealth would have a level of screening business each day that permits the District Court prosecutors to divide their time between screening and trying cases.

A screening supervisor also provides a focus for evaluating the program. The supervisor can enable each District Attorneys' Office to keep track of certain types of decisions and periodically reivew them to evaluate the performance of the screening operation. For example, the statement of reasons supporting a decision not to prosecute in a case can be routed through the supervisor of screening in order to ensure that office policy has been followed. The supervisor can also review case files for those types of cases which present particular problems in preparation. The supervisor can, in addition, be in charge of the overall evaluation of the screening operating, a function that should not be overlooked.

> Regardless of its size or its caseload demands, the prosecutor's office, throughout the country, is involved in a continuing process of evaluating the cases it must handle, establishing priorities among them and allocating time and resources in light of those priorities.[68]

The preceeding quote highlights the continuing role of evaluation in a prosecutor's office, a process institutionalized to some degree by screening. The planning, development, and refinement of a screening program, however, mandates another type of evaluation designed to measure the program's value and effectiveness. Without this proof of legitimacy, continued support from a funding agency may be restricted. Evaluation research is one mechanism to provide this proof.

The essence of evaluation is the comparison of both project impact and relation effectiveness. In the instance of prosecutorial screening, project impact evaluation is the assessment of the overall effectiveness of the screening program in meeting its objectives of improved case management and preparation, professionalization of the prosecutor's office, and improved conviction rates. Evaluation of relative effectiveness is the assessment of which strategies and projects within a specific program work best. Within the context of prosecutorial screening, this type of evaluation may focus on the location of the screening operation, the management of resources and personnel, and the scope of the screening operation.

Research designs for evaluation of screening programs will vary from program to program. Certain forms of data collection and analysis, however, are central to all. To prove the effectiveness of a screening program, one must be able to make some type of comparisons of the situation before screening was implementing and

after. Thus a rough indication of costs of prosecution, caseload, and success rates prior to the advent of screening is necessary to measure the benefits accrued by screening. Certain indicators are particularly helpful for comparsion purposes: these include such statistics as the number of complaints requested, the number of complaints issued, number of continuances per case, amount of money expended for witness fees, and conviction or bind over rates. If this type of data is available, evaluation research may result in documentation of an improved conviction rate or more efficient case management since screening was implemented.

Similarly, evaluation research may pinpoint areas which need change. For example, an office which has instituted a one-man demonstration screening program may be able to show, through evaluation research, that expansion of the program is both feasible and desirable. Such research may be one tool in convincing a funding agency to expand grant support. The second half of this report, which deals with screening as it would relate to the Springfield District Court will provide more detailed information as to the appropriate methodologies for evaluation research.

LEGAL PROBLEMS IN IMPLEMENTING SCREENING IN MASSACHUSETTS

Implementing screening in Massachusetts raises two immediate legal problems: the question of the authority of the District Attorney to prevent prosecution in a case where he feels that no complaint should be sought, and the potential liability of a police officer for false imprisonment if he makes an arrest and the District Attorney refuses to authorize seeking a complaint. Both problems are discussed next.

Authority to Screen in Massachusetts

In the American system of criminal justice, a prosecuting attorney is ordinarily vested with official discretion regarding the institution of criminal proceedings in cases that he will prosecute.[69] The source of this authority for the prosecutor's role is varied. The typical statutory scheme does not explicitly involve the prosecution at all,[70] and the prosecutor's role has evolved in these jurisdictions by way of custom and developing case law.[71] In some states, however, there exists statutory recognition of the prosecutor's screening role. In California,[72] Wisconsin,[73] and Michigan,[74] the prosecutor's consent is required before a criminal complaint can be issued. Recent nation wide proposals for reform in the area of criminal procedure, such as

the ALI Model Pre-Arraignment Code and the Uniform Rules of Criminal Procedure, also require the consent of the prosecutor. Thus, screening operations can acquire institutional validity either through custom or through statute.

The Commonwealth of Massachusetts has neither the custom nor the statutory authority for the exercise of the District Attorney's power to involve his office in the decision to authorize a criminal complaint. To be sure, the Massachusetts District Attorney's have a broad range of statutory and customary powers.[75] In fact, one such power, the power to enter a nolle prosequi,[76] is very similar to the power to decide whether a criminal case will be initiated or not. The only condition placed upon the exercise of the power to nolle a case is that a written statement of reasons must be filed in court.[77] Although misuse of the power may be grounds for a District Attorney's removal from office,[78] the Supreme Judicial Court has several times stressed that the power to nolle pros lies within the absolute discretion of the District Attorney.[79] The types of reasons that the Superme Judicial Court has found to be legitimate reasons to nolle pros a case are similar to the concerns underlying the discretionary aspects of screening:

-to accommodate the request of the complainant[80]
-to allow restitution[81]
-to accommodate the familial relationship of defendant and victim[82]
-to obtain evidence from an accessory.[83]

A Massachusetts District Attorney's exercise of screening power only acts to move his power to nolle pros to an earlier, and more logical, point in the system.

In spite of the fact that the District Attorney has a broad power to refuse to prosecute a case that already is in a criminal court, Massachusetts law provides that his approval is not necessary to initiate the criminal case. A grand jury indictment does not require the signature of a District Attorney to be valid.[84] Case-law[85] as well as statute[86] provide that anyone competent to swear to an oath may bring a complaint. The enforcement of the criminal laws in the Commonwealth does not have to depend on action being taken by law enforcement officials at all. Private prosecution of criminal matters is a fact with respect to minor offenses,[87] and is theoretically possible for all criminal offenses.[88]

If a magistrate wishes to authorize a complaint, a criminal case will be initiated regardless of the view of the District Attorney. This fact creates a potential problem for implementing screening in Massachusetts. It means that any screening operation in effect under the existing state of the law has to depend on voluntary compliance on the part of those individuals who seek to bring a complaint. If an Assistant District Attorney decides in screening that there should be no prosecution in a particular case, he has no power to prevent the complainant from going before a magistrate anyway.

Screening has been discussed throughout in the context of cases initiated by an arrest. Since police departments stand to benefit from screening as well as prosecutors, the type of co-operation needed to implement screening should be forthcoming. Agreements between police departments and District Attorney's offices should be entered into regarding how complaints are sought and the power of the District Attorney to disapprove a complaint.[89]

The situation with private complainants is different. Although screening in other jurisdictions encompasses these cases,[90] the need for private complaint screening in Massachusetts is not as pressing. There already exists in the Commonwealth a vehicle for screening private complaints. As a rule, before a private complaint is authorized, a magistrate will hold a show cause hearing to determine if the matter warrants criminal prosecution.[91] Given this existing structure, there is no urgent need for District Attorneys to initiate private complaint screening in order to weed out meritless cases. Since screening a request for a private complaint would require a substantially greater amount of time then screening a police case,[92] screening in private complaint cases can be left to magistrates. The District Attorney's role in these cases can be confined to gathering information for the file after a complaint has already been approved by the magistrate. If the case should not in fact be prosecuted, it can be dismissed in court.

Even limiting screening to police cases, though, leaves the concept of prosecutor screening on a voluntary basis. Screening is a legitimate function of the District Attorney, and it should not have to depend upon the suffrance of others for its existance. It should be explicitly authorized by law. In order to accomplish this, the Massachusetts District Attorneys' Association should consider proposing as an amendment to the Massachusetts General Laws a statute such as the one that appears on the following page.[93]

Ch. 218 § 32A

(a) Except as otherwise provided by this section, the concurrance of the Attorney General or of the District Attorney shall be required in any case which has been initiated by an arrest before a magistrate may permit a complaint to be signed by the complainant.

(b) As used in this section: the term Attorney General includes the Attorney General of the Commonwealth and any assistant of the Attorney General authorized by him to act in this regard: the term District Attorney refers to the District Attorney for the District in which the court is located where the complaint is sought, and shall include any assistant authorized by him to act in this regard.

(c) A person arrested without a warrant may not be detained in custody pending the processing of a complaint after the District Attorney expressly refuses to concur in the complaint. Nothing in this section shall be construed to authorize or permit detaining a person arrested without a warrant for an unreasonable length of time.

