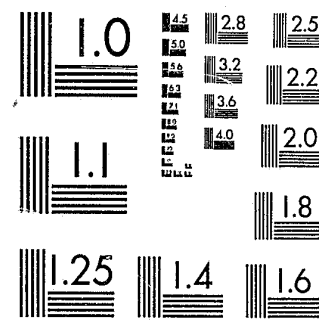


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Overview:

The Career Criminal Program

Prepared for the Law Enforcement Assistance Administration by the Staff of the Institute for Law and Social Research (INSLAW).*

"The Career Criminal Program is a priority program directed at the serious, repeat offender. The program developed by the Law Enforcement Assistance Administration and the Department of Justice is based on the premise that a relatively small number of repeat offenders are responsible for a disproportionate amount of serious crime.

The program requires close cooperation between law enforcement and prosecution agencies for the identification and enhanced and expeditious prosecution of these offenders.

To date, the Law Enforcement Assistance Administration has awarded grants to 49 jurisdictions, local and statewide."—Homer F. Broome, Jr., Acting Administrator, LEAA, and Acting Director, BJS.

HOMER F. BROOME, Jr., was appointed Acting Administrator of the Law Enforcement Assistance Administration and Acting Director of the Bureau of Justice Statistics by Attorney General Benjamin Civiletti on December 27, 1979. Previously, he was Deputy Administrator of LEAA. Prior to this appointment, Broome was a commander in the Los Angeles Police Department, where he headed the Commission Service Group for the Los Angeles Board of Police Commissioners. During his tenure with the department, Broome served on patrol and as supervisor and watch commander, division commander, and area commander. He was also assigned to the juvenile and community relations divisions. He joined the police department in 1954 after a two-year tour of duty as a second lieutenant in the U.S. Army. He holds the B.A. degree from California State University at Los Angeles and M.B.A. from Pepperdine University.



*The Institute for Law and Social Research (INSLAW) is located at 1125 15th St., N.W., Suite 600, Washington, D.C. 20005. Director, Management Systems Division, is Frank J. Leahy, Jr.

Commissions, scholars, and researchers all attest to the severity of the repeat offender problem. In 1967, the President's Commission on Law Enforcement and Administration of Justice stated that repeat offenders "constitute the hard core of the crime problem."¹ In 1973, the National Advisory Commission on Criminal Justice Standards and Goals reached a similar conclusion.²

The Problem

Scholars, such as James Q. Wilson, have also voiced concern about the habitual criminal. "Most serious crime is committed by repeaters. What we do with first offenders is probably far less important than what we do with habitual offenders."³

The findings of criminologist Marvin E. Wolfgang and his associates suggest that 15 percent of the urban male population between the ages of 14 and 29 are chronic offenders (persons arrested six or more times) and that they are responsible for approximately 85 percent of serious crime.⁴

Similarly, an analysis based on New York State crime data led researchers to conclude that 80 percent of solved crimes are committed by recidivists. Regarding the 70 percent of crimes never solved, "the most likely possibility is that they are committed by the same group of recidivists..."⁵

A Rand criminal career study reports that 49 habitual offenders admitted committing more than 10,000 serious crimes—an average of 200 each—over a typical career length of about 20 years.⁶

LEAA-funded research conducted by INSLAW resulted in the development of a recidivism profile of 45,575 persons arrested for nonfederal felonies or serious misdemeanors in the District of Columbia during the 56-month period ending September 1975. Seven percent of the arrestees (each arrested four or more times during the period) accounted for 24 percent of all arrests; 6 percent of all persons prosecuted (each prosecuted four or more times during the period) accounted for 20 percent of all prosecutions; 18 percent of all persons convicted (each convicted at least twice during the period) accounted for 35 percent of all convictions.⁷

