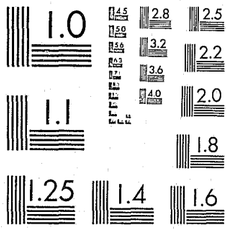

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RESEARCH ON PROSECUTORIAL DECISIONMAKING

PHASE I: FINAL REPORT

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PREFACE

This report, Research on Prosecutorial Decisionmaking, is one of three produced as a result of research activity supported by LEAA Grant 78 NI-AX-006. It presents the preliminary findings of the results obtained from administering a standard set of cases in four prosecutor's offices.

The report has been divided into three parts. Part I, Responses to the Standard Case Set, displays and comments on the responses to the evaluation of the cases, noting the degree of its explanatory power, its sensitivity in describing an office's policy and procedures and the extent to which it has comparative analysis power.

Part II, Uniformity and Consistency among Decisionmakers, examines the use of the standard case set to measure the amount of consistency that exists between assistants and the prosecutor, the amount of uniformity that exists internally among assistants and the extent to which the consistency is changed when the policy leader in one office is transferred to another. Additionally, this Part examines the Kings County, Brooklyn, District Attorney's Office for consistency and uniformity within organizational units.

Part III, Relationships between the Dependent Variables Measured by the Standard Case Set, examines and notes those variables obtained from the testing that have strong explanatory power with respect to the others. The implications of these relationships for planning and prediction purposes are presented in this Part.

This report represents only a preliminary analysis of the standard case set data. It focuses exclusively on a discussion, analysis and interpretation of the dependent variables. Further analysis on the independent variables will be forthcoming in other reports.

The second and third reports issued under the auspices of this grant are: Policy Analysis for Prosecution and the Executive Summary of Policy Analysis for Prosecution, the latter being an abridged version of the former. Both of these reports develop and present a conceptual model for analyzing the prosecutive decisionmaking function from a policy perspective and present the results of applying the model to the study of ten prosecutor's offices.

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INTRODUCTION

Background

The broad discretionary power of the American prosecutor as it applies to the decisions of whether to initiate criminal proceedings, and once in the process, to change or mitigate the penalties has subjected the office of the prosecutor to criticism and surrounded its function with controversy. Although the decisive influence of the prosecutor upon the criminal justice system is well recognized, the exact nature of his power and responsibility is confusing because his role and function changes as he operates in various areas of activity--legislative, political, judicial and executive. Endowed with discretionary power which he exercises through decisionmaking, the prosecutor has sometimes drawn the criticism that there is not sufficient review or control over these discretionary decisions and that inconsistencies may occur in the decisionmaking process.

These are not new concerns or issues. They have been the subject of intensive discussion starting with the Wickersham Commission[1] of the 1930's and reaching into the present. Many of the issues and criticisms surrounding discretionary power and its use are still unresolved. But to a one, all of them are directed at achieving fairness, ensuring consistency and increasing uniformity in the decisionmaking process.

The result of this concern has been an intensive and comprehensive examination of prosecutorial discretion from many

[1]National Commission on Law Observance and Enforcement, Report on Prosecution (Washington, D.C.:U.S. Government Printing Office, 1931).

perspectives.[2] It has produced "standards" to maximize uniformity but it has still not yet provided techniques to measure the degree of uniformity and consistency achieved by the application of these standards and their relative effectiveness.

The development of standards as the first logical response to the necessity for controlling prosecutorial discretionary power has been a necessary, though difficult task.

Foremost, and most powerful in their prescription, are the American Bar Association Standards[3] published in 1971 after years of deliberation and development. The ABA standards address the ethical, professional and legal responsibilities of the prosecutor in the charging process and cite the requirement for policy manuals to support uniform and consistent application of policy. In 1973, the work of the National Advisory Commission on Criminal Justice Standards and Goals[4] substantially expanded the development of prosecutorial standards by viewing the prosecutor as part of a criminal justice system. These standards addressed the problems of inconsistency in function and uncertainty in results and reinforced the Commission's concern by designating as second priority the improvement and upgrading of the prosecutive and defense function. Using the NAC standards as a guide, after 1973, LEAA supported the efforts of the states to translate the

[2]A good bibliography on this subject is W. Randolph Teslik, Prosecutorial Discretion: The Decision to Charge--An Annotated Bibliography (Washington, D.C.: National Criminal Justice Reference Service, LEAA, 1975).

[3]The American Bar Association, Standards Relating to the Prosecution Function and the Defense Function (New York: The American Bar Association, 1971).

[4]National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: U.S. Government Printing Office, 1973), p.8.

standards and goals into working models suitable to their own specific environments. A standards and goals project was conducted by the National District Attorneys Association and the National Center for Prosecution Management in 1974, to examine the relevance of the standards to diverse groups of prosecutors' offices[5]. From this effort, it became clear that the need for any individual standard varied as the characteristics of the office varied. A one-man prosecutor's office, for example, did not face the problems of policy transference and consistency that confront large urban offices. Thus, the standards proposed by the National Advisory Commission, needed sorting by type of office into different orders of priorities. The NDAA effort reaffirmed that standards and policy statements could be set in general terms; however, their implementation often rested on factors external to the prosecutor.

While the NDAA effort pointed to the sophistication needed in applying standards to the decisionmaking function of the prosecutor, the work of the California District Attorneys Association resulting from its Uniform Crime Charging Project and published in 1974 as a two volume work,[6] showed the many issues arising from prosecutor's discretionary power as it addressed the intake and charging function. This unique and innovative project utilized the best minds and most experienced judgment of California prosecutors in establishing standards and guidelines for

[5]National District Attorneys Association, National Prosecution Standards (Chicago: The National District Attorneys Association, 1977); See also, National Center for Prosecution Management, First Annual Report (Washington, D.C.: The National Center for Prosecution Management, 1973).

[6]California District Attorneys Association, Uniform Crime Charging Standards (Sacramento, Cal., 1974).

charging. It examined the use of office procedures to improve the charging process, it set forth the general policy guidelines, discussed evidentiary requirements for case prosecution, presented alternatives to prosecution and, in general, produced the first attempt to examine and specify the considerations inherent in the charging process.

In 1975, the Bureau of Social Science Research, as a part of a Phase 1 national evaluation of pretrial screening programs,[7] added a new dimension to the standard setting task by concluding that in addition to legal and evidentiary factors, a primary consideration in the decision to prosecute cases was the policy of the prosecutor. They noted that the consistent and uniform application of policy produced rational disposition patterns upon which evaluation activities could be based.

Although the development of standards still represents a reasonable method for bringing diverse situations under control, it is a task not without problems or conflicting objectives. If the purpose is to develop and apply policy and standards on a national or state level, they should be created with enough flexibility to accomodate the many differences that exist in prosecutorial environments, and are displayed by policy preferences. If, on the other hand, the purpose is to develop and apply policy and standards within an office, they should be created to reduce potential differences and to increase uniformity.

Standards address the basic issue of the extent to which uniformity and consistency can be installed and maintained in the prosecutor's decisionmaking process. Decisions are the critical factor

[7]Joan E. Jacoby, Pre-trial Screening in Perspective, A National Evaluation Phase 1 Report, Series A, No. 2 (Washington, D.C.: The Law Enforcement Assistance Administration, 1976).

in this quest because they make manifest the discretion allowed the prosecutor and its consequences. Historically, much of the effort made to control differences within an office and to minimize their disruptive effects, has concentrated on the charging function and its gatekeeper role. Charging or policy manuals have been developed, case review and approval procedures instituted, and memoranda and staff meetings have promulgated the agreement and consensus sought. All this was done with the expectation that consistency and uniformity would increase, and they were successful. Despite the fact that the charging or policy manuals usually suffered from either being over-developed and too detailed or too generalized for practical use; even though the case review and approval procedures were employed more on an exceptional basis than routinely, and although the memoranda and staff meetings occured sporadically as crises or problems arose, uniformity and consistency in the decision process generally developed to some measurable level. In reality, chaos is not the mark of a typical prosecutor's operation.

The standards development and setting task took the necessary first steps in identifying the areas most sensitive to the issues of uniformity and consistency, fairness and equity. It did not address the next set of questions--namely, what constitutes uniformity, how can it be measured, and what is its legitimate ranges of variation. In the ideal and abstract world, we can state that uniformity exists when all persons consider the same factors and reach the same conclusion or make the same decision. Consistency exists when the decisions made by those delegated decisionmaking power agree with those made by the leader. In the real world of prosecution, we know that there are a number of intervening variables that degrade this ideal state of equality. They

can be divided generally into two categories: those that are external to the prosecutor and over which he has little or no control; and those internal to his function over which he exercises a great deal of control.

The research of the National Center for Prosecution Management[8] identified eight factors in the external environment which significantly affected the character of the prosecutor's operation. These ranged from the size of the office to the number and type of law enforcement agencies and reporting system, type of court structure and processes, and the characteristics of the defense system. These factors take on special significance in any comparative assessment of uniformity among prosecutor's offices since one needs to determine the extent to which they create environments that hinder or impede the achievement of uniformity, limit the options and strategies available to the prosecutor, and circumscribe his responses. For example, the probability of achieving uniform and consistent decisionmaking practices is greatly reduced if the police reports are not standardized, complete or timely; if the prosecutor does not have the authority to review cases prior to filing; if the court system is bifurcated; if there is no public defender system, or alternatives to prosecution, and not enough funding to adequately support necessary services. Under these conditions, the external environment may set up a number of barriers impeding success in reaching the ideal state of uniformity.

Nevertheless, the prosecutor is a resourceful creature. He has adapted to his many areas of operation by taking those factors under his

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[8]See National Center for Prosecution Management, First Annual Report, fn. 5, supra.

control and refining their uses to such a highly developed level that they mitigate the adverse effects of the environment. He has been able to achieve some level of organizational and functional sophistication not always deliberately, but sometimes intuitively. The fact that he enjoys wide-ranging discretionary power is a significant factor in his survival. The very power that is so often subject to criticism and attempts to control, contains the key to his success. He can make decisions with regard to policy. He can pursue as a primary goal rehabilitation, punishment, or efficiency, and his decisions reflect these goals. He can manage his resources in various ways to support these objectives. He can, for example, distribute his personnel to ensure that the charging decisions reflect his priorities, and that dispositions occur as he expects them. He can assign to these areas, the more experienced, or the least experienced personnel as he so judges. The organizational and management structure of his office becomes the primary means of insuring conformance with his policy and achieving the desired outcomes. The prosecutor may also use a variety of strategies to achieve his goals. Some of these strategies may be precluded by the external conditions; but most are available as tools. Plea negotiation, diversion, discovery, and sentence recommendation are among the most important. How he uses them can significantly affect the course of work in his office and the operations of the criminal justice system. Within this world, he can subjectively measure his success and evaluate the extent to which the decisions made by the assistants are consistent with his policy.

In 1977, The Bureau of Social Science Research, was awarded a grant to conduct research on prosecutorial decisionmaking. This was a

two-pronged study, employing both a qualitative and a quantitative assessment of the effect of policy on decisionmaking. Policy Analysis for Prosecution[9] explored these dimensions in great detail and examined the dynamics of the prosecutors' decisionmaking process as it moved from intake to accusation, and from trials to post-conviction activities. This qualitative assessment identified the importance of office stability and the assistant's experience in setting policy and developing standards (even if not articulated). It also highlighted the need for accountability and feedback as self-correcting mechanisms and the use of programs and procedures in each of the decision process steps in ways that are consistent with the goals of the office.

Policy Analysis for Prosecution, while reporting the dynamics of decisionmaking and isolating some of the more important factors did not address the degree to which decisions were made uniformly among assistants or in congruence with its policy directives. That task had to be considered separately because the tools to quantitatively determine these levels had yet to be developed. The traditional concepts of management, organizational and systems analysis were readily available to determine how policy is transmitted through a prosecutor's office. The statistical concepts and tools to measure the levels of transfer were not. As a result, the activity undertaken in this area was of a substantially different character than that reported in Policy Analysis for Prosecution since it was more developmental than analytical. It is for this reason these research findings are reported

[9]The first product of this study is Policy Analysis for Prosecutors (Washington, D.C.: The Bureau of Social Science Research, 1979). See also, Joan E. Jacoby, The Prosecutor's Charging Decision: A Policy Perspective (Washington, D.C.: Law Enforcement Assistance Administration, 1977).

separately even though the two activities were mutually supportive.

Objectives

The general purpose of this research and development activity was to develop statistical concepts and tools that could be used to express the extent of uniformity and consistency in the prosecutor's decisionmaking function in quantitative terms and to set a base for future comparative studies, either among assistants within a single office, or among offices. The concepts and tools to be developed were to have the power to measure the relationship between charging policies and dispositional events and to differentiate among various prosecutorial styles. The long-range goals which could not be accomplished in this grant period, but which are integral to it, are to develop tools and techniques that are sensitive enough to show the extent to which justice is distributed equitably throughout the prosecution process. They must be powerful enough to offer another methodological alternative to our present reliance on the time-consuming, basically inefficient and costly on-site evaluations.

The specific objectives of this research were to:

1. Develop a statistical concept that would be capable of isolating some of the salient factors affected by policy and considered in the prosecutor's decisionmaking process.

2. Develop statistical tools that can be used to measure these factors and express the degree of agreement among assistants, leaders, other offices, and components of the criminal justice system.

3. Test these tools and concepts in four offices and analyze the findings for their explanatory power and sensitivity.

4. Determine the value and limitations of this approach with respect to its ability to measure uniformity and consistency in decisionmaking, to perform comparative analysis, and to be used for other applications.

It should be made clear, that this developmental effort did not include analyzing the decisionmaking functions in any one office or determining the significance of the factors that affect these functions, or producing a comparative analysis of the relative effects of prosecution in the four offices that participated in this research. Its primary purpose was to develop and test instruments and to report on their utility, power and limitations. Thus, when the results of the testing are presented in this report, it is for this purpose. The reader, therefore, will not find an analysis of any independent variables. This is outside the scope of this grant and will be performed later. What he will find is an analysis of the dynamics of the concepts and tools, and an assessment of their utility.

Concepts and Approach

This research project chose to pursue the development of test instruments as the most feasible and powerful means of gaining insights into the prosecutor's decisionmaking function. The decision was based on a number of factors, most of which stem from the ability of test instruments to operate in a relatively environment-free form, unrestrained by the diversity of the local criminal justice environments within which prosecution can be found. The analytical power derived from this ability overwhelmed the limitations that are attached to this quantitative approach.

The test instruments developed for this project are: 1. a standard case set; and 2. a case evaluation form. The standard case set consists of 160 criminal cases of varying type and seriousness and presented in a "statement of fact" format. Each case contains enough

information to satisfy an adversarial type of probable cause hearing, but not necessarily enough for proof beyond a reasonable doubt at trial. The set also includes criminal histories of 100 defendants that are presented in a form similar to that provided by police arrest records.

The case evaluation form collects information about each case's priority for prosecution, acceptance for prosecution, and expected dispositional information including type, location in the prosecution process, level, sentence if convicted, and length of sentence if locked-up. Samples of both may be found in Appendix A. The assumptions and methodology used to develop these instruments will be discussed later. First, however, it is necessary to discuss some of the factors that contributed to the selection of this approach instead of other available ones.

The quantification of prosecutorial activities is predicated on the availability of data and their transformation into statistical aggregates. While the purposes for quantification may vary, thereby producing demands for different types of data elements, the number of ways that data can be collected is quite limited. Three basic methods can be noted: 1. collecting information from an operating system that describes the activity of the entire universe under study; 2. sampling the universe under study to produce estimates of the descriptors and 3. developing test instruments to produce indicators that simulate the universe. Each of these three methods have incorporated within them certain powers and limitations which must be taken into consideration before one is selected in lieu of another to meet the needs of a particular study or research project.

The entire issue of data quality and comparability dominated the decision to pursue the test instrument approach rather than the other types of data collection and analysis. On the surface it appeared that the simplest approach to collecting information for this research project was to focus on those offices that have installed automated or manual offender-based tracking systems, and collect the dispositional information needed to determine uniformity. This was not possible because not all the information was collected, not all was automated and the amount of error contained in the file was unknown.

One of the most complete data collection systems of this type can be found in the PROMIS system which is reportedly being installed in about 36 prosecutor's offices throughout the United States.[10] It has the potential ability, because of its scope to provide a wealth of information for the vast majority of research and evaluation studies made about prosecution and parts of the court systems in the United States. While conceptually this may be true, in reality the usefulness of PROMIS and other similarly constructed tracking systems is as much a function of its data entry procedures as its inherent capacity. The reliability of the controls established for validating the data entries to ensure its completeness and accuracy vary substantially from site to site. Without proper data audits and verification, significantly large error rates may result from either erroneously entered data or missing information. This is particularly troublesome when audits are not undertaken because the magnitude of the error simply is not known. To illustrate the potential dimensions of this problem, an unpublished verification study of the accuracy of the data entries into the PROMIS

[10] PROMIS Newsletter Vol. 3, No. 1 (Washington, D.C.: The Institute for Law and Social Research, April, 1978).

system in Washington, D.C. was conducted by two of the authors in PROMIS' earliest years (1971); the results showed an error rate that ranged from a low of 15% to as high as 30% for the data elements collected.

Of equal importance in considering the use of existing data collection systems is whether the data items needed for the research or evaluation activity are first, collected; second, collected in a form amenable to the research; and third, if not collected, available from the files. Generally speaking, the automated files available today collect some of the case data useful to our study such as dispositions with reasons, but exclude others such as the location of the disposition in the process, priority for prosecution, or the sentence imposed if convicted. To develop statistical tools based on this approach would require extensive supplementation at each site tested with no guarantee that the information could be reconstructed. It also would limit the sites to only those having an OBTS type system and thereby introduce bias into any subsequent findings.

To counteract some of these difficulties, consideration was given to collecting information by sampling files maintained at different jurisdictions. Sampling introduces a different set of considerations. Collection procedures may be complicated if the files or records are not in accessible order, are incomplete or do not represent the same universe. The jurisdictional variations are a problem with both types of data collection approaches. Some files may not contain cases rejected for prosecution, misdemeanors, trials de novo, appeals, cases transferred to another court or into alternative treatment programs, and so forth. Sampling cases from prosecutor's

files where jurisdictional variations are so extensive always entails first determining what is not in the file and then hoping the subsequent problems can be solved. The conclusion we reached was that either approach would yield a product having limited analytical power for our purposes.

The decision to pursue the development of test instruments in the form of a standard case set was made because it either solved or reduced the problems encountered in using actual files. By developing our own set of cases, we could control the effects of different external factors on the types of cases presented for prosecution; standardize the quality, content and format of the information presented for evaluation; control the type of cases presented, thereby creating the ability to design and analyze experiments; record all the independent variables pertaining to the case set only once, thereby minimizing coding and computer costs while expanding the potential analytical base; and modify and refine the information presented until it attained its highest analytical power.

All these advantages were not obtained without cost. By adopting the test instrument approach we relinquished the ability to work from actual data and accepted instead analysis based on perceived data. Information collected from actual files reflects and measures actual processing times, actual dispositions, and actual measures of activities within process steps. The importance of this type of information is clear. The ability to measure improvements or changes over time, and the impact and effect of various programs or changing trends is an essential one and requires reliable, accurate and valid data.

For our purpose, however, the adoption of the test instrument approach offered more valuable incentives because we could analyze decisions under controlled conditions not confounded by other effects. We could control for effects caused by program or policy change, the local criminal justice environment and the state legislative and constitutional environment.

Local records, even if obtained for analysis within a single jurisdiction may often be contaminated by the effects of change; this is so if they extend over time. Change can take two forms, the first and more subtle are changes in prosecutorial policy or emphasis; the second, more clearly observed are changes in structure. Both types may cause significant changes in the data. For example, if arrests for possession of marijuana have been reduced or a career criminal program instituted, or if the court has been reorganized and a new system of docketing cases established, the impact on the dispositional data which form the core of this research is critical.

Changes in the local criminal justice system, or at the state level also introduce effects that may confound the analysis. This is particularly true as one moves into comparative analysis which would like to assume that all other exogenous variables are equal. The extent to which these factors confound the results of the analysis and the extent to which they cannot be separated out or controlled for if one uses actual operating data, is one of the strongest arguments presented for the adoption of the development of a standard case set. The analytical limitations become particularly pronounced under these conditions.

When comparative analysis is the objective, not only are new problems added to the data collection task, but to the analysis as well. One can cite for example, the problems created by the existence of different sampling frames and definitional differences. One office may count cases, another defendants, a third charges or counts. Even if they all count cases, that definition may not be uniform. Additionally, the varying availability of the data items may pose serious problems as one moves from one office to another. The fact that information is collected and is retrievable in one office gives no assurance even of its existence in another. Finally, the importance of the external environment created by state and local law or stemming from different types of court systems, may cause serious comparability problems. As a result, it is little surprise that researchers have focused on the most easily defined group having the least definitional variation, namely adult felony cases.

The characteristics of these files cannot be understated as one approaches the task of comparative research. Because, to the extent that the nature and quality of the crime varies from community to community, that the courts' processing modes and policies affect the dispositional patterns of an office, and that the nature of the state constitutional and legislative environments preclude or mandate certain prosecutorial activities, the ability of the research to compare the dispositions of one office with another is severely constrained.

These considerations do not necessarily apply equally to all comparative studies. They are critical here, however, because our objective is to explain prosecutorial behavior and measure uniformity primarily through the analysis of dispositional events. The requirement that these statistical tools and concepts be flexible enough to

operate in a number of widely diverse environments gives full force to the requirement that as many of the external factors that might confound the analysis be held as constant as possible. The best technique for performing comparative studies of this sort appears therefore, to lie in the development of instruments that can be used to test effects either within an office or on a comparative level among offices. The development of the standard case set and the case evaluation form offered itself as the most feasible and practical way for meeting the needs of these research objectives.

Assumptions

The standard case set and evaluation forms are based on a set of assumptions that need to be clearly stated to clarify the scope of their measurement and analytical power, and to set boundaries. These are stated as follows:

1. The choice of prosecutorial policy and how it is implemented is affected by exogenous variables that ultimately will have to be taken into account to determine their relative importance. However, this is not an essential task for this particular developmental effort and has not been attempted here.

2. Prosecutorial policy can be defined in terms of case priorities and expected outcomes. These priorities are observable in the decisionmaking processes of the office and have explanatory power with respect to their behavior.

3. The decisionmaking processes that need attention are those that are capable of producing dispositions or outcomes. They can be functionally classified into intake, accusation, trials and post conviction processes.

4. The dispositional activity that occurs in these process steps can be used to measure the amount of consistency and uniformity in the office since the definition of uniformity assumes equal dispositional results and consistency assumes agreement with the policy-setters.

5. As a result of the test instrument approach adopted, it is assumed that the assistants' assessment of his reality is

accurate and conversely in areas which he has no experience or knowledge, his assessments will agree with reality only by chance.[11]

6. A significantly large portion of the prosecutors priorities could be explained by the mix of three factors, the seriousness of the crime, the history of the defendant and the evidentiary strength of the case.

Methodology

Based on these assumptions, the standard set of cases was developed to reflect the wide diversity of cases being presented for prosecution, and the case evaluation form was constructed to capture the priorities placed on them for prosecution and expected dispositional information. The areas focused on by the test instruments were the priority rating of cases for prosecution, the expected dispositions as a result of the perceived operations of the judicial system, an indication of the strategies used to bring cases to dispositions, and an expression of the severity of the sanctions desired by the prosecutors.

There are, to be sure, a number of other uses that a standard case set can be put to. But for our purposes and for this research, the basic objectives were to:

1. identify factors important for developing and defining a priority for prosecution scale;

[11]The notion that responses or decisions are hypothetical--that is they are made without reference to which alternative will occur and thus, operate under uncertainty as to which will occur--has to be the subject of discussion. In Sellin and Wolfgang's The Measurement of Delinquency (New York: John Wiley and Sons, 1964), pp. 319-333, a justification is made that all decisions are hypothetical. There is also a body of data from psychophysics that bears on the question of the relation between what is (objective measures) and what seems to be (subjective measures). The upshot is that there is a fairly straightforward relationship. For example, see S. Smith Stevens, "A Metric for Social Concensus," in Science Vol. 151, No. 4 (February, 1966), pp. 530-541, which show that subjective and objective measures can be related by simple mathematical structures.

2. determine the policy implications of these priorities in terms of dispositional processes, location, level and types;

3. determine the level of sanctions imposed by the prosecutor with respect to crime; and

4. point out the extent of diversity and differences that exist among offices in their decisionmaking activities and their effects on the process.

The standard case set was chosen as the testing instrument because it was able to hold constant many of the confounding variables. By providing the prosecutor with 30 cases that were statistically distributed over a three dimensional axis of seriousness of offense of the criminal history and evidentiary strength and by asking assistants and prosecutors to evaluate the same set of cases, the power of such a instrument would be demonstrated. It could point out any inherent differences in values and perceptions that could not otherwise be separated if representative data from each jurisdiction were collected. The confounding effects of the external environment including the nature and type of crime and criminal would then be held constant for this test situation.

There are, of course, limitations to this approach. The primary one is that the cases, since they represent a simulated environment, cannot necessarily provide actual dispositional information that could be obtained from sampling or collected from actual files. The standard case set is not representative of any known universe. It has been deliberately constructed to distribute cases as uniformly as possible along the three dimensions mentioned. Thus, it does not show a high frequency of less serious crimes such as traffic offenses, driving under the influence or simple trespassing; nor does it have a low frequency of murder, rape amd the more serious crimes. As a result, if

representativeness is desired, the responses to the standard case set would have to be weighted by the frequencies of these crimes as they occur in the actual universe. Representativeness was unimportant for our purposes since we were measuring decisionmaking over the full range of seriousness and thus, had to construct this uniform distribution to achieve this goal.

What is reported by the test instrument is perception and expectations. The ability of the assistant prosecutor, or prosecutor himself to perceive and accurately assess the reality of the operating environment is assumed. Our assumption, which appears to be substantiated by the data was that even though the cases may be different from those ordinarily processed by an assistant, his response would still reflect his normal operating environment rather than any other unknown environment. We assumed that the assistant would tend to make decisions based on past empirical experience, and that these experiences would color the responses to the test cases even if they differed significantly from his ordinary universe.

The ultimate power of a test instrument such as this lies in its ability to provide jurisdictional comparisons. Yet, as we will see from the analysis of the data, even these instruments are not free from analytical problems, both methodological and interpretive. Despite this, the results obtained indicate that there is more power in this type of approach then we ever envisioned at the start.

The standard case set was developed in the following fashion:

1. A sample of almost 200 closed cases were drawn from the Attorney's General's office in Wilmington, Delaware. Since the files in that office were organized by offense type, the sample was drawn so that

some of each of the various types would be included in the universe.