(d) Nothing in this section shall be construed to prevent magistrates from holding hearings on requests for issuance of process in cases not initiated by an arrest.

(e) This section shall not apply to any motor vehicle offense, provided that if the District Attorney shall notify the Chief Justice of any municipal or district court that the interests of justice require the application of this section to any particular motor vehicle offense, then this section shall apply in said court to the designated offenses.

Liability of Arresting Officer when no Complaint is Sought

Since some aspects of screening will involve releasing people who have been arrested without charging them, the question arises of the potential civil liability of the police officer who made the arrest. If the arrest itself was proper (that is it involved no excessive force and was supported by probable cause), the officer is not liable for an action of false arrest even if no complaint ever issues.[94] However, case law in the Commonwealth provides individuals who have been arrested with a right to be brought before a magistrate; and a police officer who releases an arrestee without taking him before a magistrate is liable for false imprisonment, even if the arrest itself was perfectly legal.[95] The Supreme Judicial Court has viewed the police officer's power to arrest merely as a necessary incident to the initiation of judicial proceedings, and therefore an arrest can be justified only by bringing the prisoner before the proper court.[96]

Once the arresting officer puts a full statement of the facts before a magistrate, he has performed his duty and avoids liability for false imprisonment. Thus, if an officer conducts a further investigation after he has made an arrest with probable cause, and finds that the arrestee is in fact innocent, the officer can avoid liability for false imprisonment by telling the magistrate all the facts, including the exculpatory ones. Even if no complaint is authorized, there is no liability.[97] If the officer simply releases

the person without going to the magistrate, he will be liable even though he knows the person to be not guilty.

There are two ways to deal with the problem that this creates for screening: by obtaining waivers of liability and by statutory amendment. The person arrested can waive his right to be brought before a magistrate, but the waiver must be freely and intelligently made.[98] It is important that the waiver not be any broader than the problem at hand, otherwise it will be more vulnerable to an after the fact attack. Screening should not act as a device to shield police officers from liability for illegal arrests, and if the waiver purported to release the officer from all liability arising from the arrest rather than just relating to the question of appearing before a magistrate, a question of whether the waiver was against public policy or was coerced would arise.[99] Even using a narrowly drawn waiver form, there should be no threats of prosecution if the waiver is not signed. This not only would defeat the purpose of screening, but would undercut the validity of the waiver because of potential coersion.

The procedure that should be followed if screening results in a decision that no complaint will be sought is a simple one. The person arrested should be told that although the case will not be prosecuted he has the right to be brought into court. If he wishes to exercise this right, a complaint will be obtained and the Commonwealth will move to dismiss it at arraignment. If the person wishes

to avoid going to court, he may sign a waiver. The following form, recommended by the Massachusetts Law Enforcement Officer's Handbook, should be used:

> I understand that I have a right to go before a judge or magistrate. I waive that right. I authorize the _____ police to release me without bringing me before a judge or magistrate.[100]

If the person refuses to sign the form, he should be arraigned and the complaint dismissed. By following this procedure, the police officer will be fully protected.

The requirement for obtaining waivers still represents a cumbersome step in the process. For this reason, the Massachusetts District Attorneys should seriously consider proposing legislation to aid this aspect of screening. A suggested amendment to the Massachusetts General Laws follows.

CHAPTER 231, § 94 C

No action for false imprisonment shall lie against any officer who has made an arrest for which probable cause exists, by reason of the fact that the person arrested was discharged or released without being brought before a magistrate, providing that the arresting officer was authorized by the District Attorney or his designee to so discharge or release the person arrested.

FOOTNOTES

1. Miller, Prosecution, The Decision to Charge a Suspect with a Crime, 10 (1970).

2. 27 Corpus Juris Secundum, District and Prosecuting Attorneys, § 10.

3. District Attorneys at present possess an absolute power to screen cases out of the system after a complaint has issued, by filing a nolle prossequi. See M.G.L. Ch. 277 § 70A.

4 There already exists a mechanism to screen private complaint cases, through the use of a magistrate's hearing. See M.G.L. Ch. 218 § 35A.

5. See National Dist. Attys.' Asso., Screening of Criminal Cases, 49-76.

6. The standard to support a criminal charge is generally more stringent than the standard to arrest. See Miller, note 1, at 24-43. In Los Angeles, this fact is evidenced by statistics from 1971 which show that 28% of all felony arrests that came into the District Attorney's Office resulted in no prosecution. Rand, Prosecution of Adult Felony Defendants in Los Angeles County, xi (1973).

7. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, 5 (1967).

8. Screening, note 5, at 61.

9. Miller, note 1, at 30-36.

10. Id. at 36-42.

11. Id. at 155-78.

12. Courts, note 7, at 9.

13. Id.

14. National Advisory Commission on Criminal Justice Standards and Goals, Courts, 17-26 (1973).

15. American Bar Association, Standards Relating to the Prosecution Function and the Defense Function, 83-87 (1971).

16. National District Atty.'s Asso., The Prosecutor's Screening Function, 8 (1973).

17. Id.

18. A.B.A. Standards, note 15, at 92-93.

19. Merrill, Milks, and Sandrow, Case Screening and Selected Case Processing in Prosecutor's Offices, 7 (1973).

20. Katz, Litwin, and Bamberger, Justice is the Crime, 104-06 (1972).

21. Merrill et al, note 19, at 9-10.

22. Id.

23. Prosecutor's Screening Function, note 16, at 10-11.

24. Id. at 33.

25. Institute for Law and Social Research, Management Overview of PROMIS (Prosecutor's Management Information System) (1974).

26. Merrill et al, note 19, at 9.

27. Id. at 27-47.

28. National Center for Prosecution Management, A System of Manual Evaluation of Case Processing in the Prosecutor's Office.

29. Justice is the Crime, note 20, at 112.

30. Prosector's Screening Function, note 16, at 15-16.

31. Springfield is one such police department. It is described in more detail in the second part of this report.

32. Prosecutor's Screening Function, note 16, at 15.

33. Id.

34. Id. at 16.

35. Conversation with John Folkes, Administrator, Philadelphia D.A.'s Office.

36. National Advisory Commission, note 14, at 247.

37. President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, 133 (1969).

38. Merrill et al, note 19, at 16.

39. One note should be made about the practice of taking statements from witnesses at screening. Other jurisdictions which interview witnesses at screening have had problems maintaining a distinction between statements by a witness that are subject to discovery, and reports contained in the prosecutor's file that are protected as "work product." This problem will have to be worked out in the courts as it arises in the Commonwealth.

40. Prosecutor's Screening Function, note 16, at 33.

41. See note 28.

42. In terms of the total time required for screening a case, individual District Attorney's Offices may find that having each screener write out his summary of the case does not present a significant bottleneck. In Los Angeles, where the screeners fill out complaint forms themselves after reviewing the case, the average time spent on screening a case was 16 minutes. Rand, note 6, at 79 n. 3.

43. This alternative might be the least satisfactory from the point of view of obtaining accurate summaries.

44. A.B.A. Standards, note 15, at 94.

45. Justice is the Crime, note 20, at 111-112.

46. Rand, note 6, at 60.

47. Davis, Discretionary Justice, 162-188 (1969).

48. Once an office policy is decided upon, and its existence made known to all the Assistant District Attorneys, the question must be faced whether it should be a matter of public knowledge or not. It is a controversial question, particularly where the policy concerns not the choice between a felony and a misdemeanor, but the choice between prosecution and no prosecution. For a full discussion of this issue, see Abrams, Internal Policy: Guiding the Exercise of Prosecutorial Discretion, 19 U.C.L.A. L. Rev. 1 (1971).

49. M.G.L. Ch. 218 § 35A.

50. M.G.L. Ch. 276A §1 et seq.

51. Challenge, note 37, at 134.

52. Prosecutor's Screening Function, note 16, at 8.

53. A.B.A. Standards, note 15, at 94.

54. Cf. Id. at 92-93, National Advisory Commission, note 14, at 20-21.

55. A.B.A. Standards, note 15, at 84-87.

56. Merrill et al, note 19, at 7.

57. National Advisory Commission, note 14, at 18.

58. One such deferred prosecution program, used in Genesee County, Michigan, is described in National District Attorneys' Association, A Prosecutor's Manual on Screening and Diversionary Programs, 7-185.

