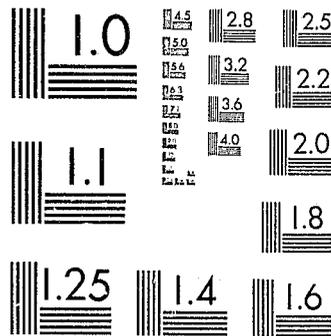


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AN ASSESSMENT OF THE  
DISTRICT COURT PROSECUTOR PROGRAMS

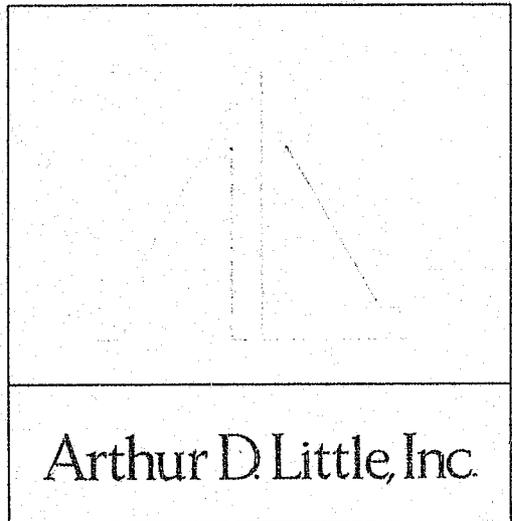
*final report to the*

MASSACHUSETTS COMMITTEE  
ON CRIMINAL JUSTICE

APRIL 1977

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AN ASSESSMENT OF THE DISTRICT COURT PROSECUTOR PROGRAMS

Final Report to the

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April 1977

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NCJRS  
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Arthur D. Little, Inc.

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## I. EXECUTIVE SUMMARY

### A. STUDY PURPOSE AND METHOD

This study has been conducted for the Massachusetts Committee on Criminal Justice (MCCJ) to evaluate the District Court Prosecutor (DCP) Programs, which provide attorney prosecutors to supplement the work of Police Prosecutors (PPs) in the Commonwealth's District Courts. Specific study objectives were:

- (1) To determine the need for the DCP Programs.
- (2) To determine the impact of these programs, including their performance with respect to their objectives.
- (3) To assess the impact of proposed program modifications.
- (4) To recommend changes which would improve the programs.

These objectives were pursued by examining 15 "Areas of Inquiry," of which the first 11 represent measures of program performance (the first 10 paraphrase stated program objectives), and the remaining four are concerned with specific program features and potential changes. Our conclusions and recommendations in each of these areas are presented in Section C. Overall recommendations for modifying the programs are presented in Section D.

To the extent possible, the study has relied upon hard data: court records and statistics. However, the availability of such data is limited and varies greatly among Prosecutorial Districts. Consequently, we have also made use of direct observation of court proceedings in ten courts, one in each District, and have surveyed key individuals in each of these courts. Cases were followed in each court by experienced trial attorneys using a standard observation guide; interviews were held to obtain perceptions of the DCP Programs from District Court Justices, DCPs, PPs, Clerks of Court, Probation Officers, publicly paid and private defense attorneys, and town or city solicitors/prosecutors; and questionnaires were completed by Justices, DCPs, PPs, and Clerks of Court who were not personally interviewed. The conclusions and recommendations summarized here are based on integration of findings from all of these sources.

### B. BRIEF DESCRIPTION OF THE DCP PROGRAMS

The DCP Programs (one in each Prosecutorial District in Massachusetts) have been funded by the Massachusetts Committee on Criminal Justice. Ninety-three DCPs currently fill 97 positions. Most are part-time. DCPs handle the prosecution of the more serious (and in some courts, all) criminal cases on behalf of the Commonwealth. The caseload varies:

averages are about 650 per year for DCPs assigned to rural courts, 900 for those in non-rural courts. Full-time and part-time DCPs handle essentially similar numbers of cases (840 and 820, respectively) annually. On the average, full-timers work 36, and part-timers 29 hours per week.

A major responsibility of DCPs involves the provision of guidance and advice to Police Prosecutors (PPs) and other police officers. With respect to the former, this means answering their questions about trial practice and procedure and the law. With respect to the latter, DCPs inform them of proper procedures in areas such as "Stop and Frisk," "Search and Seizure," etc.

DCPs spend about 30% of their time in trial, 19% on case preparation, and lesser proportions on negotiation and plea-bargaining, logistics, legal research, etc.

DCPs are appointed by and responsible (through each District's Chief DCP) to the District Attorney. They act as the DA's agents in the District Courts. They occasionally argue, in Superior Court, cases they prosecuted in the District Court.

#### C. CONCLUSIONS AND RECOMMENDATIONS BY AREA OF INQUIRY

Our principal recommendation is that the DCP Programs should be continued. The programs vary from one District to another, but as indicated by our conclusions regarding most of the first 11 Areas of Inquiry below, their general effect has been to improve the performance of the District Court system in a number of ways. We believe that these benefits clearly demonstrate the need for the programs. As discussed below, the need will be even greater if the recommendations of the Governor's Select Committee on Judicial Needs (Cox Committee) are adopted.

Our conclusions in the 11 areas relating to program impact and our recommendations in the four additional Areas of Inquiry are as follows:

1. The DCP Programs have promoted the adversarial process in the District Courts. A review of selected case records in the ten sample courts showed that the proportion of defendants with attorney representation was significantly higher among cases prosecuted by DCPs than among those prosecuted by PPs even though the offenses involved were of somewhat similar magnitude. On questionnaires, DCPs and PPs were asked how frequently they carried out specific actions which the study team had identified as related to program objectives; for example, presentation of a closing argument to support a guilty finding was one of the actions identified as promoting the adversarial process. In their responses, 25% of the DCPs, compared to 19% of the PPs, reported "always" taking the actions associated with promoting the adversarial process.\*

\* Differences mentioned are statistically significant unless otherwise indicated.

2. The programs have improved the quality with which the Commonwealth is represented in criminal proceedings in District Courts. On the questionnaires where DCPs and PPs indicated how often they performed specified actions, DCPs scored higher with respect to a variety of actions associated with quality of prosecution. Judges and observers from the study team also rated DCP performance higher on most measures related to quality of prosecution. In the cases whose records were reviewed, "win rates," or guilty findings as a proportion of total (guilty plus not guilty) findings were higher (though not by statistically significant amounts) among cases prosecuted by DCPs than among those prosecuted by PPs. This was so even though DCPs handled cases more difficult in two respects: (1) The DCPs were more likely to be opposed by professional legal counsel, and (2) the DCPs' cases tended to be more complex, with a higher share of felonies as opposed to misdemeanors. Further, the "win rate" of PPs is in part attributable to guidance received from DCPs. DCPs also had higher win rates for probable cause hearings.

3. The presence of a DCP on the prosecution side has enabled District Court Judges to assume a more neutral role in the proceedings. Of the District Court Judges who had heard cases prosecuted by DCPs within the past 12 months, 79% indicated that the DCPs gave them more opportunity to assume a neutral role than did other types of prosecutors, and 63% indicated that they had least need to assist in clarifying points of law when the prosecutor was a DCP.

4. The DCP Programs appear to have helped to dispose of cases at the District Court level. However, the evidence is not conclusive. Defined as the number of appeals per 100 charges prosecuted by DCPs and PPs, the appeal rate is slightly (though not significantly) higher for DCPs. But this partly reflects the slightly increased rate of guilty findings due to better prosecution by the DCPs. Taking the appeal rate as a proportion of findings of guilty still give a slightly (not significantly) higher appeal rate for charges prosecuted by DCPs. However, the results are different when we eliminate those guilty findings resulting in suspended sentences, a disposition which many defendants are willing to accept without appealing. If we base an appeal rate on the number of charges on which sentences were imposed, we find that the appeal rate defined thus is one and a half times as great for PPs than for DCPs. (The way the statistic was computed does not allow for any known test of statistical significance.) In summary, we may say that when DCPs prosecute cases which result in an imposed sentence, the defense is much less likely to appeal than in cases with similar results prosecuted by PPs.

5. The District Court Prosecutor Programs have helped to reduce the number of serious charges and have encouraged entering of nolle prosequi or motions to dismiss in cases wherein prosecution is unwarranted. DCPs were found to reduce 11% of charges, both in court situations where they prosecuted all the more serious cases and in court situations where there was considerable overlap between the kinds of cases they and PPs prosecuted. In the latter situations, PPs reduced only 5% of the charges they prosecuted. ("Reducing charges" includes dropping them to lesser included offenses and dropping them completely.) We do not know whether any of these reductions were "warranted by the facts" as originally specified in this Area of Inquiry.

DCPs have a more direct connection with the DA than do PPs. For good reason, PPs do not believe that they are authorized to enter nolle prosequi motions to dismiss. For these reasons, the presence of the DCPs in the courts has facilitated entering nolle prosequi and motions to dismiss.

6. DCP Programs have encouraged plea-bargaining and other methods of satisfactory disposition in the District Courts, so as to reduce the frequency of appeals. DCPs report more frequent use of negotiation and plea-bargaining than do PPs; 65% of the District Court Judges who have observed DCPs report that they plea-bargain more than do other prosecutors in District Court. DCPs were observed conferring much more frequently than PPs with the defense on matters such as dropping charges, reducing charges, plea-bargaining, etc. Further, these conferences involving DCPs were more likely to eventuate in such results than were conferences involving PPs. Evidence on pre-trial diversion, which was included in this Area of Inquiry, is not clear; case files show very little diversion of cases for either DCPs or PPs, but this could simply mean that it is not customary to include such information in these records.

7. The DCPs have advised PPs, and in some cases other police personnel, in such procedures as "Stop and Frisk," "Search and Seizure," and line-ups. They should initiate such assistance more frequently. The DCPs have made themselves available to respond to police requests for advice and have responded to specific instances of improperly prepared charges or improper police actions leading to charges. So far, however, they have not initiated campaigns to improve police performance, and we believe that more DCP initiative in this area would increase the programs' effectiveness.

8. The DCP Programs have not met their objective of providing case summaries and complete case file jackets for use by Superior Court ADAs in preparing cases appealed or bound over from District Courts. Steps should be taken to improve the preparation and transmission of case information. The programs do make it easier for ADAs to obtain the information they need on request, but only about half of the court districts have developed either case file jackets showing case summary information or case transmittal forms, and these do not meet the minimum information requirements specified in the DCP Programs' grant applications.

We recommend that the information requirements for these reports be re-evaluated and revised to include the prosecutor's name and information useful to ADAs on the prosecutor's evaluation of the case. Implementation of our recommendations for an increased proportion of full-time DCPs and increased support staff (see below) would increase the time available to DCPs to prepare case transmittals.

9. The lack of historical records has prevented a determination of whether the DCP Programs have reduced police time spent in preparing prosecution. Such a determination would have required data on police time allocated to this function beginning in the early 1970s and continuing through development of the DCP Programs.

10. DCPs have helped police in preparing search warrant affidavits. This should be made standard procedure. Availability of DCPs for this assistance does not necessarily assure the adequacy of the affidavits, since as in the case of other advice to police, the assistance is not provided unless requested. We recommend that DAs develop agreements with Chiefs of Police, so that it becomes standard procedure for search warrant affidavits to be checked by DCPs prior to application for warrants, and that DCPs take the initiative in making sure that these agreements are adhered to.

11. The study could not determine the effect of DCPs on cases continued or dismissed at the District Courts for want of prosecution. As in the case of appeals, Judges exercise considerable discretion in this area. We did find a reduction in such continuances in one District where DCP manpower was increased, augmented by ancillary personnel, and reinforced by a management information system which emphasized a reduction of prosecution-initiated continuances. But even here, the power of the prosecution to compel witnesses to come forward is limited.

12. The DCP Programs would be improved if the vast majority of DCPs served full-time. We recommend that the DCP Programs consist of a core of full-time DCPs, supplemented by part-time DCPs only under specific circumstances. These part-time DCPs may be appropriate in some rural Prosecutorial Districts including courts which meet infrequently, where

- the total workload is not commensurate with a number of full-time DCPs; or
- court scheduling makes it impossible for one full-time DCP to cover two or more infrequently sitting courts; or
- infrequently sitting courts are so distant from one another that it becomes uneconomical for one DCP to cover them.

Although we found many respects in which the performance of full-time DCPs was not different from that of part-timers, we believe that the full-time DCPs have the advantage because:

- Full-time DCPs devote more time to their DCP duties;
- Full-timers are more likely to take the time to screen complaints prior to issuance and to prepare case summaries for cases bound over or appealed;
- Full-timers are less likely to experience, or appear to experience, conflicts of interest;
- With full-time DCPs, there is less opportunity for the fact or the suspicion that DAs are using many part-time DCP slots as patronage.

13. It is not clear whether specialized formal intake screening improves the DCP Programs. Some informal intake screening takes place as part of many prosecutors' activities. We did not find evidence that special assignment of DCPs or ADAs to concentrate on intake screening improves the functioning of the DCP Program.

The critical question is whether enough manpower is supplied to the prosecution. If enough DCPs are allocated to handle the caseload adequately, we see no particular advantage to having some of them specialize in intake screening. In fact, there appear to be advantages to having the same DCP screen the case and then argue it, since the screening augments case preparation, and since the screener knows that he/she will have to argue the case and will be held responsible for its outcome. If the DCP Programs are adequately staffed, then screening constitutes a worthwhile activity for the DCPs.

14. Each District Attorney should seriously evaluate the feasibility and desirability of vertical prosecution for his own District, but the practice should not be made mandatory for all Districts. Frequently cited advantages of vertical prosecution, whereby the DCP continues to prosecute his case if it is appealed to a Superior Court, include the efficiency and continuity it provides, improved familiarity with the case and rapport with witnesses and victim, consistency of approach on the case (the prospect of which may deter a defense decision to appeal), increased incentives to dispose of the case at the District Court level, and increased familiarity with Superior Court trial routine. However, vertical prosecution can create scheduling problems for the prosecutor. One Prosecutorial District has resolved these by having the Superior Court hear all cases from a given District Court on a given day of the week, but the number of courts and their workloads and schedules may make this difficult to arrange in some Districts.

15. Implementation of the Cox Committee proposals would increase the need for the DCP Program by increasing the number of jury trials in the District Courts. Defendants would be entitled to choose between a first-instance jury trial with the right of appeal limited to issues of law and a first-instance bench trial with the right, if convicted, to a de novo District Court jury trial instead of appeal to the Superior Court. Both options would increase the number of jury trials in District Courts. The complexity of jury trials calls for a high level of professional knowledge and ability on the part of prosecutors, and this requirement would probably be intensified by careful preparation by defense counsel since the District Court will often be the court of last resort. This study has shown that the professional performance of DCPs, taken as a group, is significantly better than that of PPs. Most important, statutory provisions impede the use of PPs in arguing cases before six-person juries. Implementation of the Cox Committee proposals does not necessarily mean that additional prosecutors must be hired, since increased requirements at the District Court level may be offset by reductions in de novo appeals to the Superior Courts.

#### D. RECOMMENDATIONS FOR PROGRAM MODIFICATION

In addition to conclusions and recommendations regarding the above Areas of Inquiry, this study has led to the following recommendations for overall improvement of the DCP Programs:

1. District Attorneys should establish minimum qualifications for all future DCPs hired and should use selection committees representing prosecutors, Judges (from other jurisdictions), and police officers to screen DCP candidates. The role of DCP requires personal as well as professional qualities. Some of these characteristics, such as independence of judgment, ability to think on his/her feet, and willingness and ability to negotiate, apply to prosecutors at any level, while others, notably willingness and ability to work closely with the police, are especially applicable to the District Courts. Both the professional and the personal criteria for DCP selection should be made explicit. The stress imposed by a group interview and the presence in the group of the kinds of people with whom the DCP will need to work effectively will help to test how well candidates meet many of the selection criteria. Student prosecutor programs may provide a good source of qualified DCP candidates.

2. DAs should establish both a training program for incoming DCPs and a continuing legal education series for more experienced DCPs, to be either conducted under outside contract or provided internally using experienced ADAs or Chief DCPs (CDCPs) as instructors. Regular discussion sessions with DCPs should be conducted by CDCPs in each district. A large proportion of DCPs are hired directly from law school, and many have not been trained in criminal trial procedures and tactics. We suggest that the preservice training program follow guidelines similar to those used by the Massachusetts Defenders Committee and that the topics covered include District and Superior Court jurisdiction, elements of statutory and common law offenses and penalties, Massachusetts and constitutional criminal case law, Massachusetts criminal procedure, possible dispositions in the District Court, rules of evidence, procedures for admission of all types of evidence, powers of the DCP, and the unique role of the police on the prosecution side. The program should emphasize practice in trial techniques using hypothetical cases.

The inservice training program should be held at least semi-annually, and attendance should be required of all DCPs. Advanced trial tactics and techniques should be presented at these sessions. The discussions led by CDCPs should be held at least bi-monthly to provide a forum for exchange of experiences and for briefings on new laws or DA policies.

3. DAs should prepare written guidelines concerning the authority and responsibilities of DCPs to increase uniformity in practices within each Prosecutorial District. These guidelines should specify circumstances under which plea-bargaining or other accommodations with the defense are advisable, circumstances in which they are not advisable and unusually intensive case preparation is called for, relationships between DCPs and the ADAs who receive their cases appealed to the Superior Court, and actions or issues to be cleared with or communicated to the CDCP or DA.

4. Administrative and clerical support should be provided to the DCP Program in each District. The study found that lack of such support tended to involve DCPs in activities that waste their skills and to impede the process of case preparation. An administrator should be assigned to each District Court unless a PP is already performing this function adequately, to allocate trial dates, set continuances and conferences, call witnesses, ensure that all parties are available for the trial, conduct initial interviews of witnesses, obtain necessary reports and other evidence, and explain trial outcomes to police, witnesses and victims. In addition, at least one clerical person should be assigned to each District with fewer than 10 DCPs and two clerical people to Districts with 10 or more DCPs, to provide needed typing services and take telephone messages.

5. DAs should have discretion over DCP Program budgets, subject to a consistent statewide salary structure for all DCP, administrative, and clerical positions. Because of the variation among Prosecutorial Districts and the fact that prosecution responsibility rests with each DA, we believe DAs should be able to allocate their budgets among staff as needed and should not be constrained to a set of legislatively mandated positions. They should, however, conform to a statewide salary structure, including a hierarchy of DCP grades based on trial experience and supervisory responsibility; part-time personnel, if needed, would be paid on a pro rata basis.

6. District Courts should adjust case scheduling to avoid prosecution scheduling conflicts. Some DCPs have reported situations in which they were scheduled for two trials at the same time. Such situations should be avoidable through greater accommodation to prosecutorial requirements in the scheduling of cases. Where a DCP covers more than one court, the courts could hold sessions at different times or on different days, and where a court has two or more sessions, cases to be prosecuted by the DCP could always be scheduled for the same session.

## II. OBJECTIVES AND METHOD

### A. OBJECTIVES

The overall objectives of this study, which follow closely those delineated in the Request for Proposal (RFP) of the Massachusetts Committee on Criminal Justice (MCCJ), are as follows:

Objective 1: To determine the need for the DCP Programs.

Is there a need for the District Court Prosecutor (DCP) Programs? What would be the consequences to the Massachusetts Court System, were the DCP Programs eliminated? If a sufficient need is determined, are there alternatives to the DCP Programs? What does the District Court Prosecutor (DCP) add, in addition to manpower, to the administration of justice? Are DCPs needed for some kinds of cases, but not for others?

Objective 2: To assess the DCP Programs in terms of anticipated outcomes.

Are the DCP Programs achieving their stated objectives?\* If some stated objectives have not been achieved, why not? What other impacts (positive and negative) have resulted due to the DCP Programs?

Objective 3: To assess proposed modifications in terms of their potential impact on and benefits to the DCP Programs.

What will be the expected impacts (positive and negative) on the Massachusetts Courts of modifications proposed for the DCP Programs? How do they interact? Are there other desirable modifications? What would their impacts be?

Objective 4: To make recommendations regarding specific changes which should be incorporated into the DCP Programs.

How should the present DCP Programs be effectively improved? If the Cox Committee recommendations are implemented?

During this study, we are concentrating on the following Areas of Inquiry based on the DCP Program objectives, proposed major changes and some other areas that we have considered important:

1. Do the DCP Programs promote the adversarial process of justice within the District Courts?

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\* The first ten Areas of Inquiry on pages 2-1 and 2-2 paraphrase the stated objectives of the DCP Programs.

2. Have the DCP Programs improved the quality with which the Commonwealth is represented in criminal proceedings in District Courts?
3. Does the presence of a DCP on the prosecution side allow District Court Judges to assume a more neutral role in the proceedings? This can be operationalized as allowing each of the adversaries to state his/her own case.
4. Have the DCP Programs allowed disposal of cases before they reach Superior Courts, and thereby reduced the backlog of cases before those courts?
5. Has the presence of the District Court Prosecutor Programs reduced the number of serious charges, when warranted by the facts, and encouraged entering of nolle prosequi or motions to dismiss in cases where prosecution is unwarranted?
6. Have the DCP Programs reduced the frequency of appeals significantly through encouraging plea-bargaining, pre-trial diversion, and other methods of satisfactory disposition in the District Courts?
7. Have DCPs advised the police in areas of "Stop and Frisk," "Search and Seizure," Identification Procedure, Line-ups, etc.?
8. Have the DCP Programs aided Assistant District Attorneys in the Superior Courts regarding cases appealed or bound over to the Superior Courts, by providing case summaries and complete case file jackets with which to improve evaluation and preparation of cases for trial?
9. Has the presence of DCPs reduced police time spent in preparation of prosecution of cases?\*
10. Have the DCP Programs assured the sufficiency of search warrant affidavits before execution by having the DCPs assist in their preparation when necessary?
11. Have the DCP Programs resulted in a decrease in the number of cases continued or dismissed at the District Court level for want of prosecution, including non-appearance of prosecution witnesses?

---

\* One point of view would expect a beneficial result to consist of increased police time spent in preparation, i.e., more thorough preparation by PPs on some cases, since others are handled by DCPs.

The above Areas of Inquiry, which paraphrase stated or implied objectives of the DCP Programs, can be grouped into two overall objectives of the DCP Programs:

- (a) Improve the adversarial quality of District Court proceedings by augmenting the legal preparation of those representing the prosecution.
  - (b) Reduce the number of appeals from District to Superior Courts.
12. Would the DCP Programs be improved if all DCPs served full time?
  13. Have DCP Programs been improved when intake screening constitutes a portion of them?
  14. Have the DCP Programs been improved when they include vertical prosecution, i.e., allowing a prosecutor to follow a case from a District Court through a Superior Court?
  15. How do the DCP Programs fit into plans for changes and improvements in the Courts, e.g., those recommended by the Cox Commission?

#### B. STUDY STRATEGY

Our study strategy was shaped first and foremost by the short time, three months, available for the study.

From the beginning, we have been aware that we are dealing with a system, the District Courts in the Commonwealth, which is complex and heterogeneous with respect to availability of data, among other matters. We sought to obtain hard data where possible, to answer the question posed by the areas of inquiry. Where hard data were not available, we have relied on observations, interviews, and questionnaires.

#### C. TASKS

Below is a brief description of the nine tasks which constituted the study.

Task 1-Reconnaissance: We carried out a thorough reconnaissance of the DCPs and their place in the Massachusetts District Courts.

Task 2-Observation: We followed cases through each of ten District Courts, using standardized observation guides to record our observations.

Task 3 and 5-Survey Participants in District Court Proceedings:

We used interviews and questionnaires to ascertain how various participants in the District Courts (District Court Justices, District Court Prosecutors, etc.) perceive the DCP Program, and their experiences with it.

Task 4-Prepare Interim Report: This described what we learned in the first task and early portions of Task 2.

Task 6-Records Analysis: Through analysis of records of previously handled cases, we assessed whether different outcomes typically take place when Police Prosecutors (PPs) and District Court Prosecutors (DCPs) carry out the prosecutorial function.

Task 7-Integration, Synthesis, and Management: This task continued throughout the whole project.

Task 8-Draft Final Report Preparation: We prepared a draft report.

Task 9-Final Oral Briefings and Final Report Preparation:

We provided briefings to MCCJ and representatives of the Governor and the Legislature of the Commonwealth of Massachusetts. We then prepared this final report.

D. METHODS

Central to our study was the selection of ten courts, one in each Prosecutorial District, for concentrated attention. These courts were chosen based on the following criteria:

- Each court was chosen in order to be reasonably representative of those in its District with regard to key variables, such as DCP and PP caseload, type of charge handled, and the rural/urban nature of its constituency. We consulted with the Chief DCP of each District before choosing the sample court for that District.
- The sample courts were chosen so that in their totality they provided a representative sampling of the Courts of the Commonwealth, in terms of geography and of a case severity ratio. The case severity ratio consists of the population of the area which the court serves, divided by the number of "heavy" cases entered in each court. Groupings used were those prepared for MCCJ by the National Center for Prosecution Management in December 1973 for a previous evaluation of the Massachusetts DCP

Programs.\* It can be seen from the Table 2-1 that the sample of courts chosen from each category is roughly proportional to the total number (population) of courts in the category.

- Where possible within a District, we chose courts at which DCPs and PPs are assigned cases, for at least some types of charges, on a random basis. This condition was essential for us to carry out a fair comparison of roles of DCPs and PPs in Tasks 2 (Observation) and 6 (Records Analysis).
- Finally, in choosing all ten courts, we made certain that at least one court represented an ongoing intake screening program, and another represented an ongoing vertical prosecution program.