2. The cases were then reviewed by the project staff for acceptability as part of the case set. Major reasons why cases were primarily excluded were: 1) they were not offenses. For example, some of the cases were dispositions of bench warrants or rulings on mental competency hearings. 2) They were extraditions. These administrative type cases were excluded from the standard case set. The cases were then reviewed by the Deputy Project Director, Leonard Mellon, a prosecutor with more than ten years of prosecution experience, who for the past five years has concentrated on national prosecutorial programs. The review criterion was clarity and preciseness. We believed that the decisions of the assistant prosecutors should not be confounded by uncertainty, and that as much as possible, his decision should be based upon facts. For example, if the statement that a Miranda warning is given is not included in the facts, it too was added. If the extent of injuries was not set forth, it was stated.

After the qualitative review of the facts, approximately 160 cases were accepted for inclusion in the standard case set. The factors that were considered important for future analysis in defining the cases were then coded and automated. The cases were then typed, edited and placed in a form suitable for testing.

A second major effort involved the development of the criminal histories to be used in conjunction with the statement of facts. Appendix A presents a detailed description of this methodological approach as undertaken by Dr. Turner.

Although the statistical tools incorporated the findings of some past research efforts, they are fundamentally new products. Thus, their

design and development required a careful and controlled progression with the interim results evaluated and tested before moving forward to the next stage. The tools include:

1. A standard set of approximately 150 criminal cases.
2. A set of approximately 100 criminal histories with and without disposition data.
3. A case evaluation form for analyzing prosecutorial responses.

A schedule of monthly meetings with consultants Turner and Ratledge was established and the tasks required to design and develop the basic materials were determined. Assignments were made and deadlines set for the activities as needed.

1. The standard case set of approximately 150 criminal cases. Consultant Ratledge, with permission of the Attorney General of Delaware, sampled cases from that office's closed files. The project staff designed a standard format and rewrote the facts of each case into a predetermined order: (1) the date, time and circumstances of the arrest; (2) the statement of the facts; (3) list of the witnesses and (4) list of the evidence both physical and testimonial. Each of the cases were stripped of identifiers, edited and reformatted by the project staff. These formatted cases provide the offense component of the standard case set.

To quantify the seriousness of the offense and to identify the variables influencing the evidentiary strength of the case, more design and development work was needed than was originally anticipated. An initial attempt to apply the Sellin and Wolfgang scores to the offense characteristics was unproductive. The original Sellin and Wolfgang scales, developed in 1960, contained some now recognized methodological

problems and were culturally obsolete (for example, in 1960 no distinction was made between the seriousness of drug offenses involving heroin and marijuana, nor between the acts of possession and sale or quantities involved). Revised scales had been developed for the PROMIS system in 1970 that eliminated some of cultural obsolescence. These are currently being used because of their simplicity and reasonableness. In 1978, new Sellin and Wolfgang scales were made available by INSLAW that were to replace the 1970 version. We originally had hoped to use them, but after conversations with INSLAW and after attempting to code the cases with them, we found that they were: (1) methodologically even weaker than the original Sellin and Wolfgang; (2) so complicated that they could not be coded with any reasonable degree of efficiency; and (3) produced such complicated results after analysis that the data were difficult to interpret. Because both the 1970 and the 1978 versions are not entirely satisfactory, we coded all the basic data elements that are considered important to both scales, with the expectation that future analyses may help straighten out the discrepancies and the methodological weakenesses. This increased the work anticipated but created a more valuable data base for future research on this subject.

The legal-evidentiary strength of any case is of prime concern to prosecutors; yet, it has never been subjected to a systematic conceptualization or articulation so that the important elements can be tested and ultimately identified. A concept of evidentiary strength was developed that could be separated into four components: (1) the inherent complexity of an offense; (2) constitutional questions; (3) evidence--both physical and testimonial; and (4) the defendant's role and relationship to the participants in the crime. Within each of these

areas, other items that had been found to be important from the results of other studies and research were included. All the factors identified as important in the Vera Study of Felony arrests in New York City[12], the Major Offense Bureau of the Bronx[13], PROMIS,[14] Jacob and Eisenstein's Felony Justice Study,[15] the Alaska Plea Bargaining Study[16] and the Georgetown National Plea Bargaining Study,[17] to name a representative few, were reviewed, sorted and finally placed on a coding sheet. Additionally, an inherent complexity scale was established for all NCIC coded offenses, and will be maintained as a table in the computer since each case's arrest charges are coded by NCIC codes. There is no guarantee that all the important elements have been included, rather this effort reflects a "best guess" approach. But since the "guess" is based on reliable studies, informed experienced prosecutors, and other workers in the criminal justice arena, it probably is not too far off the mark.

Once the concept of legal-evidentiary strength was developed and the important variables identified, all 150 cases were coded. A coding

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[12]The Vera Institute, Felony Arrests: Their Prosecution and Disposition in New York City Courts (New York: The Vera Institute of Justice, 1977).

[13]National Center for Prosecution Management, Report to the Bronx District Attorney on the Case Evaluation System (Washington, D.C.: National Center for Prosecution Management, 1974).

[14]Footnote 10, supra.

[15]James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little Brown and Co., 1977).

[16]The Alaska plea bargaining study was conducted in 1977 by the Alaska Judicial Council, Michael Rubinstein, Executive Director.

[17]Georgetown University Institute of Criminal Law and Procedure, Plea Bargaining in the United States, Phase 1 Report (Washington, D.C., April, 1977).

form was designed and tested. After some modification (there were some complicated skip patterns), the coding was completed by the deadline date of June 30. The coding task was divided into two parts. The objective, non-legal factors were coded by the project staff. The elements that required legal interpretation or prosecutorial experience (such as, sufficiency of evidence to make a prime facie case, existence of constitutional questions involving search and seizure, Miranda, etc. and the inherent complexity of proving this offense) were coded by Leonard Mellon, the Deputy Director of the project. This technique introduces the question of bias or subjectivity and calls for validation through replication by others with prosecutorial experience. A limited attempt was made to validate these more judgmental evaluations. Our prosecutor consultant, William Wessel recoded the 30 cases used in the testing activity; his responses were compared to Mr. Mellon's and discrepancies were resolved. Additionally, Mr. Sheldon Greenberg, First Assistant in the Kings County (Brooklyn) District Attorney's office, reviewed each of the test cases and their legal-evidentiary fact patterns for inconsistencies, ambiguities, and other debilitating factors.

Clearly, these limited activities need expansion as the work proceeds and more systematic effort made in this area. However, the start has been made. The methodological approach is flexible enough to allow for adjustments as we learn more and more about the relationships between the component evidentiary parts and their significance. For this project however, we have included every variable that seemed reasonable and available into the file. It is important to note this because before it is ready for extended use, the unimportant factors

need to be identified and eliminated. If not, subsequent use of the file in its "raw" state would have to cope with unnecessary or even unimportant information.

2. The criminal history of the defendant is the second major component of the standard case set. The statistical activity involved developing a scale that could reflect and quantify the seriousness of the defendant's criminal history. The PROMIS system, for the lack of a better tool, modified the base expectation scale developed by Gottfredson to predict recidivism from California correctional institutions.[18] This scale contains a number of facts that are available to and considered important by bail release agencies, or probation and parole departments. Commonly, they include such facts as employment history and community stability. Yet, these facts are not generally available to the prosecutor at intake, nor does he necessarily consider them important. Clearly, we needed a scale that would be responsive to the prosecutor's intake function and charging decision and based simply on the criminal history of the defendant. The incorporation of this developmental task into the research project was undertaken so that we could analyze the importance of the defendant's prior record relative to the seriousness of the offense and the evidentiary strength of the case with respect to charging decisions.

A sample of 100 criminal histories held by the New Jersey State Police, were stripped of identifiers, and reformatted. From those 100 records, 25 were selected to provide a wide range of criminal activity

[18]D.M. Gottfreson and R.F. Beverly, "Development and Operational Use of Prediction Methods in Correctional Work," in Proceedings of Social Statistics Section of American Statistical Association (Washington, D.C.: The American Statistical Association, 1962).

and length of record. Initial testing for response variation was made by Stanley Turner using Temple University students. The results showed a basic level of consistent response, but revealed the need for some adjustment. The records were adjusted and modified, anchors set, and a response scale of 1-7 established for subsequent testing by assistant prosecutors.

The initial testing was based on criminal arrest records and did not note dispositions. After the initial response range was established, the question of how to include dispositions on the record was addressed. It was decided to use only the dispositions of acquittal, conviction and dismissal and apply them in the same proportional distributions as were present in the original police records. The testing process was repeated by Dr. Turner until two sets of 25 criminal histories were developed, one set without dispositions, one set with. These sets were then tested in some of the prosecutor's offices participating in the study and the results are reported in Appendix C.

Although the evaluation of the 25 criminal histories is not time-consuming (it takes about 15 minutes for an assistant to complete the test) the number of tests made by prosecutors to compare the effects of withholding dispositional information was few because project staff time was restricted. On the other hand, the number of cases available to test the effect of the defendant's criminal history on the decision making process was very large as a result of the testing activity. Further work in this area is of course, indicated.

3. The conceptualization and design of an evaluation form was the last activity undertaken in developing quantitative tools. This was

a difficult task because it meant specifying the dependent variables that should be used to measure uniformity within the conceptual frame established for this project. Since the primary objective was to produce instruments capable of measuring differences in decisions, questions were developed to test for these with respect to the urgency of the case for prosecution, whether it should be accepted for prosecution, what the expected disposition would be, at what level of court processing and with what sentence. The process oriented questions included two probes: (1) to determine the extent to which the assistants agreed in their assessment of the court processing systems after intake, and the extent to which they agreed on reasonable and appropriate outcomes. Since it is largely unknown how the prosecution process changes over time, or what other factors come into play after the case has been accepted for prosecution, these questions were asked to explore these areas for additional knowledge. In one respect, this moved the project beyond its original scope which was to examine the screening and accusatory functions to an examination of the entire prosecutorial process. In another respect, since the site visits showed the importance of an "office" concept, then it is reasonable to assume that decisions are made with respect to expected final dispositions and not merely dispositions occuring at the end of the process steps of intake and accusation. The extent to which the final expected outcomes explain part of the intake and accusatory decisions, is clearly an area worthy of further examination.

The case evaluation form incorporated the basic elements of the conceptual framework used in the Policy Analysis for Prosecution into its design. The policy of the prosecutor was indicated by the questions

concerning priority for prosecution, the accept/reject decisions and the sentencing recommendations. The strategies and programs used to reach dispositions were indicated by the questions regarding the location of the disposition, level and type. Some aspects of the organizational structure through which policy was implemented, and the allocation of resources consonant with the office's priorities were captured by identifying the organizational unit to which the assistant was assigned, the months of prosecutorial experience each assistant had, and the identification of the policy maker or leader of the unit.

The collection of this organizational assignment and the experience level of the assistant was important also because it not only indicated the experience level of the office, but how the experience was distributed. It seems ultimately, that a system needs to be derived that will permit this information to be integrated with the functional activities of prosecution--intake, accusatory, pre-trial, etc.--so that comparability studies can be performed. For this report, the analysis has been kept within the office.

The designation of the leader and obtaining his evaluation presented unexpected difficulties. This resulted in developing criteria that define and differentiate between leaders. First, depending on the structure of the office, the jurisdiction of the prosecutor and his involvement with the actual operations and management of the office, the definition of a leader varied widely. For example, the Attorney General of Delaware has little operational or management involvement with criminal prosecutions. This activity is delegated to the "State Prosecutor". In this office, clearly the State Prosecutor should be defined as the major policy maker for criminal prosecutions and hence, considered as the leader.

On the other hand, the Brooklyn District Attorney maintains active and "hands on" knowledge about the operations and management of his office, including a personal knowledge of the vast majority of his assistants. Because the office is large, two of his top three executive staff, are also intimately connected with the policy-setting and policy-making aspects of the office. Additionally, with an organization structure that is hierarchical and bureaucratic, each of the smaller organizational unit heads (called bureau chiefs) implement the policies and priorities of the office within their specialized sphere of responsibility, transmitting policies and priorities horizontally, as well as vertically. In this office then, one can discern three levels of leaders, the District Attorney himself, his executive staff and the operational bureau chiefs.

Thus, the first problem of defining the the policy-making leader was initially resolved by identifying all the possible leaders in the office and using, where feasible, the highest ranking one. It would seem that, ultimately, it might be beneficial to analyze policy leaders at all levels. An insight into this task can be gleaned from the analysis of the Brooklyn data that is presented in Part 2 of this report.

The second problem, that of obtaining information from the leaders was not resolved, only mitigated. The testing places a demand on the chief prosecutor's time that, in some instances, simply cannot be met. This was the case in Brooklyn and New Orleans, but fortunately not so in Salt Lake City. In an effort to reduce the time needed to evaluate the set of cases, the standard evaluation form, at the

suggestion of Brooklyn's First Assistant, was modified and a Gold form created that eliminated all open-end responses, speeded up the evaluation process, yet captured enough information to permit analysis with the rest of the office. A copy of this is found in Appendix A.

The first evaluation form was designed and tested during the Miami and Norfolk site visits. The questions originally called for open-ended responses since we could only conjecture what the answers might be. After each of these two trials, the questions were reworded to further clarify their meaning and intent. The open-ended mode made completion time-consuming. It took the assistants from 2-3 hours to read, evaluate and complete the forms for just 10-12 cases. Not only was time a problem but other intrinsic difficulties in the cases themselves were uncovered. For example, the original set of cases were weighted toward the serious end of the scale for both offense and evidentiary strength. As a result, we had to adjust them so they would be more representative of the entire range we were trying to test. We also found other problems inherent in the definition of crimes--these included the names of the crimes, state variations in defining what are crimes, and definitions and distinctions between misdemeanors and felonies. All of these problems were important because the standard case set was designed for use across jurisdictions and for comparative analysis purposes. Most of them were resolved by changing either the questions or responses on the evaluation form.

After a final test in Brooklyn, the data appeared to be acting rationally and predictably. Most minor problems had been cleared up; final adjustments were made and the evaluation form was changed from open-ended to closed with a checklist for responses. The case size was

increased to thirty to ensure a minimum of data for the statistical analysis and testing was initiated.

In the fall of 1978, the standard case set was tested at four sites: the Attorney's General Office, Wilmington, Delaware; the County Attorney's Office, Salt Lake City, Utah; the District Attorney's Office, Orleans Parish, Louisiana; and the District Attorney's Office, Brooklyn, New York. The last three sites had participated in the policy analysis component of the project, having been studied by teams composed of staff members and consultants. Thus, findings interpreted here are based on the actual knowledge of the policy and operations of the offices. The Attorney General of Delaware, was not studied as part of the policy analysis segment of this project, but consultant Edward Ratledge has worked closely with this office since 1972 and more recently, in his role of Director of Research, at the College of Urban Affairs, University of Delaware. As a result, he had acquired extensive knowledge of the offices's rules and procedures. This coupled with his long association with our research objectives and programs allowed us to substitute his findings as equivalent to the site visits the other offices had undergone.

Two sites, Brooklyn and Wilmington, were tested first. Based on a critique of the standard case set supplied by both prosecutor's offices and staff review, one case was rejected and another substituted for it and the statement of facts were tightened up-- especially as they addressed the questions of seriousness of injury, type of identification made, and the relationship of the defendant to the other parties in the incident. In addition to covering the full range of seriousness, the standard case set was designed to be as complete and unambiguous as

possible. Our purpose was not to test the amount of variability that occurs when uncertainty is interjected in the decisionmaking process, rather decisions under optimal information circumstances. Thus, the critiques volunteered by the prosecutors increased our confidence not only in our adoption of this requirement, but in the soundness of the cases. One should note, however, that this task is not finished. We have received critiques on only 30 of the approximately 150 cases available. The balance have yet to be tested. What this task did point up was the necessity for continuing with this activity.

The Brooklyn and Wilmington tests were conducted personally by the project staff, and included their presence at the sites to explain and help administer the testing procedures. They also included follow-up on-site visits to collect the results and receive the critiques of the cases. In New Orleans and Salt Lake City different procedures were tested. The New Orleans office was visited only once prior to the testing when the purposes and procedures were explained; the Salt Lake City office was tested without any personal contacts. Instead we relyed on mail and telephone communications to explain and administer the tests. On review of all methods, it seems clear that the tests can be conducted with only a few (even one) visits. However, we must note that, given the state of the art, it is still essential that some knowledge of the office and its procedures be obtained from on-site observation. Otherwise, any interpretation of the data may be suspect.

Special attention is given to the data obtained from a the District Attorney's Office in Brooklyn because it indicates some of the more powerful and valuable uses to which the standard case set can be put. The Brooklyn office is large, employing at the time of the testing

almost 300 full-time assistants. The office under the leadership of Eugene Gold, the District Attorney, has a long history of innovative management and an active interest in the improvement of the prosecutive functions. This interest was naturally enough imbedded in both the Chief Assistant, Robert Keating and the First Assistant, Sheldon Greenberg. After they saw the results of the pre-test, they requested a full scale test of all assistants in the office and additionally, asked that it be timed to permit testing approximately 60 new assistants who were entering the office the day after Labor Day. This latter group represented newly graduated law students who had just recently passed the bar and were to receive two weeks training before assignment to other parts of the office. It was during this training period that the test was administered. This was an unexpected and tremendously valuable opportunity to advance our research efforts, since we were further asked to test the newly employed assistants after they had nine months to a year's experience.

Another major contribution resulting from the testing of the Brooklyn District Attorney's office was the organizational analysis it permitted. This large office was organized into 12 clearly identifiable bureaus or divisions, each headed by a bureau chief, and supported by small groups of assistants. Each of the chiefs were identified so that the results could be analyzed within and between the organizational units. The resultant file represents the first time that the priorities and consensus of the assistants within each of the organizational units can be measured. The opportunity to work with data such as this is almost unbelievable and represents a giant step forward in extending our ability to quantify prosecutorial activity and examine it organizationally.

For the District Attorney, the data offers a personnel management tool that sheds light on the extent of training and agreement there is in the office. It answers the question as to whether there are some bureaus or divisions that behave differently. It examines the specialization of certain bureaus and looks at whether the assistants in them "know what is going on in the rest of the office". It serves as a test instrument to measure the effects of training and socialization.

The potential uses of the standard case set have been indicated in only the broadest strokes. Its true explanatory power must wait until more detailed analysis of the data has been completed.

Analysis

This report, because of the time limitation imposed by the grant and because of the unexpected volume of information collected, by necessity, is limited in its presentation. There was so much analysis that could be done that we were forced to select from the total universe that which was first, important to the objectives of this project, and second which could be done within the time allowed. The decisions as to what to include in the first analysis were made after much deliberation and consultation with the Advisory Borad, LEAA grant monitors and project staff. The result was that this report would focus on the dynamics of the case set itself, and the extent to which it could measure differences or changes in offices and among offices. Since the primary purpose of this test and research project was to determine whether tools could be developed to measure uniformity and consistency between decisionmakers, this became the focus of the analysis of the data. As a result, causal relationships, important factors and

influencing variables were excluded from this analysis. In other words, this report focuses on the dependent variables, their relationships and meanings, rather than on the explanatory power of the independent variables. This latter analysis will be conducted subsequent to this one and the results reported in other documents.

Even the dependent variable analysis was not without difficulty. Many of the responses represented nominal scale values and, therefore, required statistical techniques not generally used. Other difficulties stemmed from the need to define some of the concepts before they could be analyzed. For example, one of the more difficult was what constitutes agreement. If one assistant expects case disposition to occur at preliminary hearing and another at arraignment how far away from perfect agreement are these two responses? The answer, of course, involves utilizing different methodological techniques and subjecting the responses to other analytical procedures. This is a complicated task. For this report, we have taken a more limited approach--defining agreement as perfect agreement between responses. The need for continued work in this area is, of course, indicated and underway.

Another challenge stemmed from determinating what constituted significance. Theoretically, we could argue that since the data collected from the offices were not samples, and since the offices were not samples of any universe, tests of significance were irrelevant. To do this, in our opinion, would be to beg the question. Assuming the responses were samples of a larger decisionmaking environment, we applied tests of significance because we had to have some measure or standard against which we could make statements.

What was highlighted in analyzing the dat from the Brooklyn District Attorney's office was a real problem--namely, the distinction between what is statistically significant and what is operationally significant. Even if we statistically showed levels of disagreement between the chief of a division and his assistants, we were not able to state whether these differences were recognized, either operationally or administratively, by the chief or any others in the office. The limitations of the power of these statistical tools are most noticeable as one attempts to interpret them. "When do differences become observable" should be a major question addressed in future research.

Finally, as the unit of analysis moved from a within-office model to a comparative level, other analytical difficulties were encountered. First, the size of the offices varied considerably from Brooklyn's high of 282 to Wilmington's low of 18 assistants. This in itself impedes comparative analysis unless some indexing is applied to the responses and assumptions made that size is not an influencing factor. Secondly, the procedures and court systems varied so that it was quickly obvious that some explanations had to be given about the specific criminal justice environments within which the prosecutors served. While in one sense, this was limiting because the explanatory power of the responses were weak, in another sense, it was important because it confirmed another major hypothesis of the study, namely that offices do differ and that the differences can be measured.

From comparative analysis, we were able to extract some principles and findings that identified and established some standards for data collection and measurement. We were also able to demonstrate the validity of the measures and the need for flexible, easily obtained and quickly analyzable variables.

The analysis presented here is only a sampling of the possibilities for research from this rich data base. The conclusions reached at this point are tentative since they are based upon only four sites and the instruments still require further refinement and testing. In addition, some of the concepts require the use of empirical techniques which, at least at this time, are not amenable to rigorous statistical tests. As research continues such tests will be identified. However, we have chosen to describe the major capabilities of the data set without the usual reference to confidence intervals or tests of significance beyond those which are obvious and straight forward.

Structure of the Report

The results of this research and development activity are presented in a sequence that conforms with the goals and objectives of the grant. The first part of the report presents in summary form, the results of the testing in the four sites with a discussion about its meaning and limitations.

The second section is divided into three parts. The first reports on the amount of agreement found between the assistants and the chief policy makers in the office. It examines the extent to which, if you know the chiefs' policies and priorities, you can predict the assistants' decisions. Or conversely, it measures the amount of congruence between the leader and his followers. Each of the offices are analyzed from this perspective. Then leaders of each of the offices are compared to the assistants in offices other than their own to measure the amount of congruence that could occur if, in fact, they were transferred to head up these offices. The results show the sensitivity of the test instruments, their ability to measure differences and the

power of the instrument to analyze decisionmaking processes under simulated conditions.

The second part addresses the questions of how much internal uniformity exists among the decisionmakers without respect to the leader. Here tests and analysis are made to measure variations in the decisionmaking process overall and to establish base levels of uniformity in addition to measuring differences.

The third part of this section addresses the complexities due to organizational size and examines the differences that occur within smaller organizational units and among different levels of policy leaders. The analysis, the first of its kind in the United States, was aided by a number of factors: the willingness of the Brooklyn District Attorney to test all his assistants, the organization of the office into twelve separate bureaus or units, and the cooperation of the District Attorney in identifying leaders and placing assistants within the unit. The additional good fortune of also being able to test the entering class of assistants before they received job training also established a base for measuring the extent of uniformity and consistency that would occur as they became more experienced in the office. The results of this special analysis are presented in this section.

The last section of this report (Part 3) shifts emphasis from the agreement among the decisionmakers to the case set and the dependent variables tested. Here, the thirty cases are systematically examined by pairwise regressions and multiple regressions to identify any correlations that may exist between the dependent variables, and specifically with respect to the explanatory or predictive power of the variables collected. Special emphasis is given to determining the

ability of the priority for prosecution variable to explain other relationships. In this section, we were not trying to discover new facts but rather reaffirm the validity of the case set as an accurate and sensitive indicator of different aspects of prosecutorial decisionmaking.

Appendices are attached to present samples of the case set and evaluation form (A), summarize the variance attached to each of the cases (B), describe the data processing techniques and procedures (C) and present the results of testing criminal histories (D).

PART I

RESPONSES TO THE STANDARD CASE SET

Introduction

The standard case set was administered to 356 assistant prosecutors in 4 jurisdictions. Each assistant responded to a set of 30 cases, 24 of which were identical for all offices--the difference resulting from changes that were made to the original set of cases after they were tested in Brooklyn and Wilmington. These two jurisdictions responded to the original thirty cases; Salt Lake City and New Orleans responded to the modified set of cases. Of the six cases which changed, one was a new case, the balance were modifications to clarify points. See Appendix B for a listing of the cases and identification of those that are the same.) The participating jurisdictions are identified in Table 1.

Table 1

Prosecutors Participating in Testing the Standard Case Set
September - November, 1978

Jurisdiction	Number of Assistants	
	Office Total	Responding
District Attorney Eugene Gold Kings County (Brooklyn) NY	320	282
Attorney General Richard Weir Wilmington, DE	18	13
District Attorney Harry Connick Orleans Parish (New Orleans) LA	61	34
County Attorney Paul Van Dam Salt Lake County (Salt Lake City) UT	24	21

The analyses presented in this report are based on thirty cases when the standard case set is being tested within an office and a subset of 24 cases when the inter-office results are being presented (see Part II).

Tables 2-8 contain the percent distributions of the responses to the questions asked on the evaluation form. (See Appendix A for a copy of the form.) The question asked is displayed at the head of the page, followed by the distribution of responses for each of the sites and a brief commentary.

Each commentary addresses three primary issues:

1. The value of using a standard case set to obtain responses to the question and an evaluation of its power or limitations is explored.

2. The more interesting results obtained at each site are highlighted.

3. A critique of the question with respect to its ability to produce reliable measures of the concept of concern is provided.

Results of the Administration of the Standard Case Set

Q.1. AFTER REVIEWING THIS CASE, WOULD YOU ACCEPT IT FOR PROSECUTION?

(1) YES_____ (2) NO_____

Table 2

Percent Distribtution of Accept/Reject Rates
by Jurisdiction

	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Accept	84.9	89.0	77.9	78.6
Reject	15.1	11.0	22.1	21.4

The standard case set is able to differentiate between acceptance and rejection standards that are used in making charging decisions while holding constant influencing factors such as, different type crimes, quality of police reporting, and different amount of available information.

There is a clear indication of two different types of intake processes. Even though the assistants are looking at the same set of cases, one type (Brooklyn and Wilmington) rejects proportionately few cases; the other (New Orleans and Salt Lake City) exhibits a rejection rate almost double that of the first. This distribution is entirely consistent with the policies and procedures used in the offices which have been verified through independent on-site visits.