59. M.G.L. Ch. 276A § 3.

60. American Bar Association, Code of Professional Responsibility, DR 7-103(A) (1974).

61. Prosecutor's Screening Function, note 16, at 19.

62. Id.

63. For example, Detroit and St. Paul. Id.

64. For example, Brooklyn and Manhattan.

65. Prosecutor's Screening Function, note 16, at 20.

66. Id.

67. Rand, note 6, at 80.

68. Prosecutor's Screening Function, note 16 at 20.

69. See note 2.

70. Remington, Newman, Kimball, Melli, and Goldstein, Criminal Justice Administration, 414 (1969).

71. Comment, The District Attorney - A Historical Puzzle, 1952 Wis. L. Rev. 125.

72. Cal. Penal Code, § 806 (1970):

> A proceeding for the examination before a magistrate of a person on a charge of an offense originally triable in a superior court must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate: provided, that when such magistrate is a judge of the justice court, the proceeding must be commenced by a written complaint under oath subscribed by the complainant, filed with the magistrate and concurred in by the district attorney of the county in which he sits or the Attorney General of the State of California....

73. Wis. Stat. Ann, Crim. Pro., § 968.02 (1971):

> (1) Except as otherwise provided in this section, a complaint charging a person with an offense shall be issued only be a district attorney of the county where the crime is alleged to have been committed. A complaint is issued when it is approved for filing by the district attorney. The approval shall be in the form of a written indorsement of the complaint.
>
> (2) After a complaint has been issued, it shall be filed with a judge and either a warrant or summons shall be issued or the complaint shall be dismissed ... Such filing commences the action.
>
> (3) If a district attorney refuses or is unavailable to issue a complaint, a county judge may permit the filing of a complaint, if he finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing. Where the district attorney has refused to issue a complaint, he shall be informed of the hearing and may attend. The hearing shall be ex parte without the right of cross-examination.

74. Mich. Stats. Ann., Code of Crim. Pro., § 28.860 (1972):

> For the apprehension of persons charged with offenses, excepting such offenses as are cognizable by justices of the peace, [all judges] shall have power to issue processes to carry into effect the provisions of this chapter: Provided, however, That it shall not be lawful for ~~ay~~ of the above named public officials to issue warrants in any criminal cases, [except traffic cases] until an order in writing allowing the same is filed with such public officials and signed by the prosecuting attorney for the county, or unless security for costs shall have been filed with said public officials.

75. Smith, Mass. Practice, Vol. 30, Criminal Practice and Procedure, 399-402 (1974).

76. Cf. Attorney Genl. v. Tufts, 239 Mass. 458, 489 (1921):

> The authority vested in [the district attorney] by law to refuse on his judgment alone to prosecute a complaint or indictment enables him to end any criminal proceeding without appeal and without the approval of another official.

77. M.G.L. Ch. 277 § 70A.

78. See e.g., Tufts, note 76.

79. See e.g., Commonwealth v. Descalakis, 246 Mass. 12, 18-19 (1923).

80. Commonwealth v. Pelletier, 240 Mass. 264,343-44, 347-48 (1922).

81. Tufts, note 76, at 519,531.

82. Id. at 519.

83. Id. at 517.

84. Commonwealth v. Stone, 105 Mass. 469 (1870).

85. Commonwealth v. Haddad, 308 N.E. 2d 899 (1974).

86. M.G.L. Ch. 276 § 22.

87. See Haddad, note 85.

88. The only statutory limiation on private prosecution is M.G.L. Ch. 12 § 27 which states that district attorneys "shall appear" for the Commonwealth in all criminal cases in Superior Court. District Court participation by District Attorneys is not required.

89. One such agreement now exists with respect to complaints sought in the Dorchester District Court by the Boston Police Department.

90. See note 58.

91. M.G.L. Ch. 218 § 35A.

92. Private complaints often call for attempts to reconcile the parties through mediation, or a referral to a social service agency. Many of these types of disputes call for more than merely obtaining the legally relevant facts.

93. This statute is modeled in large part on the legislation existing in Wisconsin, note 73. It omits the procedure for judicial issuance of a complaint in the event the District Attorney refuses prosecution. There are two reasons for this. First, a District Attorney can always exercise his power to nolle pros a case which he feels should not go forward. Second, it would be a breach of the principle of the separation of powers for the judiciary to initiate prosecution.

94. See e.g., Horgan v. Boston Elevated R.R., 208 Mass. 287 (1911); Keefe v. Hart, 213 Mass. 476 (1913); Bates v. Reynolds, 195 Mass.549 (1907) Shea v. Sullivan, 261 Mass. 255 (1927).

95. See e.g., Doherty v. Shea, 320 Mass. 173 (1946); Joyce v. Parkhurst, 150 Mass. 243 (1889); Keefe, note 94; Bates, note 94; Sullivan, note 94; Brock v. Stimson, 108 Mass. 520 (1871); Phillips v. Fadden, 125 Mass. 198 (1878); Caffrey v. Drugan, 144 Mass. 294 (1887).

96. See e.g., Brock, note 95, at 522.

97. Keefe, note 94, at 482.

98. Bates, note 94, at 552.

99. See Wax v. McGrath, 255 Mass. 340 (1926); Boyd v. Adams, 17 Cr. L. Rep. 2021 (7th Cir. , March 27, 1975).

100. Massachusetts Committee on Law Enforcement and Admin. of Crim. Justice, Massachusetts Law Enforcement Officers Handbook, 40 (1972).

Screening: A Proposal for Springfield

The second section of this report deals specifically with the Springfield District Court. First it describes the existing structure of case processing in the District Court, and sets out the soon to be implemented changes that are planned. Next, it discusses the need for data collection and evaluation, and presents the results of such an effort in Springfield. Last, it sets out a proposed screening procedure--with instructions, forms, and budget.

Location and Jurisdiction of the Springfield District Court

Located at the edge of the downtown business area, Springfield District Court is the second busiest municipal court in the Commonwealth. The Court encompasses within its geographic boundaries the towns of Springfield, West Springfield, Longmeadow, Agawam and East Longmeadow, with a combined population of 249,357 (Massachusetts 1971 Census). Springfield District Court has criminal jurisdiction over minor violations of the law, motor vehicle violations, and other misdemeanors (except libels). Felonies are also tried in the District Court if they are punishable by a sentence to a state prison of not more than five years. Springfield District Court cannot sentence a person to the state prison, even after a felony conviction, but can commit offenders to jails and

houses of correction (on sentences of no more than two and one-half years for a single offense) or to the Massachusetts Correctional Institutions at Concord or Framingham.

During fiscal 1973-1974, Springfield District Court processed more than 31,000 criminal complaints, of which approximately 23,600 were for non-parking motor vehicle violations, and the remainder were for traditional crimes.

Case Processing in Springfield

In cases originated by an arrest, the complaint is sought not by the arresting officer but by a court liaison officer for the particular department involved. The District Attorney's Office does not participate in any way in the charging process, or at the arraignment. Preparation of a case for trial lies entirely within the province of the individual police departments. The District Court prosecutor's program of the District Attorney's office assigns to the Springfield District Court either two or three attorneys each day. These attorneys rotate throughout the District Courts in Hampden County. On the whole, District Court prosecutors decide what cases they will try on the morning of the hearing, by going through the docket for that day. The prosecutor then has to obtain the case file--if one exists--from the police officers who are responsible for the case. Cases are reviewed for trial, and

witnesses interviewed, in whatever time and whatever space is available before the case is called. This may amount to no more than twenty minutes, and mean that interviews must be conducted in the hallway, since only one small room is allotted to the District Court prosecutors.

Changes in Springfield

Two changes are scheduled with respect to the administration of criminal justice in the Springfield District Court which will both facilitate any screening operation and which would in turn be made more successful if screening were implemented.