At each of these courts, we carried out observations of ongoing cases. Cases were picked up at the time of arraignment or probable cause hearings and followed through during the rest of the one-month observation period. Events in the case which occurred prior to its being picked up for our sample were ascertained by analysis of court records and interviews with participants, especially the prosecutor. Appendix A shows the observation guide used. (Appendices have been bound separately from this main text.)

We hired experienced trial attorneys to carry out these observations, then trained and indoctrinated them in the use of the observation guide. The attorney observers were supervised by another attorney. In order to establish the validity of the observation guide, the supervisor and each observer filled out an observation guide on the same events. Items on the guide which showed low inter-rater reliability were dropped from later analysis.

Analysis of court records was carried out in the same courts by recent law school graduates and law school students trained and supervised by a criminal justice records specialist.

In addition, members of our case team interviewed key people at each of the ten courts. In some cases where a category was not applicable for that court or fewer than the prescribed number in a category were attached to the court, we interviewed fewer than the number indicated below:

one Justice

Clerk of Court

one Probation Officer

\*"Evaluation of the District Court Prosecutor Program in the Commonwealth of Massachusetts." Report by the National District Attorneys Association and the National Center for Prosecution Management, December 7, 1973.

TABLE 2-1

## NUMBER OF COURTS IN GROUPINGS

<u>Group</u> Description	<u>I, III</u> Central Metropolitan and High Severity Rural	<u>II</u> Boston Suburb	<u>IV</u> Major City	<u>V</u> Small City	<u>VI</u> Typical Rural	<u>Total</u>
Severity Index	12	29	51	40	40	
Population	4	6	15	34	14	73
Sample	1	1	3	4	1	10

two DCPs

two PPs

one public defender or other attorney paid with public funds

one private defense attorney

one Town/City Solicitor/Prosecutor

Questionnaires were sent out to Judges, DCPs, PPs, and Clerks of Court who were not personally interviewed. Finally, in some instances, courts had carried out statistical studies related to the DCP Programs. These were consulted and in some cases incorporated into our report.

#### E. SYNTHESIS AND INTEGRATION

During the study, task leaders exchanged information orally and in writing on progress and findings. An experienced criminal law attorney contributed his understandings and insights.

III. THE CONTEXT - A BRIEF DESCRIPTION OF  
CRIMINAL CASES IN THE DISTRICT COURTS IN MASSACHUSETTS

The 73 District Courts in the Commonwealth hear similar kinds of cases although the numbers of particular offenses heard vary greatly from court to court.

The Second District Court of Barnstable at Orleans, for example, issued 7,913 criminal complaints for the year ending June 30, 1975, and processed 410 appeals to the Superior Court.\*

The Municipal Court of Brookline, on the other hand, for the same period, issued 2,642 criminal complaints, and processed 40 appeals to Superior Court. Summary figures for the 72 courts other than the Boston Municipal Court indicate 613,753 criminal complaints, of which 16,847 were appealed. The overall appeal rate was 2.5%; that for Barnstable was 5.2%, and that for Brookline 1.5%.

The procedure followed in the various District Courts for administering criminal justice is quite uniform. Criminal complaints are sought by arresting police officers or alleged victims of crimes. Hearings are held, either by a Justice or a Clerk of a District Court, to determine if a criminal complaint shall issue. If it is determined by the court that a criminal complaint shall issue, the defendant is arraigned, and the case is generally continued for trial.

Most criminal defendants use the time between arraignment and trial to seek counsel, either private or court-appointed. Once counsel is secured, conferences may be held between defense counsel and the prosecutor.

The kind of person responsible for prosecution varies with the court, the nature of the case, the case load at the time, and sometimes even the day of the week on which a probable cause hearing or trial on the merits is held. Three kinds of people handle the bulk of the prosecution:

1. District Court Prosecutors (DCPs): Lawyers, admitted to the Massachusetts Bar, assigned to the District Courts as prosecutors. They are often referred to as "Assistant District Attorneys" (ADAs), since they are responsible to the District Attorney. In this report, we will reserve the nomenclature "ADA" for lawyers who typically prosecute at the Superior Court level.

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\* All statistics quoted in this chapter are from The Commonwealth of Massachusetts, Nineteenth Annual Report of the Justices of the Supreme Judicial Court as of June 30, 1975, John A Fiske, Executive Secretary. Refers to the fiscal year 1974-75.

2. Police Prosecutors (PPs): Police officers or detectives assigned to a given court over an extended period of time to prosecute cases within their jurisdiction. PPs may be members of municipal, state, or Metropolitan District Commission police or other law enforcement organizations.
3. Arresting Officers (AOs): Police officers or detectives serving as prosecutors on cases where they made the arrests.

Four other categories of people also prosecute in the District Courts, although considerably less often than people in the above categories:

4. Town/City Solicitors/Prosecutors (TCs): Town or city counsel admitted to the Massachusetts Bar, prosecuting cases within their jurisdiction.
5. Assistant District Attorneys (ADAs): Lawyers, admitted to the Massachusetts Bar, maintained as part of the office of a District Attorney and normally assigned to cases at the Superior Court level.
6. Assistant Attorneys General (AAG): Lawyers, admitted to the Massachusetts Bar, maintained as part of the office of the Attorney General of the Commonwealth.
7. Private attorneys, admitted to the Massachusetts Bar, retained by victims or cross-complainants.

In some courts, the prosecutor keeps a case from the time it is screened through its conclusion. In other courts, the DCP may not become involved in a particular case until it is ready for trial.

During the interim stages of criminal prosecution in the District Court, conferences between defense counsel and prosecutor may lead (subject to judicial concurrence) to reductions of charges when warranted, changes of plea or admission to sufficient facts. This system of disposing of cases is not necessarily what is commonly referred to as "plea-bargaining." It provides a means of further screening of cases and enhances pre-trial familiarization with all the facts. Those cases which cannot be disposed of short of an actual trial do go to trial in District Court with sworn testimony and exhibits which are offered to the court in accordance with the rules of evidence.

The District Court hears those cases over which it has jurisdiction, and the court frees those who are found not guilty or those whose cases are dismissed and sentences those who are found guilty. Sentencing may include the defendant's participation in a diversion program, a prison term, fine, restitution, probation, or some combination thereof. The

court may also continue a case without a finding, or place a case on file with or without a finding.

The prosecutor must be skilled in the preparation and presentation of a case if the Commonwealth is to be well represented. The manner in which District Court cases are prosecuted is critical in terms of the orderly prosecution of criminal offenses. Ideally, the tremendous number of criminal offenses can be handled expeditiously and fairly at the District Court level, without resulting in a burdensome number of appeals to the Superior Court. At the same time, those cases beyond the jurisdiction of the District Court usually are initiated at the District Court (i.e., probable cause hearing) and effective representation for the Commonwealth in the District Court will result in better preparation of the Superior Court case. Effective representation of the Commonwealth at the District Court level will also result in better case preparation for cases appealed from the District to the Superior Court level.

#### IV. HISTORY AND FUNCTIONING OF THE DISTRICT COURT PROSECUTOR PROGRAMS

##### A. HISTORY AND DEVELOPMENT

In 1969 the Massachusetts Committee on Criminal Justice, under Law Enforcement Assistance Administration (LEAA) grants, funded two pilot programs, one in Middlesex County and one in Suffolk County, in which lawyer prosecutors supplemented Police Prosecutors in District Courts. Since then, the grants for DCP Programs have been renewed and expanded to the point where their impact is now felt in every Prosecutorial District in the Commonwealth. In 1972, DCP Programs became statewide and by 1973, 80 DCPs were funded.\*

The MCCJ DCP Programs' 1977 staffing plan shows positions for a total of 97 DCPs (58 part-time and 39 full-time) including Chief DCPs under the LEAA grant in all 10 Massachusetts Prosecutorial Districts.\*\* Out of the 97 positions, 93 were filled in January 1977. Only three counties (Barnstable, Norfolk, and Suffolk) employ DCPs on a full-time basis. Most Prosecutorial Districts contain a mix of rural, small-city and large metropolitan settings.

Two types of pilot projects related to the DCP Programs are also funded. The first is an "Intake Screening" project located in Suffolk County in the Boston Municipal and Dorchester District Courts and in Hampden County in Springfield District Court. The second project is "Vertical Prosecution" funded in Barnstable County at Orleans. Some grants also provide for some clerical and administrative backup staff.

##### B. SELECTION

Each District Attorney (DA) is in charge of selecting all the DCPs in his District, although it is not clear what the selection processes are. The response most often given to inquiries on this subject was that candidates are suggested by those already employed and chosen on the basis of intelligence and experience. One interviewee had been thoroughly screened by an interviewing committee of experienced trial lawyers. Some districts seek out individuals who are energetic and proactive. There was nearly unanimous sentiment that a surfeit of able attorneys exists in the job market and that prospects for recruiting qualified candidates are excellent.

\*"Evaluation of the District Court Prosecutor Program in the Commonwealth of Massachusetts," Report by the National District Attorneys Association and the National Center for Prosecution Management, December 7, 1973.

\*\*Excluding Criminal List Managers, also funded under the DCP Programs.

When asked what they considered necessary to become a skillful prosecutor, DCPs recommended a law degree as well as experience, but they also listed additional qualifications as being helpful: desire for trial work, participation in a law school student prosecutor program, volunteer work with either the Attorney General or District Attorney, public speaking, and internship with another DCP.

### C. EDUCATION AND TRAINING

Almost 70% of DCPs\* have gained knowledge in prosecuting from in-service training (almost always informal and on the job), and 54% from courses in prosecution during law school. Forty percent of DCPs responded that they had acquired additional experience and education in prosecuting from sources other than college or law school. Among educational sources listed were in-state seminars through the DA's office and continuing legal education services. More than 95% indicated that experience had been more beneficial to them as prosecutors than training or education. This statistic bears testimony to the absence of training in depth.

The Chief District Court Prosecutors are solely responsible for training novice DCPs. Training is carried out for the most part informally, on the job. Of the ten Districts surveyed, only one has instituted a semi-formal three-day training session; another hires apprentices without pay for a probationary period, pursuant to a statute. The "green" DCP for the most part is expected to observe more experienced prosecutors for an average of about a week and is then ready for a probationary period in which he will be observed and criticized by the Chief, other DCPs, and not infrequently by Judges.

DCPs, PPs, and Judges interviewed were asked their opinions as to how many months of experience it takes to become proficient as a prosecutor. The mean estimate given by DCPs was approximately eight months. Experience was considered valuable partially to gain police and Judges' acceptance and to learn the proper recommendations for sentencing and bail. Judges interviewed believe that DCPs need an average of eight months to "hit their stride." In contrast, they answered "13 months" to "never," with an average of 31 months, on the length of time it takes PPs to become proficient.

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\* Most statistics in this report came from the questionnaires returned by Judges, DCPs, PPs, and Clerks of Court, from structured observations of court cases, or from analysis of court records. A few statistics are based on interviews, and are so indicated. Where questionnaire-based data for two groups (e.g., DCPs and PPs) are contrasted, the difference is statistically significant at the 5% level or better, unless an NS (not significant) is indicated. The 5% level of statistical significance, standardly used in data based on samples, means that the difference obtained is likely to happen by chance alone five or fewer times out of one hundred.

D. POWERS OF DCPs

DCPs derive their power from that which is statutorily conferred upon the DA; however, there is some considerable confusion among DCPs and among Police Prosecutors as to the scope of the District Court Prosecutor's authority. The vast majority of the DCPs interviewed consider themselves ADAs assigned to the District Court. Two mentioned in interviews that they are Special ADAs; and one was sworn in as an ADA, but retains the title of DCP. Two of the ten part-time DCPs interviewed believe that they do not have the same authority as the ADAs. All of the full-time DCPs interviewed consider themselves as ADAs assigned to the District Courts, but there still remains some confusion among these DCPs as to the scope of their authority.

The following represent grants of power specifically conferred upon the DA, who must be a member of the Massachusetts Bar.\* The DA must appear in Superior Court on all cases, civil and criminal, in which the Commonwealth is a party, or interested.\*\* The DA, or prosecuting officer, may move the court to amend complaints or indictments.\*\*\* However, case law allows amendment only as to form and not as to substance.† DAs and ADAs may enter a nol-pros or move to place cases on file but must state reasons therefor.†† The DA may issue subpoenas for witnesses to testify on behalf of the Commonwealth.†††

As discussed in detail in Chapter VII, District Attorneys or their designates are the only prosecutors who may try cases before a six-person jury.

Aside from specific grants of power conferred upon the DA and either expressly or by implication delegated to his agents, broader grants of general administrative authority are given to the Supreme Judicial Court and the Superior Court, which may appoint "some suitable person" to perform the duties of the Attorney General or the DA in their absence.†††† Case law supports the premise that such appointees have been members of the bar. A grant of broad administrative power is also given to the Chief Justice of the District Courts.

\* Mass. G.L., c.12, sec. 12; see also In Re Opinion of the Justices 240 Mass. 613, 135 N.E. 305, (1922).

\*\* Mass. G.L., c.12, sec. 27.

\*\*\* Mass. G.L., c.277, sec. 35A.

† Comm. v. Massod 305 Mass. 745, 217 N.E. 2d 91 [test is broad].

†† Mass. G.L., c.277, sec. 10A.

††† Mass. G.L., c.277, sec. 28.

†††† Mass. G.L., c.12, sec. 26.

The extent to which the DA's power permeates the District Court is not made statutorily explicit. Since he must appear in Superior Court on all criminal business, he certainly may appear in District Courts. Powers of the DA's agents are generally subject to the same limits as the DA's powers. Such grants would include power to move to amend complaints or enter a nol-pros, for example. Since the DA has either expressly (by swearing in a DCP or an ADA, for example) or by implication delegated his authority to the DCPs in the District Courts, the DCPs probably do possess the full range of the powers the DA may exercise in District Courts. Whether they also possess the DA's powers in Superior Court is not clear even though almost all DCPs responding to our questionnaire believe that they are vested with the same powers as an ADA in Superior Court. Whether they have the power to perform such duties as arguing before a grand jury, for example, is unclear to many DCPs.

#### E. TURNOVER

The DCPs serve at the pleasure of the DA, subject to some possibility of being held over after a change in administration, but many regard their employment as a DCP as valuable, even without guaranteed job stability, because it is one of the few ways for a young attorney to gain trial experience. There appears to be greater job stability in the rural courts than in other courts. DCPs in non-rural areas have been on the job an average of 16 months, compared with 24 months for rural DCPs.

There are three possible explanations for the apparent difference between rural and non-rural courts with respect to turnover. Employment as a DCP in the former is probably viewed as an attractive source of supplemental income, rather than as a primary source of professional development and potential financial success, for beginning attorneys, as evidenced by the facts that DCPs located in rural courts have practiced longer, a proportionately greater number are part-time, and most are well established in private practice. It appears therefore that part-time employment as a DCP attracts candidates who view the job as supplemental to another source of income,\* but that if part-time DCPs were offered jobs on a full-time basis with commensurate pay,\*\* many would consider it an attractive option. Indeed, 71% of DCPs, in response to the question, "If you are part-time would you be willing to work full-time?", answered in the affirmative.

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\* In fact, of the 83% of rural DCPs permitted private practice, all actually do practice. Many non-rural part-time DCPs interviewed, who are on the whole younger than rural DCPs, are presently trying to build a private practice.

\*\* The most frequently mentioned salary that would influence a presently part-time DCP to begin working as a full-time DCP was \$25,000 to \$30,000.

A second explanation for greater experience among DCPs in rural courts may be that DAs feel the need to assign experienced trial counsels to courts in which a single DCP handles all criminal business. A lone DCP, who does not have the opportunity to consult daily with colleagues, requires greater expertise than a DCP who has the opportunity. A third explanation is that career options for attorneys are not as diversified in rural as they are in non-rural areas.

## F. SUPERVISION

### 1. Supervisory Role of Chief DCP

Most DAs delegate supervision of DCPs to the Chief DCP, retaining only the role of supervising the Chief DCP. The Chief is responsible for day-to-day implementation of the program. Since most Chief DCPs actively prosecute, their duties are generally similar to those of the other DCPs. But there are important additional responsibilities. The Chief DCP is responsible for setting up a schedule of coverage of the courts and (in some Districts) for arranging rotations of DCPs among courts. The Chief consults with the District Attorney fairly regularly; consultation is particularly likely whenever a case comes up with a public concern of which the DA should be aware.

Interviews revealed variations in Chief DCP roles. In one District, for example, the Chief DCP answers all motions and must be consulted when a DCP is considering continuing a case without a finding. DCPs in another court consult with the Chief when there is an appeal to a six-man jury. In still another court, the Chief takes an active investigatory role in potential grand jury indictments and advises the DA as to which cases should go to a priority prosecution unit.

### 2. Evaluation

There are no formal procedures for evaluating the DCPs in any of the 10 Districts. The performance of the DCPs, however, is closely scrutinized by the Judges, the Clerks, the police, Chiefs of Police, and probation personnel, each of whom has frequent opportunity to interact with the DCPs. Moreover, each of these observers may direct critical remarks directly to the DA, or indirectly through the Chief DCP.

### 3. Relationships of DCPs to DAs

All DCPs interviewed felt they were part of the DA's office, although the frequency and type of communication between the DA and the DCP varied widely. There are some specific written policies and guidelines set by

the offices of the DAs in the Districts, either concerned with policy, or indicating emphasis to be given to certain kinds of crime, or both. Examples of policy include directives aimed at discouraging appeals by trying to keep cases within the District Court and directives to plea-bargain in weak cases. Further instances of policies include memoranda on procedure for burglary prosecution, a policy of dropping most redundant minor charges, a policy of maintaining independence from Judges and orders not to dismiss, nol-pros, or to enter into complaints brought by civilians. Examples of emphasis on crime include directives not to reduce possession with intent to sell heroin and not to reduce serious crimes (rape, armed robbery) without input from the DA.

As a general proposition, nine out of ten DCPs at least feel that they act according to guidelines set forth by the DA, although it is also true that DCPs feel that they act autonomously and assume their decisions are compatible with the DA's policies unless they receive indications to the contrary. When questioned as to what type of prosecutor in District Court would be most likely to be responsive to priorities established by the DA, all Judges named DCPs. Judges believed PPs and AOs to be least responsive to the DA's priorities.

#### G. FACILITIES AND SUPPORT

Where DCPs are regularly engaged in prosecuting in one court, physical facilities, such as an office or a cubicle, a desk, a chair, and telephone are made available to them. In courts where the DCP serves one or two days per week, facilities are not generally available and use of the Clerk's office or police station is a common practice. An itinerant DCP may also use his own office for DCP work if he maintains a private practice. No DCP mentioned a damaging lack of legal research facilities.

Various types of support personnel are currently available to the DCPs, but individual DCPs are not equal beneficiaries of essential resources. Some DCPs are backed up by victim specialists, social service resource personnel and intake screeners, while others possess merely the phone numbers of police officers who function part-time in the capacity of court liaison. By virtue of their caseloads, all courts require (but not all provide) at least some of the following types of administrative support for the DCPs, frequently provided by just one PP.

- Administrative support (calling in necessary witnesses, performing preliminary interviews to eliminate unnecessary witnesses or discover personality weaknesses in key witnesses, sending out for tests or reports where necessary);

- Screening support (either or both of pre-issuance or post-issuance charge review to make sure that there is no over-charging, that evidence supports charges listed, that charges are recommended to be dropped, dismissed, or increased when merited);
- Liaison support between DCPs and police (arranging for appropriate scheduling of police, preliminary review of police reports to ascertain weaknesses in investigation and evidence and areas needing improvement, explaining the complexities of trial outcomes to police, providing DCPs with "street" knowledge of the defendant and his background for purposes of cross-examination); and
- Clerical support (virtually non-existent).

The support functions fall into three categories: case preparation, scheduling, and police relations. The DCPs in some courts are expected to perform all of the functions listed above which constitute "case preparation," in addition to all their other duties: making decisions as to proper recommendations for disposition, whether to recommend that a case be kept within the court's jurisdiction, whether to negotiate or plea-bargain, how to answer motions, and so on.

#### H. HOURS WORKED

##### 1. Hours per Week

DCPs work hard. Even part-time DCPs typically report that they spend 26 to 30 hours a week performing DCP activities, averaging 29 hours a week, 4.5 days a week, 50-52 weeks a year. However, 29% of all part-time DCPs say that they spend 32 or more hours per week on the job. Full-time DCPs report spending 36 to 40 hours per week averaging 36 hours per week, 5 days per week, 50 to 52 weeks per year. Eleven percent of full-time DCPs report spending more than 40 hours per week on the job. Fifty-eight percent of rural DCPs, in contrast to 87% of non-rural DCPs, maintain regular office hours. More than 70% of the DCPs who maintain regular office hours stated that they are available 6-8 hours a day. Our observations in the courts corroborate these self-reports.

##### 2. Percentage Time by Task

Time spent fulfilling DCP responsibilities was broken down into functions. Responses to the DCP questionnaire demonstrate that DCPs spend 30% of their time in trial, 19% on case preparation, 11% on negotiation and plea-bargaining, 9% on logistics and legal research and 7% or less on each of screening, record-keeping, case follow-up, and waiting for trial. Full-time and part-time DCPs spend similar portions of their

time on the above functions. The most noteworthy difference is that full-time DCPs spend 8% of their time screening, while part-timers spend only 4% in screening.

### 3. Utilization of DCPs' Time

The allocation of the DCPs' time among courts in a given county varies widely. Some counties have employed DCPs whose employment status is part-time, but who are assigned to more than one, and as many as four, District Courts. Others have hired DCPs on a part-time basis but have assigned them to a single District Court. Still other counties employ DCPs on a full-time basis to ride circuit among several courts, thus present in any given court on a part-time basis, while another variation is that DCPs are hired full-time and maintain a full-time presence in only one court. Thus the fact that a prosecutor is designated as part-time or full-time is not as descriptive of actual time spent on the job as a knowledge of what type of cases he handles, how many criminal sessions are scheduled per week, how many courts the DCP is expected to cover and whether the presiding judge has issued orders either curtailing or eliminating police prosecutors, or requiring DCPs to handle specific types of cases.\*

Irrespective of employment status, DCPs encounter three obstacles to a more efficient utilization of their time. The first is that a single court may schedule more than one criminal session at a time, one or more of which may involve cases for which the DCP has already prepared or expects to handle. Scheduling conflicts arise for three possible reasons: the DCP has not been able to attend arraignments and scheduling is arranged in his absence; the DCP has not seen the trial list until the morning of trial,\*\* or the caseload is so heavy that trade-offs must be made. The result is that a case is quickly reassigned to a prosecutor unfamiliar with the facts and history of the case.\*\*\*

\* See Appendixes, bound separately.

\*\* This is unfortunate because in most Districts the trial dates are set two to three weeks in advance. Either the prosecutors or their representatives are made aware of a date at arraignment, or it is indicated on the complaint sent to the DA's office. As a last resort, many courts issue a list every Friday for the coming week, or at least make it available from two days to a week before trial date. Of course there are a number of complicating factors: jail cases which have to be heard within ten days of arraignment, arraignments late in the day, continuances obtained a few days before trial or other date shifts.

\*\*\* Some defense attorneys interviewed explained that such last minute reassignments improve the defendant's chances for acquittal because the prosecutor, especially if he is a PP, will press on with the case even though unfamiliar with the facts, instead of asking for a continuance.

A second problem is that courts assigned to a DCP riding circuit do not coordinate their schedules. It is not uncommon for an itinerant DCP to be needed in more than one court at one time or in two courts with a time interval too short to allow for the travel distance.

The third and most significant impediment to better utilization of time allotted to the DCP is a wide diversity in types and number of administrative support personnel available to the DCP. See Section G.

#### 4. Full-Time Versus Part-Time Status

When asked whether they thought the DCP Programs would be improved if all DCPs served full-time, 76% of Judges responded "yes," 11% "no," and 13% that they "don't know." A recurring opinion elicited from Judges who were interviewed was that the DCPs should be full-time.

The advantages of a full-time prosecutor over a part-time prosecutor are many. However, the advantages we found through analysis of DCP questionnaire responses are mostly in terms of time available and not in the quality of prosecution or quantity of cases prosecuted. Listed below are the variables on the DCP questionnaire on which full-time DCPs were statistically significantly different from part-time DCPs:

- More time devoted to DCP work
- Not allowed private practice
- More screening of complaints prior to issuance
- More preparation of case summaries for cases bound over or appealed
- More activities futhering adversary procedures
- Less likely to dispose of cases at District Court
- Less likely to take steps to reduce frequency of appeals
- Less longevity
- Longer office hours
- Smaller proportion of caseload consists of simple misdemeanors; larger consists of felonies.

But it should be noted that, in contrast to the nine variables on which we found significant differences between full- and part-time DCPs, there were literally dozens of variables on which the two groups were indistinguishable. Among these were:

- Number of cases handled
- Maintaining regular office hours

Insuring defendant is properly charged  
Consulting defense to narrow issues  
Using opening arguments  
Cross-examining witnesses  
Making recommendations as to case disposition  
Making closing arguments  
Carrying out legal research  
When police reports are reviewed  
Interviewing witnesses prior to trial  
Disposing of cases before trial through pre-trial conferences  
Activities furthering quality of prosecution  
Time spent preparing each case  
Receiving and responding to requests for assistance from police prosecutors and arresting officers  
Training received  
and many others

We observed some advantages to the judicious employment of part-time DCPs under some circumstances:

- It is easier to attract DCPs if part-time is an option. Some potential DCPs wish to build up their private practice. This is a consideration in the minds of both new and experienced lawyers. From the point of view of the DCP Programs, the increase in the candidate pool, if part-time employment is a possibility, is nugatory at the present time. There are many more unemployed lawyers than there are openings for DCPs. This situation, however, may change.
- Some DCPs claimed that full-time employment as a DCP does not meet the personal needs of lawyers because the work is not sufficiently intellectually stimulating to keep good lawyers interested.
- We saw situations where part-time DCPs resident in a community and prosecuting in its courts were more available to police, and apparently had better relationships with them, than would be the case for a full-time DCP resident outside the community, who covered its court as one of a number within his/her cognizance.