The question is simple and no difficulties were experienced with the responses. Its value lies in the ability to quickly discern levels of acceptance within an office, and, as will be demonstrated in Part II, it is a sensitive decision variable for measuring uniformity and consistency in intake policy.

Q.2. CONSIDERING THE CHARACTERISTICS OF THIS CASE AND YOUR COURT, WHAT DO YOU EXPECT THE MOST LIKELY DISPOSITION WILL BE? (CHECK ONE)

Table 3

Percent Distribution of Expected Dispositions
by Jurisdiction

	Jurisdictions			
Disposition	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Plea	62.1	63.1	36.9	42.4
Dismissal	1.1	0.3	0.1	0.2
Nolle	0.0	0.0	0.6	0.0
Conviction	21.0	31.7	51.6	51.7
Acquittal	1.4	0.3	1.6	1.2
Decline to Pros.	0.1	0.3	0.9	1.9
No True Bill	0.4	0.0	0.0	0.0
ACD	5.0	0.0	0.0	0.0
Transfer	1.1	0.9	0.3	0.0
Defer Pros.	0.1	0.0	0.3	0.4
Non-Crim. Alts.	2.4	0.0	0.1	0.8
Diversion	1.0	0.0	2.8	0.0
FTA	0.6	0.3	0.0	0.2
Can't Predict	3.1	2.3	4.7	3.1
Other	0.6	0.9	0.0	0.0

This table demonstrates that the standard case set can be used to distinguish a plea oriented prosecution system from a trial oriented system. The plea is shown to be the preferred disposition for over 60% of the cases tested in both Brooklyn and Wilmington. In contrast, the trial oriented policy of New Orleans is delineated by the relatively small proportion of pleas (36.3%) as compared to the higher trial conviction rate (51.6%).

Further is is interesting that assistants cannot predict some dispositions which normally occur in any office, such as nolles, dismissals, acquittals, etc. We are inclined to think that this is due to the fact that assistants will not be able to

predict dispositions if they rarely occur; are not part of an office-approved dispositional strategy; are outside of their control or if they contain future difficulties that are not visible from the information presented.

With respect to the question itself, there are too many responses; the answers should be collapsed into fewer categories and based on other analysis, it appears that these categories should be plea, conviction by trial, and all other.

Q.3. ASSUMING THE DISPOSITION YOU HAVE GIVEN IN THE PREVIOUS QUESTION, WHERE IN THE COURT PROCESS DO YOU EXPECT THIS CASE TO BE DISPOSED OF? (CHECK ONE).

Table 4

Percent Distribution of Disposition Location by Jurisdiction

	Jurisdictions			
Exit Point	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
First Appear. for Bond Set	16.0	0.3	2.5	0.8
Prelim. Hrg.	14.6	1.2	1.8	6.4
Grand Jury	1.2	0.0	0.0	0.0
Arraignment	12.0	0.6	10.2	4.6
After Arraign. before Tr.	29.5	51.5	29.4	33.3
1st Day of Tr.	2.9	12.5	1.0	1.9
End Bench Tr.	1.0	4.9	7.3	11.0
End Jury Tr.	22.8	29.1	47.7	42.0

This table indicates how the standard case set can be used to show where the caseload exits. The location in the process where dispositions occur provides a good indication of the entire system's dynamics.

By categorizing the process steps into the broad functions of intake, accusatory, pre-trial and trial, we see that in New Orleans and Salt Lake City, over 40% of the cases move into the trial process, whereas in the other two sites, 70 to 80% of the cases are disposed of before the first day of trial. This table also shows how the external environment forces the occurrence of certain dispositional patterns. For example, the zero disposition rate in the Grand Jury in Wilmington occurs because the Attorney General is not represented at Grand Jury proceedings. As a result, they hand up indictments and the Grand Jury rarely no-bills the police complaints.

This question points up the need for a time dimension to be overlaid on the process steps. Since it does not provide information about the amount of system time involved in and between the process steps, it is difficult to impute delay or inefficiency to the system. Although Wilmington appears to wait until after indictment to start disposing of its cases, it actually disposes of about 50% of its cases in the period after arraignment and before trial, this should not be equated to a delay factor. First, the process is fast-moving. The time period from arrest to arraignment is about four weeks and to first day of trial is generally ten weeks. Additionally, the Attorney General will not dispose of a case which has been accepted for prosecution until an indictment has been returned.

Q.4. AT WHAT LEVEL WILL THIS CASE BE DISPOSED OF?

Table 5

Percent Distribution of Level of Disposition
By Jurisdiction

	Jurisdictions			
Level	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Felony as Charged	25.4	61.9	70.3	55.3
Felony Lesser Charged	30.3	12.5	4.6	15.7
Misd. as Charge	7.5	13.4	22.0	18.4
Misd. Lesser Charge	24.8	11.3	2.3	7.8
Violation	6.1	0.0	0.3	0.7
Other	5.9	0.9	0.5	2.1

The standard case set can be used effectively to identify different patterns of acceptable dispositions which are presumably dictated by policy or system capacity. New Orleans, with its rigorous screening and a policy of minimal plea bargaining, clearly has transmitted its policy through the office since few cases are expected to be disposed of by a "breakdown". Brooklyn, on the other hand, is accustomed to disposing of a high volume of cases that have received limited review at intake, and thus, uses plea negotiation extensively. Further, it is interesting to note that in this table, Salt Lake City departs from the pattern followed by New Orleans for the first time.

The data suggest that although both offices perform rigorous

intake review, Salt Lake City, unlike New Orleans uses plea negotiation as a dispositional route. Between the remaining two offices, Wilmington imposes what appears to be higher standards than Brooklyn. This maybe attributed to a "no reduced plea" cut off rule.

The question was constructed with difficulty since we had to overcome the problem of interstate variations in definitions of felonies, misdemeanors and violations. Since we are, for the most part, interested in identifying the dynamics of the office's dispositional strategies and not the legal definitions of the crime, we let the "misdemeanor lesser charge," response remain ambiguous. Although we lost the ability to identify how much the charge was reduced from the original charge of felony or misdemeanor, we gained simplicity and the more important piece of information.

Q.5. IN YOUR OPINION AND IRRESPECTIVE OF THE COURT, WHAT SHOULD BE AN APPROPRIATE AND REASONABLE SENTENCE FOR THIS DEFENDANT? (CHECK ALL APPLICABLE).

Table 6

Percent Distribution of Appropriate Sentence
by Jurisdiction

	Jurisdictions			
Sentence	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
None or Fine	4.4	0.0	0.7	0.4
Conditional Discharge	12.8	3.0	3.4	2.7
Probation or Diversion	23.6	34.7	27.5	34.7
Lockup	59.2	62.3	68.3	62.2

This table indicates the potential power of using the standard case set to compare differences in sentencing expectations among jurisdictions.

It is interesting to note that there is substantial agreement among all sites, regardless of charging policy, dispositional strategies and levels of disposition with respect to the percent of responses that advocate some jail or penetentiary time. Also of interest is the variation that occurs in what is considered to be appropriate sentence for those cases at the lower end of the severity scale. We will show that policy variation is more circumscribed for the serious cases and less restricted for the less serious cases--a condition that is reasonable and to be expected.

While the responses were delineated into finer categories on the evaluation form, the broad categories presented in this table or similar ones are recommended. Since the responses chosen are those

available in a jurisdiction, some may never be selected in one jurisdiction and chosen with high frequency in another. For example, the adjournment in contemplation of dismissal (ACD) is a conditional discharge route available in Brooklyn and is used extensively to dispose of minor cases. That disposition was not found in the other jurisdictions although similar dispositions by other names were. Other external factors may also exist which effect the selection of a sentence. Jail capacity or court capacity are good illustrations. New Orleans, for example, is located in a state where the U.S. District Court has prohibited increase in the state prison population at Angola. Likewise, Wilmington has a District Court limitation at Smyrna.

Q.6. IF JAIL OR PENETENTIARY TIME, HOW LONG?_____

Table 7

Percent Distribution of Years of Incarceration by Jurisdiction

Years Sentenced	Jurisdictions			
	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
Less than 1	7.7	3.8	3.3	16.1
1 - 3	52.1	37.0	21.9	48.3
4 - 6	15.9	19.7	11.1	26.0
7 - 12	14.1	21.6	13.1	3.1
13 - 23	6.8	13.0	15.9	2.0
24 Plus	3.7	4.8	34.9	4.5

The wide differences displayed between the jurisdiction with respect to the appropriate length of incarceration are fascinating. Of great interest is the contrast between the two offices--New Orleans and Salt Lake City--which appeared to have rigorous charging standards which took a trial-oriented stance. New Orleans assistants felt that 63.9% of the defendants should be locked up for seven years of more. In contrast, Salt Lake City assistants felt that only 7.6% should be locked up for that period of time. Part of this discrepancy might be explained by the fact that only one judge is normally available to try criminal cases in Salt Lake City. This also may explain why the office participates in plea bargaining (which from this table appears to be sentence bargaining.

The question does need to be reconstructed in the future. As it exists now, it probably reflects the local sentencing practices as they are influenced by parole and probation decisions, good time credits and habitual offender acts among others. Thus, in the future, it is recommended that the question be restated to ask for "actual time to be served".

Q.7. CIRCLE, THE NUMBER THAT BEST REPRESENTS THE PRIORITY YOU, YOURSELF FEEL THAT THIS CASE SHOULD HAVE FOR PROSECUTION.

1	2	3	4	5	6	7
Lowest Priority			Average or Normal			Top Priority

Table 8

Percent Distribution of Priority Scores by Jurisdiction

	Jurisdictions			
Priority	Brooklyn	Wilmington	New Orleans	Salt Lake City
Percent	100.0%	100.0%	100.0%	100.0%
1	13.9	6.9	10.1	11.9
2	13.6	9.0	9.7	11.4
3	14.8	17.7	9.2	9.9
4	24.9	27.8	29.3	28.3
5	14.9	18.3	15.9	15.1
6	11.7	15.2	13.5	15.1
7	6.1	5.1	12.4	8.3

A primary purpose in developing the standard case set was to create a technique for measuring prosecutorial priorities that were environmentally and policy free. As we have seen from the previous discussion, the prosecutor's response were clearly linked to the environment and/or policy which had been observed. The priority scale displayed here is independent of these factors and its value lies in its ability to ascertain prosecutorial priorities without regard to the environmental factors or the local criminal justice system characteristics. This is important because it can be used as a normative scale for the value of cases for prosecution, thereby, allowing priority to exist in numerical form and early on in the process.

The fact that the full range of the scale is covered and that the offices are quite similar in their rankings indicates that the cases represent a good mix of seriousness of offenses, criminal histories of the defendants and evidentiary strengths.

There is substantial amount of agreement in the priority of a case among all offices. The way in which the office chooses to dispose of low priority cases, for example, is a matter of policy. In New Orleans, they screen them out whereas in Brooklyn, they plead them. In the same way Brooklyn might plead a serious case whereas New Orleans would try it.

The scale can be an excellent indicator of the thresholds for these dispositions.

PART II

UNIFORMITY AND CONSISTENCY AMONG DECISIONMAKERS

A. CONSISTENCY: AGREEMENT OF ASSISTANTS TO LEADERS

1. Introduction

A primary objective of this research was the development of a test instrument that was capable of measuring the amount of uniformity and consistency among prosecutors and assistants. Consistency is defined as the amount of agreement between the policy makers in an office and those personnel who implement the policy through a decisionmaking process. For this study, it was first necessary to identify the policy leaders within the office and then measure the extent to which, if knowing their decisionmaking patterns, we could predict those of the assistants. The criteria used to define the policymaker or leader, as he is called here, was discussed in detail in the Introduction to this report. Briefly, the leaders are defined as the prosecutor or one of the chief assistants.

2. Hypothesis

The hypothesis tested in this section is that there is a relationship between the leader's decisions and those of the assistants under his policy control; and that knowing the leader's decisionmaking pattern, the assistants' can be predicted.

There are two explanatory factors that need to be accounted for in this test. The first is direction of the relationship: we assume that there is a causal relationship between the leader's policy and the assistants decisions. Thus, the extent of policy agreement between the leader and the assistants should measure consistency.

The second factor that must be considered in explaining any relationship observed is the extent of inherent agreement· we assume that there is a high degree of agreement among attorneys independent of

policy that stems from a homogeneity derived from ethical standards and education.

3. Methodology

The approach taken was, first, to measure the amount of agreement between the policy leaders and their followers and second, to attempt to measure differences that could be attributed to the effects of education and/or ethical standards. The remaining difference then could be attributed to the effects of policy.

The amount of agreement was measured first by regressing the responses of the leader in the office on the assistants' responses, thereby determining the predictive power of the leader and hence, an overall measure of agreement. The results of the regression are present in Table 9.

The second task was approached in two ways. First, the responses of the leaders in the four offices were matched to the responses of the assistants in other offices. This had the effect of transferring a policy to another office operating within a different environment and thus measured the extent of congruence between the leader and his "new" staff. The basic agreement observed under these conditions could be attributed to non-policy factors. Since all four sites had been studied, it was possible at the outset to determine that the policies and procedures varied widely. The different dispositional patterns presented in Part 1 also reaffirmed the validity of this approach.

The second approach was to examine the differences in responses between the experienced assistants in Brooklyn and the newly hired assistants who were tested during their first week on board and in

training. It was assumed that the effects of law school education and ethical standards could be most clearly observed under this condition and produce measures of high reliability because of the size of this incoming group of 65 assistants.

4. Analysis

a. Agreement

Of all the variables tested, only one is process-free and minimally concerned with the resources of a particular office. That one is the priority of a case for prosecution. The question, "Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution", lets the individual respondent scale each case in order of priority ranging from a low of 1 to a high of 7. If there is common agreement between the policy makers and the assistants, it should show most clearly in the extent to which they agree on basic priorities for prosecution.

The results of the regression analysis are reported in Table 9. The dependent variable is the average assistants score for each of the 30 cases. The independent variable is the priority assigned to the case by the leader.

What is important here is the fact that the assistants' responses can be predicted with a high degree of reliability from the leaders' ratings. The r-square which states the amount of variance explained by the leader's response ranges from a low of 69% to a high of 77%. The latter statement is further supported by the comparison between the experienced assistants in Brooklyn and the new ones. The difference in the amount of variance explained is 76.3% for the experienced assistants and 64.6% for the new ones. This leads to a

Table 9

Results of Regression Analysis of Leader on Followers #

Item	Brooklyn Experienced	Brooklyn New	Wilmington	New Orleans	Salt Lake City
$y = a + bx$					
a	0.81	1.31	1.63	1.75	1.04
b	0.77	0.63	0.57	0.68	0.69
t statistic*	9.71	7.35	6.73	6.90	8.73
F statistic*	94.35	54.01	45.28	47.64	76.19
r^2 (adjusted)	.763	.646	.604	.625	.729
multiple r	.873	.804	.777	.790	.854
Number of cases with residual greater than 1	4	4	4	3	4

While formal tests of convenience are not presented here there is remarkable similarity among the equations.

* Significant at greater than the .01 level

tentative statement that based on this test, that the basic agreement level among attorneys is substantial and that the transferance of policy through the organization can increase the agreement on the order of 20 percent (the actual increase in Brooklyn is 18%).

It should also be noted that because of the enormous agreement within the offices, it is highly unlikely that the basic agreement levels would ever reach zero. In other words, the true range of agreement spreads from more than 50 to something less than 100..

Finally, a note has to be made about the cases that show residual differences between their actual score and those predicted by the regression equation. The 4 (or 5 cases) that have residual differences greater than one (but less than two) are not the same ones in each of the offices. Of the 21 cases falling into this category, only 5 were identified more than one time, and 4 of these were identified by either the experienced or the new assistants in the Brooklyn office. This leads us to believe that the differences are not a result of some interval in the cases themselves, but are more a result of different interpretations due to policy differences. The residuals are being used to detect flaws in the case set and those with large residuals have been examined by several attorneys.

The remaining questions asked of the assistants were not process-free (as the priority variable was) nor were they amenable to regression analysis. Thus, measuring the amount of congruence had to take a different form. An index of agreement was constructed based on the number of matches of each assistant's response with the response of the leader. The total number of matches was then divided by the total number of possible matches to produce the index of agreement used in the

following tables. Two other potential measures are being explored: (1) A measure which would compare the agreement with randomly selected assistants and then to the policymaker. (2) A modified form of the Index of Qualitative Variation.

The hypothesis being tested here is that there is a relationship between the leader and the followers and that we can measure the amount of agreement. In this regard, we must remember that these are not sample data, nor are we attempting to generalize outside the office in question.

The variables have been collapsed in the following fashion: (the original response codes are shown in the parentheses where applicable)

Screening	1	Accept
	2	Reject
Disposition Type	1	Plea
	2	Conviction
	3	All other
Disposition Location	1	Early (1,2,3,9)
	2	Middle (5,6)
	3	Late (7,8)
Disposition Level	1	Felony (1,2)
	2	Misdemeanor (3,4)
	3	Other (5,6,9)
Disposition Reduction	1	As charged (1,3)
	2	Reduced charge (2,4)
	3	Violation and other (5,6,9)

Table 10 presents the results of the agreement found between the leaders and the followers based on the percent match on these variables. The reader is cautioned that the level of agreement is artificially higher for screening since there are only two possibilities where as for the others there are three responses.

It is obvious that there is a vast amount of basic agreement

Table 10

Percent of Agreement Between the Policy Leaders and Assistants
by Jurisdiction and Disposition Variables

Disposition Factors	Brooklyn Experienced	Brooklyn New	Wilmington	New Orleans	Salt Lake City
Intake (Accept, reject)	88.53	81.72	86.67	75.76	80.17
Type (Plea, Convict, Other)	56.53	52.55	60.00	56.13	54.24
Location (Pretrial, Trial, End Trial) Early - Middle - Late	56.65	48.23	57.67	58.64	50.24
Level (Felony, Misd., Other)	66.60	58.49	80.00	Not avbl.	Not avbl.
Reduction (Original, Reduced, Other)	48.52	49.53	61.00	Not avbl.	Not avbl.

within the offices far exceeding what we might expect from random chance. level is less than 50%, and for some variables, the agreement reaches as high as 88%.

The character of the questions give indication as to where the most variability occurs and why. Screening decisions, for example, and the level of dispositions (whether it exits as a felony, misdemeanor or other) show consistently the highest agreement rates; while those reflecting type of disposition (plea or convict) and location in the process (before trial, by the first day of trial or at the end of trial) produced the lowest levels of agreement. One can interpret these differences in agreement as resulting from the ability of the assistants and leaders to agree more on those decisions over which policy control is exercised than on those that introduce events over which they have little control and hence, are less predictable.

For example, the screening decisions are under more prosecutorial control than any of the others. One could also argue that the policy-sensitive or controlled variables by implication reduce the amount of discretion allowed the decisionmakers, thereby creating more agreement. Lending support to this thesis is the fact that in Wilmington, the disposition agreement is higher than Brooklyn's where a no reduced plea procedure is in effect. In this jurisdiction, there are fewer discretionary choices available to the assistants' Thus, one would expect little disagreement under these controlled management circumstances.

It also appears that agreement is more likely when the outcome being predicted is under the prosecutor's control and when knowledge

and experience are interjected into the prediction. As Table 10 points out, the "new" assistants in Brooklyn showed consistently lower levels of agreement about the type of disposition that would be reached and the location of the exit from the system--two factors that require operational experience.

Even though the levels of agreement about intake were high in all jurisdictions The highest agreement occured in Brooklyn (88.53%) and the lowest in New Orleans (75.76%). This difference introduces an important concept and principle that yields a key to explaining what otherwise might appear paradoxical. Namely, why should a rigorously controlled, screening-intensive office such as New Orleans with a trial-oriented prosecutorial stance show the most disagreement about accepting or rejecting cases at intake. A reasonable explanation is as follows:

1. Offices that perform the least amount of screening (with the lowest rejection rates) have the highest level of agreement. (Brooklyn and Wilmington reject 15.1% and 11.0% of their cases and agree with their leaders, 88.53% and 86.67% of the time, respectively).

2. Conversely, offices that perform the most screening (with the highest rejection rates) have a lower level of agreement (New Orleans and Salt Lake City reject 22.1% and 21.4% of their cases and agree 75.76% and 80.1% of the time, respectively).

This indicates that as an office cuts deeper into the middle of its case load, it disagrees more in the decisions about what to accept and what to reject. The decisions at either end of the distribution are simple: the most serious are accepted; the trivial, rejected. Thus, the variability that arises as screening intensifies and as more and more cases are subjected to rejection decisions is not unexpected.

What is important here is that the agreement rates are misleading unless they are explained in conjunction with what the office is attempting to do at intake and whether the office screens intensively or not. Thus, the measure of agreement or congruence needs to be weighted by the size and characteristics of the universe about which decisions are made and the policy of the office.

Finally, what the standard case set shows clearly, is its ability to measure relative agreement between leaders and followers in all offices on a variety of dimensions. Even using the most restrictive measure of agreement possible--exact matches of each assistant's response to the leader--it points up the enormous amount of agreement that exists and indicates that the effects of policy can be separated out from other effects of education, ethical standards and socialization. The fact that agreement can be measured and levels of congruence with the policymakers determined is important if any of the factors being measured reflect the distributive properties of justice. If they do and we suspect so, the amount of internal consistency with the policymaker can be subjected to scrutiny.

More important than this is the fact that even with this type of instrument and the measures of agreement it can produce, the interpretation of the measures is extremely difficult. Agreement by itself, may produce misleading statements. As we saw with the screening in New Orleans, a relatively low level of agreement does not necessarily mean that there is less consistency in the system; rather it may mean that the universe under consideration for decisionmaking is expanded. It may also indicate that the predicted outcomes are not under the prosecutor's control but subject to external forces about which the

decisionmaker has little experience or knowledge, thereby becoming little more than a "guess". While the effect of some of these factors can be statistically identified, ultimately what emerges is the realization that we still do not have a pure measure of what constitutes disagreement or it obverse, consistency.

More than anything else, this analysis points up the need for the practitioners and persons operating in the offices to evaluate the amount of disagreement that can be tolerated in reality; to define what constitutes disagreement and to develop some notion of uniformity and consistency that may over time be amenable to statistical interpretation.

b. The Effects of Policy

The previous section examined the results of using the standard case set to obtain measures of agreement between the policymakers and assistants. It tested the hypothesis that there was a causal relationship between the two that resulted in our being able to predict the assistants' decision patterns knowing the leaders. One of the major issues in this hypothesis was the level of agreement that would have resulted, independent of a specific policy, from law school education and the ethical standards imposed by this training.

To isolate this effect, two approaches were considered. The first, already discussed in the previous section, showed the differences in agreement between new and experienced assistants in an office, thereby establishing a tentative base for the amount of agreement which may be attributed to the training factor. The second, to be considered here, shows the differences in agreement if the policymaker were moved from one office to another or from one local criminal justice system to

another. The results indicate what would happen in terms of consistency if policy were changed in an office.

One would expect that in each instance the level of agreement would be less unless the office into which the policymaker was moved was compatible with his own. One would also expect that where agreement is greater, there are circumstances operating in the office making it more desirable than the ones in his own office. What these circumstances are cannot be explained by the measures.

To develop these measures, it was necessary to reduce the number of cases to 24. This latter figure represents the number of cases that were identical to all offices (remember six had been modified). The same procedure was applied to these cases as in the previous section. Each assistant's response was matched to the leader moved into the office and a percent agreement measure computed for the "exact" matches. The tables that follow (11-14) show the results for each of the dependent variables.

Table 11 presents the amount of agreement expressed between the policy maker and the assistants with respect to the priority of the case for prosecution. What is of major interest here, is the relative stability of the amount of agreement independent of where the policymaker is moved.

This table represents a good baseline for setting agreement levels without regard to resource availability or policy preference. It shows that the priority for prosecution is relatively independent of a leader-follower relationship--the agreement varies a maximum of 5 points anywhere you put the leader. This can be interpreted as the amount of commonality among prosecutors in assessing priorities for prosecution.

Table 11

Level of Agreement about Priority For Prosecution
Obtained by Transferrring
Policy Makers into Other Offices

Leader	Followers			
	Brooklyn	Wilmington	New Orleans	Salt Lake City
Brooklyn	66.76	65.97	62.75	65.21
Wilmington	59.19	62.50	63.13	59.38
New Orleans	62.67	56.09	56.39	58.33
Salt Lake City	56.34	59.78	57.71	58.04

The subsequent tables will show that this same universality does not exist when we introduce the more policy or process dependent variables of intake, types of disposition, exit points and level of disposition.

Table 12 presents the amount of agreement that would occur at intake with respect to the acceptance or rejection of cases for prosecution. Since this is the area where most agreement occurred internally in all the offices, it is interesting to note the proportionately high levels that are maintained even upon transfer. To read this table, concentrate on the rows first. These show, for example, the effect of moving the leader in Brooklyn (row 1) to match the followers (assistants) in Brooklyn (89.24%), (column 1) then in Wilmington (column 2) where the match is 88.89%, then to New Orleans (column 3) where he agrees with those assistants only 76.64% of the time and finally to Salt Lake City (column 4) where the agreement level reaches 80.21%. If you read down the columns, you will be identifying the level of agreement the assistants in an office had with the different leaders.

As it should be, the highest levels of agreement are recorded for the most part on the diagonal. This means that the policymaker mainly agrees with his own assistants most. If one looks off the diagonal, at the effects of moving the leaders, we see that the lowest level of agreement would result if the Salt Lake City prosecutor were moved to Brooklyn (56.34%) and the best agreement would result if the Brooklyn leader were moved to Wilmington. Since these last two offices engage in limited initial screening, thereby reducing the number of reject decisions, this match is not unexpected.

The Wilmington Leader agrees almost as much with the New Orleans

Table 12

Level of Agreement about Screening Obtained by Transferring Policy Makers into Other Offices

Leader	Followers			
	Brooklyn	Wilmington	New Orleans	Salt Lake City
Brooklyn	89.24	88.69	76.64	80.21
Wilmington	79.26	83.33	82.70	78.75
New Orleans	64.97	64.77	70.11	64.39
Salt Lake City	56.34	76.81	74.31	75.87

assistants as his own (82.70% and 83.33%, respectively). While the New Orleans assistants agree more with every other leader than their own

One logical interpretation might be that there is more internal disagreement in these two offices between the policymakers and the assistants than there is disagreement with other policymakers who take a less restrictive approach to the intake accept and reject decisions. In other words, if the assistants were given the freedom to set policy, they would like to accept more cases than they presently are allowed. In this instance, we maybe observing a real difference between the policy of the leader and the proclivities of his assistants. In fact, if we look at how the New Orleans leader fares in any other office, we see that, except for the Salt Lake City prosecutor moving to Brooklyn, he agrees less with all other jurisdictions.