The first is a change in procedure. There is a plan for a compulsory system of pre-trial conferences in the District Court, to be put into effect in the Fall of 1975. At arraignment, rather than setting down a trial date, a date would be set within five days for a pretrial conference. At the conference, only a member of the District Attorney's office, defense counsel, a liaison from the police department involved, and a member of the Springfield District Court Probation Office will appear.

The purpose of this meeting would be to determine if the case can be disposed of on the basis of a plea, or through the mechanism of a diversion project. If all parties agree on

on such a disposition at the District Court level, the matter would be referred to a justice for immediate action. If a trial must be held, the conference will attempt to reach agreement narrowing the issues; dispensing with testimony of certain witnesses through the use of stipulations, for example. Once these pretrial agreements have been reached, a mutually convenient trial date will be scheduled.

The second major change is the scheduled completion of a new Hall of Justice in Springfield. For the first time, the District Attorney's Office, the District Court, and the Superior Court will be in the same building. A separate area has been set aside for the District Court prosecutor program--which will include a reception area and individual offices for the attorneys.

Screening fits in with both the pretrial conference system and the centralized building. Although these changes are independent of any screening proposal, their timely addition makes screening even more attractive for Springfield.

Data Collection and Evaluation

Over the past several years, profound alterations have been recommended for the court system by various commissions and studies. But virtually every major national inquiry into the health of the courts--from the Wickersham Commission in 1931 to the National Advisory Commission on Criminal Justice Standards and Goals in 1973--has decried the paucity of comprehensive, factual data so necessary for rational and systematic changes in the criminal justice system.

This lack of available data is not a remote issue, of concern only to academics and scholars. Rather, it is an issue which confronted Center staff as we began to consider the where's and how's of establishing a screening operation in the Springfield District Court.

Some basic questions immediately come to mind: Where should the screening unit be located? How many assistant District Attorneys will have to be assigned to a screening unit to handle the caseload? What kind of information will have to be immediately available to them? And finally, how much money will it cost?

Obviously, some of these questions will be answered on the basis of instinct and common knowledge. With five police departments within the jurisdiction of the Springfield District Court it will probably make more sense to locate a

screening unit in the prosecutor's office. If, on the other hand, most arrests in a given court originate from only one or two stationhouses, a screening unit might more profitably be situated in the stationhouse.

Other kinds of decisions, such as manpower needs and cost factors, however, will require more detailed information. It is difficult to estimate the cost of a project if one does not know the personnel requirements, and it is impossible to predetermine personnel requirements without knowledge of caseload demands.

One way of dealing with this situation is to collect some basic data early in the screening design process. This data will not only be helpful in outlining the basic needs of a screening program but will also serve as a basis for comparison after screening has been implemented.

Perhaps the best way to begin any data collection process in the context of screening is with police complaints. By selecting a limited time period as representative of the annual number of complaints generated in a single court, one may to begin to estimate the dimensions of the problem. For example, a random sample of the court docket for a single year could elicit information about the number of complaints granted, the charge, the number of continuances, the number of different times witnesses must appear, and final disposition.

This process of data gathering was done in Springfield. In order to realistically assess the impact of a proposed screening project, the Center conducted initial docket survey of the Springfield District Court. Using 1973 as a base year,[1] the Center selected one day from each month to constitute a sample. Factors such as days of the week, holiday seasons, and court vacations were considered before the final selection of sample days was accomplished. Chosen in this way, the sample consisted of: Monday, January 15; Tuesday, February 6; Wednesday, March 7; Thursday, April 5; Friday, May 18; Monday, June 18; Tuesday, July 17; Wednesday, August 22; Thursday, September 6; Monday, October 1; Tuesday, November 26; and Wednesday, December 19. With the aid of the Springfield District Court Clerk's Office, the criminal court docket for each of these days was reproduced. Cases for each day were tallied, yielding 343 sample cases. The following table illustrates the daily breakdown.

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[1] 1973 was selected so that cases could be followed to completion in both the District and Superior Court.

TABLE 1

Date	Number of Cases
January 15	12
February 6	17
March 7	25
April 5	9
May 18	41
June 18	31
July 17	27
August 22	54
September 6	37
October 1	31
November 26	36
December 19	23

Averaged out, this meant that the Court handled approximately 29 criminal cases (28.58) each day, or 6,859 cases yearly.

Following the intial tally, cases were transfered onto coding sheets highlighting the District Court docket number, the defendant's name, the complainant's name, the number of appearances, the charge, and the disposition. Special note was taken of cases which were appealed or bound over to the Superior Court.

Attention was focused on those aspects of case processing which were critical to the development and eventual evaluation of a screening project. These factors include the number of continuances, the amount expended on witness fees, and final disposition. All provide some measure of prosecutorial performance and efficiency. Table 2 represents the findings with respect to the disposition of cases in the selected sample.

TABLE 2

CHARGE BY DISPOSITION

Disposition	Disturbing the Peace	Breaking & Entering	Drugs		Larceny	Assaults	Receiving Stolen Property	Assault With a Deadly Weapon	Guns	Prostitution	Other
			Marijuana	Other							
Default	3	1	-	1	3	1	1	-	2	1	2
Dismissed	5	4	3	1	10	15	1	2	-	1	18
Not Guilty	-	-	4	3	1	1	3	1	-	-	14
No Probable Cause	-	2	-	-	-	-	-	1	-	-	0
Probable Cause	-	28	1	6	6	4	2	5	-	-	10
Continued Without a Finding	21	1	3	1	5	3	3	2	1	4	5
Filed	-	-	-	-	1	-	2	-	4	-	17
Fine	18	-	1	-	1	-	-	-	4	-	18
House of Correction Suspended/Probation	1	1	5	3	7	4	2	2	-	1	5
House of Correction Imposed	-	2	1	2	1	5	3	-	-	1	3
TOTALS	48	39	18	17	35	34	17	13	51	08	92

Police complainants and witnesses in each case were identified, as were civilian witnesses. For those cases originating from the Springfield Police Department, both police and civilian witness fees were compiled. Table 3 is a graphic presentation of our findings.

TABLE 3

OFFENSE BY AMOUNT OF WITNESS FEES

Offense	Number of Cases	Total Amount Paid in Civilian Witness Fees in District Court	Total Amount Paid in Police Witness Fees in District Court	Total Amount Paid in Police Witness Fees in Superior Court
Disturbing the Peace	35	$ 28.00	$1,245.10	$ 456.07
Drugs	34	-	740.65	450.88
Breaking & Entering	20	24.80	519.78	39.66
Larceny	16	134.70	657.55	-
Prostitution	8	18.70	520.10	-
Receiving Stolen Property	8	55.30	463.50	25.05
Assault & Battery Assault With a Deadly Weapon	9	52.30	338.16	88.49
Guns	4	-	68.88	-
Assault & Robbery	2	6.60	87.67	-
Miscellaneous	32	27.50	287.70	-
TOTALS	168	$347.90	$4,929.09	$1,060.15

As can be seen from the precceding table, a total of $6,337.14 was spent in witness fees alone during the processing of 168 cases. For certain types of offenses, the figures are even more extraordinary. The prosecuting of thirty-five disturbing the peace cases resulted in witness fees over 1,700 dollars. Police witness fees in prostitution cases averaged to $65.00 per case. Cross tabulation run by type of offense between witness fees and disposition showed no correlation between the seriousness of the charge and the amount of witness fees, or between disposition of the case and the amount of witness fees.

Information of this type is helpful for a number of reasons. A sample estimate of the number of complaints requested and granted provides a rough indication of manpower demands. The criminal dockets for the sample days were examined to determine how many screening interviews would be required each day. Each case originated by a law enforcement agency was considered to require a separate screening interview; except co-defendants or multiple cases against a single defendant, which were considered to require only one interview. The average number of screening interviews was 12 (11.53), ranging from a low of three to a high of eightteen. The number of screeners needed in the Springfield District Court, therefore,

should be sufficient to allow processing of an average of twelve cases each morning, and representation of twelve cases each afternoon at pretrial conferences. Although there is no standard formula for computing caseload for each screener, a Rand study in Los Angeles estimated that it took an average of 16 minutes to process a case, and the average for cases where a felony complaint was authorized was 31 minutes. In Springfield, then, in order to ensure adequate coverage on busy days so that cases can be arraigned the same day as they are brought to the screening room, three attorneys are needed. Thus, by gathering sample data about the annual number of complaints, one may estimate the number of Assistant District Attorneys necessary to staff a screening unit. It should be noted that the estimate of three attorneys takes into account their responsibility to screen cases and in addition represent the Commonwealth at the pretrial conference. The attorneys should also be able to handle individual District Court trials as the need arises.