Other INSLAW research funded by LEAA revealed that, on February 1, 1976, 18 percent of 180 defendants under criminal indictment in the U.S. District Court in Washington, D.C., also had other cases pending in the local court (D.C. Superior Court).⁸ INSLAW's study of bail in the District of Columbia found that 17 percent of all defendants arrested in 1974 had a case pending at the time of arrest, and 13 percent of the arrestees were rearrested before the instant offense was disposed.⁹ And INSLAW's cross-city comparison of felony case processing in 13 jurisdictions noted that during the first six months of 1977, about 20 percent (on average) of the defendants had been arrested while on conditional release for prior unrelated crimes. For auto theft, the percentage was as high as 33 percent in one locality.¹⁰

A recent study performed by investigative reporter Mike Keller, of *The Honolulu Advertiser*, followed the criminal careers of 359 individuals arrested for violent crimes in 1973. Sixty-nine of those arrestees (19.2 percent of the sample) generated more than 80 percent of the sample's subsequent serious criminal arrests. Twenty of those 69 active repeaters generated 95 felony charges in 1978.¹¹

In short, the foregoing evidence, among other data, strongly supports the proposition that a relatively small number of in-

dividuals account for a significant portion of the work load of police, prosecutors, and courts, not to mention the disproportionate impact those recidivists have on citizens who are the victims of crime.

Repeaters and Normal Processing

Especially in overburdened, urban court systems where cases are handled on an assembly-line basis, "routine processing" is often equivalent to what Felix Frankfurter and Roscoe Pound concluded after analyzing case processing in Cleveland in the 1920's — a "practical breakdown of the criminal justice machinery."¹² What this can mean in operational terms is explained by a local prosecutor.

"... we looked at a case the day the police officer brought it in and made a judgment on whether to prosecute; nobody looked at the case again until the day of the trial. Consequently, we were losing, through cracks in the system, over 40 percent of the cases.

"I don't mean losing them through jury verdicts of not guilty — I mean losing because files were misplaced or because cases got continued so many times that witnesses failed to reappear or a judge ultimately dismissed the case."¹³

In terms of case dispositions as the result of "routine processing," the findings of the above-mentioned INSLAW analysis of case flow in 13 jurisdictions were remarkably similar to those of the Wickersham Commission's study¹⁴ of case processing in the 1920s. About half of the cases in the jurisdictions studied were dropped after arrest but before plea or trial. Even the major reasons cited for this heavy case attrition were similar to those noted in the 1920s: evidence deficiencies and witness problems.

Moreover, another INSLAW analysis suggests that before the jurisdiction under study implemented a career criminal program, the defendant's criminal history did not seem to have an independent effect on the amount of prosecutory effort allocated to any given felony case.¹⁵ Observations elsewhere also tend to reinforce the view that "routine processing" often excludes the notion of giving priority attention to the cases of repeat offenders.¹⁶

A basic reason explaining the foregoing effects of "routine processing" is contained in this statement by industrial consultant Peter F. Drucker:

"... there is always a great deal more to be done than there are resources available to do it. The opportunities are always more plentiful than the means to realize them. There have to be priority decisions or nothing will get done."¹⁷

Implementation of the Career Criminal program by a jurisdiction represents one of those "priority decisions" referred to by Drucker. That is, routine processing is recognized as inappropriate for cases involving serious offenders who are responsible for a disproportionately large share of criminal activity; instead, those cases merit priority attention and deserve the type of management that, due to limited resources, cannot be given to all cases.

In effect, the "cracks" in the system are being sealed insofar as the repeat offender is concerned. This means the following, according to a former Department of Justice official:

"No longer will the career criminal case be assigned just by chance to the newest attorney in the office. No longer will he be able to plea bargain with a prosecutor who is not aware of the danger he poses, or his past record, or who is simply too hard-pressed with too many other urgent matters to properly prepare and try the case. No longer can he anticipate endless postponement and rescheduling while witnesses drift away and the file becomes stale.