- In some situations, distances among seldom-sitting courts would make it uneconomical for one full-time DCP to cover a number of them.
- Finally, some Prosecutorial Districts seem to have a configuration of courts, with some sitting infrequently, such that a given number of full-time DCPs would not provide them with adequate coverage. But hiring one more DCP would over-staff the District. A combination of full- and part-time DCPs appears to provide the most appropriate staffing level.

We are aware that the trends have been toward making all responsible positions in the courts full time. We are aware that among the concerns alleged by some about part-time DCPs are that:

- Part-time positions constitute more of a temptation for DAs to fill as patronage slots, since they could be treated as sinecures more readily than full-time positions. Part-time positions are more desirable, from the point of view of increasing patronage positions, than full-time positions, since more of the former could be set up in each Prosecutorial District.
- A DCP with a part-time position will be more tempted to let his DCP responsibilities lapse, giving priority to his/her private practice.
- Part-time DCPs with outside legal practices will be tempted to moderate their adversariness in the face of defense counsel who may have provided them, or are in a position to provide them, with private legal assignments (e.g., probate work).

We found some evidence of the first of these problems during the study, but not of the other two.

## I. CASES HANDLED

### 1. Numbers

About 38% of rural DCPs estimate that they have handled 500 or fewer cases in the past 12 months, 38% have prosecuted 500-1000 cases in the same time period and a quarter of rural DCPs have handled in excess of 1000 cases; the average is about 650. The breakdown is comparable in non-rural courts with more DCPs there prosecuting in excess of 1000 cases, with an average of 900. Each part-time DCP prosecutes approximately 820 cases a year in contrast to about 840 cases prosecuted by

full-time DCPs. The difference between full- and part-time DCPs is not statistically significant.

## 2. Type

Based on questionnaire responses, 15% of the caseload of rural DCPs consists of simple misdemeanors. Complex misdemeanors and complex felonies take up 20% and 25%, respectively, of the caseload. Finally, 37% of the caseload consists of simple felonies. By contrast, the caseload of DCPs in non-rural courts consists of fewer simple misdemeanors (9%), about 41% simple felonies and more (29%) complex felonies, and about 21% complex misdemeanors. An explanation for the difference in caseload proportion between rural and non-rural DCPs is that DCPs regularly handle the more serious cases in both types of courts, but there are greater numbers of felonies in non-rural areas.

Table 4-1 shows the distribution of charges for DCPs and PPs by type, as estimated from our records analysis. The sample under-represents the less serious charges, since only cases which included at least three charges or at least one felony were included in the sample. Courts in the sample were split into three groups:

- Group A, characterized by the presence of intake screening;
- Group B, characterized by considerable overlap between the types of cases handled by DCPs and PPs; and
- Group C, characterized by fairly rigid demarcations between the types of cases (more serious) handled by DCPs and those (the less serious) handled by PPs.

In Table 4-1, we have run the percentages in two ways. First, let us ask how the case load is split between DCPs and PPs. In Group A, DCPs handle all misdemeanors and felonies in the sample. Intake screening provides the DCPs with enough manpower to do this, so PPs handle only certain types of misdemeanors, too minor to fall in our sample.

In Group B, DCPs prosecute probably less than 20% of the misdemeanors and PPs prosecute probably more than 80%.\* Felonies are split 38%/62% between DCPs and PPs, respectively. In Group C courts, DCPs prosecute probably less than 50% of the misdemeanor charges, with PPs prosecuting at least 50% of them. Felony charges are distributed 87%/13% between DCPs and PPs, respectively. Just as we would expect from the way the sample courts were split, DCPs in Group C handle a larger proportion of the felony charges than do their counterparts in Group B.

\* Statements of "probably less/more than" in this sub-section are due to the systematic under-representation of misdemeanor charges in the sample, compared to the population of charges.

TABLE 4-1

## DISTRIBUTION OF TYPES OF CHARGES BY PROSECUTOR

Court Group	Prosecutor	Misdemeanor		Felony		$\Sigma$
		N	%	N	%	
A	DCP	N	49	193		242
		%	20.2	79.8		100.0
B	DCP	N	52	100	38.2	152
		%	34.2	65.8		100.0
	PP	N	211	162	61.8	373
		%	56.6	43.4		100.0
	$\Sigma$		263	262	100.0	525
	C	DCP	N	258	239	86.9
%			51.9	48.1		100.0
PP	N	258	36	13.1	294	
	%	87.8	12.2		100.0	
$\Sigma$		516	275	100.0	791	

Source: ADL search of records in 10 sample courts.

Now let us ask another question: "How do DCPs and PPs, respectively, split their charge load between misdemeanors and felonies?" Considering DCPs first, in Group A, the misdemeanor/felony split is probably greater than 20/80. ("Greater than" implies more misdemeanors, fewer felonies, in the population than in the sample.) In Group B, it is probably greater than 34/66, and in Group C probably about 52/48. For PPs, the split is greater than 57/43 in Group B and greater than 88/12 in Group C. Again, we find that the charge load of PPs in Group C is more heavily weighted toward misdemeanors than that of PPs in Group B. The converse is true of DCPs in the two groups.

In summary, we estimate that in the population of charges prosecuted in the District Courts, between 50% and 70% of the charges prosecuted by DCPs are felonies. Looking at it the other way, about 60% to 80% of the felonies handled in the District Courts are prosecuted by DCPs. Thus, current staffing of the DCPs enables them to handle considerably less than all felonies. However, our observations, questionnaires, and interviews substantiate that they are likely to handle the more complex and serious felonies.

#### J. CASE PREPARATION

Our observers overwhelmingly considered DCPs' preparation to be sufficient. But a substantial proportion of Judges and Defense Attorneys interviewed claimed that at least some DCPs need to do more preparation, although both groups indicated in interviews, and Judges in questionnaires, that DCPs have the highest quality of case preparation of all prosecutors in the District Courts (DCs). Some Judges interviewed cited instances of a part-time DCP showing up on the morning of a trial without having either conferenced a case or interviewed witnesses, commenting, however, that a DCP is only as prepared as the information he receives. DCPs frequently mentioned workload (especially seasonal peaks) and lack of time as among the most difficult aspects of their job. These difficulties arise, in part, because of the obstacles (mentioned in Section H.3) to optimum utilization of DCPs' time, and in part because the number of serious offenses in all courts is on the rise.

In evaluating judgments about DCP preparation from various sources, we place primary reliance on those of our lawyer observers, which were tested for reliability. Why did some Judges interviewed rate DCPs' case preparation low? We suspect that they emphasized their shock and consternation at seeing the rare (we believe) case of poor preparation. Further, they may be applying ideal standards to the DCPs--standards possibly developed in their own days as trial counsels, when the case-load of the DCs was less imposing. By the pragmatic criterion of the Judges' guilty findings in almost nine out of ten cases prosecuted by DCPs (discussed in Chapter VI), DCPs' case preparation appears adequate for the real world of the DC.

Defense Attorneys may be minimizing the adequacy of DCP preparation because it is typically less extensive than that which private defense counsels devote to a criminal case. But, we submit, that does not, ipso facto, make it inadequate. Finally, the institutionally structured rivalry between DCPs and defense counsels may have led the latter to stress instances of less-than-adequate DCP preparation.

Given the choices of "none," "minutes," "hours," or "days," 77% of DCPs state that they spend "minutes" preparing for simple misdemeanors and are almost equally divided between spending "minutes" and "hours" for complex misdemeanors. About 56% of DCPs devote "minutes" and about 42% spend "hours" preparing each simple felony case. DCPs spend between "hours" and "days" preparing for complex felonies.

As far as specific preparatory tasks are concerned, a majority of DCPs "frequently" do some legal research prior to trial, and most others research "occasionally." A majority also "frequently" consult with the defense for the purpose of narrowing issues and most others "always" do; however, a distinct majority of DCPs "always" speak to witnesses prior to trial. A bare majority "frequently" review police reports prior to the trial date, with almost three times as many responding that they "occasionally" or "never" review reports before the trial date than responded that they "always" do. Almost half of DCPs replied that they "occasionally" do not review police reports until the day of trial, with most others answering that they "frequently" do not review police reports until that day. Thus, it appears that of all preparatory tasks which a DCP undertakes, he is most likely to talk to the defense counsel and interview his own witnesses. DCPs tend to consider research more valuable to their preparation than review of police reports, which they may look over at the last minute.

The fact that superficial preparation occurs, particularly in less serious offenses, has apparently not impaired effective case presentation. Eighty-eight percent of Judges rated DCPs as being best of all prosecutors in the District Courts at logically sequential case presentation and 89% of Judges ranked DCPs as being most likely to enter complete and relevant evidence. Seventy-seven percent of Judges regarded DCPs as most proficient at efficient case presentation. These ratings indicate that DCPs cope with their time limitations better than any other type of prosecution in District Court. DCPs come out with preparation that, while not superb, is usually adequate to the demands of District Court.

## K. INTAKE SCREENING

Four types of intake screening exist:

1. Informal.
2. Formal, carried out prior to complaint issuance, performed by specialized people on the prosecution side.
3. Formal, carried out prior to complaint issuance, distributed among all people on the prosecution side.
4. Formal, carried out after issuance of the complaint.

"Informal" screening takes place as an organic part of the prosecutorial function. "Formal" screening is done as part of a separately funded program.

### 1. Informal Screening\*

Informal screening after issuance of the complaint goes on in the vast majority of Prosecutorial Districts. As in any other kind of screening, it is a mechanism which aids both the adversary process (on the prosecution side) and the quality of justice. Like all other screening, it compares the evidence in the case with the charges. As a result of screening, the prosecution may decide that one or more charges should be maintained, but more evidence is needed for its substantiation. Or, the prosecution may recommend to the Judge that one or more charges:

- should be reduced to a lesser included offense,
- should be dismissed,
- should be increased in severity, or
- should be added to those on the original complaint.

The prosecution may recommend any or all of these steps to the Judge or Clerk at the time of the complaint hearing (if any), arraignment, trial on the merits, or probable cause hearing. These recommendations are important because they affect whether the case remains within the jurisdiction of the District Court. Second, as with any other kind of screening, informal screening adds to the quality of case preparation and is likely to influence the strength of the cases with which the prosecution goes forward, the number and kind of cases heard at the District and Superior Court levels, the prosecution's "win rate," and the appeal rate.

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\* Of the four types, only this is done by PPs as well as DCPs.

2. Formal Screening Carried Out Prior to Complaint Issuance,  
Performed by Specialized People on the Prosecution Side

This takes place in one Prosecutorial District. A small group of ADAs screens all felony complaints applied for by police officers. (The ADAs plan to begin soon to screen all types of complaints applied for by both police officers and civilians.) It is routine procedure for police officers with applications for complaints to bring them first to the screeners, and to the Clerk of Court only after the screeners have passed upon them. Screeners consult with the Arresting Officer before changing the complaint application.

One might ask whether this procedure provides exclusive power over complaints to the prosecution. It appears that it does not, since (a) the Arresting Officer is consulted, (b) civilian complaints are not screened and (c) the police or civilians may apply for complaints directly to the Clerk. Thus it is possible for a victim who is dissatisfied with the complaints remaining in his case after screening to apply for additional ones himself.

Typically, the complaints are then prosecuted by DCPs other than the screeners. However, where the screener desires, he may handle prosecution on a case.

3. Formal Screening Carried Out Prior to Complaint Issuance,  
Distributed Among All People on the Prosecution Side

In another Prosecutorial District, a similar sequence goes on for complaints brought in by police. A major distinction is that here there is no specialization. As a matter of standard procedure, the DCP who screens the case later prosecutes it. The DCP carrying out screening not only talks to the Arresting Officer (AO), as in the second type of screening discussed above; the DCP also talks with the victims and/or witness. In this, the DCP is assisted by a Victim Specialist. (The Victim Specialist is also responsible for maintaining contact with the victim/witness through the time of trial, encouraging and assisting the victim/witness to testify, helping the victim, where applicable, with restitution or referral to social services needed as a direct result of the crime.)

After the DCP has made out and initialled the complaint application, the AO takes it to the Clerk of the Court. The Clerk may disagree with the content of the application on the grounds of what he perceives to be either substantive or clerical errors. If so, the Clerk discusses the matter with the DCP and the issues are resolved.

#### 4. Formal Screening, Carried Out After Issuance of the Complaint

This takes place in the Prosecutorial District described in section 3 above, with respect to civilian complaints. These complaints are made out by the Clerk and then sent to the DCP who will handle the case. If the DCP believes that the charges should be changed in any respect, he will so recommend to the Judge at the time of arraignment of trial or probable cause hearing. The Judge often follows these recommendations.

#### I. RELATIONSHIP TO POLICE AND POLICE PROSECUTORS

Half of the DCPs interviewed considered their major responsibility to be advisor to the police and coordinator of training of police officers. Because DCPs were latecomers to institutions which had operated for many years without the benefit of their presence, and because many DCPs were first viewed with suspicion by the police, DCPs did not initiate campaigns to improve police prosecutorial and arresting performance. They simply tried to make themselves available. The data indicate that the police consult with DCPs before bringing charges, especially in bringing more serious charges, or in drugs and morals cases, and that they have requested advice from DCPs on such areas as "stop and frisk," "search and seizure," identification procedures, line-ups, issuance of search warrants, and evidentiary procedures. About three-quarters of DCPs receive such requests daily or at least a few per week. A significant portion of advice given occurs after an officer has made an error fatal to the DCP's case, and wants to know why the case was lost.

DCPs provide assistance to PPs on a somewhat more regular basis. A majority of DCPs provide advice to PPs either "continuously" or "frequently." Advice most often sought relates to motions.

Despite the fact that DCPs receive requests for advice from the police on a regular basis, there is no conclusive evidence that the advice given ensures or even contributes to better police performance in their capacity as witnesses, prosecutors, or investigators. There was no clear majority or minority of opinions among the ten Judges interviewed as to whether the performance of the PP has improved since the advent of the DCP Programs. About 46% of the Judges recognized an improvement. Judges interviewed remarked on better recognition by police that cases are won or lost on legal and factual grounds, and on PP facility with and observance of evidentiary procedures. One Judge and some Defense Attorneys interviewed believe that the performance of the police as witnesses has improved, in that the police are now testifying about matters related to the elements of the charge. This comment may indicate progress in familiarity with legal terminology, but not necessarily an advancement in understanding its applicability: sometimes an officer on the stand will testify to what he believes the DCP is looking for ("it was exigent circumstances"), instead of testifying to the facts.

The DCP Program has provided the opportunity to assure the sufficiency of search warrant affidavits before execution, by having the DCPs assist in their preparation, when necessary. DCPs typically have assured the sufficiency of search warrant affidavits when requested. In one court the DCP "always countersigns search warrant affidavits, except in such cases as traffic, minor offenses, and juvenile cases." In another court, the DCP assures sufficiency as a matter of "courtesy, not mandatory," while in another court, the DCP has assisted the Clerk's office in updating and revising standard affidavits.

We found that 51% of the responding DCPs frequently or always assure the sufficiency of search warrant affidavits prior to execution; 29% do so occasionally, while 19% state that they infrequently or never assure sufficiency of search warrant affidavits. Statements made during interviews with Clerks of Courts confirmed the indications derived from the questionnaire.

In those instances where requests for assurance on sufficiency of search warrant affidavits occasionally or frequently occur, the requests are usually generated from "unusual cases such as vehicular homicide, fraud/forgery, or manslaughter", or drug or morals cases. More than one DCP states "that often they [police officers] don't call when they should."

#### M. VERTICAL PROSECUTION

Vertical prosecution or representation is the process where one prosecutor is responsible for the prosecution of the case from the arrest or arraignment stage through the discovery process, probable cause hearing or District Court trial, and culminating in Superior Court trial.\*

Vertical prosecution can be operationalized two ways. Either a Superior Court ADA can serve as the prosecutor or a District Court ADA can serve as the prosecutor during the process. The former occurs in all court districts with murders and other exceptionally serious cases. The latter's frequency is at the discretion of the DA. Presently, 32% of responding full-time DCPs occasionally or frequently prosecute vertically, while only 6% of responding part-time DCPs have prosecuted cases through final disposition at Superior Court. Therefore, 68% of the full-time DCPs and 94% of the part-time DCPs have infrequently or never prosecuted cases through final disposition at Superior Court. Vertical prosecution meets two major needs:

1. Vertical prosecution minimizes duplication of effort while promoting careful and complete case preparation by assigning one prosecutor for all stages of the same case.

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\* Grant Application 77C-020.211-Vertical Prosecution.

2. Vertical prosecution avoids confusion and frustration of victims and witnesses resulting from dealing with a succession of prosecutors from one stage of the proceedings to the next.\*

Vertical prosecution is also beneficial to prosecutors, by helping to upgrade their capabilities. By arguing in Superior Court, they learn the higher standards present in Superior than in District Court, and may then apply these standards to their DC trial behavior. Higher standards in Superior Court involve the rules for appropriate evidence, thoughtfulness of argument, and the necessity for a formal and didactic approach to presenting evidence to the jury. There is a necessity for these stricter standards in the Superior Court, because there is less room for error: an error can lead to a mistrial.

There is an overwhelmingly favorable regard for the concept of vertical prosecution in the court system today. Other frequently mentioned favorable aspects of vertical prosecution include:

- Efficiency and continuity; minimizes duplication of effort.
- Familiarity (i.e., grasp of the case; rapport with witnesses and victim; knowledge of evidence and event).
- Consistent objectives of disposition; reduces abuses by defense.
- Reduces appeals; both defense and prosecution will attempt best effort for case disposal at the District Court.

The skeptics are generally in agreement with the concept of vertical prosecution but state that it is not necessary or at least not necessary for all appealed cases. The major concerns are with scheduling difficulties, or as one skeptic states, "Vertical prosecution would not outweigh the administrative detriments." Another concern is quality prosecution. Does a District Court Prosecutor possess the skills to prosecute in the Superior Court? Another concern mentioned was the need with vertical prosecution to process papers expeditiously. The concerns with vertical prosecution are valid and should be taken into consideration when operationalizing vertical prosecution.

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\* Grant Application 77C-020.211-Vertical Prosecution.

## N. CASE SUMMARIES

The DCP Programs have not resulted in the provision of case summaries and complete case file jackets with which to improve evaluation and preparation of cases, appealed or bound over from the District Courts to the Superior Court ADAs for all cases and all Districts. However, one result of the DCP Program is that in all Districts, on a selected and as-needed basis, additional information required by ADAs in the Superior Court can be more readily obtained than if PPs handled District Court prosecution.

The potential for the DCP Programs to provide aid to ADAs in this regard is great. Presently, the Districts are in various stages of utilizing this potentiality. At one extreme, there is virtually no additional case information or complete case file jackets transmitted ("one out of one hundred cases") by the DCPs. At the other extreme, there is occasionally maximization of case information transmitted between the District and Superior Court, not as a direct result of the transfer of case information, but as a result of the transfer of the prosecutor--i.e., a vertical prosecution. The quality and quantity of case information transferred vary not only from District to District, but by case within each District. In most murders or other especially serious offenses, maximum quality and quantity of case information are transmitted, for an ADA is usually assigned at the onset and follows the case through disposition. Other cases receive varying degrees of effort by the DCPs in providing case information on bindovers and appeals to Superior Court ADAs.

Approximately half of the Districts have developed either case file jackets that contain case summary information on their cover or case transmittal report forms. (Samples provided in Appendixes.) In these instances, enough information is provided to "at least get them [Superior Court ADAs] started." No file jacket or case transmittal report form contains space for recording all the information designated in the Program Grant Application 77-21, Prosecution. The grant application states that these reports should indicate at a minimum the following: defendant's name, date of birth, case number, Massachusetts Bureau of Identification number; co-defendant's names and dates of birth; release information; charges and District Court actions/disposition of each; defense counsel's name and address; department of police officer and whether arresting or reporting officer; full witness identification, including address and phone number; indication of facts to which each witness will testify; evaluation of each witness to include scope and depth of knowledge of alleged incident/information; and an overall assessment of the severity of the case. The lack of prosecutor's name as a designated minimum requirement suggests that the minimum requirements be re-evaluated.

Brief interviews with Superior Court ADAs suggest that beyond the basic data requirements, the most useful information is the District

Court Prosecutor's evaluation of the case. This would include:

1. Quality assessment of the case, to include its strong and weak points.
2. Assessment of witnesses: their adequacy and performance.
3. Evaluation of defendants'/victims' stance.
4. Identification procedures.
5. Motions.
6. Background information.
7. Irregularities and anomalies.

The information provided Superior Court ADAs on the cases bound over or appealed to Superior Court should be in sufficient detail and typed. In some instances, a tape of the District Court proceedings is available to supplement the case summaries.

The transmission of case information from District Court on cases bound over or appealed to Superior Court has not been maximized because of:

1. Part-time status of most District Court Prosecutors.
2. Lack of support staff and equipment.
3. Instances of inadequate compilation and coordination of completed case files.

Interestingly, and not surprisingly, the Districts with the most advanced information systems with regard to bindovers and appeals are those districts which have full-time DCPs. Time is a prerequisite for a DCP to evaluate or summarize a case. Preparation of case transmittals has lower priority than other functions. Additionally, clerical support would be necessary to transcribe handwritten or dictated materials, and a coordinated effort would be necessary to complete a case file.

## V. HISTORY AND FUNCTIONING OF POLICE PROSECUTORS

### A. HISTORY

The District Court in the Commonwealth is an outgrowth of the Police Court. (In fact, many District Courts occupy a floor of a police station.) A Police Magistrate presided over these courts. It was natural, in earlier times, for prosecution to be handled by a police officer. This was done without particular contravention of the adversary system of criminal justice, since many or most defendants argued their own cases.

The system of police prosecutors continued even after the present District Courts replaced Police Courts. Two types of police officers acted as prosecutors:\*

1. Police officers or detectives assigned to a given court over an extended period of time to prosecute cases within their jurisdiction. These will henceforth be referred to as Police Prosecutors (PPs).
2. Arresting officers: police officers or detectives serving as prosecutors on cases where they made arrests. These will henceforth be referred to as Arresting Officers (AOs).

An informal variation of the first type existed, in which experienced detectives handled the prosecution for more serious cases on behalf of arresting officers for their department. In another variation of the first type, a Chief of a large police department prosecuted cases, not only for his own department, but also for smaller ones in the vicinity.

These types of police personnel were responsible for all phases of prosecution from complaint hearings to trial on the merits, in the District Court. Prosecuting at the same time were lawyers acting as prosecutors for their municipalities, under titles such as City/Town Solicitor, Town Counsel, and Town Prosecutor.

Another type of police officer existed, closely associated with the District Courts -- Case Supervisors (CSs). They had, to quote the survey, "responsibility for recordkeeping, trial arrangements, . . . keeping track of officers due in court each day" and notifying civilian witnesses and/or summoning them. Case Supervisors rarely prosecuted cases themselves.

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\* See Massachusetts Governor's Committee on Law Enforcement and Administration of Criminal Justice, Survey of Police Prosecutorial Practices in Massachusetts District Courts, Boston, Massachusetts: 1973.

The rest of this discussion concentrates on the present (early 1977) role of PPs.

#### B. PROFILE OF THE POLICE PROSECUTORS

The best information on numbers we have is from the various District Court Prosecutor Programs. Counting all types of police attached to the courts: PPs, Case Supervisors, Police Supervisors and all other police officers who perform significant functions directly related to the District Court, we estimate that there are at least 150 PPs in the Commonwealth. Numbers vary by prosecutorial district ranging from 4 to 63. Numbers per court tend to be a function of the number of police jurisdictions handled by the court. The same is true of numbers per Prosecutorial District.

The longevity of Police Prosecutors is high. Sixteen percent of those responding to our questionnaire have been PPs for one year or less, 48% for between two and five years, 28% six to ten years, and 7% eleven years or more. Longevity in rural courts is less, with 28% of the PPs in those courts having served one year or less, compared to only 13% in the other courts.

Slightly more than a quarter of the PPs responding to our questionnaire had no specific training in prosecuting. Slightly more than a half had in-service or refresher training; fewer than 10% had some law school training, and about a third had had some other training. About two-thirds have had some college or university program participation (e.g., courses in evidence, courtroom procedures, criminal law practices) relevant to prosecution. About one in 40 has a law degree, and about one out of ten has seen some other specific education in prosecution.

It is indicative of their lack of formal training for PP functions that almost 90% judged that of the following three factors--experience, training, and education--experience had been the most beneficial on them as a PP. They judged that it typically takes about 10 to 12 months for the average newly employed PP to become a proficient prosecutor.

PPs are typically experienced policemen, and of some rank (Sergeants or Lieutenants).

#### C. TIME ALLOCATION

More than four-fifths of the PPs work five days a week, with others spending as little as two days a week, and still others as many as six days a week, on their PP duties. PPs attached to rural courts are more likely to pursue their PP duties on a two- or three-days-a-week basis than are PPs in other courts.