Tables 13 and 14 show the effects of transferring leaders into other offices and seeing the extent to which their predicted outcomes about cases agree with the assistants in that office. Since these two dispositional outcomes, the type of disposition--plea, conviction or other--and the point of exit--early, middle or late in the prosecution process--are the most environmentally dependent of all the variables tested, these tables indicate the consequences of changing policy without regard to the local criminal justice systems operations and procedures. We can assume that the assistants in the office "know" their system and that the lowered agreement levels reflect the debilitating effects of "not knowing" the system. Where the levels remain the same, we can tentatively conclude that this is because the processes and policy are compatible. Overall, the level of agreement is much lower than that recorded for screening. There is also greater

Table 13

Level of Agreement about Type of Disposition
Obtained by Transferring
Policy Makers into Other Offices

Leader	Followers			
	Brooklyn	Wilmington	New Orleans	Salt Lake City
Brooklyn	56.17	57.14	37.66	44.76
Wilmington	56.96	64.04	43.22	43.42
New Orleans	52.28	46.67	54.75	61.11
Salt Lake City	40.68	62.78	51.11	51.67

variability across the offices, the difference in agreement has now extended to a maximum of 27 percentage points (from a low of 37.66 to a high of 64.04).

As we noted before, the trial-oriented jurisdictions of New Orleans and Salt Lake City show substantial agreement and when the policy makers are moved from their own jurisdiction into each others, there is little change in the level of agreement with the assistants. The same pattern holds for Brooklyn and Wilmington, both plea oriented offices. The interesting facet of this examination is exposed when we examine levels of agreement with the Wilmington office. It appears from this table that all the leaders would like to have the dispositional pattern that the Wilmington assistants have; (plea to the original charge) but all the assistants would rather stay right where they are. In other words, the leaders apparently perceive expected dispositions quite differently from the assistants who are probably more parochial or operational in their outlook. This may be an indication that the policymakers are more concerned with the overall management of the office including the ability to reach satisfactory dispositional patterns; while the assistants, being more case/trial oriented view dispositions within another, more limited, context.

Table 14 shows the real range of differences that may occur if an outsider does not "know" the system and attempts to apply his expectations independent of this knowledge. Of all the variables, case exit depends both on the policy of the office, the structure of the court process and the opportunities available as exit points. For example, if felonies are processed through a lower, misdemeanor court prior to bindover to the felony court, guilty pleas to felonys at this

Table 14

Level of Agreement about Point of Exit
Obtained by Transferring
Policy Makers into Other Offices

Leader	Followers			
	Brooklyn	Wilmington	New Orleans	Salt Lake City
Brooklyn	60.18	40.48	38.82	40.95
Wilmington	43.92	61.84	45.45	38.68
New Orleans	44.68	50.00	56.28	66.07
Salt Lake City	43.63	42.78	54.95	48.67

level generally cannot be taken; the exit point must occur later in the process, sometimes even after the accusatory process has been completed and the defendant arraigned. (This is the situation in Wilmington)>

With the exception of Salt Lake City, each of the policymakers show more agreement internally with their own office as to where a case will exit in the system than with any other office. In Salt Lake City, the prosecutor finds more agreement with the similarly directed New Orleans assistants (54.95% as compared to 48.67%). Not only is the prosecutor in more agreement with the trial exit points expected but the assistants are as well. (The level of agreement is 66.07% as compared to 48.67%). Why this occurs needs further investigation. However, the denigration of a desired trial-oriented policy may be due to the fact that only a single judge is routinely available. This variable clearly has only limited value in comparative analysis. It is critically important to individual office analysis because it indicates how the system loading works locally. If combined with a process time measure as we mentioned before, it may provide valuable insight into explaining the dynamics of a system. But, in its present form, it appears to be far too process dependent to be useful in comparative analysis.

B. UNIFORMITY: AGREEMENT AMONG ASSISTANTS

1. Introduction

The first part of this section examined the amount of consistency between policymakers and the assistants. It assumed and tested the existence of a causal relationship between the two levels in the office and found that there was, in fact, evidence to support the

hypothesis of policy transfer. It tested the strength of this agreement by showing the effects of experience in the office; this was indicated in Brooklyn by an 18% increase in agreement when new and experienced assistants were compared. It also moved the policy maker to other offices and measured the levels of agreement that occured there as an indicator of differences due to policy or other factors. We found there is generally more decisionmaking consistency within an office than can be produced by moving the policymaker to other offices. Where the same or higher levels of agreement are recorded by placing a policymaker in an office not his own, this was due primarily to the offices having the same or similar prosecutorial policy stances. Thus, the standard set of cases is capable of testing these relationships and proves to be a viable method for obtaining measures of congruence and policy compatability within and among offices.

The second part of this research activity was to examine the amount of uniformity among assistants. Uniformity exists, by definition, when there is consistency with a policymaker. But it may also exist when the policy of the decisionmaker is at odds with that of the assistants'. The task set before us was to obtain a measure of the amount of uniformity existing in an office, independent of the policymaker.

2. Hypothesis

The hypothesis tested in this section is that assistants in an office tend to be uniform in their decisions and that this can be measured by the standard case set.

There are, of course, factors, some already mentioned, that will effect the basic level of uniformity, especially those that stem from

the standardized form of education attorneys receive. But additionally, since policy is transmitted through organizational structures, it is assumed also that the type of organization used by an office may impose barriers to the transmittal of policy downward or to its horizontal transmission from one organizational unit to another. Uniformity, then, measures not merely effects of the vertical transmission (which can be included in the consistency measure) but the horizontal as well. Implicit in the organizational factor is, or course, the primary variable, office size.

The size of an office, more than any other single variable should carry within it the power to profoundly effect the amount of uniformity in the office. Any barriers that might be imposed by the organizational structure should be practically non-existent in small offices and offer the most likelihood to be an impediment in large offices. We are fortunate in this analysis to be examining offices that range in size from a low of 18 assistants in Wilmington to a high of 320 in Brooklyn. Salt Lake City has 24 assistants and New Orleans, 61. While the effects of organization are difficult to measure within smaller offices; comparisons can be made across the offices that might lend some insight into the power of the variable.

Of more importance to this analysis is whether the standard case set can measure variations in agreement levels within smaller organizational units and with what type of measurement techniques. (We have already noted some of the difficulties encountered in this effort.) Because the Kings County (Brooklyn) District Attorneys office was so interested in organizational analysis for their own management and planning functions, in addition to being extremely supportive of our

research activities, we were able to explore this issue in an office with 320 assistants and 11 clearly defined organizational units.

3. Methodology

The approach taken was first, to measure the amount of agreement among all assistants in the office and second, to attempt to show differences that might be attributed to policy, size of office and standardized training.

The methodology used is based on a measure of a quantity called the Index of Qualitative Variation or IQV. IQV measures the total amount of disagreement that occurs between paired responses and divides it by the maximum amount of disagreement possible between any pair of responses. For example, if a variable had only two states (accept or reject) then the maximum variation that could occur would be when each state received half of the responses. A three state variable (plea, convict and other, for example) would be at its maximum variation when each state received one third of the responses. The least possible variance would, of course, occur when all respondents responded the same way. The output of this methodology is an IQV score scaled from 0 to 100 where 0 is complete agreement and 100 is complete disagreement.

The data that follows in table 15 is reported in the opposite manner --as the level of agreement (namely the IQV score is subtracted from 100). This is done so that is will be comparable with the other tables. Thus, as the measures approach 100% the agreement is increasing. Since IQV is derived paired responses and the agreement of the assistants to their leader is computed as the percent of times the responses matched, the two techniques--percent match and IQV--are not comparable. Thus, the percents presented in the preceding section

cannot be arithmetically compared with the precents presented in this section. Methods to resolve this problem are under investigation.

Table 15 presents the IQV scores for each of the offices with respect to the responses to the standard case evaluation. Section C following this considers the internal uniformity and consistency as it was measured in the separate organizational units within the office of the Kings County District Attorney.

4. Results

The standard case set documents the differences in the amount of agreement within the offices, as well as among offices. Generally, decisions over which the assistants have the most control, namely the intake decision and to a lesser extent the disposition level show the highest levels of uniformity. The process oriented responses, those predicting the type of disposition and the location of the case exit again, generally indicate less agreement among the assistants and more differences of opinion.

Of interest here, however, is the insight that the standard case set gives to the types of differences existing among the offices and the need for further exploration into the explanatory factors. For example, one could hypothesize that the reason why Wilmington has such consistently higher levels of internal agreement over all variables is due to the small size of the office (only 18 assistants). If size is a factor in promoting agreement among decisionmakers, then we can look to the larger offices to examine the levels of agreement that exist under more difficult organizational circumstances. We have already noted that the lower intake agreement levels in New Orleans and Salt Lake City are most likely due to the more intensive screening that occurs in these

Table 15

Percent of Uniformity Among Assistants by Jurisdiction and Responses

Jurisdiction	Response Variables: Accept/Reject	Disposition Type	Disposition Location	Level of Disposition	Reduction at Disposition
Brooklyn	80.18	39.23	33.48	49.64	33.31
Wilmington	88.89	53.09	54.75	74.69	54.44
New Orleans	71.02	39.79	43.95	60.57	61.90
Salt Lake City	72.83	36.51	33.67	51.22	38.73

offices. Excluding Wilmington, the level of agreement about the type of disposition (whether a plea or a conviction) is remarkably similar among all three of the larger offices and relatively low, less than 40%. This would be reasonable if one assumed that this is not an area subject to policy control or under the control of the prosecutor. In contrast, the higher level of agreement in New Orleans relative to Brooklyn and Salt Lake City about the location of the disposition (43.95%) would be expected since it is an activity of interest to this trial oriented policy of the office.

The level of disposition, whether it will be disposed of as a felony or misdemeanor and the reduction variable, whether it will be disposed of at a reduced charge, provide interesting insights not only into the offices themselves but into the nature of the variables. The level of disposition as a variable appears to be weaker than the reduction variable because it is more difficult to interpret. By itself it is confounded by two factors: (1) variations that occur in the legal definition of misdemeanors and felonies and (2) changes that were made from the original charge in terms of reducing it or keeping it at the originally charged level. Because these two effects cannot be separated out, we must view this variable with suspicion and question its utility in future analysis.

More important is the next variable that is directed to change. It asks whether the case will be disposed of as charged or by a reduced charge. Here the differences in agreement levels strongly suggest that the trial sufficiency policy of New Orleans extends well into the trial strategy area and that controls are exercised in this part of the process. In contrast, the discretion allowed assistants in bringing

cases to disposition, is clearly evident in Brooklyn and Salt Lake City--indicating a wide variety of choices available to the assistant. The Wilmington policy of cutting off plea negotiation after a specified time and going forward on the original charge may be reflected here; although it is difficult to separate out these effects from the small-office effects. Nevertheless, it appears that the reduction variable is a sensitive indicator of the extent of policy control exercised in the trials process step, and certainly is worthy of further examination.

Conclusion

The analysis shows that there is a high level of basic agreement among the assistants generally and that the highest levels are reached with respect to those variables that are subject to policy control. While the results are important in showing the power of the standard case set to measure levels of agreement; they are disappointing because they do not give many clues as to the source of explanatory factors. A number of hypotheses could be tested including the effects on agreement due to the size of office, the organizational structure, the experience level of the assistants, their exposure to the prosecution process and the strength of the prosecutor's policy. What is consistently reaffirmed, however, is the finding that the highest levels of agreement are recorded for the decisions subject to policy control, first, intake and second, disposition reduction levels.

C. UNIFORMITY AND CONSISTENCY IN COMPLEX ORGANIZATIONS - KINGS COUNTY, NY.

1. Introduction

In much of the preceding analysis, the assumption was made, largely for the sake of analytical simplicity, that there was only a

single leader or policymaker in any office. We recognize, of course, that this is not generally true--many leaders may be identified at different organizational levels if the structure is large enough to support formally established units. In offices that are relatively small, or where socialization among the assistants is high, policy and priorities are transmitted informally by word of mouth or meetings. In these instances, few formal structures or rules are required; and the identification of the policy-setter is more difficult to determine.

As the organization increases in size, becomes highly structured and groups its attorney resources into a variety of sub-units, each of these units may have leaders who presumably are responsible to others within an established chain of command that reaches ultimately to the prosecutor himself or his chief assistants. Under these conditions, the transmission of policy becomes more diffused and harder to measure for uniformity and consistency.

In this research, we were fortunate that one prosecutor's office, specifically Kings County (Brooklyn) N.Y., was expressly interested in this issue and had a sufficiently complex structure to permit analysis within smaller organizational entities. In the earlier analytical presentations, the Brooklyn data were evaluated relative to the single highest-ranking chief. In the material that follows, we evaluate each of the 12 major organizational units. The responses to the various dependent variables are analyzed with respect to the ability of the standard case set to measure differences in agreement within and among these units and to gain further insight into some of the factors that should be considered as one pursues this type of measurement.

In Brooklyn, a total of 282 attorneys responded to the test

instrument. They were located in one of the twelve organizational entities in the office, known mostly as bureaus. This included: (1) Criminal Court, (2) Supreme Court,*(3) Homicide, (4) Narcotics, (5) Rackets, (6) Fraud, (7) Investigations Bureau, (8) Grand Jury, (9) Appeals, (10) Early Case Assessment Bureau (ECAB), (11) Career Criminal and (12) Training. For the purpose of this analysis, the ECAB and Career Criminal units were combined to increase the number of responses. This was reasonable since both operate simultaneously in the same location and are staffed by essentially the same experience level personnel. The Training unit, identified here, consists of 65 newly hired assistants (the majority of whom were recent law school graduates) had no prosecutorial experience, were not formerly law interns and were tested in the first week of their employment.

Each unit had its own leader who presumably transmitted the policy of the prosecutor to each individual attorney and augmented those more global policies with more specific policies or procedures as they related to the particular functions performed by the unit.

2. Hypothesis

Our assumption was that there would be more uniformity among assistants within a unit than throughout the office, since the socialization process would be strongest in the smaller groups.

We also assumed that the activity of the units would produce substantially different levels of agreement because not all units had equal experience with the parts of the system that the case evaluation form questioned. For example, it would be expected that the ECAB and

*Supreme Court is the court of general jurisdiction and Criminal Court is the lower or misdemeanor court.

Indictment Bureau would have a better understanding of intake and screening and hence, would make more uniform decisions than, say, the Appeals Bureau. In this respect, we also assumed that the Training group of newly hired attorneys would be less uniform in any of the decisions because their responses should more closely resemble "guesses".

3. Methodology

As in the previous sections, two types of analyses were performed within the organizational units, the first measured the amount of agreement that each unit had with its own leader (tables 16 and 17) and the second measured the amount of internal agreement that existed among all assistants in each unit (tables 18 and 19).

The responses were collapsed in the same manner as the previous analysis. Priority of the case for prosecution was grouped into three levels: 1 and 2; 3, 4 and 5; and 6 and 7. Intake retained its same order (accept and reject). Disposition type was grouped into plea, convict or other. Disposition location of exit was defined in terms of the process steps as early, middle or late; the level of disposition was divided three ways into felony, misdemeanor or other, and reduction of charges were also three staged, original reduce and other. For all those variables subsequent to the intake decision, comparisons were made with the leader only if the leader had accepted the case.

4. Results

Table 16 describes the conformity of the assistants to the unit leaders. The figures presented for the "Total Office" can be thought of as being the benchmark for the office. As we have seen previously, the agreement is highest with respect to the intake variable ranging from a

high of 92% recorded by the Grand Jury section to a low of 81% as recorded by the Training group. The lowest levels of agreement occur with respect to the process variables, both the type of disposition and the location of its exit in the process.

Table 17 shows the rank order of the levels of agreement by the organizational units. Grand Jury, Narcotics and Rackets show consistently high levels of assistant/chief agreement. Whether this high level of agreement exists because of the type of attorney assigned to these units, the specialized nature of the cases being tried that requires tight management control, or the experience level of the assistants are areas worthy of exploration. Clearly, however, the ability of the standard case set to identify levels of agreement between leaders and their subordinates is demonstrated. What is needed next is an interpretation as to what constitutes observable differences in an office. The need for the operating officials to interpret these measures is demonstrated again.

It appears that the response variables can be separated into three classes. First, the universal, policy-free variable of priority for prosecution. Second, the policy-sensitive variables, over which the prosecutor exercises some discretionary control, namely, intake and level of disposition and third, the process-oriented variables which require knowledge of the local operating justice system, namely, type of disposition and location in the process. With this distinction, we can see from the Brooklyn data that the priority for prosecution in the units does not vary substantially from the office's benchmark with the

Table 16

Level of Agreement between Assistants and Leader in the Kings County District Attorney's Office by Organizational Unit and Standard Case Set Responses

Organizational Unit	No. of Responses	Case Priority	Accept/Reject	Disposition Type	Disposition Location	Level of Disposition	Disposition Reduction
Total Offices	282	65.97	88.53	56.54	56.65	66.60	48.52
Criminal Court	35	65.29	82.84	43.35	47.33	76.60	57.09
Supreme Court	57	64.13	87.54	57.90	59.35	72.68	55.09
Homicide	17	62.92	83.13	61.04	63.54	67.92	52.71
Narcotics	21	70.33	89.17	70.83	73.67	80.00	65.67
Rackets	17	69.38	89.79	62.29	63.33	75.00	61.46
Fraud	7	60.56	86.11	61.67	67.78	75.56	59.44
Investigations	11	61.00	85.33	60.00	56.67	65.67	59.70
Grand Jury	14	77.95	92.05	69.74	77.44	74.62	59.23
Appeals	33	61.88	84.91	52.69	66.15	64.38	52.92
ECAB and Career Criminal	14	67.69	84.62	42.82	61.03	68.97	55.90
Training	65	53.96	81.72	52.55	48.23	58.49	49.53

Table 17

Rank Order of Level of Agreement between Assistants and Leader in the Kings County District Attorney's Office by Organizational Unit and Standard Case Set Responses

Organizational Unit	Case Priority	Accept/Reject	Disposition Type	Disposition Location	Level of Disposition	Disposition Reduction
Total Offices	5	4	8	10	9	12
Criminal Court	6	11	11	12	2	6
Supreme Court	7	5	7	8	6	8
Homicide	8	10	5	5	8	10
Narcotics	2	3	1	2	1	1
Rackets	3	2	3	6	4	2
Fraud	11	6	4	3	3	4
Investigations	10	7	6	9	10	3
Grand Jury	1	1	2	1	5	5
Appeals	9	8	9	4	11	9
ECAB and Career Criminal	4	9	12	7	7	7
Training	12	12	10	11	12	11

exception of narcotics, rackets and the grand jury units. (The difference shown by the training group is, of course, expected). In these units, the higher level of agreement between the assistants and their leader probably can be explained by other factors such as size and experience levels.

The discretionary variables that introduce the policy orientation of the office, intake and level of disposition show much the same pattern as the priority variable. Narcotics, rackets and grand jury have higher levels of agreement with their leaders than the entire office and with most of the other units. Interestingly enough, however, the ability of the grand jury to agree with its leader as to what level the case will be disposed of is much less. Table 17 shows that they drop from being among the top two in agreement levels to the 5th highest, outstripped by the Criminal Court assistants and the fraud bureau in addition to narcotics and rackets. Again, the explanatory factors need to be specified and the question as to whether this is meaningful in the operational sense needs to be answered.

The process variables of type of disposition and location of exit from the process, clearly show first, the lowered ability to agree with what is an area beyond the prosecutor's control (lessened predictability) and second, the power of experience in the system to produce higher agreement levels. Table 16 shows that the agreement levels are substantially lower for these two variables than all the others. More importantly, however, we can see from an internal examination that the lowest levels of agreement tend to occur in those organizational units that either have limited experience in prosecution (Criminal Court assistants and Appeals) or limited exposure to the total

prosecution process because of specialized duties (Investigations Bureau).

In general, however, it would be fair to say that there is an overall consistently high level of agreement between the assistants and their leaders and that the agreement tends to decrease where the assistants have limited experience in the office or are located in specialized areas that require little exposure to the rest of the office's priorities or procedures.

Tables 18 and 19, examine the internal agreement among the assistants themselves, independent of any leader.

What is immediately obvious is that the standard case set accurately reflects what one would expect it to show--namely, that the training group is the most variable since their responses fall more into a "guess" category than from knowledge or experience in the office. This perhaps, could be stated another way. We could conclude that this is the basic amount of agreement that stems from the standardized education process and shared norms. With further analysis, we may be able to separate the amount of variation that is random.

Of interest is the consistency of the units to maintain their rank order over all the variables at the two highest levels (Fraud and Rackets). For some reason, perhaps size, these two units are the most cohesive in the office. (The measures used are adjusted for size of the unit.) Conversely, the shift from relatively high levels of agreement with respect to case priority and the intake decision to the lowest levels of agreement with respect to the process oriented variables in the Criminal Court Bureau indicates the cohesiveness of the group and their lack of exposure to the rest of the system. Experience and

Table 18

Level of Agreement among Assistants in the Kings County District Attorney's Office by Organizational Unit and Standard Case Set Responses

Organizational Unit	No. of Responses	Case Priority	Accept/Reject	Disposition Type	Disposition Location	Level of Disposition	Disposition Reduction
Total Offices	282	50.90	80.18	39.23	33.48	49.64	33.31
Criminal Court	35	53.19	84.15	34.96	26.41	46.62	33.64
Supreme Court	57	51.09	78.33	41.61	36.09	51.69	33.22
Homicide	17	51.42	69.88	38.89	37.85	50.10	34.13
Narcotics	21	49.64	80.97	48.44	43.16	60.00	42.44
Rackets	17	62.85	88.63	51.08	47.95	59.51	43.89
Fraud	7	68.15	89.17	66.42	55.31	74.32	56.79
Investigations	11	55.11	81.20	47.02	31.64	50.49	43.38
Grand Jury	14	63.81	81.29	45.72	44.98	50.19	40.83
Appeals	33	52.55	85.60	43.89	41.57	53.19	36.89
ECAB and Career Criminal	14	55.56	86.04	44.72	36.99	54.19	43.20
Training	65	46.42	64.25	26.37	19.74	39.05	27.74

Table 19

Rank Order of Level of Agreement among Assistants in the Kings County District Attorney's Office by Organizational Unit and Standard Case Set Responses

Organizational Unit	Case Priority	Accept/Reject	Disposition Type	Disposition Location	Level of Disposition	Disposition Reduction
Total Offices	10	9	9	9	10	10
Criminal Court	6	5	11	11	11	9
Supreme Court	9	10	8	8	6	11
Homicide	8	11	10	6	9	8
Narcotics	11	8	3	4	2	5
Rackets	2	2	2	2	3	2
Fraud	1	1	1	1	1	1
Investigations	5	7	4	10	7	3
Grand Jury	3	6	5	3	8	6
Appeals	7	4	7	5	5	7
ECAB and Career Criminal	4	3	6	7	4	4
Training	12	12	12	12	12	12

exposure, it would appear, offer much of the explanation for these differences.

What is most important is the finding that the standard case set can differentiate among the units with respect to agreement, but it cannot explain why differences exist and more importantly, as we noted earlier, it cannot tell us at what level these differences become recognizable to the assistants and leaders in the office. This is the critically important question. If the range of differences here are not distinguishable in the real operating world of the prosecutor, then uniformity can be declared as existing. If they are distinguishable, then the critical level at which they change needs to be identified.

Finally, one needs to examine the extent of uniformity that exists among the assistants based on their experience. The assumption that as the assistants become more experienced in the office, their levels of agreement increase should be tested. Table 20 appears to indicate that this occurs in varying degrees. In fact, the slowly decreasing rate of increase in agreement with respect to experience leads us to tentatively conclude that acculturation occurs very early in the process (within the first year) and after that the basic agreement levels increase only moderately with added experience. It may well be that the value of experience lies not so much in being more uniform or consistent in making decisions but as the monitor of exceptional circumstances and the advisor for the out-of-the ordinary casework to ensure that the uniformity and consistency applies.

Table 20

Percent of Uniformity Among Assistants in the Kings County District Attorney's Office by Months of Experience

Months	No. Responses	Case Priority	Accept/ Reject	Disposition Type	Disposition Location	Disposition Reduction
Trainee	65	46.42	64.25	26.37	19.74	27.74
1-12	34	50.52	82.90	35.91	26.44	32.50
13-36	85	51.52	81.22	40.76	36.51	32.15
37-60	50	55.08	82.28	41.51	35.87	36.53
61-120	37	54.57	80.24	44.84	41.37	39.56
more than 120	10	47.33	65.43	44.14	38.55	38.66

PART III

RELATIONSHIPS BETWEEN THE DEPENDENT VARIABLES MEASURED BY THE STANDARD CASE SET

A. Introduction

1. Background

The previous sections have explored two different dimensions of the standard case set: first, its ability to describe or characterize the prosecutive process in a jurisdiction and second, its ability to measure the amount of uniformity, consistency and agreement among assistants in the various offices. In both of these dimensions, we found that the standard case set was powerful enough to yield insights into these processes that, heretofore, were not available on any systematic basis.

In this section we will explore a third dimension of the standard case set--namely, the strength and direction of the relationships among the dependent variables measured with respect to the standard case set. For example, we will ask "How strongly is priority correlated with the likelihood of going to trial?"

The tests are presented more to confirm the stability of the standard case set and the responses received than to uncover new knowledge. We all know, for example, that one would assume that more serious cases would tend to receive longer sentences than less serious cases. Therefore, if a contrary result were to occur from these tests, the credibility of the standard case set would be seriously diminished. Thus, for the most part, what we expect is the predictable and the rational. We do not expect the unexpected. To the degree that these relationships and directions are consistent with general knowledge and other research, the stability of the standard case set is reinforced.

To do this analysis we must change the unit of observation from "person" to "cases." We used persons (or more exactly person's decisions) in the previous analysis since we were interested in measuring agreements and disagreements among each decision maker. Here, however, we are interested in the case itself and we therefore take that as the unit of observation.

The case analysis is made more powerful because the standard case set was deliberately constructed to span the full range of case priority that a prosecutor would encounter--from the most trivial to the most urgent. Three dimensions were incorporated into this spread: a) the seriousness of the offense, generally with respect to the amount of personal injury or property loss; b) the seriousness of the defendant with respect to his criminal history; and c) the evidentiary strength of the case. To verify that such a range exists, we can look at Table 8 in Part I which shows the distribution of cases along the priority scale of 1 to 7 and shows that the responses did, in fact, cover the possible range of responses.