"In short, the career criminal can't 'beat the system' anymore, because there really is a system and it's ready for him."¹⁸

LEAA'S SOLUTION

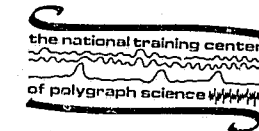
The first formal indication that LEAA was considering development of a career criminal program came in a memorandum prepared for Attorney General William B. Saxbe on August 7,

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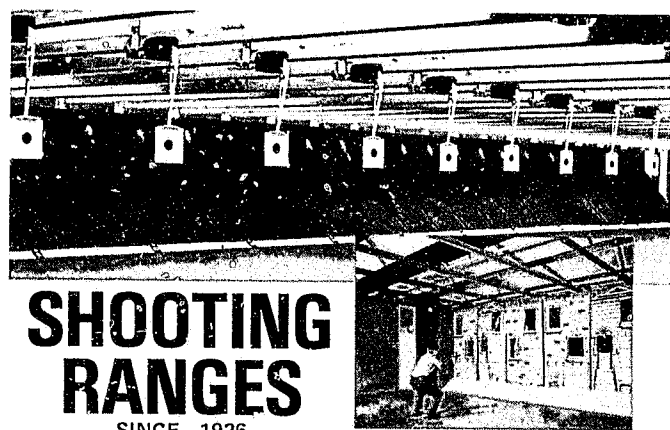
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1974, by Deputy Administrator Charles R. Work. He recommended that the attorney general direct LEAA to design a program to deal with the problem of the dangerous, sometimes professional, career criminal. Citing research on the problem by Marvin E. Wolfgang, INSLAW, and others — which reinforced his own observations while an assistant U.S. attorney — Mr. Work explained that the recommended program rested on the belief that a substantial, indeed inordinate, amount of serious crime in America is committed by a relatively small number of career criminals.¹⁹

Attorney General Saxbe followed the recommendation, and the program was announced on September 24, 1974, by President Ford, in a speech to the International Association of Chiefs of Police. As subsequently stated by the President, the objectives of the program were (1) providing quick identification of persons who repeatedly commit serious offenses, (2) according priority to their prosecution, and (3) assuring that, if convicted, they receive appropriate (prison) sentences.²⁰

The program was focused on the prosecutor because of the perception that (1) his role, especially in the big cities, had evolved to the point that his administrative decision making determined to a greater extent than any other single factor the quality of justice in America's courts; and (2) the increase in crime resulted in a proliferation of cases that far outstripped the growth of prosecutory and court resources.²¹

On October 3, 1974, Attorney General Saxbe and LEAA officials met with prosecutors from urban jurisdictions and with representatives of the National District Attorneys Association and the National Legal Data Center to obtain suggestions about the design of the Career Criminal Program. Also, several local jurisdictions were visited to determine the scope of the problem posed by repeat offenders.

Although a number of prosecutory efforts akin to the Career Criminal Program predated it — for example, selective prosecution by federal organized crime task forces and such local efforts as the Major Offense Bureau of the Bronx County (New York) District Attorney's Office (later designated an Exemplary Project by LEAA) — the acknowledged model and primary catalyst for LEAA's program was the Major Violators Unit (MVU) located within the Superior Court Division of the U.S. Attorney's Office in the District of Columbia.²² Headed in 1972 and 1973 by then Assistant U.S. Attorney Charles Work, the division prosecutes local "street crime" cases.

The Major Violators Unit was formed by Work and his colleagues because of the perceived need to give special attention to the prosecution of repeat offenders involved in serious misdemeanors. To help identify those offenders from among the 60 to 75 misdemeanor cases scheduled for trial daily, the Prosecutor's Management Information System was utilized. The PROMIS system can identify priority cases in terms of the seriousness of the offense and the criminal record of the accused.

Growth and Funding

Growth. Between December 1974, when LEAA's guidelines for the program were first issued, and April 1975, 51 cities applied for career criminal discretionary funding. By the end of 1975, 11 jurisdictions had received such funds from LEAA: New Orleans and Houston were the first two. In 1976, 8 more jurisdictions obtained discretionary grants, and in October of that year President Ford urged LEAA to expand the scope of the program.