Most PPs maintain regular office hours. These typically take up eight hours per day.

We asked PPs to estimate the percentage of their time as Police Prosecutors that they spend on various aspects of their job. On the average, they spend 19.1% on case preparation (establishing the prosecution plan, reviewing police reports, responding to motions, interviewing Arresting Officers and witnesses.) They spend 18.1% of their time in trial proceedings; 16.7% is spent in logistical functions (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to the trial). PPs estimated that they spend 13.7% of their time waiting for trial and 12.4% on recordkeeping and reports. They further estimated that 7.2% of their time is spent in negotiation and plea-bargaining. The following functions each were estimated to take up less than 7% of their time:

- Legal research;
- Screening before complaint is issued;
- Follow-up (appeals or bindovers, case summaries being prepared for Superior Court).

Those PPs in our sample who prosecuted cases estimated that they prosecute an average of 877 cases a year.\* The caseload was somewhat higher (896) for those in non-rural courts than for those in rural courts (818). The daily average works out to fewer than four cases a day, (assuming court is held five days a week; many courts meet six days each week).

Eighty-four percent of the PPs who carried out prosecution indicate that the majority of their caseload is made up of simple misdemeanor cases. Thus, PPs very rarely prosecute serious cases, where seriousness is defined in terms of the dichotomy between felonies and misdemeanors. We found that in a few courts, PPs do not prosecute at all. (These courts tend to be concentrated in rural districts.) This has happened because the Presiding Judge in a Prosecutorial District ruled that Judges would only hear criminal proceedings if the Commonwealth was represented by a member of the Massachusetts Bar. PPs typically do prosecute minor motor vehicle offenses and common, simple misdemeanors, e.g., shoplifting. PPs are also likely to handle prosecution of juvenile cases (although in two Districts special grants have brought in DCP-like prosecutors for juvenile cases). The rationale for the use of PPs on juvenile cases is "that since juvenile trials 'mostly involve deciding on a disposition,' the presence and involvement of an officer who is familiar with the defendant, his record, his family and environment seemed more important than the presence of a professional prosecutor."\*

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\* Only some of these cases are brought to trial.

\* Survey, op. Cit.

Many PPs serve as Case Supervisors only, carrying on no prosecution at all. As such, they work under the supervision of DCPs, concentrating on the case preparation, logistics, and record-keeping and reports functions described above.

Eighty percent of the DCPs indicated to us that they spend minutes preparing each simple misdemeanor case. Another 16% said that they typically spend hours on each such case. With regard to complex misdemeanor cases (which constitute a much smaller percentage of the PPs' caseload) three out of five PPs indicated they spend hours in preparation of each such case, and three out of ten indicated "minutes." What about simple felony cases? Three out of five typically spend hours on such a case, about one in four typically spend minutes, and one out of eleven spends days. There was a significant difference between non-rural and rural PPs with respect to preparation of simple felony cases. Rural PPs are much more likely to spend days on such a case, presumably because such cases are very rare. Finally, with respect to complex felony cases, one-fifth indicated that they never handle such a case, two-fifths that they spend hours on each one, and a quarter that they spend days on each one.

#### D. SUPERVISION RECEIVED

Three-quarters of the PPs work under policies and guidelines with regard to prosecution. However, these guidelines are written in only about 40% of the cases.

Our interviews with PPs showed that most report to their Chiefs of Police and receive general supervision from them. They also receive instructions and guidance from DCPs. This is discussed in further detail below. PPs also are extremely responsive to the Judges and many feel that they receive supervision and guidance from them.

#### E. RELATIONS WITH DCPs

More than 90% of PPs indicate that the District Court Prosecutor (DCP) is either always or frequently available to provide them with advice. Only 1% said that the DCP was never available. We found a significant difference in this respect between PPs attached to a rural court and those attached to other courts: in the former case, 29% replied "always" to this question, and 52% replied "frequently." In the latter case, 70% replied "always" and 24% replied "frequently." Thus, DCPs are even more likely to be available for providing advice in non-rural courts. Corroborating the availability of the DCP for advice, 64% of the PPs indicated that the DCP is available (on call) on a 24-hour basis.

Almost all PPs in our sample sometimes sought advice from a DCP. fifteen percent indicated that they do so "continuously," a total of 74%

indicated that they do so either "frequently" or "occasionally" and 11% do so "infrequently."

Of the PPs who carry out prosecution, only a very small proportion (3%) have never asked the DCP to prosecute a particular case in the last year. Three out of four have done so "frequently" or "occasionally," 12% do so "continuously" and 16% do so "infrequently."

Although many PPs felt threatened at the onset of the DCP Program, the threat appears to have dissipated. It has become clear that DCPs will not replace PPs. Rather, a cooperative relationship has arisen among the two kinds of elements of the prosecution. In this relationship, PPs carry out the administrative, logistical, and case preparation functions on behalf of the DCPs. DCPs argue the more serious (and in some courts all) cases. Typically, PPs argue the less serious cases.

The PPs to whom we talked are unanimously in favor of continuation of the DCP Program. Paraphrases of some of their comments make this amply clear:

- I don't see how the court got along without DCPs.
- There is much more sophisticated prosecution now.
- PPs are not so busy now.
- The DCP teaches the PP how to handle cases.
- There are now fewer mistakes in the search warrants.
- DCPs help police with search warrants when they have doubts about them.
- The DCP acts as a good backup man for the police, filling in whenever the police cannot handle a "touchy" case.
- We are now getting more convictions, disposing of cases much faster, doing a better job of getting the essential elements out on the table in a trial. The performance of PPs has improved by watching the DCPs operate.
- There is a reduction in the percent of cases going to Superior Court due to the DCPs' nol-pros power and the DCPs' willingness, ability, and authority to plea-bargain.

Similar comments, in response to an interview question about what would happen if the DCPs were to be taken out of the courts, buttress the above:

- We would have to have help (there would be more paper work, there would be a need for someone to handle motions and bills of particulars; it would make the workload tremendous).
- The prosecution would lose a lot more cases without the DCP.
- We would lose the power that the DCP has in the courts, greater than what a PP has.
- The system would collapse completely; it would bog down.
- The PPs would lose their legal counseling.
- There would be a vast increase in the number of motions.
- The trial lists would be tripled.

Another way of showing the opinion that PPs have about DCPs is based on the similarities and differences that PPs saw between themselves and DCPs. Some of the similarities mentioned include:

- Similar responsibilities, but handle different kinds of cases.
- Same trial procedure, same trial preparation.

The differences perceived are also illuminating, as follows:

- DCPs have law degrees.
- DCPs have responsibility for all towns in the court's jurisdiction; the PP is responsible for only one town.
- The DCP prosecutes; the PP acts as his assistant and prepares evidence and witnesses for trial.
- A DCP is an advisor and supervisor.
- There is a difference in the kinds of cases handled, with the DCP answering all the motions.

We did have a few less-than-positive comments on the relationship of the DCP and the PP. All of these are indicated below:

- The Assistant District Attorney has no impact whatsoever.
- A Chief of Police responds to his community in enforcing laws and the PP responds to the Chief. [Implying that PPs are not responsive to DCPs.]

- The DCP lacks sufficient involvement in cases here.
- The DCP is necessary for smaller towns and cities that don't have their own manpower or experience [but, by implication, not for the larger ones].
- I am concerned when lawyers on the defense side deal with lawyers on the prosecution side; they tend to "fix" the cases. Justice goes down the drain when the DCPs reduce charges. PPs will not do this. The DCP should, however, act as a supervisor.

PPs are, in the vast majority, happy with the present division of labor between themselves and the DCPs. Some comments, which show that the present allocation of responsibilities is working well, follow:

- With the PP, liaison with the police is better.
- Someone [the PP] has to coordinate the paper work. There is more paper work with small cases and motor vehicle cases and arraignments.
- The PP relieves the DCP of all minor duties, investigatory work, and witness preparation.
- The DCP knows the law better, can handle motions, trial tactics, legal precedents, etc.
- PPs know officers and how they will testify;
- PPs have better control over the continuity of evidence. They can handle the court's questions regarding procedures for handling evidence.
- If there were only DCPs, there would be problems with handling the Arresting Officers (AOs) and in providing liaison with the police.

#### F. OBJECTIVES OF AND PRESSURES ON PPs

We asked PPs to indicate what one objective was most important to them as a prosecutor. Five-eighths indicated it was disposing of cases at the District Court level. About a sixth indicated it was winning cases. Smaller proportions indicated that it was respectively, promotion of the adversarial process, reducing charges when warranted, and strict sentences.

Synthesizing comments from the PPs and others with information from the questionnaires, we come to the following conclusions. It appears that PPs are less able to plea-bargain judiciously than are DCPs. This is true for a number of reasons, given in what seems to be to us the order

of importance (most to least). First, PPs are typically not so confident of their knowledge of the law as DCPs. Second, they know that DCPs directly represent the authority of the District Attorneys (DAs) whereas they, the PPs, do not. Third, PPs tend to see their role as presenting only the facts, without taking a proactive part in the proceedings. Put another way, they believe that it is up to the Judge to make any changes in the original charges. They contrast with the DCPs in that many PPs see themselves as acting as an adjunct of the Judge, not as the representative of an independent power center. Fourth, since PPs are brother officers with the police officers who have signed the complaints or made the arrests, they are leery of offending the latter by dropping or reducing charges against defendants. They feel considerable pressure on them to back up police. This pressure works in the other direction, in some cases. That is, PPs instruct their fellow officers on elements of evidence necessary to prove a crime, and sometimes on the necessary procedures for search warrants, arrest warrants, etc. They tend to do this after the fact (i.e., when an insufficient search warrant has been filled out).

## VI. SOME COMPARISONS -- DCPs AND PPs

### A. RUNNING A "NATURAL EXPERIMENT"

In order to ascertain the involvement of DCPs, PPs and others in the daily activity of the District Courts, we examined selected public trial lists in the sample courts. These daily lists are usually prepared in the office of the Clerk of Court; while they do not reflect all activities of the prosecution, they provided an appropriate source for the selection of offenses to be pursued through the docket for detail. It is recognized, however, that use of the trial lists precludes examination of charges that might have been screened out and not brought to trial.

Records researchers selected from the lists cases which involved at least one felony charge or three or more misdemeanor charges and extracted statistical information and sufficient identification to permit following up through DCP Program or other files. From the files, the researchers prepared records abstracts containing information on the court at which the case was tried, charges, findings, dispositions, the category of prosecutor, and other key information on the case. They were also encouraged to add comments based on their legal knowledge concerning discrepancies or items of particular interest. The records form used for abstracting is presented in the Appendices.

The differences which exist in quality and quantity of information relating to court cases were cited in the 1973 evaluation project and recognized in our proposal. We looked, therefore, for a few major facts on each case rather than attempting to do detailed case studies. It should also be noted that the cases covered were chosen to be the more serious ones and are therefore representative only of those categories; they should not be interpreted as typical of District Court cases.

The courts covered were categorized into three groups:

- Group A, where the DCP Program includes intake screening. Group A represents the most extreme implementation of the DCP Program; in this group none of the cases studied were prosecuted by PPs.
- Group B, where DCPs and PPs tend to prosecute the same types of offenses.
- Group C, where a fairly rigid line of demarcation separates the kinds of cases prosecuted by DCPs (typically felonies) and by PPs (typically misdemeanors).

The next four sections of this chapter discuss findings from the records relevant to the objectives of the DCP Programs. The remainder of the chapter discusses findings on the comparative performance of DCPs and PPs obtained by other methods.

## B. STATISTICS RELATING TO PROMOTION OF THE ADVERSARIAL PROCESS

Area of Inquiry No. 1 asks, "Do the DCP Programs promote the adversarial process of justice within the District Courts?" We can conclude that the DCP Programs do increase the level of representation by attorneys, both public (including court-appointed) and private. Examining compilations for Group A, courts with DCP Programs including intake screening programs, and Group B, courts having no set division of responsibility between DCPs and PPs, we can see a clear difference between level of attorney representation. In Group A, where there was no PP prosecution, all defendants were represented by counsel. In Group B, there was 74.2% representation by attorneys of defendants where the PPs were in charge of cases, compared to 84.8%--an increase of 10%--when DCPs were in charge.

## C. STATISTICS RELATING TO IMPROVING QUALITY OF PROSECUTION

Area of Inquiry No. 2 asks, "Have the DCP Programs improved the quality with which the Commonwealth is represented in criminal proceedings in District Courts?" Table 6-1 shows the outcomes of charges (not cases) abstracted. Assuming that the prosecutors have screened out cases where prosecution is unwarranted, one measure of the quality of the prosecution is the "win rate." Table 6-1 shows this for trials on the merits where the win rate is the ratio of guilty findings to total (not guilty and guilty) findings. (For example, for Group A, the ratio is 58/15+58, or 79.5%.) We see that in Group B courts the "win rate" for DCPs, 91.2%, is higher than that for PPs, 87.0%. (This difference is not statistically significant.) Similarly, in Group C, the "win rate" for DCPs 80.2%, is higher (but not significantly) than that for PPs, 72.4%. Note also that the DCPs' slightly higher "win rates" have been achieved in spite of the fact that DCPs are more likely than PPs to be opposed by attorneys rather than defendants arguing pro se, and in spite of the fact that the proportion of felonies in the DCPs' caseload is considerably higher than that in the PPs' caseload in Group B, and much higher in Group C.

Table 6-1 also shows that DCPs have a higher (but not significantly so) "win rate" than PPs, using a slightly different measure: a ratio with findings of Guilty and Sufficient Facts in the numerator, divided by the total number of charges heard in trial on the merits.

Let us direct our attention to the columns in Table 6-1 which relate to probable cause hearings. In Group A, the win rate for DCPs for such hearings was 84.3%. In Group B, the win rate for DCPs was 90.6%; for PPs it was 73.1%. Thus, in Group B, where DCPs and PPs have more or less similar caseloads, the "win rate" of DCPs is significantly higher in probable cause hearings. Note that in Group C no PP acted as a prosecutor in probable cause hearings. This is consistent with the general trend in Group C courts to limit PPs to the less serious cases.

TABLE 6-1

## OUTCOMES OF CHARGES

		1	2	3	4	5	<u>G</u>	<u>G+SF</u>	<u>PC</u>	<u>Appeals</u>	<u>Appeals</u>
		<u>NG</u>	<u>G</u>	<u>SF</u>	<u>PC</u>	<u>NPC</u>	<u>NG+G</u>	<u>NG+G+SF</u>	<u>PC+NPC</u>	<u>G</u>	<u>Sentence</u>
<u>Group A</u>											
Findings	DCP	15	58	53	43	8	79.5%	88.8%	84.3%	13.8%	400.0%
Sentences Imposed	DCP		2								
Appeals	DCP		8								
<u>Group B</u>											
Findings	DCP	6	62	3	29	3	91.2	91.5	90.6	33.9	87.5
	PP	23	154	33	19	7	87.0	89.0	73.1	31.2	137.1
Sentences Imposed	DCP		24								
	PP		35								
Appeals	DCP		21								
	PP		48								
<u>Group C</u>											
Findings	DCP	37	150	44	51	4	80.2	84.0	92.7	14.7	66.7
	PP	34	89	43	0	0	72.4	79.5	-	9.0	100.0
Sentences Imposed	DCP		33								
	PP		8								
Appeals	DCP		22								
	PP		8								

1 = Not Guilty

2 = Guilty

3 = Sufficient Facts

4 = Probable Cause Found

5 = No Probable Cause Found

Source: Records Analysis

#### D. STATISTICS RELATING TO ELIMINATING UNWARRANTED PROSECUTION

Area of Inquiry No. 5 asks, "Has the presence of the District Court Prosecutor Programs reduced the number of serious charges, when warranted by the facts, and encouraged entering of nolle prosequi or motions to dismiss in cases where prosecution is not warranted?"

As Table 6-2 shows, there is some indication that the DCPs have reduced the number of serious charges. Of 247 original charges researched during our records analysis in Group A, 11% were reduced to lesser included offenses. In Group B, where 57% of the DCPs' chargeload and 53% of the PPs' chargeload consisted of breaking and entering, larceny, robbery, assault, and narcotics, the DCPs reduced the number of serious charges (153) by 11%, while the PPs reduced the number of serious charges (329) by only 5%. Data for Group C were not usable. We can only assume the reductions were warranted by the facts.

#### E. STATISTICS RELATING TO REDUCING THE FREQUENCY OF APPEAL

Area of Inquiry No. 6 asks, "Have the DCP Programs reduced the frequency of appeal significantly through encouraging plea-bargaining, pre-trial diversion and other methods of satisfactory disposition in the District Courts?" The records did not show a major use of any of the pre-trial diversion programs, such as for alcoholism, drug use, psychiatric evaluation and help, or juvenile guidance, either by PPs or DCPs. We believe that this is due in part to the fact that the courts studied do not standardly indicate diversion programs on the case papers.

Since appeals can only take place after the finding of guilty on a charge, we initially used the ratio of appeals to guilty findings as an index of the appeal rate. Using this index, DCPs show a slightly higher appeal rate than PPs. In Group A, prosecuted by DCPs, 14% of the guilty findings were appealed. In Group B, 33.9% of the guilty findings for charges where DCPs were prosecuting were appealed, compared to 31.2% of the guilty findings when PPs were prosecuting. In Group C the difference in the appeal ratio widened, at 14.7% for DCPs and 9.0% for PPs. The last two differences are not statistically significant.

Some consideration led us to conclude that the above index might not be appropriate, since many guilty findings do not lead to the imposition of a jail sentence. Instead, they may result in a suspended sentence, a fine, the imposition of court costs, or restitution, or some combination of the above. We reasoned that defendants would be particularly likely to appeal when a sentence was imposed. Therefore, we constructed a second index of appeal frequency. This uses the number of charges resulting in jail sentences as the denominator, with the number of appeals in the numerator. (This index led to the apparently anomalous conclusion that in Group A, there were four times as many appeals as sentences imposed; we believe that this happened because District Court Judges in

TABLE 6-2

## REDUCED NUMBER OF SERIOUS CHARGES

<u>Group</u>	<u>Prosecutor Category</u>	<u>Original Charges</u>	<u>Reduced</u>	<u>% Reduced</u>
A	DCP	247	26	11%
B	DCP	153	17	11%
	PP	329	17	5%

Source: Records Analysis

Group A are particularly likely to impose heavy fines and court costs, which could provide as much of an incentive to appeal as a prison sentence.) Using this new ratio, we find appeals considerably more likely in both groups B and C when a PP has carried out prosecution than when a DCP has done so. In fact, the index for the PP in both cases is approximately 1.5 times as high as that for the DCP. (137.1%/87.5% = 1.57.)

Thus, we concluded that, other things being equal (that is, given the presence of a severe sentence), the use of DCPs as prosecutors is likely to cut by a third the likelihood of an appeal.\* Note, however, that other things are, in fact, not equal. For example, as discussed above, DCPs are somewhat more likely to obtain a guilty finding which in turn tends to be related to a higher probability of a sentence which will cause the defendant to appeal.

#### F. STATISTICS RELATING TO INTAKE SCREENING

Area of Inquiry No. 13 asks, "Have the DCP Programs been improved when they embody an intake screening procedure?"

We compared the number of continuances. The data showed that Group A (with intake screening) has a mean of 0.77 continuances per case (for DCPs) whereas Group B, without intake screening, reflects a mean of 2.2 continuances per case (2.4 for DCPs; 2.0 for PPs). The Group C overall record is 1.08 (1.13 for DCPs, 0.95 for PPs).

\* No test of statistical significance appropriate for the ratio is known.

The data appear to indicate two things:

- Where DCPs are involved with intake screening, they tend to have fewer continuances per case;
- DCPs tend to have more continuances per case than PPs.

It is somewhat difficult to attribute causality to these findings. The large difference among the average DCP continuances, from group to group, indicates that factors other than the DCPs are at work. Primarily, we believe that this reflects the influence of the Judges in the various groups of courts. Thus, it is not clear whether the difference in average DCP continuance numbers between Group A on the one hand, and Groups B and C on the other, are due to the intake screening or due to the influence of Judges. Further, it is not clear why the cases of DCPs average a higher number of continuances than those of PPs. One likely possibility is that DCPs have a higher proportion of felonies in their caseloads. Continuances would seem to be more common with felonies, i.e., serious cases in which both the defense and the prosecution may need an unusually long time to prepare.

#### G. STATISTICS RELEVANT TO JUDGE NEUTRALITY\*

Area of Inquiry 3 asks, "Does the presence of a DCP on the prosecution side allow District Court Judges to assume a more neutral role in the proceedings?" There is little doubt that this is so.

Table 6-3, "Opportunity to Assume a Neutral Role in Court Proceedings," shows that 79% of the responding District Court Judges state that the DCPs are the category of prosecutor that gives them the greatest opportunity to assume a neutral role in court proceedings. Only 43% of the District Court Judges who have had Town/City Solicitors/Prosecutors prosecute within their District Courts, sometime during the last twelve months, responded the same about that prosecutorial category, while only 22% said this about Police Prosecutors. Additionally, the table indicates that 88% of the responding District Court Judges felt that Arresting Officers give them the least opportunity to assume a neutral role during court proceedings.

Table 6-4, "Tempted to Assist in Clarifying Points of Law During Trial Sessions," indicates that 63% of the responding District Court Judges are least tempted to assist DCPs in clarifying points of law during trial sessions. In comparison, 29% and 27% of the responding District Court Judges state they would be least tempted to assist Town/City Solicitors/Prosecutors and Police Prosecutors, respectively, in clarifying points of law during trial sessions. Table 6-4 further

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\* Beginning with this section, this chapter draws on data sources other than the Records Analysis.

TABLE 6-3

OPPORTUNITY TO ASSUME A NEUTRAL ROLE  
IN COURT PROCEEDINGS

DISTRICT COURT JUDGES' RESPONSES TO THE QUESTION: WHO GIVES YOU THE  
(MOST, LEAST) OPPORTUNITY TO ASSUME A NEUTRAL ROLE IN COURT PROCEEDINGS?

Prosecutor Category	Respondents *	Number of Mentions		% Mentions to Respondents	
		Most	Least	Most	Least
DCP	52	41	4	79%	8%
PP	41	9	18	22%	44%
AO	25	2	22	8%	88%
TC	14	6	-	43%	-

\* Number of Judges that report having heard cases prosecuted by each prosecutor category sometime during the last twelve months (February 1976 - February 1977).

indicates that 96% of the responding District Court Judges are most tempted to assist Arresting Officers in clarifying points of law during trial sessions and 41% are most tempted to assist Police Prosecutors in clarifying points of law during trial sessions.

Our observations of court proceedings and interviews with District Court Judges indicate that District Court Judges do assume a more neutral role during court proceeding when a DCP is the prosecutor. Table 6-5, "Percent of Times Judge Intervened on Behalf of the Prosecution," identifies the number of times a District Court Judge intervened on behalf of a prosecutor during trial proceedings that included direct examination. In the course of direct observations of 36 court proceedings where a Police Prosecutor was prosecutor and 61 court proceedings where a DCP was prosecutor, the District Court Judge intervened on behalf of the Police Prosecutor in 19% of the cases, while intervening on behalf of the DCP in only 8% of the cases. (The difference, however, is not statistically significant.) None of the trial proceedings observed required direct examination when the Arresting Officer was the prosecutor and only three observations occurred where the Town/City Solicitors/Prosecutors was the prosecutor. The District Court Judge did not intervene on behalf of the Town/City Solicitors/Prosecutors.

TABLE 6-4

TEMPTED TO ASSIST IN CLARIFYING POINTS OF LAW  
DURING TRIAL SESSIONS

DISTRICT COURT JUDGES' RESPONSES TO THE QUESTION: WHOM ARE YOU (MOST, LEAST) TEMPTED TO ASSIST IN CLARIFYING POINTS OF LAW DURING TRIAL SESSIONS?

Prosecutor Category	Respondents *	Number of Mentions		% Mentions to Respondents	
		Most	Least	Most	Least
DCP	52	8	33	15%	63%
PP	44	17	11	41%	27%
AO	25	24	-	96%	-
TC	14	1	4	7%	29%

\* Number of Judges that report having heard cases presented by each prosecutor category sometime during the last twelve months (February 1976 - February 1977).

Interviews with District Court Judges indicate that DCPs allow the District Court Judge to assume a more neutral role during court proceedings because:

1. DCPs possess the professional quality to present cases on an equal footing. The DCP is able to balance the defense better.
2. The DCP's presentation is given in proper legal manner and brings out all the issues so that the Judge need not ask questions to clarify. The DCPs ask proper questions and introduce proper evidence.

Thus, we can respond affirmatively that prosecution by a DCP gives District Court Judges greater opportunity to assume a more neutral role during court proceedings. Further, the data suggest that District Court Judges do assume a more neutral role when a DCP is the prosecutor.

TABLE 6-5

PERCENT OF TIMES JUDGE INTERVENED ON  
BEHALF OF THE PROSECUTION  
(DIRECT EXAMINATION)

Prosecutor Category	Total Observations	No inter- ven- tion	Times Intervened			Total	% Total Times Intervened to Total Observations
			1	2	3		
DCP	61	56	4	1	-	5	8%
PP	36	29	4	2	1	7	19%
TC	3	3	-	-	-	0	-

Source: Observation of cases.