We will be giving primary attention to the explanatory power of priority as to whether a case is accepted or rejected, location of dispositions, how and by what means, and the level of punishment assigned. Additionally, we will search for strong relationships among other selected variables. Because the evaluation form given to the assistants was process-bound--it directed questions to the various process decision points such as intake, location of disposition, level of disposition and sentence--the analysis presented here,

concentrates only on those relationships that have the ability to explain or predict something that occurs later in the process. Thus, we excluded from testing any relationships in which the independent variable occured later in the process than the dependent variable. If we find that variables interrelate strongly, perhaps we can replace one with the other. Thus, a more easily obtained variable could substitute for a costly one. Or if two variables are very weakly related, the correlation between them can perhaps be treated as zero and thus, ignored.

2. Hypothesis

Our hypothesis is that the priority for prosecution variable will be capable of explaining much of the variance in many of the variables.

With respect to the relationships between other variables, our hypothesis in each case is that they should behave systematically according to the expectations of experience. This is equivalent to saying that what will happen to a case is substantially a function of the prosecutor's initial assessment of its importance and that this assessment may explain the behavior of the other dependent variables.

3. Methodology

The methodology used here is regression analysis. For each reasonable pair of variables--those in proper predictive or explanatory sequence, a regression equation was derived. The results presented include the coefficients with their associated level of significance, r^2, and the standard error of the estimate. These are presented by office and then summarized for comparative purposes.

For those relationships that were significant, diagrams are displayed to show the scatter and direction in a more graphic form. The reader is cautioned that these diagrams have different values along axes; that is, the axes do not intersect at the zero point for both variables. Additionally, the computer system places numbers at some points instead of astericks to indicate the number of times the same response was plotted. Each of the more important relationships are briefly discussed, and special comments added where needed.

When some of the variables are plotted pair-wise, they are not bi-variate normal--not a desirable condition from the point of view of a regression analysis. It may be that some of these relationships are truly non-linear; perhaps some pair-wise relationships are affected by a third variable. For example, the relationship between priority and likelihood of trial may be affected by the accept/reject probability. If so, it may (and in fact does) prove valuable to look at priority and likelihood of trial only for those cases which are typically accepted for trial.

We plan to explore later the rationale for introducing non-linear relations as well as a full-scale, multi-variate analysis that takes into account the dependencies illustrated above. For the present, the reader is advised to interpret the results of the present analysis with due caution.

B. Kings County (Brooklyn), New York

The examinations of the pairwise regressions presented in Table 21 show that six exhibit strong explanatory power--having adjusted r-squares over .50. Of these six, three of the relationships include the average priority of the case for prosecution as the independent variable, the other three identify the percent of cases being disposed of by trial as the independent variable.

The case priority variable has the greatest explanatory power of all the variables tested with respect to predicting whether the defendant will have his case disposed of by trial rather than a plea; whether he will receive a sentence that involves incarceration (called lockup in the tables); and whether the sentence will be long. All three of these relationships are positive showing that the higher the priority the case has for prosecution, the more likely it is to go to trial and receive a more severe sentence. Conversely, the least serious cases tend to be disposed of early in the process, by a plea and with few sanctions imposed. Figures 1-4 show the scatter diagrams of these relationships.

The second important variable in Brooklyn is the probability of the case being disposed of by a trial. This variable explains a significant amount of the variation about the probability of the case being disposed by a lesser charge (called reduced in the tables). The relationship is negative; as the probability of case disposition by trial increases, the chances of the case being disposed of by a lesser charge decreases. This strong negative relationship is interesting because, its counterpart, the relationship between the probability of

charge reductions and pleas, while positive, is relatively weak. (r-square of .386 as contrasted to this r-square of .682). Finally, as cases tend to be disposed by trial, the probability of the defendants being incarcerated and for longer periods of time also increases.

Of interest also are some of the relationships that did not appear to be strongly related. It appears that in this jurisdiction, the priority of the case for prosecution has lesser bearing on whether it will be disposed of at a reduced level (r-square, .333) and practically no impact on whether the case will be disposed of by a plea (r-square, .058). Because the mirror of this shows strong relationships, we can conclude that there are special factors affecting the priority scale that indicate whether it will go to trial. What these factors are, clearly needs to be identified by further analysis. Generally, however, it appears obvious from this brief analysis that the office knows which cases are most likely to go to trial, that their knowledge is based on a clear understanding and agreement about the priorities of these cases and that the most serious cases naturally enough tend to receive the most serious punishment.

The fact that the relatively weakest relationships exist between other variables and pleas tend to indicate that the dispositional processes surrounding the plea are more discretionary or complex, and hence, iess predictable. Part of this may be due to the existence of alternative dispositions other than pleas such as dismissals, ACD, diversion, mediation, etc. As a result, trials are a predictable dispositional form, pleas are not.

Table 21

Results of Selected Pairwise Regression Analyses of Responses in Kings County (Brooklyn) District Attorney's Office

Dependent Variable	Intercept	Coefficient	Independent Variable	Sig.	r^2	SE
Reduced Charge	.893	- .067	Avg. Priority	**	.333	.140
Reduced Charge	.752	- .128	Accept.	**	.034	.169
Reduced Charge	.296	+ .547	Plea	**	.386	.134
Reduced Charge	.781	- .655	Trial	**	.682	.097
Average Years	- 4.748	+ 2.151	Avg. Priority	**	.564	2.644
Average Years	- 4.943	+ 9.472	Accept.	n.s.	.124	3.749
Average Years	11.807	-12.817	Plea	**	.405	3.090
Average Years	.399	+14.420	Trial	**	.634	2.42
Average Years	.600	+ 5.365	Lockup	*	.278	3.403
Average Years	13.787	-15.947	Reduced Charge	**	.499	2.836
Lockup	- .351	+ .234	Avg. Priority	**	.722	.214
Lockup	.619	- .155	Plea	n.s.	.006	.405
Lockup	.220	+ 1.419	Trial	**	.573	.265
Lockup	1.397	- 1.363	Reduced Charge	**	.332	.332
Trial	- .251	+ .124	Avg. Priority	**	.713	.116
Trial	- .075	+ .337	Accept.	*	.147	.200
Plea	.752	- .032	Avg. Priority	n.s.	.058	.189
Plea	.568	+ .078	Accept.	n.s.	.010	.194
Accept.	.440	+ .110	Avg. Priority	**	.431	.186

*Significant at .05 level

**Significant at .001 level

Figure 1
Relationship between Probability of Trial and Average Case Priority
in Brooklyn

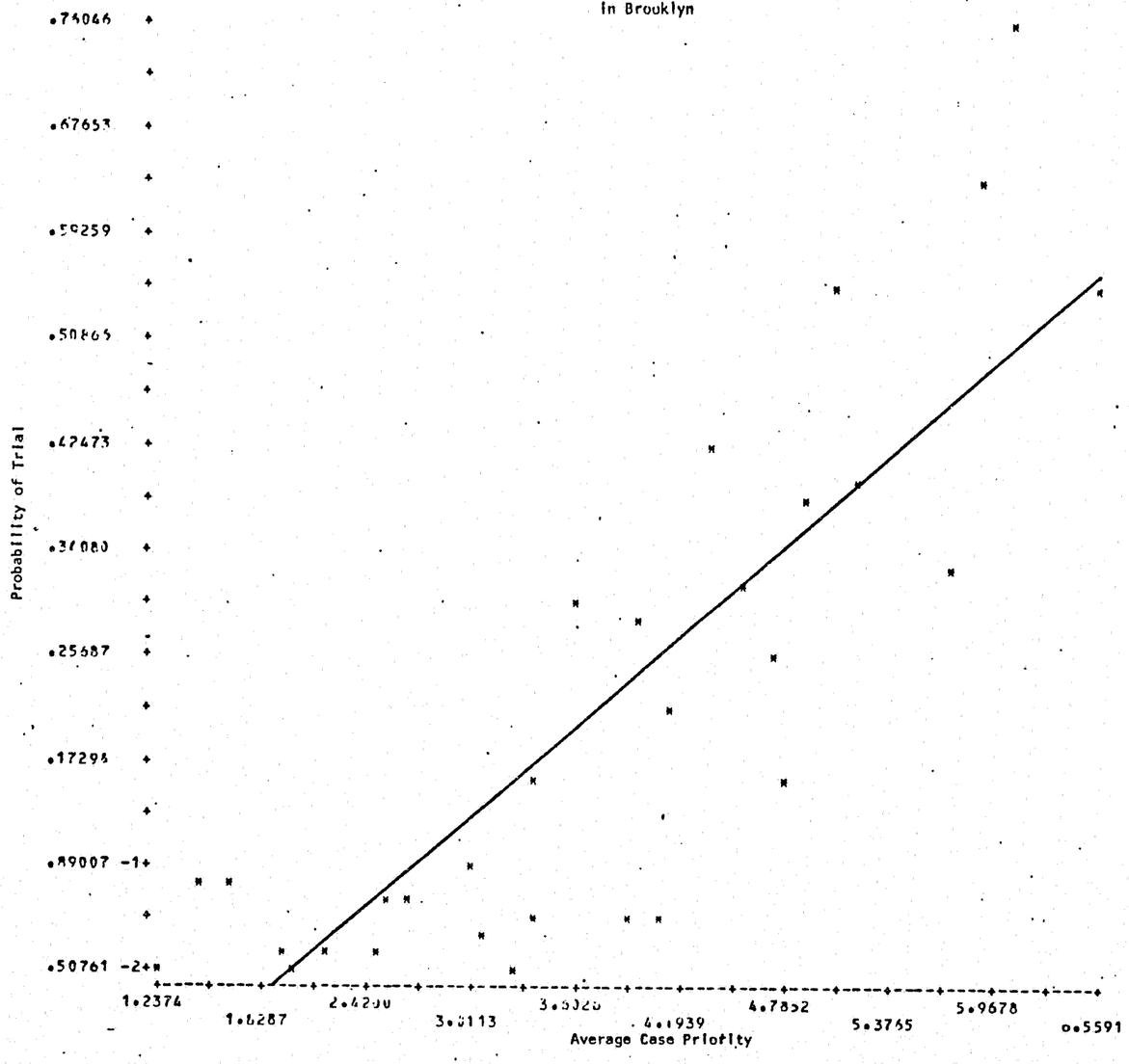


Figure 2
Relationship between Average Years Sentenced and Average Case Priority in Brooklyn

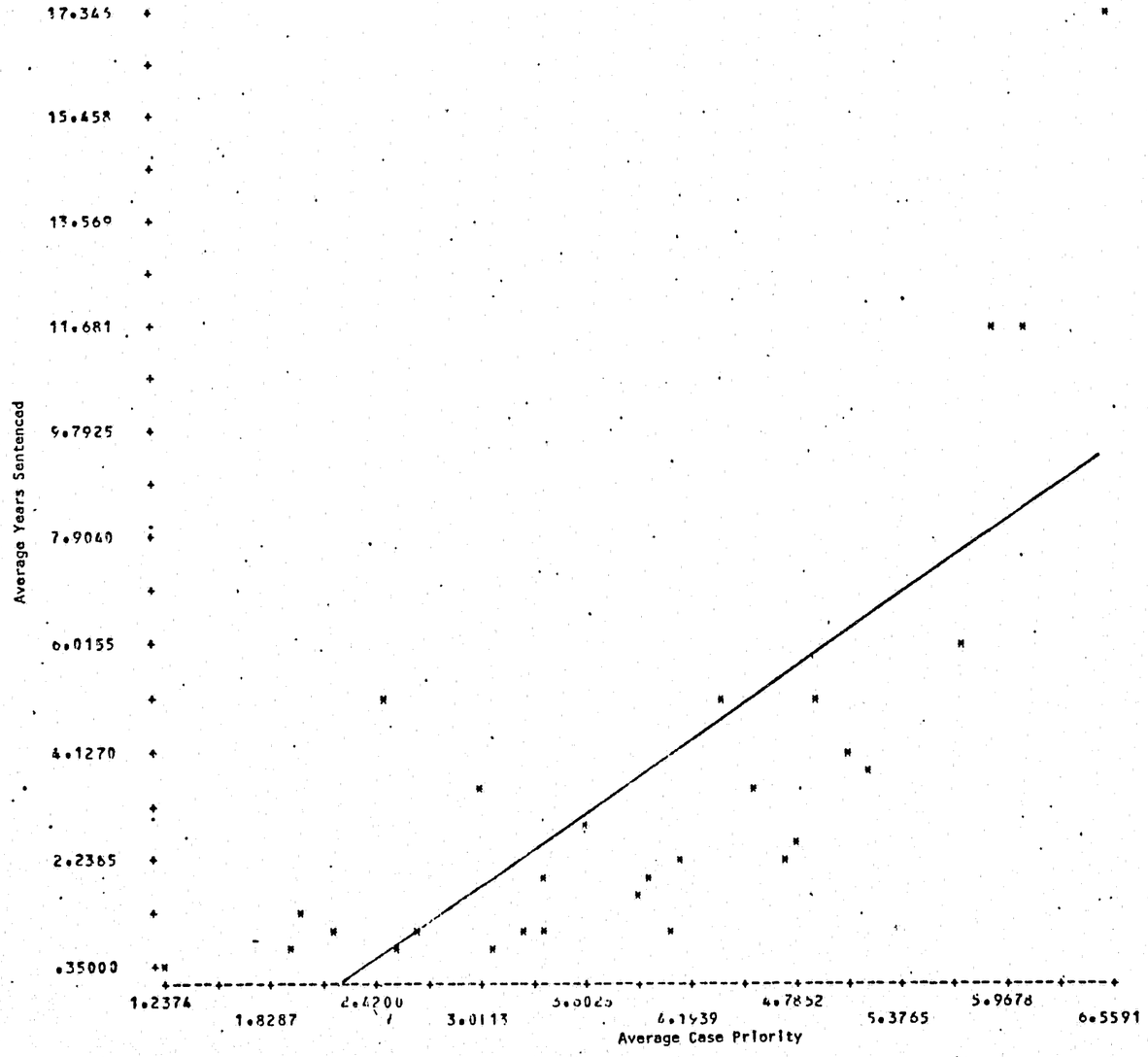


Figure 3
Relationship between Probability of Charge Reduction and Probability of Trial in Brooklyn

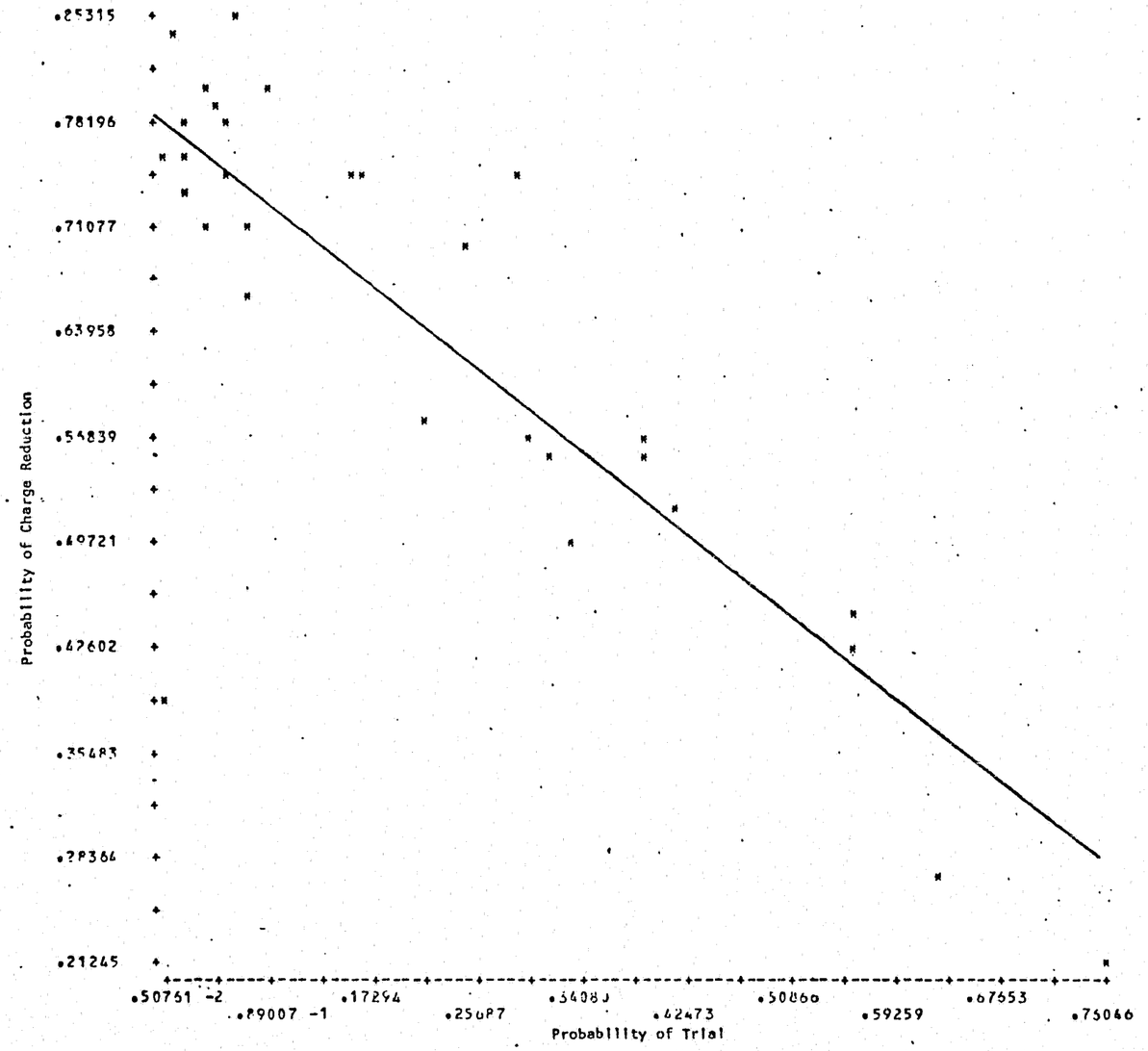
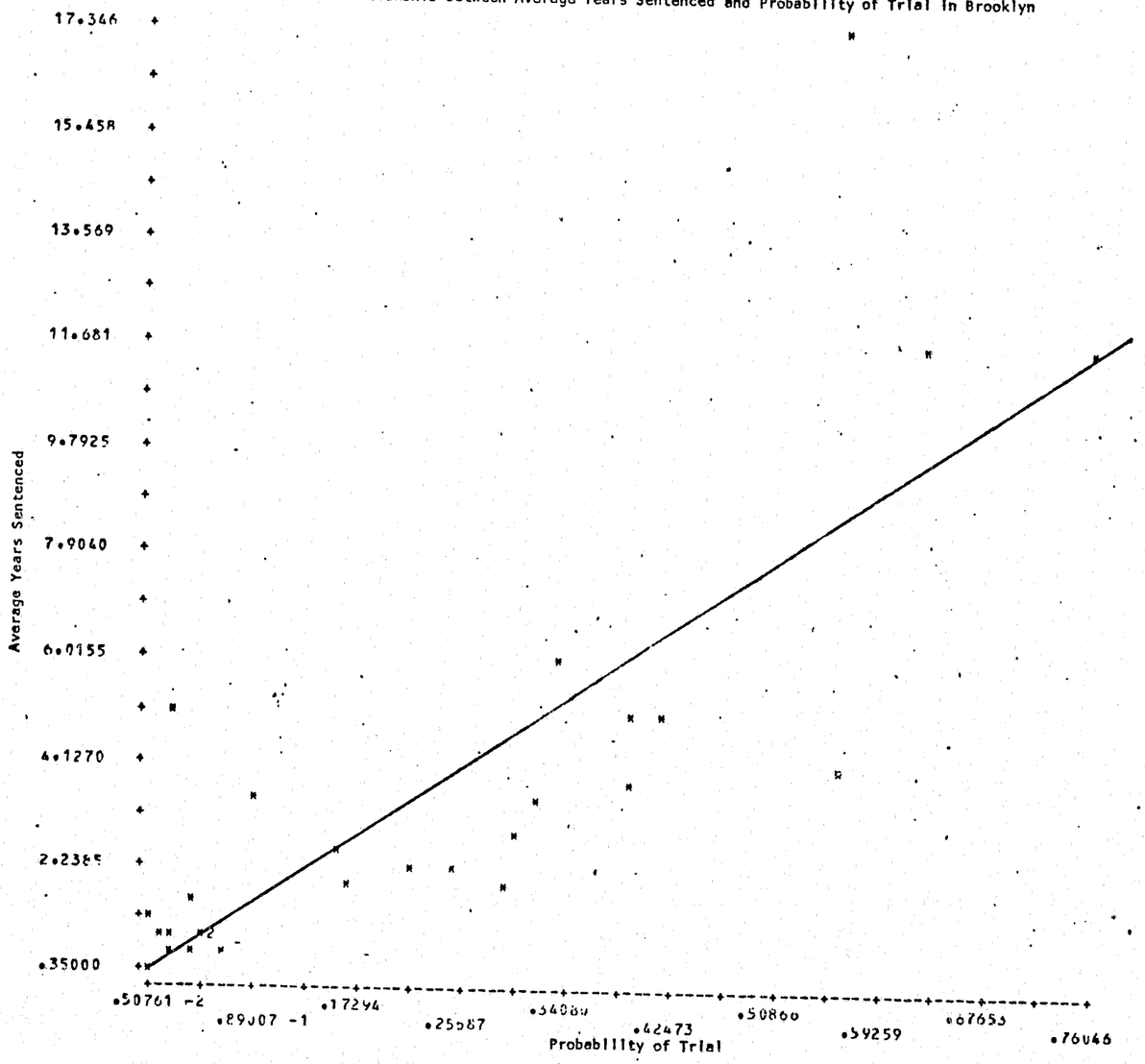


Figure 4
Relationship between Average Years Sentenced and Probability of Trial in Brooklyn



C. State of Delaware (Wilmington)

In Brooklyn, two independent variables correlate strongly with four events. In Wilmington, the same two variables correlate strongly in only two events. Both of these are post-conviction oriented. Whether the defendant will be incarcerated is strongly related to the priority of the case for prosectuion (r-square, .689) and how long he is incarcerated is also dependent on the priority of the case (r-square, .714). Additionally, there is also a strong relationship between the case being disposed of by trial and the average length of sentence (r-square, .541). Table 22 presents the regression equations. Figures 5 and 6 show the scatter plots of these relationships. It is interesting to note that like Brooklyn, case priority is a powerful explanatory variable about whether a defendant will be incarcerated and for how long. Unlike Brooklyn, however, this factor does not exhibit strong predictability in whether the case will be disposed of by a plea or by trial (r-squares .038 and .446 respectively). While one might argue that the trial variable is explained fairly well by the .446 r^2, this certainly is not of the same magnitude of Brooklyn's r^2 of .713. Thus, the office appears to place its major emphasis on ensuring that the more serious cases receive the same incarceration but not as much emphasis on how this is achieved, whether by trial or plea.

On the other hand, it is also clear from this analysis that the longer sentences are sought for both the serious cases and for cases that have been disposed of by trial. This is consistent with the office's no reduced plea policy after its cut-off date. If the case cannot be negotiated out before trial, the original charge stands.