Information gathered as to charge is also helpful in making staffing decisions where sufficient funds for full coverage are not available. If preliminary data examination indicates that the police file approximately 7,000 criminal complaints yearly, but the prosecutor's budget indicates that only one person can be assigned to the screening unit, information

gathered about frequency of different charges can help in selecting those types of cases to be screened. Thus, a prosecutor's office may decide to screen only the most serious cases--preliminary data collection may help to narrow the range of choice.

So far we have discussed the use of statistical information as a guide to planning for a screening program. These same types of basic court statistics, howver, can also be used for evaluative purposes.

There are several performance measures that may be used to assess the effectiveness of a screening program. Each measure has its unique meaning that cannot be obtained from the others. Taken together they present a fairly complete picture of prosecution effectiveness. Some of the more commonly used measures are:

1. Rejection Rate - that percentage of cases presented by the police for prosectuion in which the District Attorney chooses not to file.

2. Dismissal Rate - that percentage of the defendants whom the court releases prior to adjudication. The dismissal may occur in the District Court before or at the preliminary hearing. It may result from a failure of the Grand Jury to indict, or it may result from a motion by the defense or prosecution in Superior Court.

3. Plea Rate - that percentage of the defendants who plea guilty.

4. District Court Conviction Rate - that percentage of cases filed in District Court which result in either a guilty plea or a conviction.

5. Superior Court Trial Conviction Rate - that percentage of cases that go to trial and result in a conviction in Superior Court.

6. Superior Court Overall Conviction Rate - that percentage of cases filed in Superior Court which result in either a guilty plea or a conviction.

It should come as no surprise to those familiar with court statistics that these definitions raise a host of semantic and procedural questions about their application in specific cases, but their usefulness is fairly self-evident. For example, the dismissal rate is one measure of profiling screening success. For jurisdictions in which a prosecutor files all or most cases brought in by the police, a large percentage are usually dismissed in District Court or before trial in Superior Court. If statistics have been collected before and after the implementation of a screening program,lower dismissal rates after the implementation of screening is one way of demonstrating the program's success.

If the District Attorney is to plan his screening function effectively he must periodically evaluate his performance against established policies, objectives and standards. To accomplish this requires continuous feedback or reporting on the results of the screening operations. The previously mentioned indicators are invaluable in this respect.

One method of ensuring continuous evaluation is the compilation of a monthly report documenting both the screening process--the number of screening interviews, the number of complaints issued, the number of pretrial conferences, and the screening product--the number of cases dismissed, the number of guilty pleas entered, and the number of convictions.

Monthly reports can be compiled by secretarial or administrative staff as part of their daily operations. With respect to the suggested screening procedure and forms which follow this discussion, the secretarial staff could easily keep track of the required information. All new cases are logged in on the Sign-In Sheet (Form 1), the receptionist has a daily tally of the number of complaints requested and the number of complaints authorized. In those cases where no complaint has been authorized, secretaries can note both the signed waiver form (Form 4) and the case rejection form (Form 3). Tabulation

of these totals on a monthly basis provides basic information about the screening project's caseload. These totals may also combine to form the rejection rate, one of the evaluation measurements discussed earlier.

Monthly review of information contained within the conference tickler file is also useful in evaluating the screening process. Cards may be counted to obtain the number of pretrial conferences held, pretrial caseloads for each participating Assistant District Attorney, and the frequency of requests for additional investigation.

Review of Sign-In Sheets and conference tickler files provide only two performance assessments. Obviously, as a program begins carrying cases through trial disposition, other measures come into play. For our purposes, these tallies help to evaluate the screening structure suggested, and provide immediate input about organizational aspects of the developing screening program.

CONTINUED

1 OF 2

A SCREENING PACKAGE

The section which follows contains a proposed system to screen cases in the Springfield District Court. First, there is a summary overview of the way the system works. Then, there are instructions to police officers, attorneys, and secretaries concerning their individual responsibilities in screening. These instructions are keyed to proposed forms which appear at the end of the instruction section. Third, there is a proposed budget for the entire operation.

It should be noted that this proposal does not include any participation by either the attorneys or the secretarial staff in the processing of a case beyond the pretrial conference stage. There is no reason to believe, however, that the system could not be modified to allow screening attorneys to handle the trial of selected cases, or to permit the secretaries to administer the files or cases that have been assigned for trial in the District Court. In any case, the system would have to be run through on a trial basis for several weeks to determine the feasibility of the operations instructions, and any modifications in terms of additional duties that the attorneys or secretaries could take on could be made at that point.

OVERVIEW DESCRIPTION OF THE PROCESS

For every non-traffic arrest where a complaint will be sought, the arresting officer is responsible for appearing at the District Attorney's Office in order to participate in screening. If the officer is able to appear at the District Attorney's Office during screening hours on the day of the arrest, the case will be screened then. If he cannot, the case will be screened on the morning of the next day when court is in session. The arresting officer must obtain from the probation department of the District Court the criminal record of the arrestee before coming to the District Attorney's Office. The officer will also have with him the arrest report and any statements by the defendant or by civilian witnesses that the officer feels are necessary to screening. The officer shall also bring with him any civilian witnesses that are able to appear and whose testimony is relevant, as well as any necessary physical evidence.

At the District Attorney's Office, the officer shall sign in with a receptionist and will be referred to the next available screening Assistant District Attorney. The police officer and any civilian witnesses will be interviewed by the Assistant District Attorney, who will decide the appropriate action to be taken on the case. The Assistant

District Attorney will notify the officer what charges will be sought and direct him to a secretary who will type up the necessary application for a complaint based upon a form authorized by the screener. The officer will obtain from the receptionist, prior to leaving the screening room, the case file containing all the documents about the case that are generated by screening. The officer will then take the application to the Clerk's office to seek a complaint and will deliver the case file to whomever represents the Commonwealth at arraignment. After arraignment, the file is returned to the screening room for processing. This entails having a secretary enter the case in the files, and place the next appearance date on a master calendar and on a tickler file, along with any requests in the case for follow up information or further investigation. The file will then be given to the Assistant District Attorney who screened the case, and who will be responsible for it at the pretrial conference. After the pretrial conference, the case will be assigned to a District Court prosecutor for trial.

If the screener does not authorize prosecution in a case, a copy of the form indicating the reasons for his decision will be given to the arresting officer for Police Department files. In such cases, the screener may nonetheless have a complaint issued and direct that dismissal be sought at the arraignmen In some cases, the screener may decide that no complaint should be

sought. In that instance, the officer will inform the person arrested that the District Attorney has decided not to go ahead with the case and shall read to the person the waiver form provided for such situations. If the person signs the waiver form, he shall be released. If the person does not freely sign the waiver form, the officer shall notify the Assistant District Attorney who screened the case. In that event, a complaint will be sought and directions placed in the file that the Commonwealth should ask for its dismissal at arraignment.

PROCEDURES

Police Officers

--Introduction: The purpose of this procedure is to better coordinate efforts at prosecution between the police department and the District Attorney's Office. This type of early cooperation enables more thorough preparation; more efficient coordination of evidence and witnesses; and ultimately, more convictions in those cases which deserve to be prosecuted. The job of the police officer in this process is to provide the District Attorney with the information on which successful cases can be based. This means that in filling out arrest reports and in deciding on what evidence or which witnesses to bring to the District Attorney's

Office for screening, the officer must exercise his discretion in making judgments about what type of evidence will be needed to prepare the case for an eventual conviction.

Each officer should cooperate fully with the Assistant District Attorney who screens his cases. If the officer has a dispute about the action of the Assistant District Attorney in a particular case, the officer should raise his point with the supervising attorney in charge of screening. If the dispute is not resolved at that level, the officer should inform his supervisor, and the dispute will be resolved one way or the other at a higher level.