H. COMPARISON OF POLICE PROSECUTORS AND DISTRICT COURT PROSECUTORS  
ON SCALES RELATED TO DCP PROGRAM OBJECTIVES

Among options available to the Commonwealth, two groups of people stand out as those who might carry out prosecution in the District Courts: Police Prosecutors and District Court Prosecutors. We wished to see whether either of these groups is more likely to accomplish some of the objectives of the DCP program. These objectives comprise the following:

- Promote the adversarial process of justice within the District Courts;
- Improve the quality with which the Commonwealth is represented in criminal proceedings in District Court;
- Allow disposal of cases before they reach Superior Courts, and thereby reduce the backlog of cases for those courts;
- Reduce the number of serious charges, when warranted by the facts, and encourage entering of nolle prosequi and motions to dismiss in cases where prosecution is unwarranted;
- Reduce the frequency of appeals significantly through encouraging plea-bargaining, pre-trial diversion, and other methods of satisfactory disposition in the District Court.

In order to examine whether the above objectives are better satisfied by DCPs or PPs, we grouped questions on the questionnaires for each of these groups, according to their content. DCPs and PPs were asked the same questions. Since these questions were scattered throughout the questionnaire, it was not clear to respondents that they were all on the same subject, and it was not mentioned that they would be grouped during analysis. For each kind of behavior relevant to a particular program objective, DCPs and PPs indicated whether they carried out this behavior, "always," "frequently," "occasionally," "infrequently," or "never," in the least year in which they prosecuted cases. The comparisons in Table 6-6 show that, in summary, DCPs more often carry out the behaviors related to objectives.

DCPs were more likely to report "always" carrying out the behaviors that improved adversarial procedures. Twenty-five percent of the DCPs compared to 19% of the PPs reported carrying out such procedures "always."

Table 6-7 shows an example of a question relating to adversary procedures. (The reader can consult the Appendixes for the complete questionnaire and lists of all the questions which were involved in the adversarial procedures scale, on both the DCP and PP questionnaires.) Question 19 on the PP questionnaire (question 21 on the DCP questionnaire) reads "How often do you make a closing argument that a sufficient case has been presented for a guilty finding?" Forty-six percent of the DCPs but only 36% of the PPs indicated that they "always" do this. Twenty-one percent of the PPs, but none of the DCPs, indicated either that they "occasionally" or "infrequently" do this. None in either group reported that they "never" present such closing arguments. Thus, on this particular question that makes up part of the adversarial procedures scale, DCPs were more likely "always" to heighten the adversarial procedures; conversely, PPs were much more likely to omit the element of adversarial procedure. The difference was not statistically significant, however.

With respect to the objective of providing strong quality of prosecution on behalf of the Commonwealth, DCPs responded 32% of the time that they "always" carry out steps in accordance with this objective; PPs reported the same only 26% of the time. By contrast, 26% of the PPs answered that they "infrequently" or "never" carried out such activities while they were prosecuting, as opposed to only 17% of the DCPs.

Let us look at Table 6-7 at two questions which form part of the "quality of prosecution" scale, in order to illustrate its contents. Question 23 on the PP questionnaire (question 25 on the DCP questionnaire) reads "How often do you review police reports for the first time on the same day as the trial day?" Note that in Table 6-7, a minus sign precedes these question numbers. This means that question was reversed on the scale: answering "never" was considered to be indicative of high quality prosecution, while answering "always" was taken to be indicative to be low quality prosecution. We find that 34% of the PPs, but only 2% of the DCPs, "never" review their police reports for the first time

TABLE 6-6

COMPARISON OF PP AND DCP ON SCALES  
RELATED TO PROGRAM OBJECTIVES

<u>Objective</u>	<u>Type of Prosecutor</u>	<u>Number of Responses</u>	<u>Percent Responding</u>				
			<u>Always</u>	<u>Frequently</u>	<u>Occasionally</u>	<u>Infrequently</u>	<u>Never</u>
1. Adversary Procedures	PP	996	19.4	32.7	29.7	15.0	3.2
	DCP	576	25.2	31.6	26.2	13.2	3.8
2. Quality of Prosecution	PP	403	26.3	31.0	17.1	12.9	12.7
	DCP	231	31.6	33.8	17.7	11.7	5.2
3. Dispose at District Court	PP	658	4.0	16.9	35.0	28.1	16.0
	DCP	375	6.4	18.4	38.4	19.7	17.1
4. Reducing Charges	PP	514	5.1	17.5	28.6	29.7	19.1
	DCP	290	8.3	21.0	32.1	17.9	20.7
5. Dispose at District Court	PP	667	3.9	17.5	38.9	27.4	12.3
	DCP	374	6.4	19.8	42.2	20.6	11.0

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TABLE 6-7

COMPARISON OF SAMPLE QUESTION RESPONSES OF PP AND DCP  
AS PART OF OVERALL SCALES RELATED TO PROGRAM OBJECTIVES

Objective	Questions	Type of Prosecutor	Number Responding	Percent Responding				
				Always	Frequently	Occasionally	Infrequently	Never
1. Adversary Procedures	How often do you make a closing argument that a sufficient case has been presented for a guilty finding? (19/21*)	PP	75	36.0	42.6	16.0	5.3	0.0
		DCP	43	46.5	53.5	0.0	0.0	0.0
2. Quality of Prosecution	How often do you review police reports for the first time on the same day as the trial date? (-23/25)	PP	76	0.0	14.5	27.6	23.7	34.2
		DCP	43	4.7	30.2	46.5	16.3	2.3
	How often do you make recommendations as to case disposition? (18/20)	PP	75	16.0	50.7	24.0	8.0	1.3
		DCP	43	44.2	48.8	7.0	0.0	0.0
3. Dispose at D.C.	How often do you agree to diversion programs? (13/15)	PP	72	1.4	26.4	56.9	9.7	5.5
		DCP	40	0.0	22.5	65.0	12.5	0.0
4. Reducing Charges	How often do you engage in constructive plea-bargaining? (14/16)	PP	75	5.3	37.3	36.0	20.0	1.3
		DCP	43	18.6	39.4	32.6	4.7	4.7
5. Dispose at D.C.	How often do you consult with the defense to narrow issues, make stipulations, etc.? (11/13)	PP	74	27.0	52.7	17.6	2.7	0.0
		DCP	48	32.6	62.8	4.7	0.0	0.0

\* PP Question #/DCP Question #

on the same day as the trial date. Conversely, 5% of the DCPs, but none of the PPs, reported "always" doing this. Thus, in terms of the timeliness of case preparation, PPs were more likely than DCPs to carry out behavior consistent with the "quality of prosecution" objective of the DCP program.

Let us contrast this, however, with figures in Table 6-7 based on question 18 on the PP questionnaire (question 20 on the DCP questionnaire), asking how frequently the respondent makes recommendations as to case disposition. About 44% of the DCPs, but only 16% of the PPs, "always" make such recommendations.

The bulk of the questions related to "quality of prosecution" showed patterns of answers more like those of questions 18/20 than questions 20/25. Thus, in summary, DCPs were more likely than PPs to report behavior consistent with high-quality prosecution. The next section of this chapter compares their responses with respect to specific components of the prosecution process.

Looking at the third section of Table 6-6, we see that DCPs reported, 25% of the time, "always" or "frequently" taking steps to dispose of cases before they reach Superior Courts. PPs reported such activities "always" or "frequently" 21% of the time. Conversely, DCPs reported taking such steps "infrequently" or "never" 37% of the time while PPs did the same 44% of the time. The differences did not attain statistical significance.

Going to Table 6-7, we find a similar pattern with respect to a particular question (PP 13/DCP 15) which makes up part of the "Dispose at District Court" scale. None of the DCPs reported "never" doing this while 5.5% of the PPs reported "never" doing this. Thus the data indicate that DCPs are more likely than PPs to take steps which will allow disposal of cases in the District Court.

Again, Table 6-6 shows that, considering all behaviors which will help to reduce serious charges when warranted by the facts, and otherwise lead to a dropping of charges where prosecution is unwarranted, that DCPs are (not significantly) more likely to do this. DCPs report doing this "always" or "frequently" 29% of the time, whereas PPs report doing this "always" or "frequently" only 23% of the time. The DCP and PP percentages under "infrequently" and "never" reflect the opposite side of this coin.

Table 6-7 shows the results for question 14 on the PP questionnaire (question 16 on the DCP questionnaire) one of the questions on the scale related to reducing charges. This question asked "How often do you engage in constructive plea-bargaining?" Nineteen percent of the DCPs report doing this "always," compared to only 5% of the PPs. Only 9% of the DCPs, compared to 21% of the PPs, report engaging in constructive plea-bargaining "infrequently" or "never." The difference is not significant.

The fifth section of Table 6-6 compares DCPs and PPs with respect to other methods of satisfactory disposition in the District Courts which tends to reduce the frequency of appeals. Here again, 26% of the DCPs, but 21% of the PPs, report carrying out these activities "always" or "frequently." Only 32% of the DCPs, but 40% of the PPs, report carrying out these activities "infrequently" or "never." Statistical significance was not attained, however.

PP/DCP question 11/13 exemplifies the items on the second "dispose at DCP" scale and shows similar results. Ninety-five percent of the DCPs but only 80% of the PPs report that they "always" or "frequently" consult with the defense in order to narrow issues, make stipulations, etc.

### I. QUALITY OF CASE HANDLING

This section provides further detail on findings concerning the quality of prosecutor performance. In the questionnaires where DCPs and PPs indicated the frequency of various behaviors, the behaviors associated with quality related to one or more of five different components of prosecution:

- case preparation
- negotiation and plea-bargaining
- recommendations and information sought to determine the best possible disposition
- trial technique
- professionalism

We also asked the Observers and Judges to grade or rate the performance of the prosecutors, eliciting opinions on effectiveness, completeness, relevance, impartiality, objectivity, and so on of the specific tasks which the prosecutors carry out. Our results show the DCPs are rated higher in all areas than PPs except immunity to community concerns and that both DCPs and PPs outstripped AOs in performance by wide margins.

#### 1. Preparation

In addition to specifics on case preparation discussed in Chapters IV and V, DCPs and PPs were asked how often they engaged in legal research, how often they consult with Probation prior to complaint issuance, and how often they involve themselves in pre-trial conferencing. One hundred percent of DCPs, and 81% of PPs responded that they either "always," "frequently," or "occasionally" do legal research. Equal

numbers of DCPs and PPs (approximately 80%) either "infrequently" or "never" consult with Probation prior to complaint issuance. More than 88% of the DCPs, but only 60% of the PPs observed, held at least one conference, e.g., with witnesses, during the course of a case.

Observers noted that both DCPs and PPs prepare most cases sufficiently. In about 95% of their cases, PPs spend less than an hour preparing. DCPs spend the same amount of time on 70% of their cases, but are more likely to spend up to half a day in preparation.

Judges were similarly satisfied with case preparation but tended to rate DCPs somewhat higher than PPs and AOs. Asked who pays the most attention to detail in proving elements of crimes, 69% of Judges who actually observed DCPs replied that DCPs did, 41% of those who observed PPs rated PPs highest and 8% who observed AOs favored AOs. Almost a third with experience of PPs rated them lowest.\*

Thirty-four percent of Judges said that they would be most likely to dismiss a case for lack of prosecution in the case of a PP, 25% in the case of a DCP and 56% in the case of an AO. (The differences are not significant.) Sixty-five percent of Judges considered DCPs to have the highest quality case preparation; 43% also favored PPs, and a surprising 24% preferred AOs.

## 2. Negotiation and Plea-Bargaining

DCPs are generally more likely to engage in constructive plea-bargaining than PPs, with 67% of DCPs in rural courts plea-bargaining either "always" or "frequently."

About three quarters of both DCPs and PPs agree to reduce charges "occasionally," "infrequently" or "never." A similar result occurs when the prosecutors were asked how often they are apt to meet with defense for the purpose of narrowing issues. An average of 94% of all DCPs meet either "always" or "frequently" with defense counsel. PPs indicate similar frequencies of consultation. An average of 74% of DCPs and 66% of PPs (difference not significant) rarely discuss alternatives to prosecution with the defense, and a sizable minority of PPs "never" discuss this subject.

There is therefore a similarity in how the DCPs and PPs rate themselves with respect to frequency and subject matter of pre-trial

\* Wherever we mention results of the questions which asked Judges to rate each type of prosecutor who was most or least characterized by some behavior or trait, the percentages are based on only those Judges before whom that kind of person argued. Also, Judges were allowed to name more than one type of prosecutor as either "most" or "least." Thus, "most" percentages may sum to more than 100; the same is true of the sum of the "least" percentages.

negotiation. They are very amenable to meeting with the defense to narrow issues and to plea-bargain, but are not likely to agree to reduction of charges, or discuss alternatives to prosecution; PPs are generally less willing than DCPs to converse with the defense about narrowing issues and plea-bargaining.

Observers provided additional information. DCPs were more likely (16% of their cases) than PPs (5%) to drop charges as a result of an out-of-trial conference. DCPs were more likely (27%) than PPs (7%) to conference about a plea without charge reduction and were similarly more likely (16% versus 5%) to come to agreement on such a plea. DCPs (25%) also exceeded PPs (10%) on the proportion of their cases in which a conference led to an agreement on disposition recommendation. DCPs conferred with the defense in a higher proportion (67%) of their cases than PPs (33%). As indicated above, DCPs generally conference in a higher proportion of their cases than do PPs.

Judges had very strong opinions about the likelihood of the various prosecutors to engage in constructive plea-bargaining. Thirty-seven percent of the Judges observing PPs noted them among the most likely to plea-bargain, and 37% of the Judges considered them to be least likely to bargain. Of Judges who observed DCPs, 65% graded the DCP highest and no Judge thought the AO would be most likely to plea-bargain. In fact, 88% graded them as being least likely to do so: only 13% said this about DCPs. Thus there is no consensus among Judges with respect to the PPs, but a very high rating of the DCPs and a low rating of the AO. As far as likelihood of conferencing various topics is concerned, 32% of the Judges before whom PPs argued thought the PPs were most likely to consult to narrow issues, 67% of the Judges credited the DCP as most likely to confer on this subject, and again, none of the Judges gave AOs the highest rating. The consensus among Judges is similar to the above on the subject of reducing charges.

### 3. Best Possible Disposition

There is little data on how likely the prosecutors are to concern themselves with appropriate dispositions. Thirty-nine percent of the Judges said they would be most likely to accept recommendations on disposition from PPs, 20% graded AOs highest and 65% preferred DCPs. Most PPs stated that they would be very likely to agree to, or recommend diversion programs, while most DCPs would consider diversion an option only "occasionally" or "infrequently."\*

\* This is related to the frequency with which the PPs prosecute driving while intoxicated offenses, in which defendants are frequently sent to diversion programs.

#### 4. Trial Technique

Neither PPs nor DCPs make opening arguments frequently. The majority of both types do cross-examine witnesses regularly, with the DCPs leading by a narrow (not significant) margin. However, DCPs say they are more likely to make closing arguments than PPs.

We asked Observers to grade prosecutors' performance and Judges to elaborate on the specifics of trial technique. As far as effectiveness of opening arguments and command of the rules of evidence are concerned, Judges rated DCPs far above PPs. PPs also lag behind DCPs in adeptness at evidentiary procedures and tendency to enter complete and relevant evidence. PPs also are rated comparatively poorly in eliciting information from witnesses, knowledge of applicable laws, countering defense motions, and making their own use of motions.

Observers' grades correspond to the Judges' opinions. Observers awarded As and Bs on direct examination to 42% of the PPs and the same grades to 87% of the DCPs. The remaining PPs were graded in the C-D range, while no DCP received less than a "C."

Judges favored DCPs on cross-examination proficiency. No Judge regarded AOs as being most proficient at cross-examination. It seems that DCPs are not impeccable in their performance on cross since observers considered their examination to be insufficient 21% of the time, in comparison to PPs whose examination was insufficient 52% of the time.

AOs were judged consistently less capable of eliciting information from witnesses and deficient at cross-examination and comparatively much weaker than either PPs or DCPs in all other areas.

#### 5. Professionalism

Professionalism was defined as including elements such as proficiency in trial tactics, command of the law, knowledge of evidentiary procedures, and impartiality and objectivity. The mean grade for DCPs was between A- and B+ in trial tactics, command of the law, and knowledge of evidentiary procedures, while the mean grade awarded PPs in the same areas was between C- and D+, except that PPs' mean grade improved to B-/C+ in command of the law. However, a proportionately higher number of PPs than DCPs could not be graded at all on professionalism, because greater numbers of PPs prosecute cases in which the defendant pleaded "sufficient facts" and thus there was insufficient opportunity for the observers to evaluate level of competence. A similar problem existed in grading AOs.

We asked the Judges to evaluate the prosecutors' objectivity, by inquiring which type of prosecutor, if any, had generated citizen criticism, who is most vulnerable to community concerns, and who is most

likely to remain impartial in his contribution to the administration of justice. Judges thought AOs had incurred the most citizen criticism and DCPs the least; 75% of the Judges believed DCPs were most able to remain impartial, while 22% also preferred PPs and 4% favored AOs. AOs and DCPs are both thought to be equally immune to community concerns, while 63% of Judges considered PPs to be most vulnerable.

## VII. IMPLICATIONS AND RECOMMENDATIONS

In this chapter, we will integrate the findings presented earlier and present overall program recommendations.

### A. NEED FOR THE DISTRICT COURT PROSECUTOR PROGRAM

It is clear that there is a need to continue the DCP Programs. Without them:

- The quality of legal representation of the Commonwealth would decrease markedly;
- There would be problems in simply providing enough manpower to prosecute cases in District Courts (DCs);
- Coordination between the DCs and the Superior Court in each District, with reference to prosecution, would suffer;
- There is some evidence that the appeal rate from District to Superior Court would increase;
- There would be no independent agency to review the complaints brought by police officers. The neutrality, objectivity, and rationality of the decision to go forward with trial on a complaint would suffer;
- Related to the previous point, the efforts of prosecution to negotiate with defense counsel, in order to dispose of District Court cases expeditiously, would decrease; and
- Finally, Police Prosecutors would be somewhat hampered by losing the legal (technical) advice and guidance which DCPs now provide them.

To highlight the two first and most important points above, removal of the DCPs would lose the adversary balance that was achieved by placing trained lawyers in the courtroom on the prosecution side, against the trained lawyers representing defendants on the more important and complex cases.

In the last ten years, the appointment of defense counsel to indigent defendants has increased markedly in frequency. To take away the trained legal capability of the prosecution would, on the face of it, be inequitable.

## B. WHAT HAVE THE DCP PROGRAMS ACCOMPLISHED?

We will use the framework of the 15 Areas of Inquiry. But first, it is necessary to reiterate that there is not one DCP Program; there are ten District Court Prosecutor Programs, one in each Prosecutorial District. This decentralization, paralleling that of the District Attorneys' activities at the Superior Court levels, is reflected in differing accomplishments among Prosecutorial Districts. But we are able to make some general statements.

The DCPs have promoted the adversarial process in the District Courts.

They have improved the quality of prosecution there.

They have allowed Judges to be more neutral, and helped the role of the Judges by allowing better discovery and better case preparation and presentation, on both sides of the court chamber.

The DCPs have reduced the number of serious charges. Further, because of the more direct connection between the DA and the DCP, than between the former and the PP, the presence of DCPs in the courts has facilitated entering of nolle prosequi and motions to dismiss, which PPs do not feel authorized to enter.

There is some evidence of a relationship between the DCPs and a reduction in the appeal rate. But this is not conclusive, since the actions of the prosecution are only one among a number of factors that contribute to the frequency of appeals. Probably far more important are the finding and disposition decisions of Judges, and the response of the defense of these.

The DCPs have advised PPs, and in some cases other police personnel, in such areas as "Stop and Frisk." But these instances have been largely in reaction either to requests for advice, or to specific instances of improperly prepared charges or police actions leading to charges.

The DCP Programs have had only minimal effects in providing case summaries which Superior Court ADAs can use to prepare their cases appealed or bound over from District Courts. But in some Prosecutorial Districts, steps in this direction have begun.

It has been impossible, in the "snapshot" style in which this study was carried out, to ascertain whether the DCP Programs have resulted in a reduction of police time spent in preparing prosecution. A "moving picture," i.e., historical approach, would have been necessary. That is, one would have needed records of police time allocated to this function, beginning in the early 1970s and continuing through the development of the DCP Programs.

DCPs have helped police in preparing search warrant affidavits. But as in the case of "Stop and Frisk" advice, above, this has been largely

reactive, i.e., when the police requested it. It is clear, however, that DCPs have been available to assist the police in this and other functions.

The effect of DCPs on cases continued or dismissed at the District Courts for want of prosecution is not clear. As with appeals, Judges exercise considerable discretion in this area. We did find a salutary effect on such continuances in one District where DCP manpower was increased, augmented by ancillary personnel, and reinforced by a management information system which emphasized a reduction of prosecution-initiated continuances. But even here, the power of the prosecution in fact (not in theory) to compel witnesses to come forward is limited.

### C. POTENTIAL ACCOMPLISHMENTS OF THE DCP PROGRAMS

In addition to highlighting the accomplishments of the DCP Programs, it is important to point out areas in which they have major potential which has not been realized. In this section, we will discuss areas where this potential could have been realized in the past, but has not been. The next section will be devoted to the potential of the DCPs for realizing the recommendations of the Cox Committee Report. Some of the areas of unrealized potential are:

1. Improved selection and training of DCPs, in order to further improve the quality of prosecution.
2. Improved potential of the DCPs for instituting uniform prosecution practices and policies in each Prosecutorial District.
3. Improving productivity of the DCPs, themselves, by insuring the presence of sufficient supporting personnel.
4. Improving equity and consistency among DCP Programs by relating salaries to hours spent in DCP work and to experience/responsibility.

#### 1. Selection and Training

We found that, generally, both selection and training of DCPs were excessively informal, with implicit methods and standards. Below, we provide recommendations for realizing the full potential of the DCP Programs by improving selection and training.

#### 2. Uniformity of Prosecution Practices and Policies

One major potential of the DCP Programs, never mentioned among the

program objectives, is to enable each District Attorney to exercise some control over the prosecution in the District Courts of his District. Such control implies:

- Common policies with respect to plea-bargaining and negotiation;
- Consistent standards with regard to recommendations for sentencing;
- Coordination of District Court activities and those in Superior Courts; and
- Unified policies with regard to the priority to be given to preparation of cases with given charges.

In general, such coordination and centralization of control within a Prosecutorial District has not taken place. However, we regard it as desirable, and see its accomplishment as far easier with DCPs in place, than it was when PPs carried out prosecution. Its desirability is based on:

- Equity within a District: the same crime deserves the same punishment;
- The ability to implement public policy decisions reflecting the will of the voters, who elect the DA; and
- The ability to concentrate law enforcement and prosecution efforts on certain types of cases, including those which arise out of the activities of organized crime, which reflect clear and present dangers to public safety.

Coordination and centralization have generally suffered because of the paucity of written directives to prosecutors, the difficulties of applying general guidance in case law, and the absence of proactive supervision of DCPs.

### 3. Support Personnel

DCPs, in many Districts, carry out clerical and administrative functions which constitute a waste of their talents. This prevents them from devoting their time to the legal activities for which they have been specially trained. Their potential could be better realized by the addition of support personnel.

#### 4. Compensation

Although we did not investigate compensation questions in detail, we became aware that there is no consistent relationship between compensation, on the one hand, and time spent on DCP work and the experience and responsibility of the DCP, on the other hand. We believe that such consistency would be in the best interests of the programs.

#### D. RELATIONSHIP BETWEEN THE COX COMMITTEE PROPOSALS AND THE DCP PROGRAMS

##### 1. Effects of the Cox Committee Proposals on the Present System

Under the Cox Committee proposals, a defendant coming into the District Court charged with a crime within District Court jurisdiction would have a choice. He could select a jury trial in the first instance, from which he would have a right of appeal only on issues of law. Or, he could select a bench trial, retaining a right, if convicted, to a de novo jury trial in a District Court jury session.\*

If the Cox proposals are enacted in their present form, the District Court will be affected in three ways:

1. Cases which result in jury trials will necessarily take longer and require greater professional ability on the part of counsel, and
2. There would be more jury trials in the District Court because greater numbers of defendants will either opt for a first-instance jury trial, or
3. The same numbers of defendants will select a first-instance bench trial as presently do, the present appeal rate will remain constant, but all cases appealed under the present system will remain in the District Court.\*\*

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\*A de novo jury trial was declared constitutional in a recent Supreme Court holding, Ludwig v. Massachusetts 96 S. Ct. 2781 (1976).

\*\*Fifty percent of the Superior Court caseload is made up of de novo appeals. See on Judicial Needs, December 1976, p. 31.

## 2. Greater Professional Ability Required

Our research clearly indicates the DCPs perform more professionally and are more proficient at all types of trial procedures than any other type of prosecutor in the District Courts. Since it can be safely assumed that at least some of the cases which are presently appealed to Superior Court will still be appealed (but to the District Court) under the Cox Committee proposals, and since jury trials are more complicated than bench trials, in terms of the number and variety of procedures possible, the range of professional qualities utilized, and the length of time required, we believe that responsible prosecution of jury trials requires prosecution by DCPs.