Table 22

Results of Selected Pairwise Regression Analyses of Responses in Wilmington Attorney General's Office

Dependent Variable	Intercept	Coefficient	Independent Variable	Sig.	r^2	SE
Average Years	.997	+ 13.826	Trials	**	.541	3.62
Average Years	10.817	- 9.239	Pleas	**	.303	4.45
Average Years	- 9.623	+ 3.458	Avg. Priority	**	.714	2.85
Lockup	.304	+ .098	Trial	**	.380	.345
Lockup	.704	- .220	Pleas	n.s.	.026	.433
Lockup	- .513	+ .269	Avg. Priority	**	.689	.244
Trials	- .271	+ .136	Avg. Priority	**	.446	.205
Pleas	.750	- .046	Avg. Priority	n.s.	.038	.315
Accept.	.547	+ .084	Avg. Priority	*	.212	.219
Reduce	- .013	+ .398	Pleas	**	.510	.125
Reduce	.303	- .328	Trials	*	.254	.155

*Significant at .05 level

**Significant at .001 level

Figure 5
Relationship between Average Years Sentenced and Probability of Trial
in Wilmington

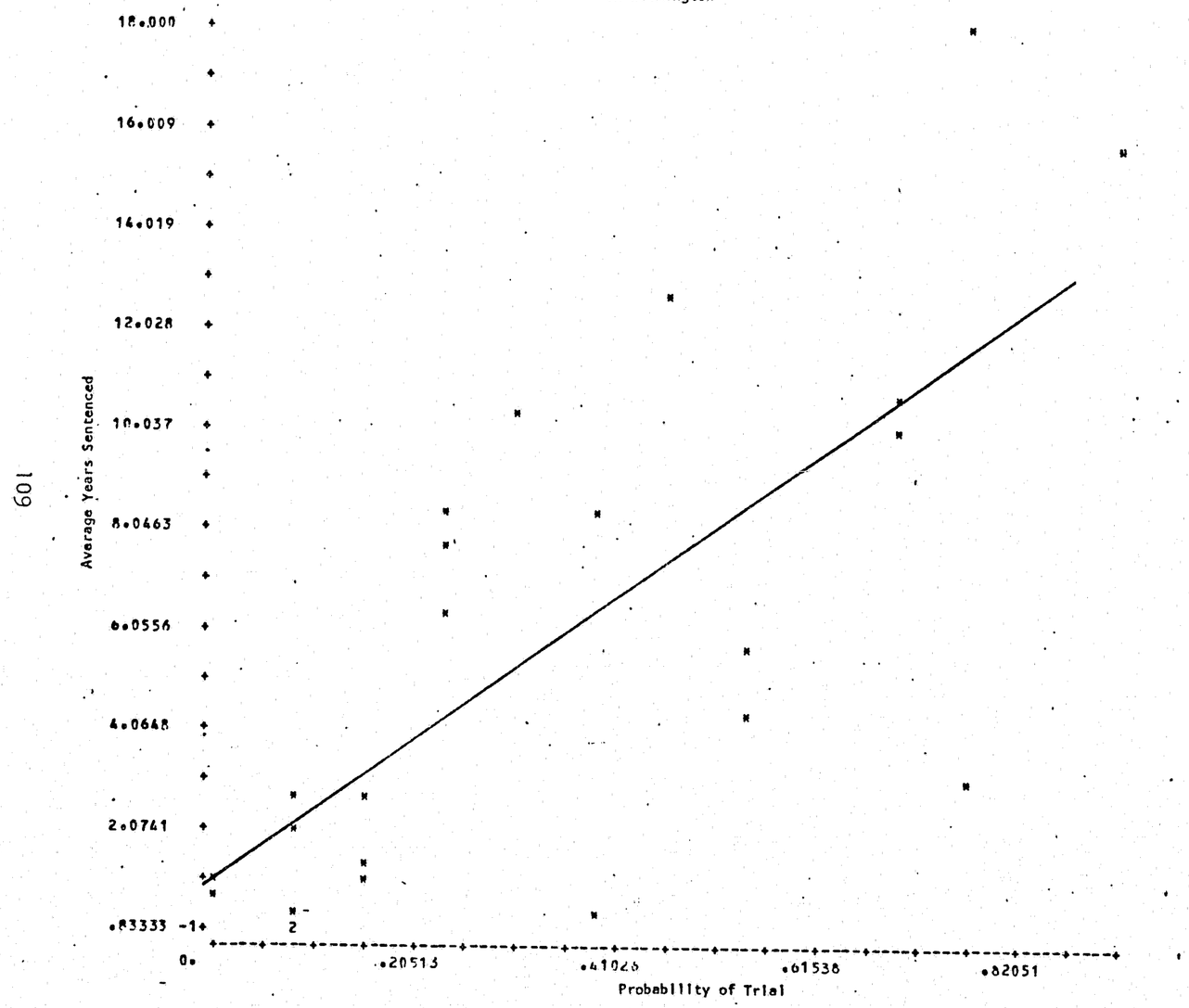
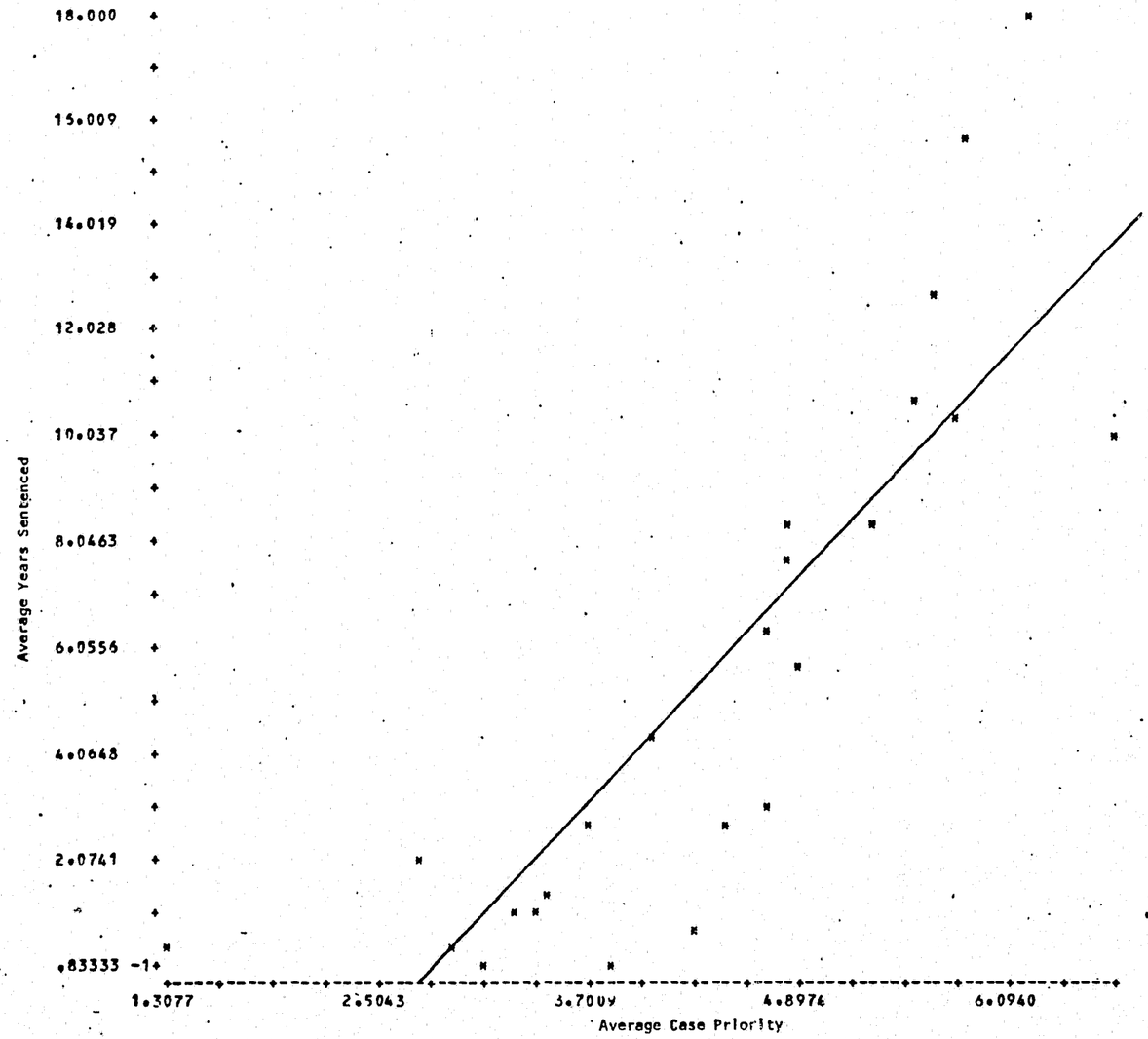


Figure 6

Relationship between Average Years Sentenced and Average Case Priority in Wilmington



D. Orleans Parish (New Orleans) Louisiana

Like Brooklyn, there is a strong relationship between priority of a case for prosecution and the probability of trial. (Table 23) In this trial oriented office, the relationship between cases going to trial and the probability of incarceration is strong and positive (r-square, .799). Not surprisingly, it is the strongest of all the sites.

In addition, the priority of the case is strongly related to the probability of incarceration and longer sentences are also present (r-squares of .702 and .615 respectively).

In addition to the predictive power of priority in this jurisdiction, the likelihood of the case being disposed of by trial is also involved. Here there is a strong relationship between trials and incarceration (r-square, .735) and even the average length of sentence (r-square, .533). The stance seems to be that of taking serious cases to trial with the expectation of obtaining an incarceration of the defendant.

Figures 7 to 10 show the relationships in this jurisdiction.

Table 23

Results of Selected Pairwise Regression Analyses of Responses in New Orleans District Attorney's Office

Dependent Variable	Intercept	Coefficient	Independent Variable	Sig.	r^2	SE
Average Years	- 12.678	+ 4.745	Avg. Priority	**	.615	5.075
Average Years	- 2.003	+ 14.986	Lockup	**	.477	5.918
Average Years	- .157	+ 18.579	Trial	**	.533	5.591
Average Years	+ 13.645	- 17.758	Plea	*	.325	6.720
Average Years	- 1.725	+ 12.170	Accept	n.s.	.134	7.615
Lockup	.151	+ 1.108	Trials	**	.735	.220
Lockup	.817	- .736	Plea	*	.189	.385
Lockup	- .451	+ .251	Avg. Priority	**	.702	.233
Trial	- .462	+ .207	Avg. Priority	**	.799	.148
Plea	+ .566	- .067	Avg. Priority	*	.142	.234
Accept.	+ .187	+ .140	Avg. Priority	**	.477	.210

*Significant at .05 level

**Significant at .001 level

Figure 7
Relationship between Probability of Trial and Average Case Priority
in New Orleans

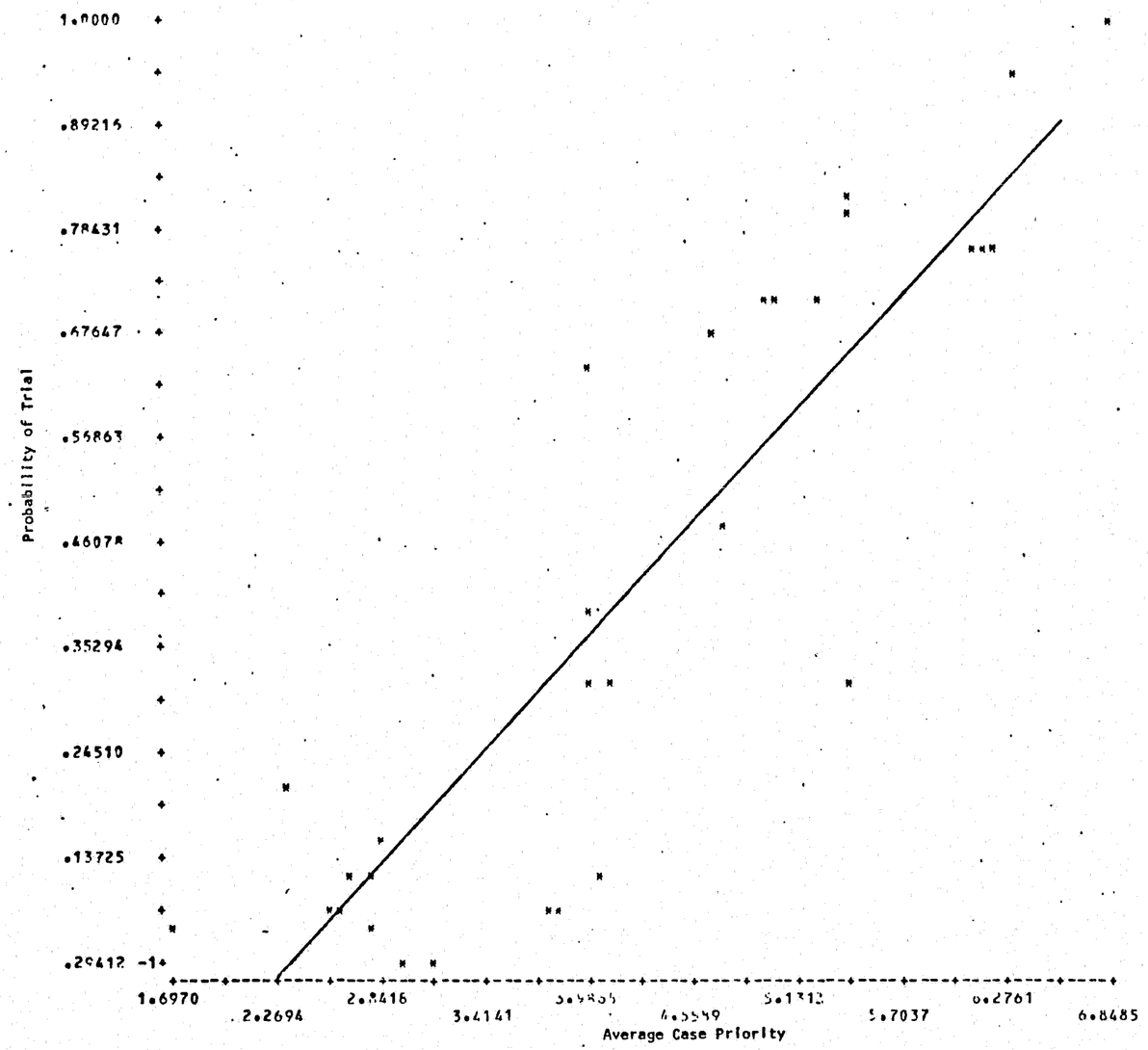


Figure 8.
Relationship between Probability of Incarceration and Average Case Priority in New Orleans

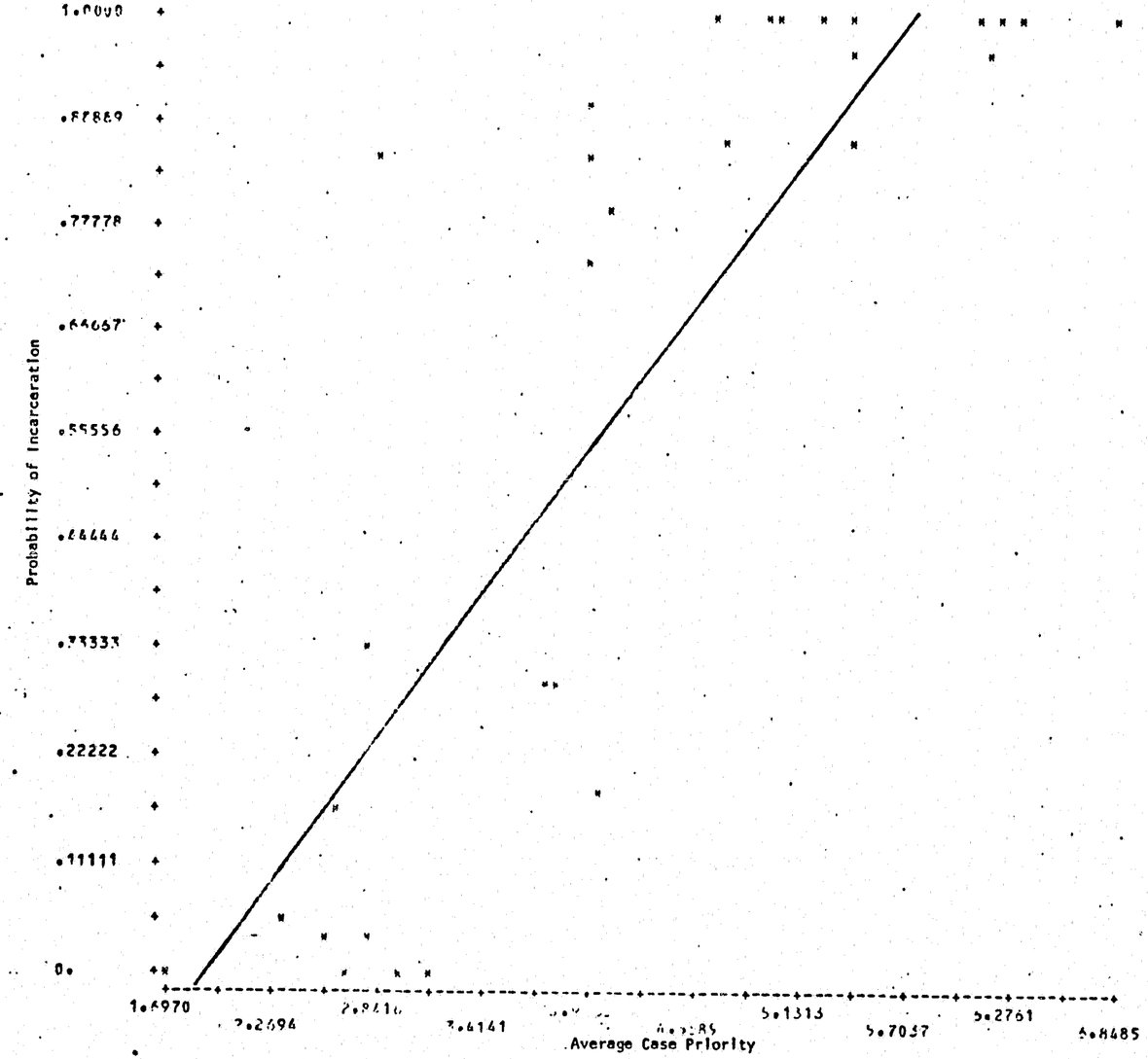


Figure 9
Relationship between Average Years Sentenced and Average Case Priority in New Orleans

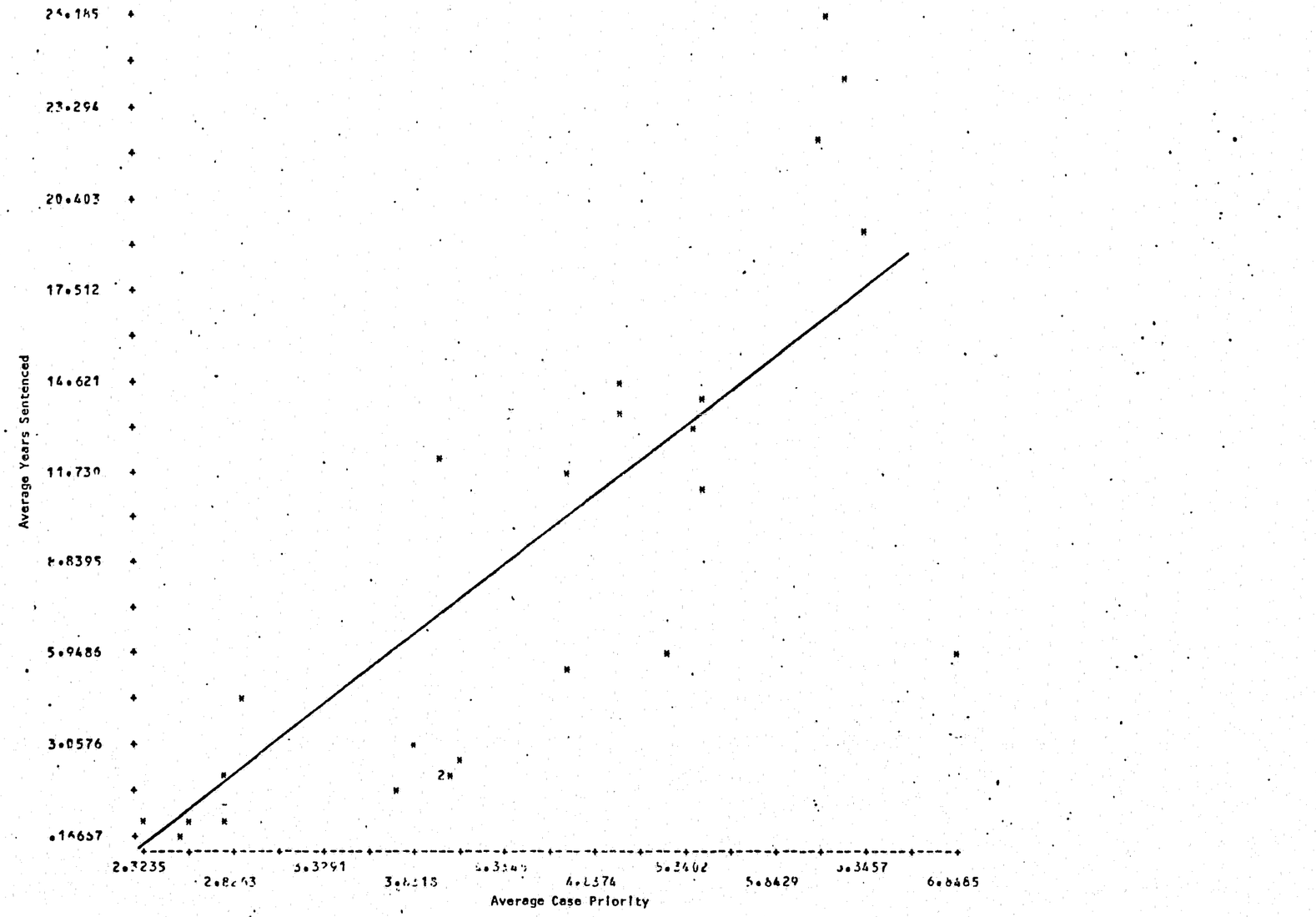
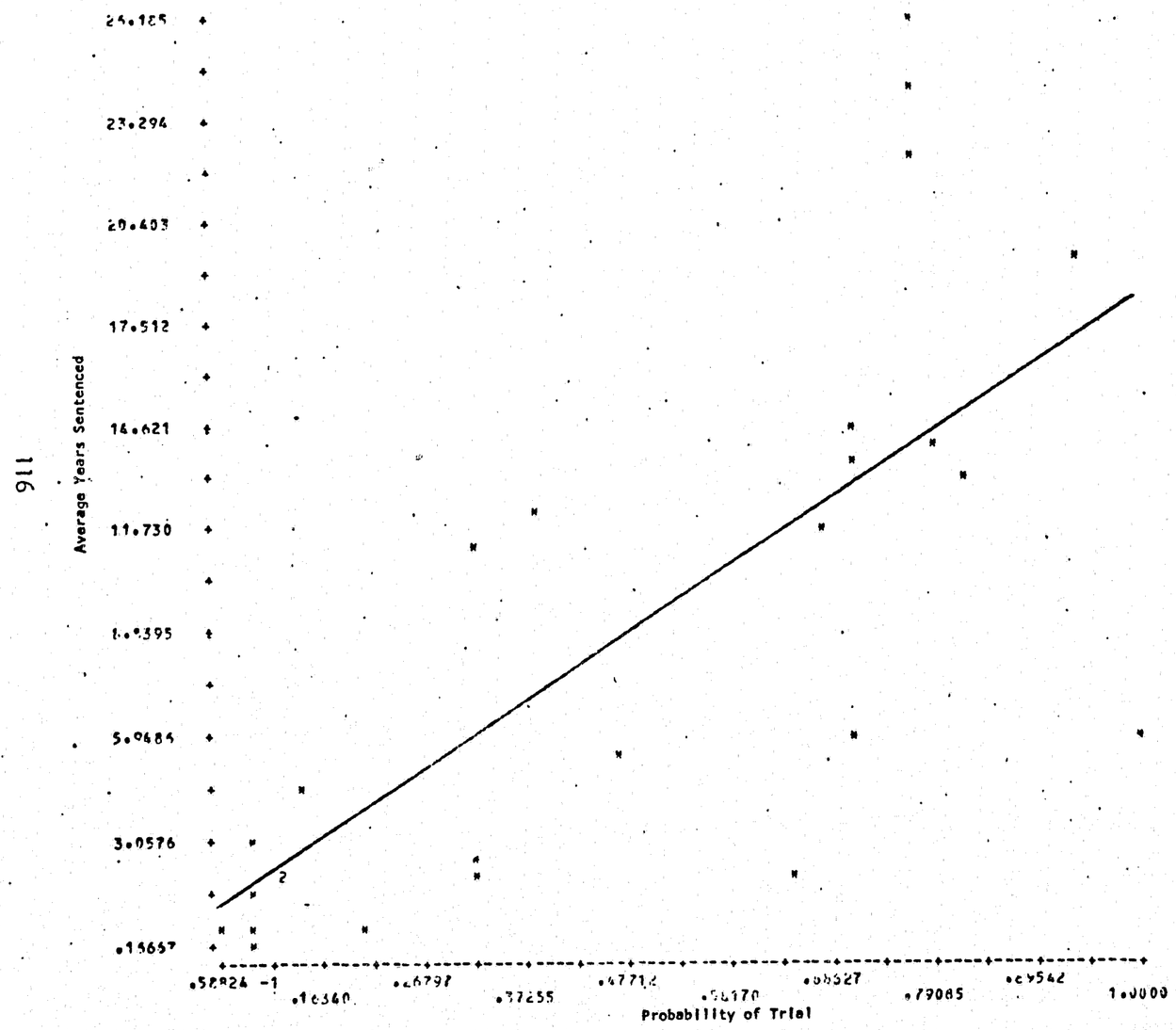


Figure 10
Relationship between Average Years Sentenced and Probability of Trial in New Orleans



E. Salt Lake City, Utah

The office in Salt Lake County shows a pattern of relationships similar to the other jurisdiction with one exception. The priority of the case is a powerful predictor of whether the case will be disposed of by trial (r^2, .627) and whether the defendant will be incarcerated (r^2, .684) and for how long (r^2. ,698). Similarly, as the probability of disposition by trials increases the probability of the defendant being incarcerated increases also (r^2, .555) but not the length of sentence. (Table 24)

In this one-man criminal court system, we see for the first time the emergence of case priority as a predictor of acceptance (r^2; .504). It would be interesting to see whether this relationship exists in other similarly situated offices. Along with this implication is another--namely, the absence of a relationship between the probability of cases being disposed of by trial receiving longer sentences. It may well be that this is precluded by the overwhelming need to reduce workload and dispose of cases using a variety of negotiated sentences as the incentive. Table 7 in Part I indeed verifies the fact that sentences considered appropriate and reasonable are much less severe than those imposed by the other sites. Figures 11 to 13 display these relationships.