-- Instructions: (1) Whenever an arrest is made in a non-traffic case and a decision is reached by the police department to seek a complaint, the case must be screened by the District Attorney's Office prior to requesting a complaint from the Clerk's office.

(2) Only the arresting officer shall participate in screening. If other officers were involved in the investigation or arrest, their names and the substance of what they could testify to shall be reported to the Assistant District Attorney who screens the case. If these other officers are needed, it is the responsibility of the Assistant District Attorney to call them in for consultation.

(3) The arresting officer in each case to be screened is responsible for brining to the District Attorney's Office the following material:

a. the arrest report;

b. a copy of the arrestee's criminal record (to be obtained from the probation department of the District Court);

c. any statements by the arrestee or by witnesses, that have been reduced to writing;

d. any items of physical evidence the officer feels are necessary to screening and can be be taken to the District Attorney's Office (a knife, for example);

e. a list of the officer's days off and other court appearance dates.

(4) If there are civilian witnesses in a case whose testimony the officer feels is relevant and who are able to come down to the District Attorney's Office, the witnesses shall be told to meet the officer at the screening room. The officer shall explain to the witness that it is important to the successful prosecution of the case for an Assistant District Attorney to interview him as soon as possible after the crime.

(5) Each case shall be taken to the screening room as soon as possible after the arrest. This means that if a case is ready to be screened on the same day as the arrest and if the officer can present it to the District Attorney's Office before 4:00 pm, the case should be screened that day. Otherwise, the officer should be at the screening room at 8:30 on the morning of the next day during which court is in session.

(6) On entering the screening room, the officer shall sign in at the receptionist's desk, filling out items 1 and 3-5 on the sign in sheet (Form 1). A copy of the arrest report should be given to the receptionist, who will prepare a case file and return it to the officer. If the officer has just come off duty from a night shift, he should so inform the receptionist. If there are co-defendants involved, a separate entry should be made for each, and the receptionist informed of the fact that there are codefendants. The officer shall thereafter wait with his witnesses until referred to an Assistant District Attorney.

(7) The officer shall provide to the Assistant District Attorney assigned to the case all the information he has with him, and shall cooperate in answering questions.

(8) If the Assistant District Attorney requires additional investigation on the case, the officer shall obtain a statement of what additional investigation is required (Form 5). This statement shall be given to the officer's supervisor.

(9) After a case has been screened, if the Assistant District Attorney authorizes prosecution the officer will take a copy of the form which states the charges that have been authorized (Form 2) and shall bring the form to an available secretary who will type out an application for a complaint.

(10) After the application has been typed out, the officer will return to the receptionist and pick up the case file. The officer shall note on the sign in sheet (Form 1,item 2) the time he leaves the screening room.

(11) The officer shall take the application to the Clerk's Office and obtain a complaint. The file shall be delivered to whomever is representing the Commonwealth at arraignment. Unless told otherwise by the Assistant District Attorney who screened the case, the officer shall not remain for the arraignment.

(12) Under certain rare circumstances, all or some of the charges for which the person was arrested will not be authorized for prosecution by the Assistant District Attorney. The officer should obtain a copy of the statement of reasons why prosecution is not authorized (Form 3) and return same to his supervisor.

(13) In cases where the Assistant District Attorney decides both that there will be no prosecution and that there will be no complaint sought, the officer shall upon leaving the screening room go to the holding area and tell the person arrested that the District Attorney's office has decided not to seek a complaint in this case. If the arrestee is already free on bail, the officer shall locate him through the office of the probation department of the District Court. The officer shall read to the person arrested, the waiver statement (Form 4), and ask that the person sign the statement. If the statement is signed freely, the person shall be released, and the waiver form returned to the screening room. If the statement is not signed freely or if the arrestee cannot be located in the courthouse, the officer shall immediately return to the District Attorney's Office and so notify the Assistant District Attorney on the case. The officer should refer all questions by the arrestee about the effect of the waiver statement to the District Attorney's Office.

(14) If at any time an officer has a disagreement over the handling of a case that cannot be resolved with the Assistant District Attorney who screened the case, the officer shall notify the supervising attorney in the screening room. If the dispute is not resolved at that level, the officer shall inform his supervisor of the matter.

Assistant District Attorneys

--Introduction: In order for screening to be a useful tool for the successful and efficient prosecution of cases, it must be able to gather enough information to form the basis for all future prosecution actions. Screening is the foundation on which an ultimate conviction is based. It should, therefore, be done in a careful and thorough manner. Witness interviews should be comprehensive, and the results should be placed in the file in a useable form.

Aside from gathering information, screening also provides an opportunity for the Assistant District Attorney to exercise his discretion in deciding what to do about a case. Whether to authorize prosecution or not, what charges to bring, and whether additional investigation is needed are examples of the type of crucial judgments called for in screening. To make these decisions properly requires as a bareminimum a thorough knowledge of the substantive criminal law of the Commonwealth as well as a sense of what is tactically necessary at a trial. If a screener is unsure about these questions, he should consult with the supervising attorney. It is only by demonstrating the professionalism of a screening operation in making these judgments that screening will be viewed as a valuable asset by the other components of the criminal justice system, and will in fact become successful.

-- Instructions:

Case Evaluation(Form 2)

(1) The police officer in each case should have with him the arrest report and a copy of the defendant's criminal record. From this, items 1-7 and item 10 of the case evaluation will be filled out by a secretary. The screener will fill out item 8, 11, 12, and 16 after he has interviewed the police officer. The remaining items (9,13-15) which are marked with an *, are filled out at arraignment.

(2) Item 8: In deciding what charges to authorize, the screener should carefully evaluate all of the potential evidence. Although the charges requested by the police will normally be the guide, the Assistant District Attorney should consider whether additional charges are appropriate. The arrestee's criminal record should be consulted to see if any second offender provisions are applicable. As a matter of course, the screener should be satisfied that sufficient evidence exists as to each of the elements necessary for a conviction of every charge authorized.

(3) Item 11: This item provides a quick overview of the evidence in the case. If evidence was seized as a result of a police search, check box a. If the defendant made a statement, even if exculpatory, check box b. If there was an identification of the defendant by a civilian witness (whether

an on the scene show up, from a photograph, at a lineup, or an informal stationhouse procedure) check the appropriate box. Last, check the box or boxes in item 11(d) if there is a police witness, the victim will be a witness, or there are other witnesses.

(4) Item 12: The bail recommendation is intended as a guide for the Assistant District Attorney at arraignment. The screener should take into special account the recommendation of the arresting officer as to bail.

(5) Item 16: This summary of the case is one of the hearts of the screening operation. It is intended to give someone reviewing the file an overview of the case. This section requires a short statement of what the defendant did. This does not necessarily include a summary of how the Commonwealth can prove its case: detailing which witness can testify to what, for example. That type of information goes on the evidence list (Form 6). What is required here is a concise statement of when, where, and what acts were committed by the defendant. Someone reading this summary should be able to see that the necessary elements exist for each charge that is authorized.

(6) After the screening conference is complete, the case evaluation form is given to the officer who takes it to a secretary to have an application for a complaint typed up based on item 8.

Evidence List (Form 6)

(7) Based on an interview with the police officer and any civilian witnesses at screening, the Assistant District Attorney should be able to provide a brief summary of how the Commonwealth can prove its case. For each witness interviewed, there is a separate entry on the evidence list. This entry includes basic background information (name, home and business address and telephone), as well as any dates in the relevant future when the witness is unavailable to appear in court. The meat of the entry is a three or four sentence summary of what testimony the witness can give. This summary should be complete enough to make sense to the Assistant District Attorney who must try the case, but be short enough to be useful. For example, the entry: "Witness saw robbery," is a poor type of witness summary. More appropriate would be the following:

> 3/7/75 at 10:30 pm, W in Joe's Bar sitting at table. W saw D enter. Lighting good, W not drunk. W observed whole robbery, made positive ID from photo's at station.

The final item to be filled out at screening about each witness is a space for comments. These may include the screener's assessment of the witness' credibility, or special problems the witness might create at trial such as the need for a translator. The boxes to the left of the witness' name will

be filled out after the pretrial conference. If it is necessary for the witness to appear at the next date the case is scheduled to be in open court , the box next to the witness' name will be checked. If a subpoena should issue for that date, the appropriate box should be checked as well.