Specifically, DCPs are more qualified than any other type of prosecutor in the DC to conduct jury trials for the following reasons:

1. DCPs are the only type of prosecutor in the DCs\* with potentially enough time, and without the time conflicts imposed by additional responsibilities (such as police work, or private practices) to spend in longer trials requiring more detailed preparation.
2. Unlike bench trials, jury trials split the roles of fact-finder and legal determiner between two entities, the jury and the judge, forcing each to function independently of the other. Prosecutors will have to try cases to both the judge and the jury and will thus be required to place as great an emphasis on legal fundamentals as on drawing out the facts. DCPs are demonstrably more proficient in their knowledge of the law and the legal process than other types of prosecutors in the DCs.
3. District Attorneys, or their designates, are the only prosecutors who may try cases before a six-man jury, according to Mass. G.L.ch. 218, Sec. 27A. Thus, the question of whether DCPs are more qualified than other prosecutors to try cases before six-man juries is, to a large extent, irrelevant. However, the DAs have the power subject to the acquiescence of the individual District Court judges, to appoint other types of prosecutors to perform this function. Should the DAs consider appointing prosecutors other than DCPs to try cases before six-man juries, we believe that they should consider our findings demonstrating that DCPs perform more professionally. We doubt that DAs would attempt to appoint PPs as "special assistant DAs" to perform this function; and further doubt that, if they did, Judges would accept the arrangement.

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\* Discussion of prosecutors in this chapter is limited to those in District Courts, unless explicitly designated otherwise.

4. Jury trials demand painstaking attention to rules of evidentiary admissibility in order to ensure that the jury find the facts without disregarding defendant's constitutional rights. DCPs are more judicious in their approach to cases and thus less likely to err in unduly influencing the jury; they are more skilled in presenting relevant evidence and more cognizant of case law demonstrating the adverse consequences of prejudicing a jury than other prosecutors.
5. Most other prosecutors have gained expertise in prosecuting largely from prior experience at bench trials. However, jury trials require knowledge of special procedures which cannot be acquired through experience at bench trials. Among these are voir dire, opening and final arguments to the jury, requests for instructions, or answers to defense motions. The ramifications of these procedures can only be acquired through experience handling jury cases. PPs and AOs do not possess the necessary legal training or requisite jury experience. Some DCPs, on the other hand, are currently prosecuting jury trials, either through vertical prosecution in the Superior Court, or at appeals sessions in District Court. Those DCPs who presently do not try jury cases have at least acquired the necessary legal background.
6. Since the District Court will become the court of last resort for many more cases, it can be anticipated that defense counsel will prepare District Court cases with more diligence and imagination than they presently do. This means more motions, more dilatory tactics and more showmanship which must meet with appropriate countervailing ability on the prosecution side. DCPs have been rated far above other prosecutors in their ability to respond to such tactics.

### 3. More First-Instance Jury Trials

Two states which have a trial de novo system with a right to first-instance jury trial have had different experiences. In Maryland, approximately 8% of defendants claim an initial jury trial, while in Rhode Island, only about 1% of the defendants do so.\* The Special Committee on Trial de Novo attributes the disparity in number of jury trials claimed

\*Special Committee on Trial de Novo, December 31, 1976, p. 11.

in Maryland and Rhode Island to a policy against granting continuances in Maryland, resulting in many late-filed claims for jury trials as a way to increase delay, and the comparatively limited jurisdiction of the District Courts in Rhode Island.

Since neither of these variables applies to Massachusetts District Courts, the experiences of Maryland and Rhode Island may be nugatory. Initial jury claims in Massachusetts will, however, depend on such factors as the extent of delay in prosecuting cases, plea-negotiation policies, continuance policies, adequate procedures for discovery, and availability of a sufficient number of Judges and prosecutors. If Massachusetts' experience resembles Maryland's, there will be significantly more first-instance trials,\* and thus a corresponding need for more DCPs.

#### 4. More Appeals in the District Court?

If Massachusetts' experience parallels that of Rhode Island and most defendants opt for a first-instance bench trial, there will still be more jury trials in the District Court. Thus even though there would be fewer jury trials under this option than if large numbers of defendants selected first-instance jury trials, there will be some increase due to the number of cases which will be appealed de novo in the District Court. However, it does not necessarily follow that if DCPs are to handle District Court jury trials, that more DCPs must be hired if the number of trials increases. This is so because the apparent need for an increase in the number of prosecutors in the District may be offset by the number no longer needed in Superior Court to try de novo appeals. Whether the number of prosecutor hours released by the termination of de novo appeals will be sufficient to handle the corresponding increases in District Court is unclear. A de novo appeal takes up less time than other types of cases in Superior Court. The Committee on Trial de Novo feels that full-time status for ADAs will eliminate the problem of insufficient manpower since Chapter 542 of the Acts of 1976 prohibits the private practice of law by Superior Court ADAs after December 1978, and many ADAs are being required to go full-time well before the deadline. However, it must be reiterated that this feeling is not based on any data, and it is equally possible that changing the status of ADA's from part-time to full-time may not make ADA's any more available to the District Courts than at present.

### E. RECOMMENDATIONS

#### 1. Maintain the District Court Prosecutor Programs

The DCP Programs are needed. They have accomplished their key objectives. They provide the potential for meeting other desirable objectives. The presence of the DCPs will be even more acutely required, if

\*Special Committee on Trial de Novo, p. 9.

the recommendations of the Cox Committee report are implemented. For these reasons, we recommend that the Commonwealth of Massachusetts fund the continuation of the DCP Programs.

## 2. Selection of DCPs

Not everyone, not even every lawyer, has the personality, motivation, or trial attorney instincts to achieve excellence in District Court prosecution. In order to ensure quality of representation for the Commonwealth equal to that available to the defense (which is naturally selected, at least as far as private defense counsel goes, by survival of the fittest), we recommend that the DAs establish some minimum candidate qualification requirements to be applied to all future DCP hiring. Suggested selection criteria includes such indications of the following as can be evidenced in a stressful (to the candidate) group interview:

- ability to react quickly to implications of new developments and to think on his/her feet
- independence of judgment
- willingness to negotiate and ability to do so
- willingness to consider the needs of defendants as individuals without sacrificing the interests of the Commonwealth in law enforcement and citizen protection
- contentionsness in court, but not out of it
- detachment
- willingness to be on call for advice 24 hours a day
- ability to gain the confidence of the police and to work with them

We further recommend that the DAs use selection committees of experienced prosecutors, Judges, and police officers to screen the wealth of candidates available, using the above criteria in the hiring process to provide an experienced and impartial basis for selection.

In some Prosecutorial Districts, student prosecutors are used. These are assigned by law schools to learn some of the elements of prosecution by direct experience. They are supervised both by law school faculty

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\*It is preferable that Judges on a District's selection committee preside over courts in other Districts. The function of the Judge on the committee is to select candidates who will perform well as prosecutors, not necessarily those whom he would like prosecuting in front of him personally.

and by DCPs. (A similar arrangement exists on the defense side.) They are given relatively uncomplicated and minor cases to prosecute. Student prosecutor programs have proven to be an excellent source of new DCP hires in the past. We commend them for the future. Any one who has been a student prosecutor, in any District, has sharpened his/her prosecutorial skills. Further, selection from among those who have been student prosecutors in a given District is based on considerably better information about the candidate, than is the case with those who have not been observed in prosecution by DCPs (and sometimes the Chief DCP) in the hiring Prosecutorial District.

### 3. Training DCPs

Only some law schools teach trial tactics, and fewer teach criminal law procedures, because only a minority of lawyers specialize in criminal law, and because such trial tactics do not form part of examinations for the Massachusetts Bar. Our interviews indicated that a large proportion of DCPs are hired straight out of law school. (The same is evidently true of the Massachusetts Defenders.) Some newly hired DCPs, but by no means all, have participated in optional law school experiences, either didactic or experimental, which taught them about, gave them practice in, or exposed them to criminal trial counsel responsibilities and techniques (prosecution or defense) in District Courts.

We do not believe that new DCPs without training can quickly acquire a level of proficiency comparable to that of experienced defense counsels. While brief observation of an experienced DCP, followed by the present system of on-the-job training, capped by experience through trial and error, can smooth rough edges and help inexperienced DCPs to gain confidence, we do not believe that it can equip DCPs with sufficiently broad-based knowledge of prosecution (as opposed to the law) to enable them to competently handle situations which arise for the first time.

We therefore recommend that the DAs establish both a training program for incoming DCPs and a continuing education series for more experienced DCPs, and that they either contract out for these services or develop a program using experienced ADAs or Chief DCPs as instructors.

#### a. Preservice Training

We suggest the following guidelines (adopted from those of the Massachusetts Defenders Committee) for developing the preservice training program:

1. The program should be repeated at least on a semi-annual basis, or as often as there are sufficient numbers of incoming DCPs.
2. The enrollment for any session should not exceed 10 new DCPs.

3. The program should be administered in one location for a period of at least two weeks, from 9 a.m. to 5 p.m.

We consider the following topics to be essential to a working knowledge of prosecution in the District Court and thus to form the training curriculum:

1. District and Superior Court jurisdiction.
2. Elements of statutory and common law offenses, together with punishments.
3. Massachusetts and constitutional criminal case law.
4. Massachusetts criminal procedure.
5. Possible dispositions in the District Court.
6. Rules of evidence.
7. Procedures for admission of all types of evidence.
8. Powers of the DCP.
9. Common deficiencies in police investigative techniques and their unique role as witnesses.

We recommend that preservice training accomplish the objectives of developing

- a working knowledge of the substantive topics listed above,
- facility with procedures for admission of all types of evidence,
- ability to appreciate the roles of prosecution and defense and the difficulties of being a witness,
- working knowledge of training in prosecution that police commonly receive, together with a plan of action for a continuing education series for the benefit of the police.

by means of the following model:

1. A syllabus should be developed abstracting the information from the Massachusetts Prosecutors' Handbook and other sources covering substantive topics listed above together with assigned case readings.

2. The syllabus should correspond to and provide background reading for a series of hypotheticals, each involving common legal and evidentiary policies which would provide the basis for classroom study and discussion.

[Examples of sample problem: Alcoholic Beverage Commissioner sees minor in bar being served; he arranges arrest of bartender, taking samples of the minor's glass and the bottle. The points to be covered are:

- a. examination of applicable law
  - b. how to get alcohol tests into evidence
  - c. chain of possession problem.]
3. Part of the syllabus should include inputs from experienced DCPs and criminal justice specialists as to their views on common needs for improvement in police, both as witnesses and as investigators. The DCPs should become versed in the structure and responsibilities of members of police department as well as routine procedures used for investigation of cases and compilation of evidence.
  4. Of the study and discussion portion of the session, 25% should be spent in one-on-one practice in direct examination, cross-examination and arguments related to the hypotheticals. Commentary from students about each other's performance should be solicited.
  5. The class should be divided into teams of four for this purpose, rotating each team member among the roles of defense, prosecutor and witnesses.
  6. The session should end in a two or more days of mock trial in a local courtroom, with a District Court Judge presiding, and lay witnesses. The hypothetical used for the trial should be more complicated than those used for classroom practice, but it should present a kind of case which arises frequently in District Court. Students should be given a short time to prepare. Two team members serve together as co-counsel for the prosecution and two for the defense.
  7. Each DCP should emerge from the session with a plan of action for contacting police and setting up a format for educational seminars for police.

#### b. Inservice Training

We recommend that the DAs sponsor a continuing legal education series in criminal practice at least semi-annually. The DAs should require as a condition of continued employment that DCPs attend these sessions. This program would accommodate many more students than the initial program and might consist of lectures and demonstrations by experts on advanced trial tactics and techniques.

[Example: how to introduce non-hearsay portions of business documents; how to object to hearsay portions.]

We further recommend that the DAs instruct each Chief DCP (CDCP) to organize at least bi-monthly discussion sessions with DCPs. These meetings should be a forum for the exchange of experiences, for briefing on new law, and for discussion of policies of the DA. The CDCP should be responsible for distributing Advance Sheets to the DCPs at these meetings, or as soon as they become available. Such discussion sessions take place in some Districts. Their wider use would improve the quality of the DCP Programs.

#### 4. Increasing Uniformity Among DCPs in Each Prosecutorial District

The presence of DCPs, responsible to each DA through the Chief District Court Prosecutor, provides the DA with a golden opportunity to make his presence, programs, and policies felt in each District Court in his District. In order to actualize this potential, we reiterate our recommendation for bi-monthly meetings of the DCPs in a District. We further recommend the development of written guidelines (which may be changed with changing priorities and circumstances) for the DCP on the following aspects of the authority and responsibility of the DCP:

- Circumstances under which plea-bargaining, negotiation with defense counsel, reducing to lesser charges, motions to dismiss, and other accommodations with the defense are advisable or desirable.
- Other circumstances in which such accommodations are inadvisable, and, in fact, unusually intensive case preparation to buttress a case is indicated.
- The DCPs' relationships with and responsibilities to ADAs at the Superior Court who receive cases which the DCP prosecuted at the DC.
- Actions and matters to be cleared with or communicated to the CDCP or DA. To the extent that the guidelines are sufficiently clear and cover the necessary areas, the need for such case-by-case guidance will be reduced from its present level.

## 5. Support

For the DCP Programs to use their funds and their DCPs to the best effect, support staff is necessary. Such staff will allow full capitalization on the DCPs' legal background and ability and assure the opportunity for correct utilization of his time. The recommendations, below, for supplying such staff require changes in the pending legislation, to be implemented.

We recommend, at a minimum, that each Prosecutorial District with fewer than ten DCPs (full-time or part-time) be provided one clerical person capable of transcribing handwritten or dictated material; and that each court district with 10 or more DCPs (full-time or part-time) be provided two such clerical people capable of transcribing handwritten or dictated material. DCPs need clerical support, not only to type responses to motions, case summaries, case evaluations, records, and reports, but to take phone call messages while the DCPs are in court.

Additionally, we recommend that programs be initiated to assure that DCPs have proper administrative and/or screening support. In some cases, PPs do, and can continue to, provide this. Programs could be established with those law schools within the Commonwealth that will provide law students to work in the court system as partial credit towards graduation. Otherwise we recommend funding of an administrative position.

An administrator is necessary to effect the maximum utilization of the DCP's time, and indirectly, to assist the courts in operating smoothly and effectively. An individual designated as administrator could perform the following:

1. Allocate trial dates equally over a designated period of time among available DCPs at arraignment.
2. Set continuances and conferences.
3. Call all necessary witnesses.
4. Ensure that all parties are available for the trial.
5. Conduct initial interviews that would eliminate unnecessary witnesses or discover personality weaknesses in key witnesses.
6. Obtain necessary reports, tests, and other evidence.
7. Explain the complexities of trial outcomes to police, witnesses, and victims.

The degree to which an administrator is needed to supplement PPs varies from court to court. In large urban courts which cover only one municipality, or which include one or more large cities or towns, the municipality(ies) generally provide one or more Case Supervisors who

carry out some of the above functions, particularly 3, 4, and 6. But in courts that cover many smaller towns, no single continuing administrative presence, working on behalf of the DCP, resides in the court. In all courts, Case Supervisors, Police Liaison personnel, or PPs who also prosecute act as a useful administrative interface between the DCPs and police forces. We recommend that these positions be maintained, but supplemented by administrators specifically responsible to the CDCP.

We recommend that the hours of those in the administrative positions be tied to court hours. Where a court meets every day, a continuing presence during the whole week is necessary. However, a court which meets less often can be adequately covered by a part-time administrator.

#### 6. Compensation of DCPs and Funding of the DCP Programs

The scope of our study did not include costs and compensation. We do believe that our understanding of the way the programs function is sufficient to suggest to the Commonwealth some considerations in setting compensation. Consistent with the decentralized nature of the programs, and the responsibilities of the DA for prosecution of criminal cases in his Prosecutorial District, we suggest to the Commonwealth that it is preferable to fund each District's program with a program budget, rather than to constrain the DA to a given number of positions in each DCP grade. This will allow the DA discretion over how to allocate resources-- DCP, clerical, and administrative\*--in his program. Since the DA is responsible for the end result, and is familiar with the (sometimes changing) configurations of courts, scheduling, and case load by type, the program budget approach is likely to result in resource allocations more fitting to the local situation than sets of positions established by legislation.

We further suggest that consistent statewide salary structures be set for full-time DCP, clerical, and administrative positions,\* with the proviso that unpaid positions are possible for probationary DCPs and for administrators placed by law school programs. Part-time DCPs and administrators (see discussion below) should be paid pro-rata in relation to the number of hours they work.

A hierarchy of DCP grades is suggested, with grades (and their full-time salary) related to trial experience and supervisory responsibility over other DCPs. We observed that a DCP who is the only one in his/her court requires more experience, discretion, and independent judgment than a DCP who has fellow DCPs in his/her court to consult with. The additional demands of the lone DCP should, we suggest, be reflected in grade and full-time salary level.

---

\* These assume that legislation is amended to include clerical and administrative support.

## 7. Full-Time DCPs Versus Part-Time DCPs

The data clearly indicate a need for full-time DCPs in all ten Districts.

Would the DCP Programs be improved if all DCPs served full-time? We recommend that full-time DCPs be used in any court that has enough work for them, typically a large urban court. We recommend that the DCP Programs consist of a core of full-time DCPs, supplemented by part-time DCPs only under specific circumstances. These part-time DCPs are appropriate in some rural Prosecutorial Districts including courts which meet infrequently, where

- the total work load is not commensurate with a number of full-time DCPs; or
- court scheduling makes it impossible for one full-time DCP to cover a pair of infrequently sitting courts; or
- infrequently sitting courts are so distant from one another that it becomes uneconomical for one DCP to cover them.

Although we found many respects in which the performance of full-time DCPs was not different from that of part-timers, we believe that the full-time DCPs have the advantage because:

- Full-time DCPs devote more time to their DCP duties;
- Full-timers are more likely to take the time to screen complaints prior to issuance and to prepare case summaries for cases bound over or appealed;
- Full-timers are less likely to experience, or appear to experience, conflicts of interest;
- With full-time DCPs, there is less opportunity for the fact or the suspicion that DAs are using many part-time DCP slots as patronage.

## 8. Intake Screening

Some intake screening takes place as part of any prosecutor's activities. We did not find evidence that special assignment of some DCPs or ADAs to concentrate on intake screening improves the functioning of the DCP Program.

The critical question is whether enough manpower is supplied to the prosecution. If enough DCPs are allocated to handle the caseload, we see no particular advantage to having some of them specialize in intake screening. In fact, there appear to be advantages to having the same

DP screen the case and then argue it, since the screening augments case preparation, and since the screener knows that he/she will have to argue the case and will be held responsible for its outcome.

#### 9. Vertical Prosecution

We endorse the concept of vertical prosecution and recognize the potential benefits to be gained by its use. At the same time, we realize the associated problems that come with its implementation.

No two Districts are the same. The number of courts, their sessions, and their geographic configurations differ. The staffs of each court district differ in quantity, and workload. We therefore, recommend that each DA seriously consider the feasibility of implementing vertical prosecution, if he has not already done so, and use his own discretion as to whether it would be beneficial to his particular District.

The biggest difficulty with vertical prosecution is proper scheduling. Where a DA decides to use vertical prosecution, he would be well advised to obtain the cooperation of the Superior Court to institute the system used now in one Prosecutorial District. The Superior Court hears all cases from a given District Court on a given afternoon each week. This allows the DCP(s) from that court to schedule their Superior Court Appearances without interfering with their primary responsibilities in the lower court.

#### 10. Court Scheduling

We have mentioned the difficulties of some DCPs confronted with two cases for whose prosecution they are responsible going to trial simultaneously, either in two courts or in two sessions of the same court. In order to obviate this, we recommend to the courts that they be more accommodating to the prosecutorial side, in terms of case scheduling. This becomes more important if the proportion of full-time DCPs is increased. Where one DCP covers two or more courts, such courts can hold their sessions on different days. Or (as is done in some courts) they can hold felony sessions on days different from one another. When a court has two or more sessions, cases which the DCP will prosecute can be scheduled for the same session. We realize that courts must respond to a number of constraints and desiderata in their scheduling, but do not believe that such accommodation will work any severe hardship or contravention of other scheduling considerations.

**CONTINUED**

**1 OF 4**

70067

2 of 2

AN ASSESSMENT OF THE DISTRICT COURT PROSECUTOR PROGRAMS  
APPENDICES

Final Report to the

Massachusetts Committee on Criminal Justice

April 1977

80304-09

NCJRS

AUG 20 1980

ACQUISITIONS

Points of view or opinions expressed in this report  
are those of the researchers and do not necessarily represent  
the official opinion or policy of the Committee on Criminal Justice

Arthur D. Little, Inc.

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APPENDIX A

QUESTIONNAIRES, OBSERVATION GUIDES, RECORDS ANALYSIS FORM, AND  
INTERVIEW GUIDES USED

DISTRICT COURT JUDGE QUESTIONNAIRE

Arthur D. Little, Inc. ACORN PARK • CAMBRIDGE, MA 02140 • (617) 864-5770 • TELEX 921436

February 18, 1977

Dear District Court Justice:

Attached to this letter is one from the Executive Director of the Massachusetts Committee on Criminal Justice, and a questionnaire. The questionnaire is sent to you as a person with important information and insights about District Court Prosecutors and other elements of prosecution in the District Courts of the Commonwealth. It is being sent to the majority of District Court Justices. We are personally interviewing the other District Court Justices.

The contents of your returned questionnaire will be confidential, and its answers will not be identified with you in any way. We have, however, placed a code number on your questionnaire, so that we can check it off when it is returned.

We ask that you fill out the questionnaire thoughtfully and completely and that you return it no later than February 28. It will take no more than half an hour to complete. We will have the benefit of your experiences, point of view, and insights, only if you return the questionnaire. Please feel free to add any comments or suggestions.

Thank you in advance for your cooperation.

Sincerely yours,

*Anton S. Morton*

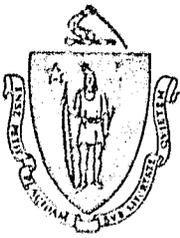
Anton S. Morton  
Project Director

cc: Ms. Karen Joerg, MCCJ

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CAMBRIDGE, MASSACHUSETTS

ATHENS BRUSSELS LONDON PARIS RIO DE JANEIRO SAN FRANCISCO TORONTO WASHINGTON WIEGRADEN



The Commonwealth of Massachusetts

COMMITTEE ON CRIMINAL JUSTICE

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ROBERT J. KANE  
EXECUTIVE DIRECTOR

To Whom It May Concern:

The Massachusetts Committee on Criminal Justice (MCCJ) has retained Arthur D. Little, Inc. (ADL), a management consulting firm of Cambridge, Massachusetts, to carry out an assessment of the District Court Prosecutor Program which has been funded by MCCJ. ADL will determine the need for the Program, assess its accomplishments, assess proposed program modifications and make recommendations thereupon, and possibly perform a cost analysis.

ADL has a difficult and complex assignment to accomplish in three months. In order to obtain the information needed to carry out the assessment, they will need to talk with many people involved in various ways with the courts of the Commonwealth. They will also need to receive completed questionnaires from such people, observe some of them in the performance of their duties, and gather large quantities of information about the functioning of the District Courts and, to some extent, the Superior Courts.

We believe that the District Court Prosecutor Program is an important part of the Commonwealth's court system, and that this assessment is important, not only to MCCJ, but also to the courts. We ask that you accord ADL your wholehearted cooperation and assist them in their study. ADL will treat your inputs as confidential. Their reports to us will not identify any individual or institution.

If you have any questions, please address them to Karen Joerg, MCCJ Assistant Director of Evaluation, 617-727-6958 or to the ADL Project Director, Dr. Anton S. Morton, 617-864-5770, extension 3129.

Sincerely yours,

Robert J. Kane  
Executive Director

RJK:kjm

DISTRICT COURT JUDGE

QUESTIONNAIRE

DISTRICT COURT \_\_\_\_\_

1. How many years have you served as a District Court Judge? \_\_\_\_\_ years (6) (7)

2. How many years have you presided in this District Court? \_\_\_\_\_ years (8) (9)

Please answer the remaining questions based on your experiences of the last twelve months as a District Court Judge.

3. Which of the following has prosecuted within your court sometime during the last twelve months? (Please check as many as apply.)

\_\_\_ 1. DCP - District Court Prosecutor(s) (10)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the district courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney--ADA.)

\_\_\_ 2. PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

\_\_\_ 3. AO - Arresting Officer(s) - serving as prosecutor

A police officer or detective serving as prosecutor because he is the arresting officer.

\_\_\_ 4. TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a district court for cases within his jurisdiction

## Definitions

A simple case: A case consisting of a factual variable or combination of variables that makes the prosecution of the case a rather uncomplicated process, fairly free from secondary complications, and overall causing little difficulty. An example of such a case would be one that is frequently tried in your district court and generally requires little evidence to prove any element.

A complex case: A case consisting of a factual variable or a combination of variables that makes the case a rather complicated and/or difficult process. An example of such a case would be one that consists of one or more difficult elements to prove, requires a substantial command of the law, persuasion, and use of trial tactics by the prosecutor.

4. Cases Prosecuted

Below are four small tables, one for each prosecutorial category of interest. For each applicable category, estimate how its prosecutorial case load is divided up among the four types of cases, based on the cases you have heard in this district court prosecuted by members of that category within the last twelve months. If a category of prosecutors does not serve in your court, mark "not applicable." Make sure that the estimated percentages add up to 100%. For example, the judge who filled out the table below estimated that 60% of the cases which DCPs prosecuted before him in the last 12 months were simple felonies, another 25% were complex felonies, and 15% were complex misdemeanors. None of the DCPs' cases were simple misdemeanors.