F. Conclusion

The composite table constructed to summarize the strongly related variables identified in each site (Table 25) shows clearly that only two factors play any significant role in explaining variation among the

Table 24

Results of Selected Pairwise Regression Analyses of Responses in Salt Lake County Attorney's Office

Dependent Variable	Intercept	Coefficient	Independent Variable	Sig.	r^2	SE
Average Years	.148	+ 4.634	Trials	**	.299	1.72
Average Years	3.445	- 3.311	Pleas	n.s.	.128	1.91
Average Years	- 3.567	+ 1.334	Avg. Priority	**	.698	1.13
Lockup	.051	+ 1.222	Trials	**	.555	.263
Lockup	.798	- .616	Pleas	n.s.	.126	.369
Lockup	- .423	+ .240	Avg. Priority	**	.684	.222
Trials	- .167	+ .142	Avg. Priority	**	.627	.157
Pleas	.263	+ .015	Avg. Priority	n.s.	.009	.236
Accept.	.155	+ .152	Avg. Priority	**	.504	.217
Reduce	.063	+ .305	Pleas	**	.383	.092

*Significant at .05 level

**Significant at .001 level

Figure 11
Relationship between Probability of Trial and Average Case Priority in Salt Lake City

Figure 12
Relationship between Probability of Incarceration and Average Case Priority in Salt Lake City

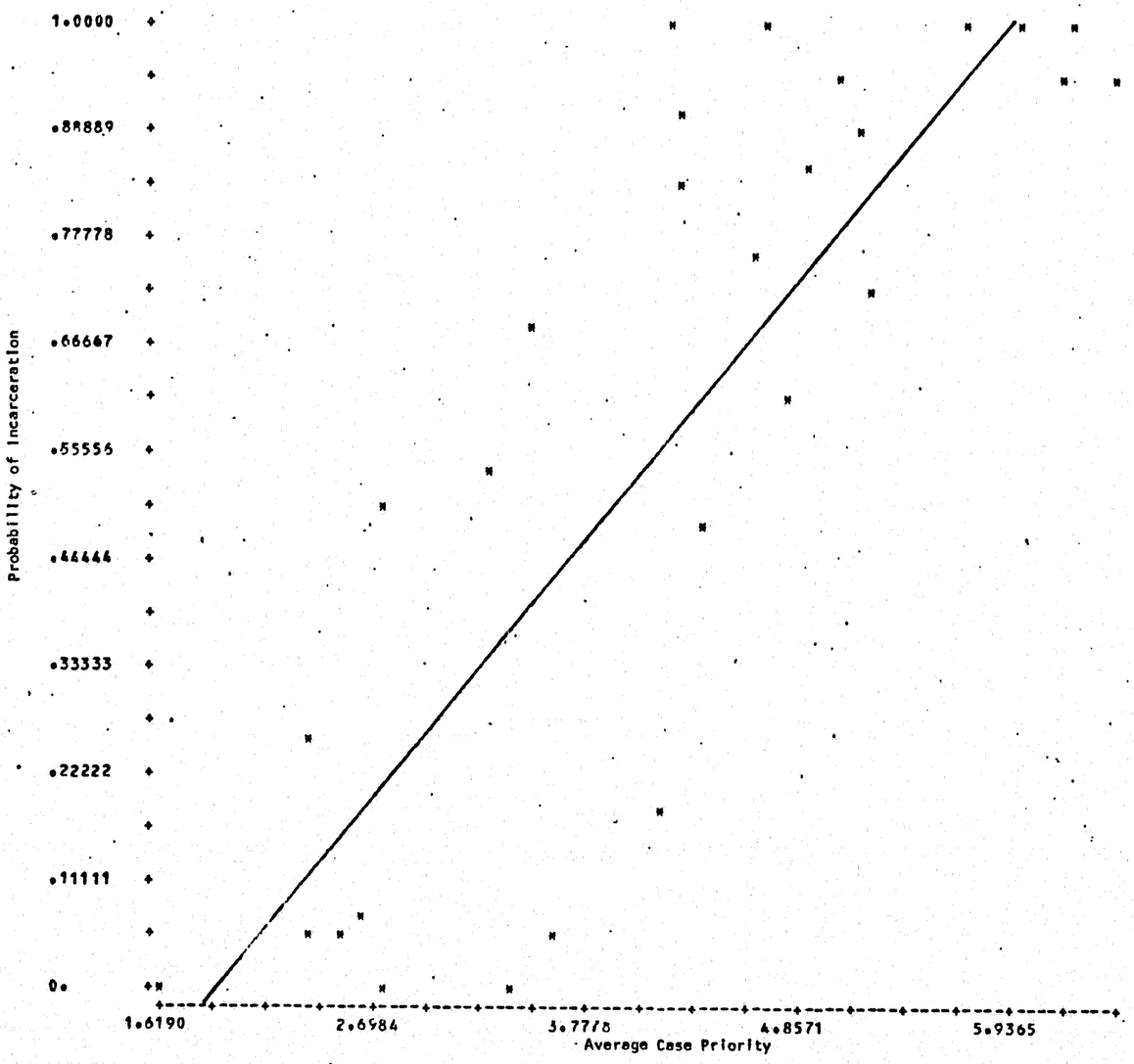
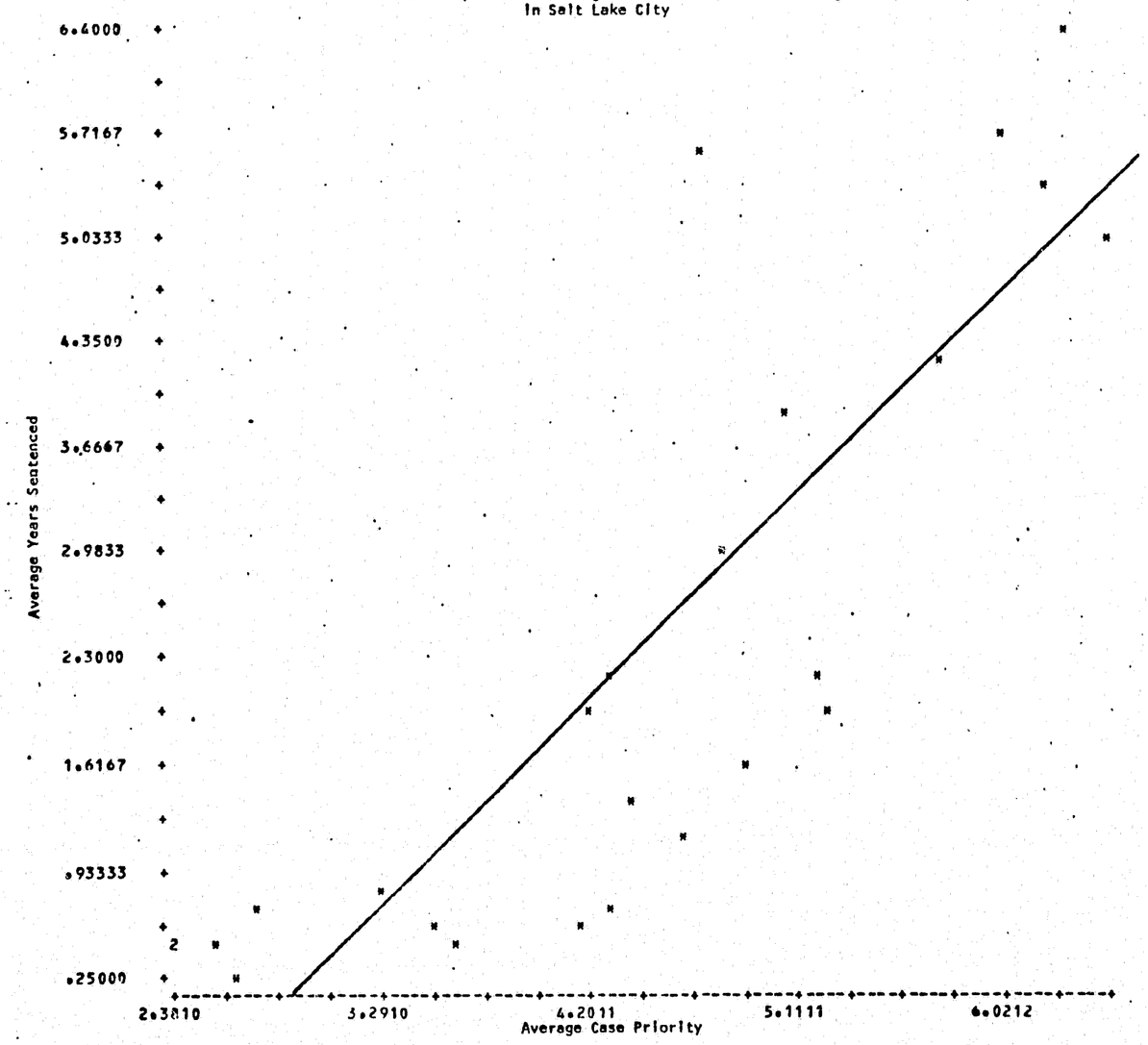


Figure 13
Relationship between Average Years Sentenced and Average Case Priority
In Salt Lake City



cases with respect to the other dependent variables. They are the priority of a case for prosecution and the probability of a case being disposed of by trial. The priority variable has the highest consistent explanatory power of all the variables tested. This is important because first, we can examine it in future analysis to determine what factors have a bearing on what makes a case important for prosecution; and then, knowing this, use the results to search for deviations from the predicted behavior of the prosecution process.

The scale needs to be examined along the three dimensions of seriousness of offense, defendant and evidentiary strength. The relative weighting given these variables is expected to indicate policy differences among prosecutors as different factors are considered in the decisionmaking process. From the results of this analysis, we would expect high uniformity with respect to the tails of the distribution (the most serious and trivial) but more choices in the middle.

The fact that priority is able to predict trials (with the exception of Wilmington) and that priority and trials are both good predictors of the likelihood of incarceration and the average length of sentence yields the conclusion that we have identified a powerful technique that early in the prosecution process is able to assess the likelihood of trial. The significance of this is that it lays a base for prosecutors to know in advance how to allocate resources to the most work-intensive part of their function. As a planning tool, for budgeting and personnel management, it may be invaluable. Its potential certainly appears to be very good. Similarly the planning

Table 25

SUMMARY OF IMPORTANT PAIRWISE REGRESSIONS EXPLAINING 50% OR MORE OF THE VARIANCE, BY SITE

Dependent Variables	Independent Variables: Priority of Prosecution		Probability of Trial	
	Site	r^2	Site	r^2
Probability of Accept	Salt Lake City	.504		
Probability of Reduction at Disposition			Brooklyn	.682
Probability of Trial	New Orleans	.799		
	Salt Lake City	.627	(Not applicable)	
	Brooklyn	.713		
Probability of Lockup	Wilmington	.689		
	New Orleans	.702	New Orleans	.735
	Salt Lake City	.684	Salt Lake City	.555
	Brooklyn	.722	Brooklyn	.573
Average Length of Sentence	Wilmington	.714	Wilmington	.540
	New Orleans	.615	New Orleans	.533
	Salt Lake City	.698		
	Brooklyn	.564	Brooklyn	.634

(Note: All regressions are significant at the .05 level or less.)

implications of the likelihood of incarceration and the average length of sentence reach far beyond the prosecutive process and into the correctional planning area.

Table 26 is presented to hint at the predictive power of this variable. This table presents the computed probability of a case being disposed of by trial given its priority rating in each of the jurisdictions as well as for all jurisdictions combined. The remarkable similarity and agreement among sites indicated the universal or normative features of this predictor.

However, caution must be interjected into these statements. The r^2 and the standard error need to be noted to give dimension to the explanatory power of the predictor and the amount of variation that one could expect around the estimates. Table 27 shows that for Wilmington, while the regression equation is remarkably similar to that of the other sites, the ability of the priority ranking to predict trial dispositions is very low. In this site, there are clearly other (as yet unidentified) factors operating with respect to determining which cases will be disposed of by trial and these factors are not to be found in any of the elements that make up the priority scale. Thus, as is typical in most efforts of this type, the answers are only partially complete and the questions resulting from the search are exponentially increased. Despite this, there is certainly sufficient justification to conduct similar tests in other sites to determine the stability of this predictor in addition to the reasons why it is not as strong in Wilmington.

Table 26

Probability of Case Being Disposed of By Trial For Each Site and All Sites Combined by Priority of Case

Priority of Case	All Sites	Brooklyn	Wilmington	New Orleans	Salt Lake City
1	0	0	0	0	0
2	.03	.02	.05	0	.10
3	.17	.13	.18	.14	.23
4	.31	.24	.31	.33	.36
5	.45	.35	.44	.52	.49
6	.59	.46	.57	.71	.62
7	.73	.57	.70	.90	.75

Table 27

Regression Equations For Probability of Case Being Disposed of by Trial For Each Site and All Sites Combined

	Intercept	Coefficient (Priority)	r^2	SE
All Sites	- .25	+ .14	.73	.12
Brooklyn	- .20	+ .11	.71	.11
Wilmington	- .21	+ .13	.40	.22
New Orleans	- .43	+ .19	.77	.15
Salt Lake City	- .16	+ .13	.63	.15

APPENDIX A

SAMPLE OF CASES AND EVALUATION FORM

CASE NUMBER: 016

CASE NUMBER 016

1. On November 20, 1977, at 9:45 P.M., the defendant, a white male, was arrested on a charge of Theft (Motor Vehicle) over $300.

2. On November 20, 1977, at 5:20 P.M. the owner of a 1970 4-door Plymouth sedan reported to the police that while accompanied by the defendant he had parked the vehicle to go into the convenience store to make a purchase. The defendant had requested that the keys be left in the ignition so that the defendant could hear the radio. Upon returning from the store the victim discovered that the car was gone and he reported the incident to the police. At 9:45 P.M. an the same date the arresting officer on patrol observed a vehicle like the one which had been reported stolen parked on a side street and occupied by the defendant. The defendant was placed under arrest and charged with Theft over $300. After the arrest, the defendant was transported to the hospital to receive treatment for the D.T.'s.

3. Witnesses -

   #1. Vehicle owner

   #2. Arresting officer

4. Evidence - Physical Property, Statements, Other

   a. Testimony as to theft

   b. Testimony as to the recovery of the vehicle and the presence in it of the defendant.

Defendant #6

Date of Birth: 8/23/54

Age at Arrest	Offense	Disposition
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed
18	Possession of Marijuana	Dismissed

CASE NUMBER: 048-01

CASE NUMBER 48-01

1. On June 3, 1977, the defendant, a black female, was arrested and charged with Attempt to Commit a Crime (to wit Murder in the First Degree) and also Possession of a Deadly Weapon During the Commission of a Felony.

2. On June 3, 1977, the arresting officer responded to a call concerning a knifing. When he approached the crime scene he noticed a group of people standing on the northside of the street waving to him. As the arresting officer (Witness #1) exited his vehicle he saw a black male lying face down on the sidewalk with five or six people standing around him. The arresting officer then asked a black female standing near the victim what happened. She stated "I cut him." The arresting officer then asked who she was and she stated her name and that she was the victim's girlfriend. At this point the suspect was taken into custody. After advising the defendant of her rights, the arresting officer asked the defendant why she had stabbed her boyfriend and she stated "He was beating me with his buckle and I'm pregnant so I stabbed him." Thereafter the defendant stated that she had only "sliced" the victim across the chest. The victim was transported to the General Hospital where he was treated and released.

Witness #2 who was at the scene stated that the defendant and the victim had been guests in her house during a crab feast and that approximately one half hour before the stabbing the two had left the house and walked across the street where an argument ensued, resulting in the incident and crime in question. Witness #2 saw the victim hit the defendant with a belt buckle. Witness #3 saw the same incident and saw the defendant stab the victim.

3. Witnesses -

#1. Arresting officer to whom admissions were made by defendant

#2. Person who gave party attended by victim and defendant

#3. Eyewitness to stabbing

#4. Corroboration of Witness #3

Defendant #19

Date of Birth: 11/8/47

Age at Arrest	Offense	Disposition
18	Possession of Heroin	Conviction
	Possession Narcotics Equipment	Conviction
18	Possession of Heroin	Conviction
19	Possession of Heroin	Acquittal
23	Possession of Marijuana	Conviction
25	Procure for Prostitution	Dismissed

CASE NUMBER: 061-02

1. On May 19, 1977, the defendant was arrested and charged with Robbery in the First Degree (Hand Gun) and also Possession of a Deadly Weapon During the Commission of a Felony.

2. At approximately 1:47 A.M. on May 19, 1977, police received a call from an unidentified caller stating that a robbery was in progress at a bar in this city and that the suspect was a black male driving a black Chevrolet Nova. Three officers (Witnesses #2, #3, and #4) responded in their patrol units. As Witness #2 approached the bar in question he observed a dark colored Chevrolet Nova driven by a black male leaving the parking lot. Witness #2 pursued the car and stopped it approximately 8/10's of a mile east of the bar. The officer ordered the driver who was the sole occupant of the car to exit his vehicle and lie on the ground. At this point Witness #2 was joined by Witnesses #3 and #4 who arrived simultaneously. After a quick pat down, the defendant was given his Miranda rights at approximately 1:52 A.M. and was thereafter handcuffed. Witness #3, upon looking over the suspect vehicle, observed on the front seat a roll of quarters and on the floor of the vehicle a cigar box and a money bag. Witness #2 and Witness #3 checked the interior of the vehicle and under the driver's seat found a nine millimeter automatic pistol with one cartridge in the chamber and six in the magazine.

Another officer (Witness #5) went to the bar in question where he picked up the victim (Witness #1), and transported him to the point where the defendant had been stopped. The victim viewed the defendant at 1:57 A.M. and positively identified the defendant as the one who had robbed him.

The defendant was transported to the police station where $167 in cash was taken from his pockets, the cigar box was examined and found to contain checks and cash. The money bag was examined and found to contain cash and rolled

coinage totalling $1639.51. Several of the checks were made payable to the bar in question.

The victim, who was interviewed by a detective sergeant (Witness #6), indicated that at 1:45 A.M. that day as he was closing the bar owned by him, he set the burglar alarm and left through the rear kitchen door after locking the door. As he walked toward his automobile he passed a van parked immediately adjacent to his automobile. An unidentified subject in the van called to the victim and told him that there was a black male who was acting suspiciously in the parking lot. As the person later identified as the defendant approached, he held in his hands in front of him an unidentified object which at 10 feet the victim was able to see was a gun, which the defendant thereupon pointed it at the victim saying: "We're going in and you are going to open the safe." At this time, the subject in the truck started his van and the victim said that the defendant pointed the gun at the driver and ordered him to stop, but the subject started off to the nearest phone booth. The victim said that the defendant stayed behind him and ordered him inside the bar. Once inside the bar the defendant ordered the victim to turn off the alarm system. This the victim did. Thereafter on several occasions the defendant threatened to "blow off" his head unless the victim opened the safe. During the last of the threats, the defendant fired the gun into the floor. Once the victim opened the safe the defendant removed the cigar box with the cash and checks and took a bag from a stack and started ransacking the safe, emptying the contents into the bag. The defendant also removed cash from the cash drawers on a sofa in the office and removed rolled coins which he put in the bank bag. Thereafter the defendant ran out of the kitchen door telling the victim "If you'll remain here for five minutes, nothing will happen to you."

3. Witnesses -

   #1. Victim

   #2., #3., #4., #5. and #6. Arresting and investigating officers

4. Evidence - Physical Property, Statements, Other

   a. $1166.30 in assorted U.S. currency and coins

   b. $640.21 in endorsed checks and money orders

   c. Bank bag in question

   d. Cigar box

   e. 9 millimeter Browning semi-automatic pistol

   f. Black leather shoulder holster with nylon straps

   g. Testimony of the victim as to robbery in question and identification of the defendant

   h. Testimony of arresting officers as to apprehension and search of the defendant's vehicle.

Defendant #14

Date of Birth: 5/28/52

Age at Arrest	Offense	Disposition
19	Receiving Stolen Property	Conviction
20	Robbery	Dismissed
	Aggravated Assault (w/weapon)	Dismissed
20	Burglary	Dismissed
	Assault	Dismissed

RESEARCH ON PROSECUTORIAL DECISIONMAKING*

Case Evaluation Worksheet

1. Case number: 2-00

2. Your initials: _____

3. Circle the number that best represents the priority you, yourself, feel that this case should have for prosecution.

1	2	3	4	5	6	7
Lowest Priority			Average or Normal			Top Priority

4. After reviewing this case, would you accept it for prosecution?

(1) Yes ____

What would you charge? List all charges. If co-defendants charge each

Def. #1	Def.#2
Number of charges	
_____	_____

(2) No ____

Why not?

*Supported by LEAA Grant No. 78-NI-AX-0006

RESEARCH ON PROSECUTORIAL DECISIONMAKING

Case Evaluation Worksheet - Continued

5. Considering the characteristics of this case and your court, what do you expect the most likely disposition will be? (Check one)

____1. Plea
____2. Dismissal
____3. Nolle
____4. Conviction
____5. Acquittal
____6. Decline to prosecute
____7. No true bill
____8. Transfer to another court
____9. Diversion
____10. Failure to Appear
____11. Can't predict
____12. Other (specify)

6. Assuming the disposition you have given in Q 5 occurs, where in the court process do you expect this case to be disposed of? (Check one)

____1. At first appearance for bond setting and defense counsel appointment
____2. At preliminary hearing
____3. At grand jury
____4. At arraignment
____5. After arraignment, before trial
____6. First day of trial
____7. End of bench trial
____8. End of jury trial

7. At what level will this case be disposed of?

____1. Felony (as charged)
____2. Felony (lesser charge)
____3. Misdemeanor (as charged)
____4. Misdemeanor (lesser charge)
____5. Violation or Infraction
____6. Other (specify)

8. In your own opinion and irrespective of the court, what should be an appropriate and reasonable for this defendant? (Check all applicable).

____1. None
____2. Fine
____3. Restitution
____4. Suspended Sentence
____5. Deferred Sentence
____6. Alternative progam (Community service, treatment, other)
____7. Probation
____8. Jail
____9. Penetentiary

9. If jail or penetentiary time, how long? _____

APPENDIX B

COMPARISON OF STANDARD DEVIATIONS ASSOCIATED WITH CASES BY RESPONSES AND SITE

APPENDIX B
COMPARISON OF STANDARD DEVIATIONS ASSOCIATED WITH CASES BY RESPONSES AND SITE

Case Number	Priority for Prosecution (Question 3)				Total Number of Charges (Question 4)				Length of Sentence (Question 9)			
	Wil.	NO	SLC	Brk.	Wil.	NO	SLC	Brk.	Wil.	NO	SLC	Brk.
ALL CASES	1.55	1.78	1.77	1.74	3.00	.96	1.24	2.67	7.61	36.55	18.65	6.84
1.01	1.21	1.08	1.13	.97	.00	.31	.00	.52	.00	.00	.00	.49
2.00	.94	1.22	1.05	1.03	.28	.28	.24	1.02	.00	.00	.00	1.08
3.00	.72	1.31	1.31	1.02	.58	.73	.00	.90	.94	2.89	.39	1.28
6.00	.72	-	-	1.00	.70	-	-	1.14	1.31	-	-	1.80
6.01	-	1.13	1.10	-	-	.52	.37	-	-	25.99	1.66	-
9.02	.82	1.02	1.54	1.13	.46	.35	.00	.96	8.94	19.20	4.15	3.94
13.00	1.11	1.55	1.18	1.39	.49	.00	.45	.69	.00	.00	.00	1.15
14.00	.73	1.39	1.42	1.23	.90	.60	.58	1.19	2.43	28.04	1.64	2.12
15.00	.63	-	-	.88	.50	-	-	1.73	1.40	-	-	.68
15.01	-	.87	1.02	-	-	.50	.32	-	-	18.40	.35	-
16.00	.62	1.12	1.07	.79	.27	.19	.00	.89	.00	.00	.00	1.02
21.00	1.28	1.21	.66	.96	.00	.00	.00	.21	.00	.00	.00	.00
22.02	.73	.73	.83	.86	.92	.54	1.69	1.86	4.80	4.16	1.50	1.80
23.01	-	.80	.70	-	-	.84	.99	-	-	36.10	20.87	-
34.00	.77	-	-	.96	1.96	-	-	3.25	4.13	-	-	3.15
34.01	-	.98	1.05	-	-	1.48	1.81	-	-	26.61	5.45	-
39.01	1.10	-	-	1.12	.92	-	-	1.40	5.75	-	-	5.96
39.02	-	1.09	1.12	-	-	.70	.93	-	-	37.95	32.95	-
43.00	.62	.74	.86	.93	.97	.59	.56	1.66	.00	1.47	.00	1.16
48.01	1.19	1.56	1.34	1.26	.47	.00	.40	.91	.00	35.00	.41	3.96
50.00	.73	1.33	1.21	.96	.43	.00	.00	.36	.21	.39	.40	.61
51.00	1.53	1.61	1.40	1.15	.00	.00	.00	.65	.00	.00	.00	.00
57.01	.82	-	-	1.23	4.15	-	-	4.30	4.05	-	-	3.25
58.00	.46	.94	.79	.51	.00	.00	.00	.60	.00	.00	.00	.36
61.02	.70	.89	1.33	1.04	1.46	.43	.63	2.02	8.51	26.48	20.77	4.46
64.00	.75	1.32	1.13	.98	1.48	1.45	.85	1.68	2.15	18.63	1.22	2.33
79.01	.63	1.40	1.68	1.02	1.07	.55	.33	1.49	4.64	37.32	5.69	4.13
90.00	.72	1.00	.95	.89	1.08	.00	.00	.50	.91	1.95	1.45	.79
99.00	.53	.99	.76	.91	1.44	.77	1.22	2.69	9.70	27.32	21.43	8.42
103.02	.61	1.05	.87	.97	.66	.61	.36	1.08	4.78	17.08	1.69	3.56
108.00	.58	-	-	.89	.84	-	-	2.00	7.36	-	-	7.47
108.01	-	.73	.69	-	-	.67	.69	-	-	31.75	28.26	-
113.00	.46	.36	.73	.85	.27	.17	.41	.69	10.67	24.27	37.90	12.78
117.02	.70	1.18	.90	.93	1.32	.93	1.27	1.12	0.00	0.00	0.00	5.94
120.02	.99	1.13	1.28	1.12	.27	.25	.00	.89	2.97	4.85	.57	3.17
141.01	.53	.63	.56	.85	2.17	1.08	1.09	2.26	.20	1.27	.45	1.15

APPENDIX C

DATA PROCESSING--TECHNIQUES, PROCEDURES AND ANALYSIS

Edward C. Ratledge

APPENDIX C

Data Processing--Techniques, Procedures and Analysis

The handling and preparation of the data set for this project was perhaps more complex and difficult than that associated with the typical type of statistical analysis. Part of this was due to the two-fold effort of analyzing the dependent variables and designing a system capable of meeting the needs for the long-range analysis of the independent variables. Furthermore, since the data was being gathered at four different sites the need for extensive quality control measures was increased to ensure the validity of each site's responses.

As each evaluation form was received for processing it was edited for completeness and assigned an identification number. Originally it had been anticipated that data entry would be done directly from the evaluation forms. However, the manner in which many assistants chose to answer the questions and the difficulty that the keypunching staff had in accurately transfering the data from the forms to the cards dictated the use of coding sheets. In the end this approach was easier, faster and entirely more accurate. Thus, each item of data was transferred from the form to the coding sheets prior to keypunch and verification.

Fifty cases from the Brooklyn data set were entered to determine what types of problems were likely to surface during the analysis. Based on the results of that pre-test, the analysis program was designed. After input, each of the four separate data files was loaded to a disc file on the University of Delaware's Burroughs B7700 computer system. Each data set, in turn was subjected to two computer based edits. The first edit checked the sequencing of each record to insure

that each assistant was associated with 30 records (cases.) Further, the program evaluated whether the case numbers were those that were required and whether they were in the proper order. As a result of this edit, cases were identified where the attorneys had skipped cases or had formed the evaluations out of sequence. This was not unexpected since a decision had been made to collect the data at each site without the active supervision of a project team member. This approach was taken with the idea that a large number of offices might be done at some later time. It was confirmed that the computer edits were sufficient to permit data collection to proceed unsupervised and that the quality of the data could be assured

After all basic problems with the sequencing of the data set were completed, the data was edited a second time. This edit had several purposes. First, it validated each field to insure that the value contained in the data on the record, fell within the allowable range; or where the value was a table value and could be checked independent of the range, such checks were also made. Second, if data were missing, the appropriate missing data codes were assigned. In the initial instructions skip patterns were not specified; instead, they were to be set after the data was collected. For example, in one question the assistant was asked whether the case should be accepted for prosecution. If the response was negative, the initial instructions were ambiguous as to whether he should at that point, skip to the next case and not answer the remaining questions. Only after reviewing the forms and weighing the effects of either decision it was decided to exclude any answers following the response that the case would be screened out. Thus, for analytical purposes missing data codes were

automatically generated for the case where that question was answered. However, the original data as collected is maintained in the original data file.

At this point, to further simplify the identification of the cases in the office a base sequential number was assigned to each assistant and the cases were renumbered from 1-30. The original I.D. numbers and the original case numbers were maintained; however, for simplicity these additional codes were entered along with the set number and a new variable which specified that a particular attorney was a leader. The leader variable does not appear on any of the coding directions; a value of zero is assigned if the individual is a leader and a one if he is not. This permits proper sorting. Coding the Brooklyn data required the preparation of a completely separate data file for the analysis of multiple leaders i.e. unit chiefs. In that particular case, the leader will always appear at the front of the set of followers in each specified unit. The output of this second edit is the third data file created in the series. A fourth data file was created which reorganized the data set by case number. The structure of that data file has each case sorted in numerical order and the number of assistants rating that case following sequentially. In the previous data file, of course, the assistant was the key variable and his 30 cases were sorted in case number order. It should be noted that where an individual leader served more than one unit, additional records were inserted at the front of each unit. Thus, the final number of records in the specialized unit is different from those found in the original data files. Since some types of analysis as well as the structure of the data files were not generally suitable for the production of reports

by standard statistical packages, several report generators were written. The first report produces a frequency distribution of the dependent variables beginning with priority and ending with sentencing. The results for each office and for each case within that office appear on separate pages. Where the data was appropriate, means and standard deviations were also reported. Furthermore, a summary table for all cases was produced at the end of each report. For Brooklyn, a report was generated for each unit in addition to one for the office as a whole. Since approximately 60 of the individuals taking the test in Brooklyn were new assistants, they were segregated in the analysis from all other attorneys. Thus, there are 216 assistants included in the basic analysis for Brooklyn with 282 attorneys processed in the extended analysis.