(8) The back of the evidence list contains space to put down information relating to physical evidence. In each case, it is important in establishing at trial the chain of custody for the screener to note how the property was obtained and who the current custodian is.

(9) If there was an identification of the Defendant by a civilian witness, the pertinent summary section should be filled out. Any description of the defendant given by the witness prior to the identification should be noted. In the comments section, the screener can note any potential defense challenges to the identification procedure.

(10) The last item on the evidence list relates to statements by the defendant. The surrounding circumstances and the content of <u>any</u> statement should be summarized. Even a seemingly exculpatory statement may be used at trial to impeach a defendant who changes his story. Boxes are available to note whether a <u>Miranda</u> warning was given prior to the statement, and whether it was signed or transcribed. In the comments section, the screener can note any potential defense challenges to the admission of the statement.

Additional Investigation (Form 5)

(11) One of the advantages of screening is that it allows the District Attorney's Office an opportunity to evaluate the need for additional evidence in a case at a point in the process early enough to ensure that the police can obtain what is available. In screening a case, the Assistant District Attorney should determine if there is a need for additional police investigation. This may include locating additional witnesses who can identify the defendant, or who can rebut his alibi claim. It can also be used to note what type of expert witnesses--whether ballistician, chemist, or other--will be needed at trial. It might call for the preparation of maps, diagrams or photographs which will be necessary at the trial. It might also require further physical evidence, or scientific tests on evidence already in possession of the Commonwealth. These requests should be noted on this form, and one copy given to the police officer. The screener should note next to each item requested whether it is needed by the date of the pretrial conference, at the District Court trial or hearing, or not until the case reaches the Superior Court. The secretary who processes the case file will be responsible for checking up on the progress of these requests as the case nears the trial or hearing date.

Case Rejection (Form 3)

(12) The District Attorney's Office retains the right to decide whether a case shall be prosecuted or not. This power calls for the exercise of the most responsible sort of judgment on the part of the screener. A decision not to prosecute in a case where the police have already made an arrest should not be made lightly. On the other hand, where no prosecutable case exists, the District Attorney's Office has an obligation to see that the case does not result in unnecessary court action. A decision to invoke this discretionary power should be made only after a thorough analysis of all of the facts. The Assistant District Attorney should make the police officer who made the arrest as well as any civilian witnesses who are at screening aware of the exact reasons why prosecution is not warranted. For this purpose, the screener shall give a copy of the case rejection form to the officer in addition to the file copy.

(13) In addition to checking off the box that describes the reason why no prosecution will occur, the screener should summarize his reasons. Here again, the statement should be brief but complete. For example, in a case where the defendant is charged with possession of marijuana, a poor type of statement

would be: "Insufficient evidence of possession." A complete statement in this case would be:

> Investigation does not clearly establish identity of accused as possessor of marijuana. Marijuana found in glove compartment of car in which accused was one of five passengers. No other evidence establishing possession.

(14) Under some circumstances, the screener may decide not to prosecute but may nevertheless want the defendant presented at arraignment where the complaint will be dismissed. This may be appropriate when the charge is serious or controversial, or when the defendant is in fact guilty but sufficient admissable evidence is missing. In these circumstances, the direction to ask for dismissal should be noted on the case evluation as well as the rejection form.

(15) Under current Massachusetts law, a person who is arrested has a right to have his case presented to a magistrate. Therefore, the police must obtain a waiver before a complaint can be dispensed with. If no complaint will be sought, the officer should be given a waiver form (Form 4) in addition to the case rejection form. The officer should explain the circumstances to the arrestee and obtain his signature on the waiver form. The officer should be told to inform the screener if there is any problem with the waiver procedure. In that event the case will go forward on the same basis as in paragraph 14.

(16) After the end of each screening interview, the Assistant District Attorney should complete whatever forms are appropriate to the case, and call in a secretary to take the file, and to notify her that the screener is available for the next case. If the screening interview involved more than one case file (as would be the situation, where there were co-defendants), both files should be given to the secretary with instructions that the file folders be marked so that the cases are thereafter handled together.

(17) If no complaint will be sought, the file should not be given to the officer, only the waiver form and rejection form. The secretary keeps the file in these cases.

(18) Any disputes over a screener's judgment, or any questions that the screener has about a particular decision, should be referred to the supervising attorney.

(19) At the end of each day, the case files which have been screened by each Assistant District Attorney will be assigned to him for representation at the pretrial conference.

(20) After the pretrial conference, the attorney shall make a notation on the appropriate place on the file folder concerning the results of the proceedings, as well as putting down the date set for trial or hearing in the District Court. The Assistant District Attorney shall also review the evidence list to note what witnesses must appear at the next court date, and if a subpoena should issue. When the file is complete it should be turned over to a secretary.

Secretarial Staff

--Introduction: It is the responsibility of the secretarial staff to ensure that files are assembled and routed properly, to keep track of court dates and attorney assignments, and to keep records pertaining to the business of the screening unit.

Case files are assmebled by the secretaries prior to screening. After the screening interview, the secretary gives the file to the police officer who will take it into the arraignment session. After the arraignment, the file is returned, and the information in it is processed according to the date for the next stage in the judicial process--the pretrial conference. There is a separate master calendar and tickler file to use in entering cases scheduled for a pretrial conference. After this processing, the file is routed to the Assistant District Attorney who screened the case and who handles it at the conference. After the conference is held, the file is returned to the secretary who will process it on a separate trial master calendar and tickler file system according to the eventual trial date.

--Instructions:

(1) There must be a receptionist on duty at all times during screening hours. The receptionist is responsible for logging new cases in on the sign in sheet (Form 1).

(2) The receptionist shall obtain from each officer the arrest report in every case to be screened. Information from this report will be used to fill out items 1-7 and item 10 on the case evaluation form (Form 2). This form will be placed in a file along with the arrest report. The name of the defendant shall be placed on the file folder, along with a code number showing the date of screening and the number of the case on the sign in sheet. For example, the second case screened on March 27, 1976 would be numbered 76-3-27-2. If there are co-defendants in the case, each file folder will make reference to the name of the co-defendant. A record shall be kept of all files started on the sign in sheet (Form 1). After preparation of the file, it will be given back to the officer, who will bring it in to the screening interview.

(3)The receptionist shall refer officers to available screeners in the order in which they appear on the sign in sheet, except that any officer who appears at the screening room in the morning immediately following a night shift shall be given priority. It is the responsibility of the officers to inform the receptionist of this fact. When the police officer informs the receptionist that there are co-defendants in a case, all case files relating to the co-defendants shall be sent to the screener

to be screened together.

(4) The secretaries shall be available to type up applications for complaints based upon the charges requested in item 8 of the case evaluation forms which officers are given after a screening interview. If there are any questions concerning the language of the application form, the secretary should ask the Assistant District Attorney who screened the case.

(5) A secretary will obtain the file in the case from each Assistant District Attorney, after the screening interview is over. In those cases where a complaint will be sought, this file will be given to the officer before he leaves the screening room. If no complaint has been authorized, the secretary shall retain the file and hold it until the officer returns a signed waiver form (Form 4). A record should be kept of all files that leave the room by checking item 7 on the sign in sheet.

(6) After the cases have been arraigned, the files will be returned to the screening room. They should be logged in on item 8 of the sign in sheet.

(7) For each file that returns from arraignment, the secretary shall:

a. assign the case to the Assistant District Attorney who screened it;

b. enter the case name on the master conference calendar for the date noted in item 14 of the case evaluation form (the pretrial conference date), along with the name of the Assistant District Attorney to whom the case has been assigned;

c. make out a card with the following information:

-- the date of the pretrial conference;

-- the name of the defendant;

-- the name of the defendant's attorney;

-- the name of the Assistant District Attorney to whom the case is assigned for the pretrial conference;

-- if additional investigation was requested, the name of the officer and department to whom the request was made, the type of information requested, and the nature of the proceedings at which the information is necessary.

This card should be placed in the conference tickler file, for the business day immediately preceeding the conference date.