E X A M P L E

District Court Prosecutor(s)

Simple misdemeanors	<u>0</u> %
Complex misdemeanors	<u>15</u> %
Simple felonies	<u>60</u> %
Complex felonies	<u>25</u> %
Total	100%

District Court Prosecutor(s)

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
Simple misdemeanor	_____ %	
Complex misdemeanor	_____ %	<input type="checkbox"/> not applicable
Simple felonies	_____ %	
Complex felonies	_____ %	
Total	100%	

Arresting Officer(s)-serving as prosecutor

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
Simple misdemeanor	_____ %	
Complex misdemeanor	_____ %	<input type="checkbox"/> not applicable
Simple felonies	_____ %	
Complex felonies	_____ %	
Total	100 %	

Police Prosecutors

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
Simple misdemeanor	_____ %	
Complex misdemeanor	_____ %	
Simple felonies	_____ %	<input type="checkbox"/> not applicable
Complex felonies	_____ %	
Total	100%	

Town/City Solicitor(s)/Prosecutors

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
Simple misdemeanor	_____ %	
Complex misdemeanor	_____ %	
Simple felonies	_____ %	<input type="checkbox"/> not applicable
Complex felonies	_____ %	
Total	100%	

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-2-

Arthur D Little, Inc

If there is more than one category of prosecutor within your court, please answer the following questions. If not, please skip to Question 50 on page 11.

We recognize that for each prosecution category there are some highly qualified and experienced individuals and there are those that are not so highly qualified or experienced. We are asking you to consider the typical individual within each category based on your overall experiences of the last twelve months.

**DIRECTIONS:** For each question we are asking you to compare the different procedural or quality traits between the prosecution categories that you have previously identified as prosecuting within your court (refer to Question 3). Each question asks you to identify the extremes (i.e., highest, lowest; most, least) qualities and quantities by placing a check mark (✓) below one of the prosecution categories listed. If you do not know or cannot determine, place a check mark under the heading "don't know." The order in which the prosecution categories appear will differ for each question. If you have all categories prosecuting in your court and you believe that two, three, or all four prosecution categories are equal, place a check mark (✓) under each of those that apply.

**EXAMPLE:** (There are no TC prosecuting in this court.)

Question	AO	DCP	PP	TC	Don't Know
Who is (most, least) likely to drive a Ford?	MOST	✓	✓		
	LEAST			✓	

The judge who filled in the example placed no check mark under "TC," since no TCs have prosecuted in his court in the last year. All the PPs in his court drive Chevrolets and Buicks, so he checked "Least" under PP. About half the AOs and DCPs prosecuting in his court drive Fords, so he checked "Most" under both of these categories. (Of course, if all AOs drive Fords, but a third of DCPs drive Fords, the judge would have checked "Most" under AO, and left two blank spaces under DCP.)

AO = Arresting officer - serving as prosecutor

DCP = District Court Prosecutor

PP = Police Prosecutor

TC = Town/City Solicitor/Prosecutor

Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

<u>QUESTIONS</u>		1	2	3	4	5	
		PP	TC	AO	DCP	Don't Know	
5.	Who has the (highest, lowest) quality case preparation?	HIGHEST					(11)
		LOWEST					(12)
6.	Who spends the (most, least) amount of trial time in prosecution of a case?		DCP	PP	TC	AO	Don't Know
		MOST					(13)
		LEAST					(14)
7.	Who is (most, least) likely to agree to reduced charges when warranted by the facts?		AO	DCP	PP	TC	Don't Know
		MOST					(15)
		LEAST					(16)
8.	Whom are you (most, least) tempted to assist in clarifying points of law during trial sessions?		TC	AO	DCP	PP	Don't Know
		MOST					(17)
		LEAST					(18)
9.	Who do you believe is the (most, least) suited to match the "new aggressiveness" on the part of the defense counsel?		PP	TC	AO	DCP	Don't Know
		MOST					(19)
		LEAST					(20)
10.	Whose cases are you (most, least) likely to dismiss for lack of prosecution?		DCP	PP	TC	AO	Don't Know
		MOST					(21)
		LEAST					(22)
11.	Whose prosecution has generated the (most, least) citizen criticism?		AO	DCP	PP	TC	Don't Know
		MOST					(23)
		LEAST					(24)

A-13

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Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

QUESTIONS		1	2	3	4	5	
		PP	TC	AO	DCP	Don't Know	
12	Who do you believe is the (most, least) qualified to improve the quality with which the Commonwealth is represented in criminal proceedings in your courts?	MOST					(25)
		LEAST					(26)
		DCP	PP	TC	AO	Don't Know	
13	Who makes the (most, least) use of motions during trial sessions?	MOST					(27)
		LEAST					(28)
		AO	DCP	PP	TC	Don't Know	
14	Who has the (most, least) efficient case presentation?	MOST					(29)
		LEAST					(30)
		TC	AO	DCP	PP	Don't Know	
15	Who would you (most, least) like to prosecute a case before you?	MOST					(31)
		LEAST					(32)
		PP	TC	AO	DCP	Don't Know	
16	Who is the (most, least) skilled in trial tactics?	MOST					(33)
		LEAST					(34)
		DCP	PP	TC	AO	Don't Know	
17	Who do you believe has the (higher, lower) rate of cases appealed to the Superior Courts?	HIGHER					(35)
		LOWER					(36)
		AO	DCP	PP	TC	Don't Know	
18	Who is the (most, least) likely to enter complete and relevant evidence?	MOST					(37)
		LEAST					(38)

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Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

QUESTIONS

		1	2	3	4	5	
		PP	TC	AO	DCP	Don't Know	
19.	Who makes the (most, least) use of vigorous cross-examinations?						(39)
							(40)
20.	Who is (most, least) qualified to serve as prosecutor within your court?						(41)
							(42)
21.	Who is (most, least) likely to have cases continued at the district court level for want of prosecution, including non-appearance of prosecution witnesses?						(43)
							(44)
22.	Who gives you the (most, least) opportunity to assume a neutral role in court proceedings?						(45)
							(46)
23.	Who spends the (most, least) amount of attention to detail in proving all elements of a case?						(47)
							(48)
24.	Who is (most, least) likely to present arguments in case summation?						(49)
							(50)
25.	Who is (most, least) adept in evidentiary procedures?						(51)
							(52)

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-9-

Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

<u>QUESTIONS</u>		1	2	3	4	5	
		DCP	PP	TC	AO	Don't Know	
26.	Who has the (greatest, least) command of rules of evidence?	GREATEST					(53)
		LEAST					(54)
27.	Who is the (most, least) suited to be viewed by the public as impartial in his contribution to the administration of justice?		AO	DCP	PP	TC	Don't Know
		MOST					
		LEAST					(56)
28.	Who has the (most, least) knowledge of which laws apply to particular cases?		TC	AO	DCP	PP	Don't Know
		MOST					
		LEAST					(58)
29.	Who is (most, least) likely to counter defense motions?		PP	TC	AO	DCP	Don't Know
		MOST					
		LEAST					(60)

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Remember to respond in terms of the typical prosecutor found in each category

(1) (2) (3) (4) (5)

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

QUESTIONS

		1	2	3	4	5	
		PP	TC	AO	DCP	Don't Know	
33.	Who is (most, least) likely to be responsive to the prosecution priorities established by the DA?	MOST					(6)
		LEAST					(7)
		DCP	PP	TC	AO	Don't Know	
34.	Who has the (most, least) effective case presentation?	MOST					(8)
		LEAST					(9)
		AO	DCP	PP	TC	Don't know	
35.	Who do you believe aids (most, least) in achieving quality of justice in the district court?	MOST					(10)
		LEAST					(11)
		TC	AO	DCP	PP	Don't Know	
36.	Who consults the (most, least) with the defense to narrow issues, make stipulations, etc.	MOST					(12)
		LEAST					(13)
		PP	TC	AO	DCP	Don't Know	
37.	Who is the (most, least) likely to recommend and/or agree to diversion programs?	MOST					(14)
		LEAST					(15)
		DCP	PP	TC	AO	Don't Know	
38.	Who do you believe has the (higher, lower) quality of prosecution?	HIGHER					(16)
		LOWER					(17)
		AO	DCP	PP	TC	Don't Know	
39.	Who has the (most, least) skill in eliciting information from witnesses?	MOST					(18)
		LEAST					(19)

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Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

QUESTIONS

		1	2	3	4	5	
		PP	TC	AO	DCP	Don't Know	
40	Who is (most, least) likely to be responsive to prosecution priorities based on local community concern?	MOST					(20)
		LEAST					(21)
		DCP	PP	TC	AO	Don't Know	
41	Who is the (most, least) receptive to disposal of cases at the district court level before they reach the superior court?	MOST					(22)
		LEAST					(23)
		AO	DCP	PP	TC	Don't Know	
42	Who possesses the (most, least) command of the law?	MOST					(24)
		LEAST					(25)
		TC	AO	DCP	PP	Don't Know	
43	Who is (most, least) likely to use effective opening arguments?	MOST					(26)
		LEAST					(27)
		DCP	PP	TC	AO	Don't Know	
44	Who takes the (greatest, least) amount of experience to become proficient as a prosecutor?	GREATEST					(28)
		LEAST					(29)
		PP	TC	AO	DCP	Don't Know	
45	Who is (most, least) likely to engage in constructive plea bargaining?	MOST					(30)
		LEAST					(31)
		TC	AO	DCP	PP	Don't Know	
46	From whom would you be (most, least) likely to accept recommendations as to case disposition (i.e., reductions in charge, dismissals, etc.)?	MOST					(32)
		LEAST					(33)

A-18  
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Remember to respond in terms of the typical prosecutor found in each category

DCP = District Court Prosecutor(s)  
PP = Police Prosecutor(s)

AO = Arresting Officer(s) - serving as prosecutor  
TC = Town/City Solicitor(s)/Prosecutor(s)

QUESTIONS

		1	2	3	4	5		
		AO	DCP	PP	TC	Don't Know		
47.	Who provides the (most, least) logically sequential presentations of evidence?	MOST					(34)	
		LEAST					(35)	
48.	Who is (most, least) likely to hold to strict rules of evidence and law during case presentation?	MOST	DCP	PP	TC	AO	Don't Know	(36)
		LEAST						(37)
49.	Who has the (most, least) familiarity with case management?	MOST	PP	TC	AO	DCP	Don't Know	(38)
		LEAST						(39)
						Don't Know		
						Don't Know		
						Don't Know		
						Don't Know		

A-19  
-10-

Please answer the following:

50. Have you observed a change in the police prosecutors' performance since the advent of District Court Prosecutors?      1. performance has improved (40)  
     2. performance has remained unchanged  
     3. performance has declined  
     4. don't know; not applicable
51. Have you observed a change in the arresting officers' performance as prosecutors since the advent of the District Court Prosecutors?      1. performance has improved (41)  
     2. performance has remained unchanged  
     3. performance has declined  
     4. don't know; not applicable
52. In the last twelve months, have you ever requested that a DCP handle the prosecution for a particular case? 1. Yes      2. No      (42)
- 52a. If yes, how many times?
53. Do you believe the District Court Prosecutor Program has changed the presentation of the defense?      1. presentation has improved (43)  
     2. presentation has remained unchanged  
     3. presentation has diminished
54. Would the District Court Prosecutor Program be improved if all DCPs served full-time? 1. Yes      2. No      3. Don't Know      (44)
55. Some believe that the continuation of the DCP in some form is essential to the success of the "Cox" reports' recommendations for strengthening the district courts? Do you: 1. Agree      2. Disagree      3. Don't Know      (45)

     2  
(80)

56. Are there any suggestions or comments you would like to make regarding the District Court Prosecutor Program or District Court Prosecutors? Police Prosecutors? Arresting Officers? Town/City Solicitor/Prosecutors? Prosecutors in general?

Please list: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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Other comments: \_\_\_\_\_  
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THANK YOU!

DISTRICT COURT PROSECUTOR  
(ASSISTANT DISTRICT ATTORNEY)  
QUESTIONNAIRE

Arthur D. Little, Inc. ACORN PARK · CAMBRIDGE, MA 02140 · (617) 864-5770 · TELEX 921436

February 25, 1977

Dear District Court Prosecutor (Assistant District Attorney):

Attached to this letter is one from the Executive Director of the Massachusetts Committee on Criminal Justice, and a questionnaire. The questionnaire is sent to you as a person with important information and insights about District Court Prosecutors and other elements of prosecution in the District Courts of the Commonwealth. It is being sent to the majority of District Court Prosecutors. We are personally interviewing the other District Court Prosecutors. (If you are scheduled to be interviewed or have been interviewed by a member of the ADL project team, please disregard the questionnaire.)

The contents of your returned questionnaire will be confidential, and its answers will not be identified with you in any way. We have, however, placed a code number on your questionnaire, so that we can check it off when it is returned.

We ask that you fill out the questionnaire thoughtfully and completely and that you return it no later than March 7. It will take no more than half an hour to complete. We will have the benefit of your experiences, point of view, and insights, only if you return the questionnaire. Please feel free to add any comments or suggestions.

Thank you in advance for your cooperation.

Sincerely yours,



Anton S. Morton  
Project Director

cc: Ms. Karen Joerg, MCCJ

A-25

CAMBRIDGE, MASSACHUSETTS

ATHENS BRUSSELS LONDON PARIS RIO DE JANEIRO SAN FRANCISCO TORONTO WASHINGTON WIESBADEN



The Commonwealth of Massachusetts

COMMITTEE ON CRIMINAL JUSTICE

110 TREMONT STREET - 4TH FLOOR - BOSTON 02108

(617) 727-6958

MICHAEL S. DUKAKIS  
GOVERNOR  
FRANCIS X. BELLOTTI  
ATTORNEY GENERAL  
CHAIRMAN

ROBERT J. KANE  
EXECUTIVE DIRECTOR

To Whom It May Concern:

The Massachusetts Committee on Criminal Justice (MCCJ) has retained Arthur D. Little, Inc. (ADL), a management consulting firm of Cambridge, Massachusetts, to carry out an assessment of the District Court Prosecutor Program which has been funded by MCCJ. ADL will determine the need for the Program, assess its accomplishments, assess proposed program modifications and make recommendations thereupon, and possibly perform a cost analysis.

ADL has a difficult and complex assignment to accomplish in three months. In order to obtain the information needed to carry out the assessment, they will need to talk with many people involved in various ways with the courts of the Commonwealth. They will also need to receive completed questionnaires from such people, observe some of them in the performance of their duties, and gather large quantities of information about the functioning of the District Courts and, to some extent, the Superior Courts.

We believe that the District Court Prosecutor Program is an important part of the Commonwealth's court system, and that this assessment is important, not only to MCCJ, but also to the courts. We ask that you accord ADL your wholehearted cooperation and assist them in their study. ADL will treat your inputs as confidential. Their reports to us will not identify any individual or institution.

If you have any questions, please address them to Karen Joerg, MCCJ Assistant Director of Evaluation, 617-727-6958 or to the ADL Project Director, Dr. Anton S. Morton, 617-864-5770, extension 3129.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert J. Kane".

Robert J. Kane  
Executive Director

RJK:kjm

DISTRICT COURT PROSECUTOR  
(ASSISTANT DISTRICT ATTORNEY)  
QUESTIONNAIRE

DISTRICT COURT(S) IN  
WHICH YOU PROSECUTE:

\_\_\_\_\_  
\_\_\_\_\_

JOB TITLE:

\_\_\_\_\_

1. How many years have you been assigned to the District Courts as a District Court Prosecutor (DCP) or an Assistant District Attorney (ADA)? \_\_\_\_\_ years

(6)(7)

2. When did you begin your job as a DCP (ADA) in this court district?

\_\_\_\_\_ month \_\_\_\_\_ year  
(8)(9) (10)(11)

Please answer the remaining questions based on your experiences of no more than the last twelve months as a DCP (ADA) within the court district.

3. Are you full-time or part-time?

(12)

Please check one: \_\_\_\_\_ 1 full-time  
\_\_\_\_\_ 2 part-time

4. How many hours per week do you work as a DCP (ADA)?

(13)(14)

\_\_\_\_\_ hours per week

4a. How many days per week do you work as a DCP (ADA)?

\_\_\_\_\_ days per week

(15)

4b. How many weeks per year do you work as a DCP (ADA)?

\_\_\_\_\_ weeks per year

(16)(17)

5. Do you maintain regular office hours? 1 yes 2 no (18)

5a. If yes, what are they? From (19-22) to (23-26)

6. Are you permitted a private practice? 1 yes 2 no (27)

6a. If yes, do you have a private practice? 1 yes 2 no (28)

7. Are you considered an Assistant District Attorney assigned to the District Courts? 1 yes 2 no (29)

7a. Do you currently have the same authority as an Assistant District Attorney at the Superior Court? 1 yes 2 no (30)

8. Do you have policies and guidelines with regard to prosecution that you work under? 1 yes 2 no (31)

8a. If yes, are they written? 1 yes 2 no 3 don't know (32)

9. Which of the following has (have) prosecuted within your court district sometime during your last 12 months of tenure as a DCP (ADA)? (Please check as many as apply.) (33)

1 PP - Police Prosecutor(s)  
A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

2 AO - Arresting Officer(s) - serving as prosecutor  
A police officer or detective serving as prosecutor because he is the arresting officer.

3 TC - Town/City Solicitor(s)/Prosecutor(s)  
Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a district court for cases within his jurisdiction.

10. Approximately, how many cases have you prosecuted within the last twelve months or less?

(34-37)

number of cases prosecuted

Please estimate how the total number of cases you prosecuted within the last twelve months or less (refer to Question #9) are divided up among the following four types of cases.

Case Definitions

A simple case: A case consisting of a factual variable or combination of variables that makes the prosecution of the case a rather uncomplicated process, fairly free from secondary complications, and overall causing little difficulty. An example of such a case would be one that is frequently tried in your district court and generally requires little evidence to prove any element.

A complex case: A case consisting of a factual variable or a combination of variables that makes the case a rather complicated and/or difficult process. An example of such a case would be one that consists of one or more difficult elements to prove, requires a substantial command of the law, persuasion, and use of trial tactics by the prosecutor.

For example, the DCP (ADA) who filled out the table below estimated that 60% of the total cases prosecuted by him in the last 12 months were simple felonies, another 25% were complex felonies, and 15% were complex misdemeanors. None of his cases were simple misdemeanors.

E X A M P L E

<u>Type of Case</u>	<u>% of Total Cases Prosecuted (12 months or less)</u>
Simple misdemeanors	<u>0</u> %
Complex misdemeanors	<u>15</u> %
Simple felonies	<u>60</u> %
Complex felonies	<u>25</u> %
	Total 100 %

10a. Please estimate how your caseload is divided. Make sure that the estimated percentages add up to 100%.

<u>Type of Case</u>	<u>% of Total Cases Prosecuted (12 months or less)</u>	
Simple misdemeanors	_____ %	(38-40)
Complex misdemeanors	_____ %	(41-43)
Simple felonies	_____ %	(44-46)
Complex felonies	_____ %	(47-49)
	Total 100 %	

Please answer Questions 11 through 31 based on your experiences in prosecuting the type of cases you estimated in Question 10a as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always 1	Fre- quently 2	Occa- sionally 3	Infre- quently 4	Never 5	Don't Know 6	Not Applicable 7	
11. Do you screen complaints prior to issuance?								(50)
11a. Do you insure complaints are properly drafted (free of clerical errors)?								(51)
11b. Do you insure the defendant is properly charged (substantive errors)?								(52)
12. How often would you be likely to agree to reduced charges?								(53)
13. How often do you consult with the defense to narrow issues, make stipulations, etc.								(54)
14. How often do you use opening arguments?								(55)
15. How often do you agree to diversion programs?								(56)
15a. How often do you recommend diversion programs?								(57)
16. How often do you engage in constructive plea bargaining?								(58)
17. How often do you cross-examine witnesses, if available?								(59)

A-32

Please answer Questions 11 through 31 based on your experiences in prosecuting the type of cases you estimated in Question 10a as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always 1	Fre- quently 2	Occa- sionally 3	Infre- quently 4	Never 5	Don't Know 6	Not Applicable 7	
18. How often do you counter defense motions?								(60)
How often do you employ the following motions?								(61)
19a. nolle prosequi?								(62)
19b. move to have case placed on file?								(63)
19c. request court to enter dismissal?								(64)
20. How often do you make recommendations as to case disposition?								(65)
21. How often do you make a closing argument that a sufficient case has been presented for a guilty finding?								(66)
22. How often do you make recommendations regarding sentencing?								(67)
23. How often do you prepare case summaries for cases bound over to the Superior Court?								(68)
24. How often do you do legal research for your cases or have it done for you?								(69)

A-33

Please answer Questions 11 through 31 based on your experiences in prosecuting the type of cases you estimated in Question 10a as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always 1	Fre- quently 2	Occa- sionally 3	Infre- quently 4	Never 5	Don't Know 6	Not Applicable 7	
25. How often do you review police reports for the first time on the same day as the trial date?								(70)
25a. How often do you review police reports for the first time prior to the trial date?								(71)
26. How often do you speak with witnesses prior to trial?								(72)
27. How often is there consultation between you and the Probation Officer, prior to the issuance of complaints, concerning the dropping of charges or the lessening of serious charges?								(73)
28. How often do you discuss possible alternatives to formal prosecution with the defense prior to formal prosecution?								(74)
29. How often do you participate in pre-trial screening conferences?								(75)
29a. How often are your cases disposed of before trial as a result of pre-trial conferences?								(76)
30. How often do you assure the sufficiency of search warrant affidavits prior to their execution?								(77)
31. How often have you prosecuted a case beginning at the District Court level through final disposition at the Superior Court level or higher?								(78)
								$\frac{1}{(80)}$

A-34

Please answer the remaining questions based on your experiences as a DCP (ADA) of the last twelve months (or less).

32. Approximately how much time do you generally spend preparing a case for trial? (Please check one for each type of case.)

Time Spent Preparing Case for Trial

<u>Type of Case</u>	<u>None</u>	<u>Minutes</u>	<u>Hours</u>	<u>Days</u>	<u>Not Applicable</u>	
Simple misdemeanors	_____	_____	_____	_____	_____	(6)
Complex misdemeanors	_____	_____	_____	_____	_____	(7)
Simple felonies	_____	_____	_____	_____	_____	(8)
Complex felonies	_____	_____	_____	_____	_____	(9)
	1	2	3	4	5	

33. Has there been a change in the number of witnesses needed as a result of pre-trial screening/conferences? (Please check one for each type of case.)

<u>Type of Case</u>	<u>No Change</u>	<u>Little</u>	<u>Some</u>	<u>Significant</u>	<u>Don't Know</u>	<u>Not Applicable</u>	
Simple misdemeanors							(10)
Complex misdemeanors							(11)
Simple felonies							(12)
Complex felonies							(13)
	1	2	3	4	5	6	

34. How often have you received requests for assistance from the other prosecutors within this District Court?

	<u>Continuously</u>	<u>Frequently</u>	<u>Occasionally</u>	<u>Infrequently</u>	<u>Never</u>	<u>Not Applicable</u>	
Police Prosecutor	_____	_____	_____	_____	_____	_____	(14)
Arresting Officer, serving as prosecutor	_____	_____	_____	_____	_____	_____	(15)
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	(16)
	1	2	3	4	5	6	

35. Do police officers consult you before bringing charges against defendants? (17)

\_\_\_\_\_ yes                      \_\_\_\_\_ no  
1    2

35a. If yes, how often? \_\_\_\_\_ 1 daily (18)  
\_\_\_\_\_ 2 a few times a week  
\_\_\_\_\_ 3 a few times a month

36. Have you received requests for advice from police officers in the last twelve months regarding the following areas?

	<u>1</u> Yes	<u>2</u> No	
Stop and Frisk	_____	_____	(19)
Search and Seizure	_____	_____	(20)
Identification Procedures	_____	_____	(21)
Lineups	_____	_____	(22)
Issuance of search warrants	_____	_____	(23)
Evidentiary procedures	_____	_____	(24)
Other areas	_____	_____	(25)

37. What percent of your time as a DCP/ADA do you spend on the following functions of your job? Please make sure the numbers add up to 100%.

<u>Function</u>	<u>% of Total Time</u>	
Screening before complaint is issued	_____	(26) (27)
Legal research	_____	(28) (29)
Negotiate, plea bargain	_____	(30) (31)
Preparation (establishing prosecution plan, reviewing police reports, responding to motions, interviewing arresting officers and witnesses)	_____	(32) (33)
Logistics (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to trial)	_____	(34) (35)
Time spent waiting for trial, etc.	_____	(36) (37)
Trial	_____	(38) (39)
Follow-up (appeals or bindovers, case summaries to Superior Court)	_____	(40) (41)
Record-keeping and reports	_____	(42) (43)
Other (specify) _____	_____	(44) (45)
_____	_____	(46) (47)
_____	_____	(48) (49)
_____	_____	(50) (51)
_____	_____	(52) (53)
	100% of Time	

38. Have you received any specific training in prosecuting? (54)  
 Please check as many as apply: \_\_\_\_\_ 1 none  
 \_\_\_\_\_ 2 in-service or refresher training  
 \_\_\_\_\_ 3 law school training  
 \_\_\_\_\_ 4 other (please specify)

39. Have you received any specific education in prosecuting? (55)  
 Please check as many as apply: \_\_\_\_\_ 1 none  
 \_\_\_\_\_ 2 college or university program  
 (courses in evidence, court-  
 room procedures, criminal law  
 practices)  
 \_\_\_\_\_ 3 law degree  
 \_\_\_\_\_ 4 other (please specify)

40. Which of the following--experience, training, education--has been (56)  
 the most beneficial to you as a DCP? Please check only one:  
 \_\_\_\_\_ 1 experience  
 \_\_\_\_\_ 2 training  
 \_\_\_\_\_ 3 education

41. How many months do you believe it would take the average newly (57)(58)  
 employed DCP to become an experienced (proficient)  
 prosecutor?  
 \_\_\_\_\_  
 months

42. If you are part-time, would you be willing to work (59)  
 as a full-time DCP?  
 \_\_\_\_\_ yes \_\_\_\_\_ no  
 1 2

43. What is most important to you as a prosecutor? Check only one. (60)

\_\_\_\_\_ 1 case disposition at the District Court level  
 \_\_\_\_\_ 2 winning cases (80)  
 \_\_\_\_\_ 3 strict sentences  
 \_\_\_\_\_ 4 reducing charges where warranted  
 \_\_\_\_\_ 5 promotion of the adversarial process  
 \_\_\_\_\_ 6 other. Please specify \_\_\_\_\_

DCP-Q

Arthur D Little, Inc

44. Are there any suggestions or comments you would like to make regarding the DCP Program or DCPs? Police Prosecutors? Arresting Officers, serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecution in general?