A second report displayed, for each of the dependent variables, the responses supplied by the designated leader followed by the responses of each assistant with the assistant sorted in order from least experienced to most experienced. This assisted in determining outliers very quickly with respect to both the policy and with respect to all other individuals in the group. The report generator deals with the congruence or agreement of the individual assistant with the decisions of the policy maker.

To eliminate some of the complexity in the congruence analysis only, each of the dependent variables was recoded. The priority scale was reduced from 7 states to 3 where values 1 and 2 were coded to the first category. 3,4, and 5 to the second and 6 and 7 to the third. A fourth category was formed for missing data. For the screening variable, there are only 3 categories with yes =1, no =2, and missing

data =3. Disposition was recoded so that the first category contained pleas; the second, convictions; the third, was all other types of disposition, and the fourth missing data. Exit point was recoded to indicate the pre-arraignment stage, the post-arraignment but pre-trail stage, and the unit trial stage with missing data in the fourth category. The final variable, level of charge, was defined in two ways. The first placed felonies in the first category, misdemeanors in the second, violations in the third and missing data in the fourth category. Alternately, category 1 contained "as charged" responses, category 2, "reduced charges", and the remainder were coded as in the previous method.

The responses of each assistant were then matched with those of the leader for all 30 cases--matches were assigned a value of 0 and mismatches the value of 1. An index agreement is computed by comparing the total matches to the total possible matches. The index is constructed for all dependent variables. If the leader has rejected a case, any responses made by the assistants about disposition, exit point and level at exit are not considered. The match and mismatching for those is accounted for in the analysis of the screening variable. To carry the technique over to the latter process step variables would misstate the level of agreement.

The final report deals with a measure of a quantity which we call IQV (Internal Quotient Variation). IQV measures the total amount of variability in the system as composed to the theoretical possible variation that could have been observed. This can be illustrated by a three state variable on a nominal, interval or ordinal scale. Maximum variance would occur when the responses are equally divided among the

three responses. The least possible variance would occur when all responses were the same. This particular type of analysis was used to measure the uniformity among assistants within the office or within an organizational unit of an office with respect to each of the dependent variables. It is particularly useful in identifying disagreements with the policy maker by where a relatively low value is found on the agreement index but the assistants agree on IQV. Uniformity within a unit can also be measured and the degree at agreement with the leader leader when composed to the office leader of the extent to which the policy was either misunderstood or was being transmitted poorly.

The output report for this generator contains IQV scores for each case. In addition, an average score is recorded to obtain the total index for the 30 cases. In calculating the index of agreement, we considered the entire matrix independent of the cases. For IQV, this is clearly an inappropriate measure. The scores produced for IQV are inverted since a large value of IQV indicates relatively low levels of consistency in the answers. The IQV values have been modified to move in the same direction as the index of agreement. That is the value presented in all tables is 100 minus the calculated IQV score. Normally an IQV of zero represents complete agreement or the lowest possible variance in the system. With the transformation, the value shown in the tables would be 100. Thus, for both the index of agreement and the index of IQV the higher the score the greater the degree of agreement or uniformity.

In this particular report, a case-by-case analysis was not sent. Even though measures both of IQV and the index of agreement have considerable value in identifying problems in cases, the measurement of

total agreement across all cases was the primary objective. The analysis of the individual cases was reserved for incorporation into the analysis of the independent variables.

Special software was also written which took the leaders from each one of the offices and substituted their responses to the other offices. In this way the leader in Brooklyn for example, was matched to the assistants in Wilmington, Salt Lake City and New Orleans, as well as his own office. Adjustment had to be made to the cases since only 24 of the 30 cases were common to all four offices. While only one case was totally different for Salt Lake and New Orleans as compared to Wilmington and Brooklyn five other had small modifications performed to tighten the scenarios.

As a final note, it should be noted that all software written for this project was prepared in Algol, although analysis was conducted using both SPSS and MIDAS with the SPSS work being done at the University of Delaware on the B 7700 and the DEC KL 10 with MIDAS being used on the Michigan Terminal System via Telenet. The data files, however, were identical in both cases indicating very clearly that the structure of the files was sufficient for transferring between systems.

APPENDIX D

DEVELOPING A SERIOUSNESS SCALE FROM CRIMINAL HISTORIES

Stanley H. Turner

I. CONCEPTS AND APPROACH*

Introduction

As part of a larger effort to determine how prosecutors and their assistants make decisions about offenders, this section will focus on one important dimension of information that routinely enters into many, if not all, such decisions: the prior record of the offender. Excluded from consideration, therefore, are the welter of other segments of information; the current offense, the social background, the type of defense, etc. Thus, the purpose of this paper is to develop an objective, simple scale that will reproduce the judgements of experienced prosecutors as to the overall "badness of an offender's prior record.

Ethical Consideration

A point can be raised that the use of the prior record of an offender is unjust. In fact more positions can be raised:

1. The prior record of an offender should never be used against him by anybody;

2. The prior record of an offender should always be used against him by anybody;

3. The prior record of an offender should be used by the prosecutor in making a decision about the defender;

4. The prior record of convictions (guilty by plea or trial) should be used by the prosecutor in making a decision about the offender.

Readers interested in either of the first two positions (which will not be considered in this paper) are referred to The Punishment Response, Graeme Newman, J.B. Lippincott, 1978, where such issues

*This section was prepared with the assistance of Ms. Aysha Latib.

are discussed within the framework of contemporary criminology. This paper assumes that it is legitimate for a prosecutor to possess and act upon the prior record of the defendant. This paper will investigate the actual effect of withholding disposition information. That is, it will present identical prior records but in one case disposition information will be present and in the other it will be absent. Thus, we will be able to determine how much disposition information affects the decision of the prosecutor and what type offender is most affected.

Methodology

There are two contrary procedures that could be followed. We could either sample prior records from actual files, change all identifying information and present them in a standardized format or, alternatively, we could simulate prior records. There are advantages to both procedures. In the first you gain representativeness--the cases are close to reality, but in the second the cases can be generated by deliberately combining preselected variables--the researcher gains control. In the sense that a range of prior record can be generated to cover all types of possibilities e.g., a long but trivial prior record, a short but very serious prior record sheet. What was selected here was a kind of blending of the two above contrary strategies. We selected adult prior records from New Jersey, edited them and standardized their format--thus we followed the first strategy that of using prior records from an actual file. But we selected the actual cases to be used so that the full range of cases to be used would appear.

Random vs Nonrandom Selection

Clearly we have opted for nonrandom selection of cases. There are costs associated with this choice but we feel the benefits outweigh them. If we relied on a random sampling of say 50 cases from the court dockets of a typical big city court there would be too many trivial cases and not enough serious ones. What we wanted was the full range from no prior record at all up to extremely lengthy and serious prior records. Thus to ensure that at least one of all the types of results that we thought to be important would appear we chose a judgmental rather than a random sampling plan.

Gradually as we obtain a firmer grasp as to which variables are important and which may be safely discarded we aim at fully simulated prior records that will also resemble real cases. Such cases could then be completely computer generated. This would entail the realization of the second strategy discussed above.

Selection of Relevant Variables

Which variables are most important in affecting the judged seriousness of a prior record? There is of course no clear answer to this question. Theory, guesswork, trial-and-error all play their part. Strictly speaking we are discussing the "admissability criterion" in the following form:

$$Y = f(Xa, Xb, Xc \ldots)$$

Y (the judged seriousness is dependent upon some cluster of variables which we have to specify).

Our suppositives are as follows:

1. LENGTH. All other things being equal the larger a prior record, the worse it is.

2. SERIOUSNESS. The 'worse' the crime the worse the prior record. We are already able to measure the seriousness of crime by building on prior work in criminology. (See the large body of work starting with The Measurement of Delinquency, T.Sellin and M. Wolfgang, J. Wiley, 1964).

3. ORDER. Though two records have the same seriousness, one might be thought more serious than the other because of the pattern of the events. Thus if a record went from least serious on up in an ever-increasing pattern of seriousness it might be thought much worse then one that was regularly decreasing or one that was randomly distributed, without any pattern at all. Another exotic possibility would be to consider a cyclical pattern in a prior record. (See especially here the work of R.M. Fijlio in Delinquency in A Birth Cohort, Wolfgang, Fijlio and Sellin, University of Chicago Press, 1972).

One final possible effect is the 'undue' influence of the last offense (not the one that the defendent was arrested for but the one just before that). Some of our results suggest that this offense may have more influence on voters than any other offense.

4. DISPOSITION INFORMATION

A. Sufficiency.--Most people with experience in a big city criminal justice system deplore the incompleteness of disposition information.

B. Degree of detail.--Sometimes, as in Chicago, very detailed information (charge at conviction, court, sentence imposed) is present. Most frequently however disposition information is recorded merely as one of the following: (Acquitted, Dismissed, Convicted, etc.).

C. Type of information.--There are essentually two different types of information charge at arrest or charge at conviction. Sometimes prior records do not indicate which stage is being used, most frequently charge at arrest is on the prior record.

5. SPECIAL OFFENSES. Some prosecutors in informal interviews expressed concern over certain offenses. Offenses like heroin sales or aggressive crimes against the person seemed especially of interest to them. No doubt such crimes are serious and seriousness has already been dealt with above. Yet it was felt that we would include it as a distinctive category to see if offense type had had some impact on prosecutor's decisions over and above the seriousness of such offenses.

6. 'TREATMENT' FAILURE. Some offenses (e.g. Parole Violation) or statuses (on conditional release at time of arrest) show that the offender has been given a 'break' previously and has abused it or that he received treatment, instead of punishment, and has 'failed.' Such indicators may lead some prosecutors not to give the offender a second 'break.'

7. TIME. There is a human tendency to forgive offenses committed against the public years ago. Each offense can be seen to have an age of its own. For example, an old offense is more likely to be overlooked than a recent one. Similarly each offender has an age. Thus, the very young offender and very old offender is more likely to be approached with a greater degree of sympathy and understanding and hence there is a greater possibility in these cases to be given a "break."

8. COMPLEX VARIABLES. Many complex variables may be created out of the 'simple' variables above. For instance the Density of a criminal record could be measured by the total Seriousness divided by its Length.

II. PRETESTS

The preliminary format developed was a set of sheets, one per rap sheet, bundled together. Each subject was to receive a bundle plus instructions. The task for each subject was to provide a number that represented the subjects estimate of the 'badness' of each prior record. A preliminary set was generated following the lines laid down in Section I. This preliminary set proved to be inadequate and a number of changes were made as to the format of the prior record sheets to be presented to the subject.

Communication of Tests:

The first schedule was presented with no scoring scale. In other words, the subject was requested to fill in a number he thought appropriate. This made it difficult to interpret some responses.

The second schedule consisted of a preprinted 11 point scale. A new element was introduced e.g., anchors, that is two examples of extreme prior record sheets with the scoring 1. a trivial offense and 2. a very serious prior record. This gave the subject some "anchoring" conception of how the scoring is done. On the administration of this test it was discovered that the scoring scale was too long.

Thus a 7 point scale was substituted for the 11 point scale.

Dispositions

All the pretests were identical except that 50 percent of the subjects were presented with a schedule including disposition and the other half excluding dispositions. Regarding dispositions there was a

problem concerning the disposition "unknown." This word seemed to create disagreement and ambiguities and was thus changed to a more definite category--"dismissed."

Bimodal responses also occurred regarding the offense termed as "dangerous drugs." Here again a change was made to include more definite categories of offenses on the same level of seriousness, namely, P.C.P., cocaine. However, more problems were encountered with regard to the offense P.C.P. A number of respondents did not understand this term and again heroin and cocaine were substituted.

Generation of Prior Records:

We generated prior record sheets to complete the range of offenses possible. We produced set of offenses that were apparently unambiguous with a broad range of types. (See page 8.)

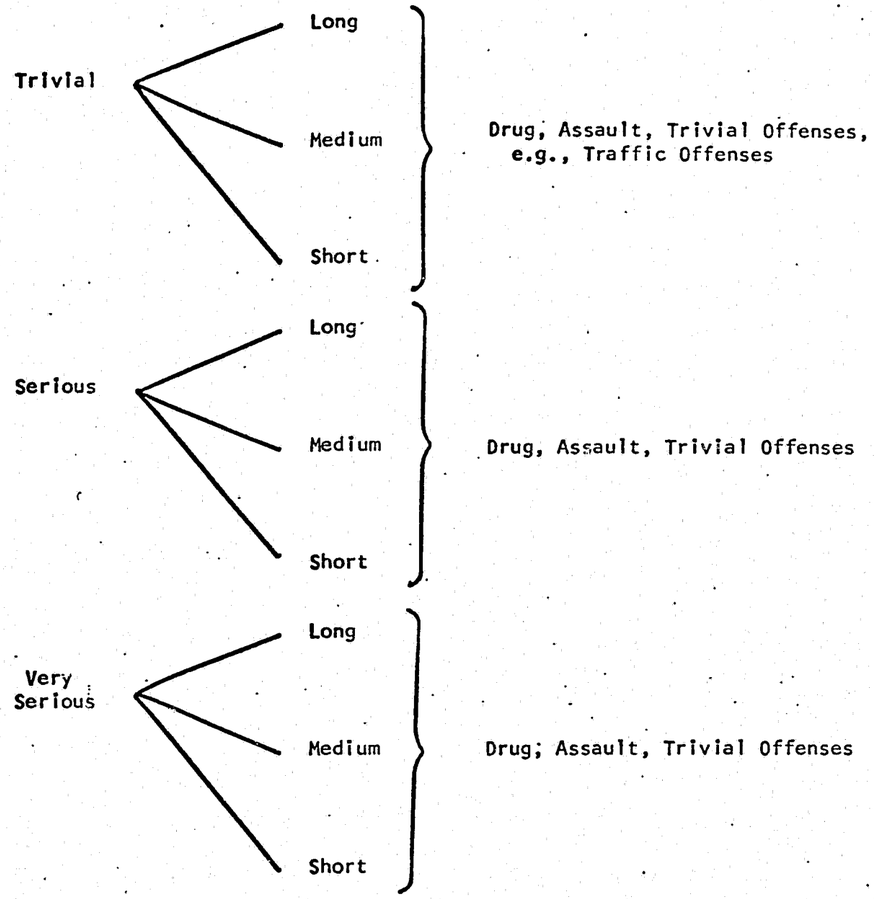
After careful scrutiny of responses to previous tests and to the prior record sheets, three categories of crimes were apparent: 1. Drug offenses; 2. Assault including murder and robbery; 3. Trivial offense e.g., lottering, traffic violations, and thus each category of offense was included in all the judgmental categories (serious, very serious, trivial).

Randomization:

An effort was also made to randomize each schedule so that no two respondents would receive the same sequence of prior records. This

was done in an attempt to insure, that in the long run, each offense would appear first, second and so on until the last an equal number of times. In this way, the positional bias is minimized when you sum over subjects.

EXAMPLE



Results

The results of the stepwise forward regression that was performed indicate that the seriousness of the defendant's record can be explained by the following five factors: (1) the percent of arrests that are Sellin and Wolfgang index offenses (basically crimes against the person and crimes involving property loss or damage); (2) the length of the record based on the number of prior arrests; (3) the seriousness of the last arrest based on four classes ranging from trivial to serious; (4) the number of arrests for crimes against persons; and (5) the number of arrests for offenses involving "hard" drugs, principally heroin.

The summary of this analysis is presented in Table 1 below:

Table 1

Results of Regression Analysis of Seriousness of Defendant't Record

Step	r.-Square	Std. Error	Variable	Partial	Significant
1	.50114	1.2066	Index	.70791	.0003
2	.75106	.87573	Length	.70780	.0005
3	.83372	.73645	Last Arrest	.57625	.0098
4	.87218	.66558	Crime Against Person	.48089	.0434
5	.90893	.58021	Drugs	.53626	.0265

Despite the extremely small sample, only 21 responses, it is important to note the high explanatory power of these few variables, the monotonically decreasing standard error of the estimate and the levels of significance. Clearly, areas for further development and testing have been indicated.

ARITHMETIC MEAN OF JUDGED "BADNESS" OF PRIOR RECORDS*

CRIMINAL HISTORY SHEET	PRETEST 1 DISPO. SHOWN NO ANCHORS 11 POINT SCALE	PRETEST 2 NO DISPO ANCHOR 11 POINT SCALE	PRETEST 3 NO DISPO ANCHOR 7 POINT	PRETEST 4 DISPOS ANCHOR 7 POINT
1	4.5	3.07	3.71	3.42
2	9.4	8.74	6.42	6.08
3	6.1	6.11	6.13	4.58
4	4.4	3.19	3.58	2.58
5	5.9	4.19	-	-
6	1.9	1.26	1.83	1.50
7	4.2	3.85	3.79	2.92
8	9.2	9.04	6.25	5.38
9	5.2	5.11	5.33	4.17
10	9.7	7.93	5.54	5.13
11	8.9	7.04	5.54	-
12	7.0	6.81	5.13	3.46
13	7.9	7.07	5.79	5.42
14	7.1	6.55	5.38	3.56
15	3.3	1.55	-	-
16	6.1	4.70	4.67	4.25
17	10.3	10.22	6.63	6.29
18	9.1	8.37	5.79	5.79
19	7.1	4.63	4.54	4.38
20	6.6	6.77	5.42	5.08
21	7.1	7.08	5.42	4.83
22	-	5.77	4.75	4.04
23	-	1.32	1.17	1.04

*All subjects are college students

ARITHMETIC MEAN OF JUDGED "BADNESS" OF PRIOR RECORDS*

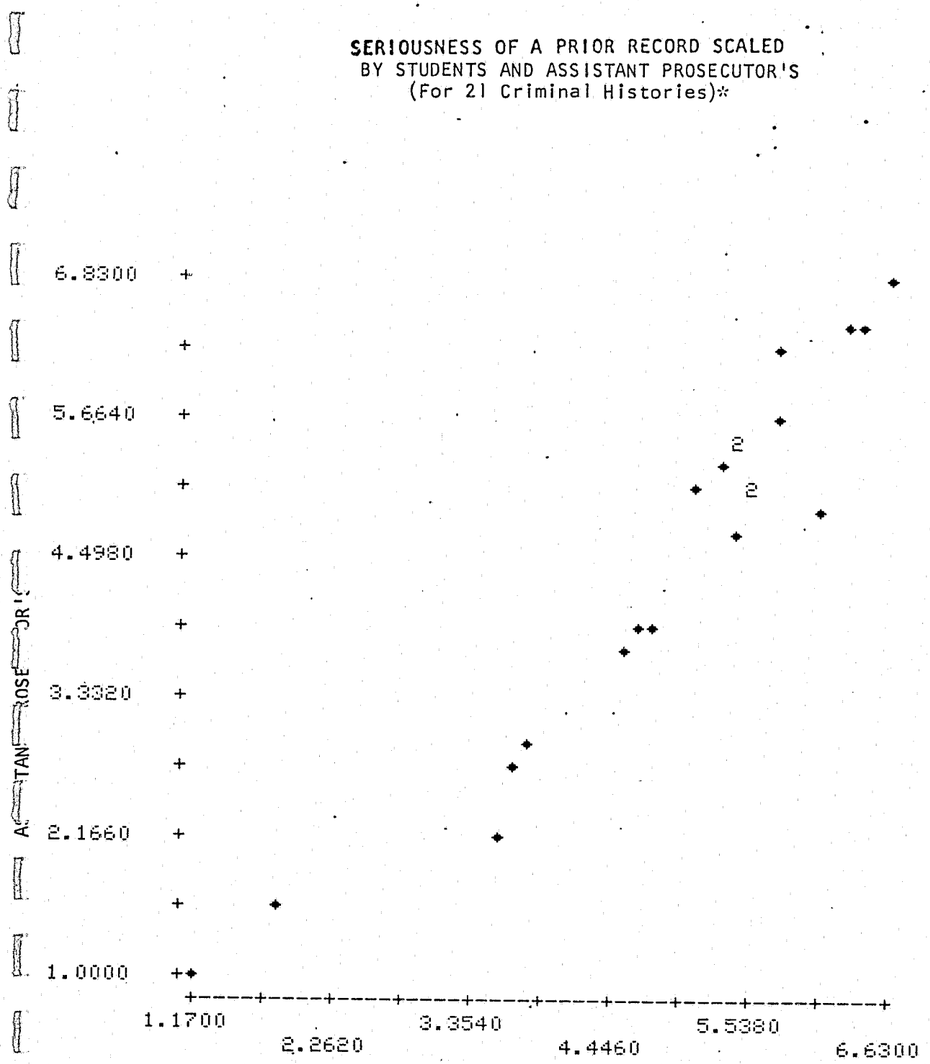
CRIMINAL HISTORY SHEET	NO DISPOS SHOWN ANCHORS 7 POINT SCALE
1	2.67
2	6.50
3	4.83
4	2.17
5	-
6	1.50
7	3.00
8	6.50
9	5.33
10	5.12
11	5.12
12	5.00
13	5.67
14	4.67
15	-
16	4.00
17	6.83
18	6.33
19	3.67
20	5.50
21	5.50
22	4.00
23	1.00

*All subjects are ADA's Dade County, Fla.

CONTINUED

2 OF 3

SERIOUSNESS OF A PRIOR RECORD SCALED
BY STUDENTS AND ASSISTANT PROSECUTOR'S
(For 21 Criminal Histories)*



No Dispositions shown, anchors, seven point scale

The tables show the results of testing. Some of the conditions had dispositions while others had more. Some had 'anchors' (pre-test extreme cases defined by the experimenter to have the highest and lowest values possible); others had more. Some conditions had eleven point scales and some had seven point scales. At the end, we adopted the seven point scale with no anchors as the standard.

The scatter plot shows the relation between the students' estimates and those of a small group of assistant District Attorney's. They are in substantial agreement. This raises, but does not establish, the hypothesis that there is numerical agreement between the prosecutor and his constituents as to what constitutes a serious prior record of an offender.

The question of the effect of including or excluding disposition may be <u>partially</u> answered. The following table shows that for Kings County Assistant District Attorney's essentially the same responses were given whether or not dispositions are included. However, there are some exceptions and work is currently being undertaken to find out if there is any coherent explanation for these differences.

Other analysis (not displayed) gives rise to the following hypothesis: Withholding disposition information causes estimates to regress towards the mean. That is, if an offender has been acquitted of all charges on all offenses and this information is withheld, then the estimate of his record will be in the direction of <u>more</u> serious. If an offender has been convicted of every offense and this is withheld, then the estimates will be towards less serious. In other words, the

"very innocent" would be harmed and the "very bad" would be rewarded. Whether this is really true and, if so, how extensive the effect is yet to be determined.

The data so far derived were cast into a regression format and subjected to a forward step-wise regression analysis. Since the numbers are small and are derived insofar as attorneys go, from a single office, the reader is urged to employ even more caution then usual in interpreting the results which are, nevertheless, interesting.

In particular, the results show a good deal of agreement between students and prosecutors but the prosecutors seem able to employ more variables in arriving at a decision. Thus, very tentatively, we suggest that a prosecutor, when he looks at a prior record, acts as if he does the following:

1. Start out with 1.4
2. Add 7% of the number of arrests
3. Add 16% of the number of crimes against persons
4. Add 38% of the value of the last offense (which ranges from a low of 1 to a high of 4)
5. Add 19% of the percent of SW index offenses (served in 10 values)
6. Add 16% of the number of offenses involving 'heavy' drugs.

Clearly, the above model is not only tentative but "artificial". A much more straightforward model is now being tested and shows promise. But even this preliminary work promises that the simulation of how a prosecutor makes up his mind about a prior record is within our grasp.

Table 1

Comparison of Ratings Assigned by Assistant District Attorneys, Kings County, N.Y. on Criminal Histories With and Without Dispositions*

Criminal History		Min.	Max.	$\bar{x}$	Mdn.
1.	No Disposition	1	3	3.3	2
	Disposition	1	4	2.2	2
2.	No Disposition	5	7	6.0	6
	Disposition	4	7	6.1	6
3.	No Disposition	3	5	4.4	5
	Disposition	2	5	3.4	3
4.	No Disposition	1	2	1.7	2
	Disposition	1	2	1.7	2
5.	No Disposition	2	5	3.9	4
	Disposition	1	5	3.0	3
6.	No Disposition	1	2	1.3	1
	Disposition	1	2	1.2	1
7.	No Disposition	2	3	2.4	2
	Disposition	1	3	1.6	2
8.	No Disposition	5	7	6.6	7
	Disposition	6	7	6.6	7
*9.	No Disposition	5	6	5.8	6
	Disposition	2	4	3.0	3
10.	No Disposition	3	7	5.3	5.5
	Disposition	2	6	4.8	5
11.	No Disposition	4	7	5.1	5
	Disposition	2.	7	5	5
*12.	No Disposition	4	6	4.9	5
	Disposition	1	3	1.9	2
13.	No Disposition	3	6	4.9	5
	Disposition	5	6	5.7	6
*14.	No Disposition	3	6	4.6	5
	Disposition	1	4	2.6	3

*Based on ten raters who received histories without dispositions and nine raters who received histories with dispositions

Table 1 Cont'd

Criminal History		Min.	Max.	$\bar{x}$	Mdn.
15.	No Disposition	2	6	2.7	2
	Disposition	2	6	3.4	3
16.	No Disposition	2	5	3.4	3
	Disposition	2	5	3.4	4
17.	No Disposition	5	7	6.8	7
	Disposition	4	7	6.6	7
18.	No Disposition	5	7	6.4	6.5
	Disposition	6	7	6.9	7
19.	No Disposition	2	5	3.5	3.5
	Disposition	1	5	3.4	4
20.	No Disposition	6	7	6.5	6.5
	Disposition	3	6	5.5	6
21.	No Disposition	3	7	5.0	5
	Disposition	4	7	5.4	6
22.	No Disposition	2	4	3.3	3
	Disposition	2	5	3.8	4
23.	No Disposition	1	1	1	1
	Disposition	1	1	1	1
24.	No Disposition	2	2	2	2
	Disposition	1	3	1.6	1
25.	No Disposition	7	7	7	7
	Disposition	7	7	7	7

END