Five more prosecutors' offices were added in 1977, 13 more in 1978, and 8 more in 1979 making a total of 45 discretionary-fund jurisdictions since the inception of the program.²³ In addition, two multijurisdictional programs were started under LEAA's National Priority Program. During fiscal 1978 and

1979, LEAA received concept papers from at least 40 other jurisdictions seeking discretionary grants. At least 40 other jurisdictions are reported as operating career criminal units within the prosecutor's office, but they do so without LEAA discretionary funds.

Funding alternatives. According to LEAA's fiscal 1979 *Guide to Discretionary Grant Programs*, a prosecutor's office may receive two successive one-year grants, which usually range from \$100,000 to \$300,000, with a decreasing match (cash, not in-kind goods and services) requirement. Upon termination of discretionary funding, local or state assumption of project costs is expected by LEAA.

Career criminal projects may also be funded through LEAA's National Priority Program, announced in the *Federal Register* on April 24, 1978, and on January 25, 1979. This program is designed to provide federal monies to states that can demonstrate recidivism problems and can present viable action plans for a statewide solution. The proposed solution must provide career criminal program coverage to those jurisdictions that comprise the majority of the state's recidivism trouble areas. Most awards will be less than \$1 million and will usually be for a period of one or two years, after which the grantees are expected to assume the costs of the projects.

Federal funds can be used for up to 50 percent of total program costs; another 40 percent may be LEAA block grant funds; the remaining 10 percent must be "hard match," as defined by LEAA financial guidelines.²⁴ In 1978, New York State received incentive funding of \$2 million for distribution to career criminal units in district attorney's offices in 14 counties. Florida and Connecticut were funded in fiscal 1979, and funding for up to three more states is proposed for fiscal 1980.

Other career criminal projects are funded through LEAA block grants, local funding, or a combination of the two. For example, under the terms of state legislation passed in 1977, local prosecutors' offices in California may apply for state general revenue funds to help support career criminal programs.

In the 95th Congress, bills²⁵ were proposed to facilitate financial support of local career criminal units. The legislation may be reintroduced in the 96th Congress.

Major Operating Procedures

Although differences in procedural and substantive law and in the nature of the local crime problem preclude a standard format or operational pattern for a career criminal unit, several concepts or features have evolved that are common to most successful programs. The central tenet of the program is to focus law enforcement and prosecutive resources to increase the probability of early identification, enhanced investigation, priority prosecution, conviction on most serious charge, and lengthy incarceration of individuals who have repeatedly demonstrated a propensity to commit violent crimes. Focusing resources usually involves forming a team of senior prosecutors who because of reduced case loads, can concentrate extraordinary efforts on adjudicating their cases.

Selection criteria. Which cases should be prosecuted by the career criminal unit? To answer that question, jurisdictions have developed and applied selection criteria that reflect LEAA's guidelines, the policies and priorities of the prosecutor, and the resources available. The criteria pertain to the gravity of the accused's criminal record (e.g., frequency and seriousness) and may also take into account the seriousness of the instant crime. Criteria are often designed to assure the inclusion of all defendants who can be charged under second or habitual offender statutes.

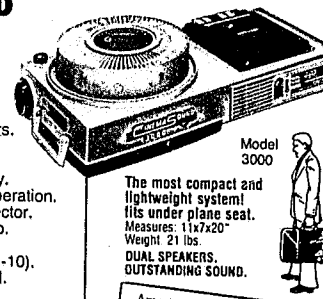
Recent INSLAW research indicates that the selection process is perhaps the most important aspect of the program.²⁶ Incapacitation may effect a notable reduction in crime only when the

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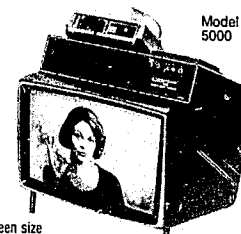
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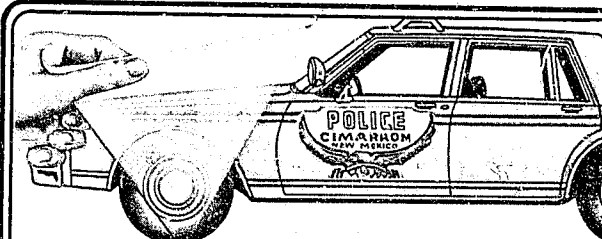


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worst offenders are identified, prosecuted, convicted, and incarcerated. Efforts toward refining targeting methodology and selection criteria are continuing, and increases in the predictive capabilities of existing models are expected.