(8) After post-arraignment processing, the file shall be placed in the mailbox of the Assistant District Attorney to whom it has been assigned.

(9) At the end of each day, a list of all cases assigned for pretrial conferences shall be drawn up and given to the superivsing attorney. The list shall include, under the name of each attorney: the name of the defendant, the charges authorized, and the continuance date in each case.

(10) Each day, the secretary shall go through the conference tickler file for cases whose pretrial hearing comes up on the following day. If a request for investigation was made for the pretrial conference, the secretary shall call the police department involved and confirm with the appropriate supervisor the type of information needed.

(11) For each file that is returned after a pretrial conference the secretary shall:

a. Assign the case to a District Court prosecutor from the list of attorneys who are available on the continuance date (this date is noted on the file folder) for that case. The list will be provided by the supervising attorney. For example, if the continuance date for a case is March 27, 1976, the secretary shall assign the case to the first attorney listed under that date on the list obtained from the supervising attorney. The next case which has a March 27 continuance date will be assigned to the second attorney. Cases of co-defendants, or separate case files involving the same defendant which have been noted for consolodated action, shall be assigned to only one Assistant District Attorney.

b. Enter the case name on the master trial calendar for the continuance date, along with the name of the District Court prosecutor to whom it has been assigned.

c. Remove the case card from the conference tickler file and cross out the date noted for the pretrial conference, and add the following information:

-- the date of the next appearance in District Court,

-- the names of any witnesses whose appearance is necessary at the next court date, and whether subpoenas should issue for those witnesses (from Form 6).

This card should be placed in the trial tickler file for the fifth business day immediately preceeding the trial date.

POLICE DEPARTMENT | PRINT OR TYPE ALL ENTRIES — | ARREST REGISTER

FORM CR-1 5-23-67 | PART 1

1 DATE (M O D A Y R) 2 TIME (H R M N) 1 A.M. 2 P.M | 3 IDENT. NUMBER | 4 COMPLAINT NUMBER

5 NAME — LAST — FIRST — MIDDLE | 6 SOCIAL SECURITY NO.

7 ADDRESS — 7A NUMBER AND STREET — 7B CITY — 7C STATE

8 ALIAS/MAIDEN NAME — 8A — 8B | 9 NICKNAME

10 D. O. B. (M O D A Y R) | 11 AGE IN YEARS | 12 BIRTHPLACE — CITY — STATE/COUNTRY

13 MARITAL STATUS: 1 SINGLE 2 MARRIED 3 DIVORCED 4 SEPARATED | 14 NAME OF SPOUSE

15 FATHER'S NAME | 16 MOTHER'S MAIDEN NAME

17 PRISONER'S OCCUPATION | 18 EMPLOYER

19 NON-CRIMINAL APPLICATION: 1 Taxi 2 Gun Permit 3 Alien 4 Government 5 Security Check 6 Other

20 WARNING OF RIGHTS GIVEN: 1 YES 2 NO

21 WAIVER OF RIGHTS: 1 YES 2 NO

22 STATEMENT GIVEN AFTER WAIVER: 1 YES 2 NO

23 REQUEST FOR COUNSEL: 1 YES 2 NO

24 TELEPHONE USED: 1 YES 2 NO

25 CRIMINAL CHARGE: A B C D | 26 CHARGE CODE: A B C D

27 PLACE OF ARREST | 28 DIST | 29 | 30

31 ACCOMPLICES — 31A — 31B | 32A — 32B

33 ARRESTING OFFICER | 34

36 BOOKING OFFICER | 37

38 SEARCHING OFFICER | 39

40 IDENTIFICATION OFFICER | 41

REMARKS - 35

AMOUNT OF MONEY WHEN ARRESTED $

CELL NO. 42 | PROPERTY BAG NO. 43

Narrative:

FORM 1

SIGN IN SHEET: SPRINGFIELD DISTRICT COURT

Date: _____

No.	1 Time In	2 Time Out	3 Officer	4 Dept.	5 Defendant's Name	6 Assistant District Attorney	7 Complaint Authorized (File Out)	8 File In
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								

Case No.

Screening Date

Screening A.D.A.

1. Defendant's Name	2. Defendnt's S.S.#	3. Defendant's D.O.B.
4. Co-Def.(s) /Juv./ (a) ☐ (b) ☐ (c) ☐	5. Arr. Off./P.D.	6. P.D. Case No. 7. Date of Arrest
8. Charge(s) Authorized (a) (b) (c) (d)	9. Docket No.(s)* (a) (b) (c) (d)	10. Initial Charge(s)
11. Case Highlights (a) S/S ☐ (b) Def.'s Statement ☐ (c) ID ☐ show up ☐ photo ☐ line up ☐ s.h. (d) W.'s ☐ P.O. ☐ V. ☐ Other	12. Bail Rec. 14. Cont. Date *	13. Bail Set.* 15. Def.'s Atty.*

16. Case Summary (short statement of Defendant's participation)

CASE REJECTION

SCREENING DATE _____ SCREENING A.D.A. _____

Defendant's name	Def.'s S.S. No.	Def.'s D.O.B.

Charges for which arrested	Arr. P.O./Dpt.	Date of arr
(a)		
(b)		
(c)		
(d)		

No complaint authorized for following reason:

1. no ev. of crime [ ]
2. no ev. of def's participation in crime [ ]
3. illegal s&s, no other suff. ev. [ ]
4. request of complainant [ ]
5. witness unavailable, subp. not possible [ ]
6. interests of justice, de minimus violation [ ]
7. other [ ]

Explanation: _____

(Form 4)

WAIVER OF RIGHT TO BE BROUGHT BEFORE THE DISTRICT COURT

I understand that I have a right to go before a judge or magistrate. I waive that right. I authorize the _____ Police to release me without bringing me before a judge or magistrate.

Signed _____

Date _____

(Form 5)

ADDITIONAL INVESTIGATION

Screening Date _____ Case No. _____

Screening A.D.A. _____

1. Defendant's Name	2. Defendant's S.S. No.	3. Defendant's D.O.B
4. Charges (a) (b) (c) (d)	5. Arr. Off./P.D.	6. Date of Arrest 7. P.D. Case No.

I. ADDITIONAL WITNESSES:	Needed by: Conf.	D. Ct.	S. Ct
II. SCIENTIFIC EVIDENCE, CHARTS, MAPS, PHOTOS:			
III. PHYSICAL EVIDENCE:			

EVIDENCE LIST

Defendant's Name _____ Case No. _____

Witnesses:
Appear Subp.
at Cont.

☐ ☐ W1
Name _____

Bus. Add. _____ Tel. _____

Home Add. _____ Tel. _____

Dates _____

Test. _____

Comments _____

☐ ☐ W2
Name _____

Bus. Add. _____ Tel. _____

Home Add. _____ Tel. _____

Dates _____

Test. _____

Comments _____

☐ ☐ W3
Name _____

Bus. Add. _____ Tel. _____

Home Add. _____ Tel. _____

Dates _____

Test. _____

Comments _____

Needed at Cont.

☐ Weapon - Type
Serial No.
How/When Obtained
Custodian
Comments

☐ Drugs - Quantity/Type
How/When Obtained
Custodian
Comments

☐ Personal Property (contraband, fruits of crime)
Type
How/When Obtained
Custodian
Comments

☐ Other (photos, fingerprints, fabric, blood sample)
Description
How/When Obtained
Custodian
Comments

IDENTIFICATION:

Time/Date
Location
Prior Description

Method of Id. ☐ show ☐ photo ☐ line ☐ s.h. ☐ other
Comments

STATEMENT BY DEFENDANT:

Time/Date
Location
To Whom

Miranda ☐ Y ☐ N Signed ☐ Y ☐ N Trans. ☐ Y ☐ N

Content

Comments

BUDGET

1 Supervising Attorney at	$19,000
2 Attorneys at 15,000 AR each	30,000
1 Administrator at	9,500
1 Clerk/Typist at	7,000
	65,500
Printed Forms	1,000
3 Dictaphones at 150 each	450
1 Transcriber at	150
2 Typewriters (rental) at 200 each	400
	2,000
TOTAL	$67,500

END