Some jurisdictions focus their selection criteria exclusively on the prior record of the defendant. The nature of the current offense is not a factor in case selection. Others use a combination of criminal-history/crime-type criteria. For example, a unit might select defendants who meet *either* of the following conditions: (1) a charge of murder, rape, robbery, burglary, or major assault and three prior felony convictions; or (2) a combination of three prior convictions and three pending cases.

In yet another jurisdiction, a point system is used to select defendants for the career criminal program. Points are assigned if the defendant has prior convictions, a current charge involving injury or weapons, and a current release status of bail, probation, or parole.

Early identification. The goal of identification procedures is to determine, at the earliest possible time, whether an arrestee meets the selection criteria and, therefore, should be prosecuted by the career criminal unit. In one jurisdiction utilizing criminal history criteria only, the arresting officer applies the criteria at the crime scene by querying the police computer about the arrestee's criminal record. Another prosecutor's office determines which defendants meet selection criteria after initial screening. Or a combination of the two procedures may be used: application of preliminary or "threshold criteria" by police at the crime scene and a final determination at the case screening stage by an experienced assistant prosecutor, who also assures that cases can withstand the rigors of reasonable doubt.

To help identify habitual offenders at an early stage, to assure prompt and thorough investigation, and to facilitate case preparation, career criminal units may have an attorney on call for the police 24 hours a day or actually stationed at the precincts.

Expediting the dockets. Jurisdictions have established continuance and scheduling practices that afford swift disposition of career criminal cases. Such cases can be given priority on the docket, or special judges can be assigned to hear them. Many career criminal units have found that an open discovery policy speeds case processing by minimizing the chances of prolonged discovery motions and constitutional challenges by defense attorneys.

Vertical representation. LEAA-funded career criminal programs assign a single attorney to a case from its initiation to final disposition — and even to parole or pardon hearings. This facilitates thorough case preparation, encourages a beneficial rapport with victims and witnesses (police and civilian), reduces duplication of effort that can occur when different attorneys handle different stages of a case, and promotes better handling

of appeals. Implicit in the concept of vertical representation is a case load substantially lighter than that of the rest of the office.

Plea bargaining. The practice of plea bargaining, if any, is limited and supervised carefully. One jurisdiction describes its policy this way: "No frivolous plea bargaining is permitted. Once a case is accepted for prosecution, it is expected that that case will go to trial as charged or a plea of guilty 'as charged' will be entered."

Post-conviction procedures. To maximize the chances of warranted incarceration of a convicted recidivist, career criminal units file repeat offender papers to invoke habitual offender laws, assure that presentence reports note the defendant's prior record, and allocute if permitted. Most programs track career criminals after sentencing and commitment. A notification from correctional authorities is requested whenever an incarcerated offender is considered for parole or early release so that appropriate opposition can be expressed.

Program Results

From May 1975 to January 1978, detailed statistics on each career criminal case were collected by 24 jurisdictions receiving LEAA discretionary funds (after January 1978 aggregate summary data were reported). During the 31-month period, according to LEAA congressional testimony,²⁷ 6,641 defendants were prosecuted as career criminals. Defendants had a total of 84,367 prior arrests and 38,710 prior convictions. Fifty-three percent were on conditional release — parole, probation, pretrial release — for another crime when they were arrested and designated career criminals.

The conviction rate was 94.7 percent (defendant convictions divided by acquittals plus convictions). Those convictions involved 10,409 crimes; 3,179 by trial, 7,230 by guilty pleas. Major offenses included robbery (3,074), burglary (2,149), rape (574), homicide (356), felonious assault (754), kidnapping (171), and grand larceny (790). Of the 6,641 defendants, 89.4 percent were convicted on the top charge. Sentences averaged 15.4 years.

Overall, crime statistics were available in only 17 of the jurisdictions, but they suggested that the career criminal programs were making an impact. The reduction in robberies in the 17 cities exceeded the national average by 54 percent. The reduction in burglaries exceeded the national average by 30 percent. In the 24 jurisdictions, the median time from arrest to disposition was 106 days (far shorter than in the past); from filing to disposition, 96 days.

Statistics comparing the handling of career criminal cases with that of other cases attest to the greater effectiveness of career criminal procedures in terms of case processing time, conviction rate, pretrial release rate, severity of sentences, and limited plea bargaining, among other measures of performance. ★

END

¹ President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Crime and Its Impact — An Assessment* (Washington, DC: Government Printing Office, 1967), p.79.

² National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington, DC: Government Printing Office, 1973), p.95.

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⁴ Discussed in two papers by James J. Collins, Jr., "Chronic Offender Careers," presented at the American Society of Criminology, Annual Meeting, Tucson, Arizona, November 1976; "Offender Careers and Restraint: Probabilities and Policy Implications," prepared for the Law Enforcement Assistance Administration, Washington, D.C., 1977.

⁵ Shlomo Shinar and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," *Law and Society Review* (Summer 1975), p.597.

⁶ Peter Greenwood, et al., *The Rand Habitual Offender Project: A Summary of Research Findings to Date* (Santa Monica: The Rand Corporation, 1978), p.4.

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⁹ Jeffrey A. Roth and Paul B. Wice, *Pretrial Release and Misconduct in the District of Columbia*, PROMIS Research Publication, no. 16 (Washington, DC: INSLAW, 1979).

¹⁰ Kathleen B. Brosi, *A Cross-city Comparison of Felony Case Processing* (Washington, DC: INSLAW, 1979).

¹¹ Mike Keller, *The Honolulu Advertiser*, January 14, 1979: A1.

¹² Felix Frankfurter and Roscoe Pound, *Criminal Justice in Cleveland* (1922 reprint ed., Montclair, NJ: Patterson Smith, 1968), p.vi.

¹³ INSLAW, *Special Litigation (Major Violators) Unit*, PROMIS Briefing Paper, no. 4 (Washington, DC, 1976), p.2.

¹⁴ National Commission on Law Observance and Enforcement, *Wickersham Commission Reports* (1931, reprint ed., Montclair, NJ: Patterson Smith, 1968).

¹⁵ INSLAW, *Curbing the Repeat Offender*, p.16.

¹⁶ See Sorel Wildhorn, et al., *Indicators of Justice: Measuring the Performance of Prosecution, Defense and Court Agencies Involved in Felony Proceedings* (Santa Monica: Rand, 1976), pp.115, 161, 211.

¹⁷ Peter F. Drucker, *Managing for Results* (New York: Harper & Row, 1964), p.12.

¹⁸ Richard L. Thornburgh, "A Professional Approach to the Career Criminal," *LEAA Newsletter* (June 1976), p.2.

¹⁹ See Charles R. Work, "The Career Criminal Program," Statement Before the Committee on the Judiciary, U.S. Senate, September 27, 1978.

²⁰ "White House Message on Crime," June 19, 1975.

²¹ Work, "The Career Criminal Program."

²² Ibid.

²³ In a few jurisdictions, defender services also received funding; one jurisdiction obtained \$340,000 to develop a corrections program for career criminals.

²⁴ LEAA is seeking authority to fund 100 percent of program costs through a combination of National Priority Program funds and block grants.

²⁵ S.28 and S.3216, for example.

²⁶ Kristen M. Williams, "Estimates of the Impact of Career Criminal Programs on Future Crime," unpublished paper, February 23, 1979, available from INSLAW.

²⁷ J. Robert Grimes, Statement Before the Subcommittee on Criminal Laws and Procedures, Committee of the Judiciary, U.S. Senate, September 17, 1978.