44a. What improvements could be made in your role as a DCP? If additional resources (funds) were made available? If funds were cut, what functions would you suggest be eliminated first?

POLICE PROSECUTOR QUESTIONNAIRE

Arthur D. Little, Inc. ACORN PARK • CAMBRIDGE, MA 02140 • (617) 864-5770 • TELEX 901436

February 25, 1977

Dear Police Prosecutor:

Attached to this letter is one from the Executive Director of the Massachusetts Committee on Criminal Justice, and a questionnaire. The questionnaire is sent to you as a person with important information and insights about District Court Prosecutors and other elements of prosecution in the District Courts of the Commonwealth. It is being sent to the majority of Police Prosecutors. We are personally interviewing the other Police Prosecutors. (If you are scheduled to be interviewed or have been interviewed by a member of the ADL project team, please disregard the questionnaire.)

The contents of your returned questionnaire will be confidential, and its answers will not be identified with you in any way. We have, however, placed a code number on your questionnaire, so that we can check it off when it is returned.

We ask that you fill out the questionnaire thoughtfully and completely and that you return it no later than March 7. It will take no more than half an hour to complete. We will have the benefit of your experiences, point of view, and insights, only if you return the questionnaire. Please feel free to add any comments or suggestions.

Thank you in advance for your cooperation.

Sincerely yours,

*Anton S. Morton*

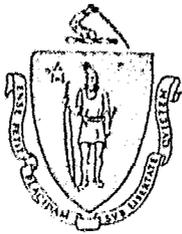
Anton S. Morton  
Project Director

cc: Ms. Karen Joerg, MCCJ

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CAMBRIDGE, MASSACHUSETTS

ATHENS BRUSSELS LONDON PARIS RIO DE JANEIRO SAN FRANCISCO TORONTO WASHINGTON WIESBADEN



The Commonwealth of Massachusetts

COMMITTEE ON CRIMINAL JUSTICE

110 TREMONT STREET - 4TH FLOOR - BOSTON 02108

(617) 727-6958

MICHAEL S. DUKAKIS  
GOVERNOR

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL  
CHAIRMAN

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EXECUTIVE DIRECTOR

To Whom It May Concern:

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We believe that the District Court Prosecutor Program is an important part of the Commonwealth's court system, and that this assessment is important, not only to MCCJ, but also to the courts. We ask that you accord ADL your wholehearted cooperation and assist them in their study. ADL will treat your inputs as confidential. Their reports to us will not identify any individual or institution.

If you have any questions, please address them to Karen Joerg, MCCJ Assistant Director of Evaluation, 617-727-6958 or to the ADL Project Director, Dr. Anton S. Morton, 617-864-5770, extension 3129.

Sincerely yours,

Robert J. Kane  
Executive Director

RJK:kjm

POLICE PROSECUTOR  
(PP)  
QUESTIONNAIRE

DISTRICT COURT: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_

1. How many years have you been assigned to the District Courts as a Police Prosecutor (PP)? \_\_\_\_\_ years (6)(7)

2. When did you begin your job as PP in this District Court?

\_\_\_\_\_ month (8,9)      \_\_\_\_\_ year (10,11)

Please answer the remaining questions based on your experiences of no more than the last twelve months as a PP within this District Court.

3. Are you assigned to this District Court on a full-time or part-time basis? Please check one: \_\_\_\_\_ 1 full-time (12)  
\_\_\_\_\_ 2 part-time

4. How many hours per week do you work as a PP? \_\_\_\_\_ hours per week (13)(14)

4a. How many days per week do you work as a PP? \_\_\_\_\_ days per week (15)

4b. How many weeks per year do you work as a PP? \_\_\_\_\_ weeks per year (16)(17)

PP-Q  
80304-05  
2/24/77

5. Do you maintain regular office hours? 1 yes 2 no (18)

5a. If yes, what are they? From (19-22) to (23-26)

6. Do you have policies and guidelines with regard to prosecution that you work under? 1 yes 2 no (27)

6a. If yes, are they written? 1 yes 2 no 3 don't know (28)

7. Which of the following has (have) prosecuted within your District Court sometime during your last 12 months of tenure as a PP? (29)  
(Please check as many as apply.)

1 DCP - District Court Prosecutor(s)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the District Courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney--ADA.)

2 PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

3 AO - Arresting Officer(s) - serving as prosecutor

A police officer or detective serving as prosecutor because he is the arresting officer.

4 TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a District Court for cases within his jurisdiction.

If you do not prosecute any cases, please answer only Questions numbered 33, 33a, 34, 36, 42 and 42a. If you do prosecute cases, please answer all questions. Thank you.

8. Approximately, how many cases have you prosecuted within the last twelve months or less?

(30-33)

\_\_\_\_\_   
 number of cases   
 prosecuted

Please estimate how the total number of cases prosecuted by you within the last twelve months or less (refer to Question #8) are divided up among the following four types of cases.

Case Definitions

A simple case. A case consisting of a factual variable or combination of variables that makes the prosecution of the case a rather uncomplicated process, fairly free from secondary complications, and overall causing little difficulty. An example of such a case would be one that is frequently tried in your District Court and generally requires little evidence to prove any element.

A complex case: A case consisting of a factual variable or a combination of variables that makes the case a rather complicated and/or difficult process. An example of such a case would be one that consists of one or more difficult elements to prove, requires a substantial command of the law, persuasion, and use of trial tactics by the prosecutor.

For example, the PP who filled out the table below estimated that 10% of the total cases prosecuted by him in the last 12 months were simple felonies, none were complex felonies, 15% were complex misdemeanors and 75% of his cases were simple misdemeanors.

E X A M P L E

<u>Type of Case</u>	<u>% of Total Cases Prosecuted</u> (12 months or less)
Simple misdemeanors	<u>75</u> %
Complex misdemeanors	<u>15</u> %
Simple felonies	<u>10</u> %
Complex felonies	<u>0</u> %
	Total 100 %

8a. Please estimate how your caseload is divided. Make sure that the estimated percentages add up to 100%.

<u>Type of Case</u>	<u>% of Total Cases Prosecuted</u> (12 months or less)	
Simple misdemeanors	_____ %	(34-36)
Complex misdemcanors	_____ %	(37-39)
Simple felonies	_____ %	(40-42)
Complex felonies	_____ %	(43-45)
	Total 100%	

Please answer Questions 9 through 28 based on your experiences in prosecuting the type of cases you estimated in Question 8a. as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always 1	Fre- quently 2	Occa- sionally 3	Infre- quently 4	Never 5	Don't Know 6	Not Applicable 7	
9. Do you screen complaints prior to issuance?								(46)
9a. Do you insure complaints are properly drafted (free of clerical errors)?								(47)
9b. Do you insure the defendant is properly charged (substantive errors)?								(48)
10. How often would you be likely to agree to reduced charges?								(49)
11. How often do you consult with the defense to narrow issues, make stipulations, etc.								(50)
12. How often do you use opening arguments?								(51)
13. How often do you agree to diversion programs?								(52)
13a. How often do you recommend diversion programs?								(53)
14. How often do you engage in constructive plea bargaining?								(54)
15. How often do you cross-examine witnesses, if available?								(55)

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Please answer Questions 9 through 28 based on your experiences in prosecuting the type of cases you estimated in Question 8a. as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always	Frequently	Occasionally	Infrequently	Never	Don't Know	Not Applicable	
23. How often do you review police reports for the first time on the same day as the trial date?	1	2	3	4	5	6	7	(66)
23a. How often do you review police reports for the first time prior to the trial date?								(67)
24. How often do you speak with witnesses prior to trial?								(68)
25. How often is there consultation between you and the Probation Officer prior to the issuance of complaints concerning the dropping of charges or the lessening of serious charges?								(69)
26. How often do you discuss possible alternatives to formal prosecution with the defense prior to formal prosecution?								(70)
27. How often do you participate in pre-trial screening conferences?								(71)
27a. How often are your cases disposed of before trial as a result of pre-trial conferences?								(72)
28. How often do you assure the sufficiency of search warrant affidavits prior to their execution?								(73)
								$\frac{1}{(80)}$

A-50

Please answer Questions 9 through 28 based on your experiences in prosecuting the type of cases you estimated in Question 8a. as constituting the largest proportion of the total cases prosecuted by you in the last twelve months.

*Please Check Only One For Each Question*

Questions	Always 1	Fre- quently 2	Occa- sionally 3	Infre- quently 4	Never 5	Don't Know 6	Not Applicable 7	
16. How often do you counter defense motions?								(56)
How often do you employ the following motions?								(57)
17a. nolle prosequi?								(58)
17b. move to have case placed on file?								(59)
17c. request court to enter dismissal?								(60)
18. How often do you make recommendations as to case disposition?								(61)
19. How often do you make a closing argument that a sufficient case has been presented for a guilty finding?								(62)
20. How often do you make recommendations regarding sentencing?								(63)
21. How often do you prepare case summaries for cases bound over to the Superior Court?								(64)
22. How often do you do legal research for your cases?								(65)

A-49

Please answer the remaining questions based on your experiences as a PP of the last twelve months (or less).

29. Approximately how much time do you generally spend preparing a case for trial? (Please check one for each type of case.)

Type of Case	Time Spent Preparing Case for Trial					Not Applicable	
	None	Minutes	Hours	Days			
Simple misdemeanors	_____	_____	_____	_____	_____		(6)
Complex misdemeanors	_____	_____	_____	_____	_____		(7)
Simple felonies	_____	_____	_____	_____	_____		(8)
Complex felonies	_____	_____	_____	_____	_____		(9)
	1	2	3	4	5		

30. Has there been a change in the number of witnesses needed as a result of pre-trial screening/conferences? Please check one for each type of case.

Type of Case	No Change	Little	Some	Significant	Don't Know	Not Applicable	
Simple misdemeanors							(10)
Complex misdemeanors							(11)
Simple felonies							(12)
Complex felonies							(13)
	1	2	3	4	5	6	

31. How often have you received requests for assistance from the other prosecutors within this District Court?

	Continuously	Frequently	Occasionally	Infrequently	Never	Not Applicable	
Police Prosecutor	_____	_____	_____	_____	_____	_____	(14)
Arresting Officer, serving as prosecutor	_____	_____	_____	_____	_____	_____	(15)
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	(16)
	1	2	3	4	5	6	

32. Do police officers consult you before bringing charges against defendants?

\_\_\_\_\_ 1 yes \_\_\_\_\_ 2 no (17)

32a. If yes, how often?

\_\_\_\_\_ 1 daily (18)  
\_\_\_\_\_ 2 a few times a week  
\_\_\_\_\_ 3 a few times a month

33. How often is the District Court Prosecutor (DCP), often referred to as an Assistant District Attorney (ADA), available for advice? (19)

- 1 always
- 2 frequently
- 3 occasionally
- 4 infrequently
- 5 never

33a. Is he available (on call) on a 24-hour basis? (20)

- 1 yes
- 2 no

34. How often do you seek advice from the DCP (ADA)? (21)

- 1 continuously
- 2 frequently
- 3 occasionally
- 4 infrequently
- 5 never

35. How often do you request that the DCP (ADA) prosecute particular cases? (22)

- 1 continuously
- 2 frequently
- 3 occasionally
- 4 infrequently
- 5 never

36. What percent of your time as a Police Prosecutor do you spend on the following functions of your job? Please make sure the numbers add up to 100%

<u>Function</u>	<u>% of Time</u>	
Screening before complaint is issued	_____	(23)(24)
Legal research	_____	(25)(26)
Negotiate, plea bargain	_____	(27)(28)
Preparation (establishing prosecution plan, reviewing police reports, responding to motions, interviewing arresting officers and witnesses)	_____	(29)(30)
Logistics (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to trial)	_____	(31)(32)
Time spent waiting for trial, etc.	_____	(33)(34)
Trial	_____	(35)(36)
Follow-up (appeals or bindovers, case summaries to Superior Court)	_____	(37)(38)
Record-keeping and reports	_____	(39)(40)
Other (specify)	_____	(41)(42)
_____	_____	(43)(44)
_____	_____	(45)(46)
_____	_____	(47)(48)
_____	_____	(49)(50)
_____	_____	(51)(52)
	100% of Time	

37. Have you received any specific training in prosecuting?

Please check as many as apply:

(53)

- 1   none
- 2   in-service or refresher training
- 3   law school training
- 4   other (please specify)

38. Have you received any specific education in prosecuting? (54)  
Please check as many as apply:

- 1 none
- 2 college or university program  
(courses in evidence, courtroom  
procedures, criminal law practices)
- 3 law degree
- 4 other

39. Which of the following--experience, training, education--has been  
the most beneficial to you as a PP? (55)

- Please check only one:
- 1 experience
  - 2 training
  - 3 education

40. How many months do you believe it would take the average newly  
employed PP to become an experienced (proficient) prosecutor?

\_\_\_\_\_ months (56) (57)

41. What is most important to you as a prosecutor? Check only one.

- 1 case disposition at the District Court level (58)
- 2 winning cases
- 3 strict sentences (80)
- 4 reducing charges where warranted
- 5 promotion of the adversarial process

42.

Are there any suggestions or comments you would like to make regarding the DCP Program or DCPs? Police Prosecutors? Arresting Officers, serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecution in general?

42a.

What improvements could be made in your role as a PP? If additional resources (funds) were made available? If funds were cut, what functions would you suggest be eliminated first?

CLERK OF COURT QUESTIONNAIRE

Arthur D. Little, Inc. ABBORN PARK • CAMBRIDGE, MA 02140 • (617) 864-5770 • TELEX 921436

February 25, 1977

Dear Clerk of Court:

Attached to this letter is one from the Executive Director of the Massachusetts Committee on Criminal Justice, and a questionnaire. The questionnaire is sent to you as a person with important information and insights about District Court Prosecutors and other elements of prosecution in the District Courts of the Commonwealth. It is being sent to the majority of Clerk of Courts. We are personally interviewing the other Clerk of Courts.

The contents of your returned questionnaire will be confidential, and its answers will not be identified with you in any way. We have, however, placed a code number on your questionnaire, so that we can check it off when it is returned.

We ask that you fill out the questionnaire thoughtfully and completely and that you return it no later than March 7. It will take no more than half an hour to complete. We will have the benefit of your experiences, point of view, and insights, only if you return the questionnaire. Please feel free to add any comments or suggestions.

Thank you in advance for your cooperation.

Sincerely yours,

*Anton S. Morton*

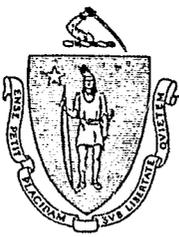
Anton S. Morton  
Project Director

cc: Ms. Karen Joerg, MCCJ

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CAMBRIDGE, MASSACHUSETTS

ATHENS BRUSSELS LONDON PARIS RIO DE JANEIRO SAN FRANCISCO TORONTO WASHINGTON WIESBADEN



The Commonwealth of Massachusetts

COMMITTEE ON CRIMINAL JUSTICE

110 TREMONT STREET - 4TH FLOOR - BOSTON 02108

(617) 727-6958

MICHAEL S. DUKAKIS  
GOVERNOR

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL  
CHAIRMAN

ROBERT J. KANE  
EXECUTIVE DIRECTOR

To Whom It May Concern:

The Massachusetts Committee on Criminal Justice (MCCJ) has retained Arthur D. Little, Inc. (ADL), a management consulting firm of Cambridge, Massachusetts, to carry out an assessment of the District Court Prosecutor Program which has been funded by MCCJ. ADL will determine the need for the Program, assess its accomplishments, assess proposed program modifications and make recommendations thereupon, and possibly perform a cost analysis.

ADL has a difficult and complex assignment to accomplish in three months. In order to obtain the information needed to carry out the assessment, they will need to talk with many people involved in various ways with the courts of the Commonwealth. They will also need to receive completed questionnaires from such people, observe some of them in the performance of their duties, and gather large quantities of information about the functioning of the District Courts and, to some extent, the Superior Courts.

We believe that the District Court Prosecutor Program is an important part of the Commonwealth's court system, and that this assessment is important, not only to MCCJ, but also to the courts. We ask that you accord ADL your wholehearted cooperation and assist them in their study. ADL will treat your inputs as confidential. Their reports to us will not identify any individual or institution.

If you have any questions, please address them to Karen Joerg, MCCJ Assistant Director of Evaluation, 617-727-6958 or to the ADL Project Director, Dr. Anton S. Morton, 617-864-5770, extension 3129.

Sincerely yours,

A handwritten signature in black ink that reads "Robert J. Kane".

Robert J. Kane  
Executive Director

RJK:kjm

CLERK OF COURT  
QUESTIONNAIRE

DISTRICT COURT: \_\_\_\_\_

1. How long have you served as Clerk of Court? \_\_\_\_\_ (6)(7)
2. How long have you served this district court as Clerk of Court? \_\_\_\_\_ (8)(9)

The following questions are concerned with the relationship of the activities surrounding the preparation of cases to be tried in district court to the activities of the prosecution.

DEFINITIONS:

DCP - District Court Prosecutor(s)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the district courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney--ADA.)

PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

AO - Arresting Officer(s) - serving as prosecutors

A police officer or detective serving as prosecutor because he is the arresting officer.

TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a district court for cases within his jurisdiction.

Please note for the following questions we are interested in activity. We are not concerned with whether it takes place formally (a matter of record) or informally (not a matter of record). If a category of prosecutor does not prosecute in your District Court, mark "not applicable." Please base your answers on your experiences of the last twelve months.

3. How often do those serving as prosecutors within your District Court insure the sufficiency of search warrant affidavits prior to their execution? Place one check mark on each row.

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____ (10)
Arresting Officer	_____	_____	_____	_____	_____	_____	_____ (11)
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____ (12)
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____ (13)
	1	2	3	4	5	6	7

4. How often do those serving as prosecutors within your District Court participate in the decision to issue an arrest warrant or summons?

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
Arresting Officer	_____	_____	_____	_____	_____	_____	_____ (14)
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____ (15)
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____ (16)
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____ (17)
	1	2	3	4	5	6	7

4a. How often do those serving as prosecutor within your District Court review arrest warrants or summons for errors prior to issuance?

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____ (18)
Arresting Officer	_____	_____	_____	_____	_____	_____	_____ (19)
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____ (20)
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____ (21)
	1	2	3	4	5	6	7

5. Do those serving as prosecutors within your district court have any input into the preparation of the trial list?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>	
Police Prosecutor	_____	_____	(22)
District Court Prosecutor	_____	_____	(23)
Arresting Officer	_____	_____	(24)
Town/City Solicitor/Prosecutor	_____	_____	(25)
	1	2	

5a. If "yes," explain:

6. Do you see pre-trial screening of charges as a prosecutorial function?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>	
Town/City Solicitor/Prosecutor	_____	_____	(26)
Police Prosecutor	_____	_____	(27)
District Court Prosecutor	_____	_____	(28)
Arresting Officer	_____	_____	(29)
	1	2	

6a. If "yes," please explain:

7. Do those serving as prosecutors within your District Court offer to assist you in evaluating complaint(s) sought so that overcharging, unnecessary bindovers, and de novo appeals may be reduced?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>	
Arresting Officer	_____	_____	(30)
Town/City Solicitor/Prosecutor	_____	_____	(31)
Police Prosecutor	_____	_____	(32)
District Court Prosecutor	_____	_____	(33)
	1	2	

CC-Q

8. In your opinion, has the advent of the District Court Prosecutor Program changed the quality of justice within this District Court?

1 improved quality significantly

(34)

2 improved quality slightly

3 quality has remained unchanged

4 reduced quality slightly

5 reduced quality significantly

6 don't know.

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Are there any suggestions or comments you would like to make regarding the District Court Prosecutor Program or District Court Prosecutors, especially with respect to records and administration? Police Prosecutors? Arresting Officers, serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecutors in general?

CC-Q

A. D. LITTLE, INC.  
RECORDS RESEARCH



CARD #2 Dup. Ident. CC 1-7

Court # \_\_\_\_\_  
Researcher # \_\_\_\_\_  
ADL Asgd Docket No. \_\_\_\_\_

20. Original charges  
(Abbreviations; codes  
later.

Ch #1 _____	8 - 10	11
Ch #2 _____	12 - 14	15
Ch #3 _____	16 - 18	19
Ch #4 _____	20 - 22	23

If more charges before hearing,  
Check column 23 above.

21. Pre-trial complaint by  
1. Civilian  
2. Police

24

22. Hearing on issue?  
1. Yes 2. No

25

23. Hearing before the  
1. Judge 2. Clerk  
3. Other

26

24. No. of original complaints  
dropped

27

25. No. of original complaints  
increased

28

26. No. changed to lesser  
included offense

29

27. Date of final disp.  
(Mo-2, Day-2, Yr-1)

30-34

OBSERVATION GUIDE

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_  
 Name of defendant Court Sequence No. A B C  
 1:1,2 3,4 (1) (2) (3)  
 4. \_\_\_\_\_  
 Case Docket No.  
 6-12

Observer Name \_\_\_\_\_ Number \_\_\_\_\_ 13

Proceeding dates

Complaint hearings, if any 5. \_\_\_\_\_ 5a. \_\_\_\_\_  
 Day Month Day Month  
 14,15 16,17 18,19 20,21

Arraignment 6. \_\_\_\_\_ 6a. \_\_\_\_\_  
 Day Month Day Month  
 22,23 24,25 26,27 28,29

Probable cause or trial, if any 7. \_\_\_\_\_ 8. \_\_\_\_\_ 9. \_\_\_\_\_  
 Day Month Day Month Day Month  
 30,31 32,33 34,35 36,37 38,39 40,41

10. Prosecutor \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_  
 city/town solicitor PP DCP arresting officer 42. \_\_\_\_\_

11. Dress \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_  
 police uniform civilian clothes 43. \_\_\_\_\_

12. Defense \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) 44. \_\_\_\_\_  
 Pro se Mass. Pub. Def. Other court-appointed Private

I. Pre-trial

A. Complaint Issuance

Issuance

13. complaint brought by \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_  
 civilian police 45. \_\_\_\_\_

14. hearing on issuance? \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_  
 yes no 46. \_\_\_\_\_

15. before \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_  
 judge clerk 47. \_\_\_\_\_

16. \* who assigned case to prosecutor? \_\_\_\_\_ (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_ (5) \_\_\_\_\_  
 D.A. CDCP Clerk DCP PP

\_\_\_\_\_ (6) \_\_\_\_\_ (7) \_\_\_\_\_  
 Judge c/t s 48. \_\_\_\_\_

\* Probably from interview

Screening

17.  $\frac{(1)}{\text{yes}}$   $\frac{(2)}{\text{no}}$  49. \_\_\_\_\_

18. \* How?  $\frac{(1)}{\text{not on basis of police report}}$   $\frac{(2)}{\text{on basis of police report}}$  50. \_\_\_\_\_

19. \_\_\_\_\_ 51,52. \_\_\_\_\_  
 other factual variables (refer to Code) 53,54. \_\_\_\_\_  
 55,56. \_\_\_\_\_  
 57,58. \_\_\_\_\_  
 59,60. \_\_\_\_\_  
 61,62. \_\_\_\_\_  
 63,64. \_\_\_\_\_  
 65,66. \_\_\_\_\_

20. procedure efficient?  $\frac{(1)}{A}$   $\frac{(2)}{B}$   $\frac{(3)}{C}$   $\frac{(4)}{D}$   $\frac{(5)}{E}$  67. \_\_\_\_\_

20a. result merited?  $\frac{(1)}{\text{yes}}$   $\frac{(2)}{\text{no}}$  68. \_\_\_\_\_

B. Case Preparation

21. \* Documents prepared by prosecution at any time  $\frac{(1)}{\text{none}}$  69. \_\_\_\_\_  
 $\frac{(1)}{\text{memos}}$  70. \_\_\_\_\_  
 $\frac{(1)}{\text{briefs}}$  71. \_\_\_\_\_  
 $\frac{(1)}{\text{other}}$  72. \_\_\_\_\_

22. \* initiated by  $\frac{(1)}{D}$  73. \_\_\_\_\_  
 $\frac{(1)}{\text{judge}}$  74. \_\_\_\_\_  
 $\frac{(1)}{\text{self}}$  75. \_\_\_\_\_

23.  $\frac{(1)}{\text{excessive}}$   $\frac{(2)}{\text{sufficient}}$   $\frac{(3)}{\text{insufficient}}$  76. \_\_\_\_\_

Begin card 2.  
ID No. Cols. 1-5

OUT-OF-TRIAL CONFERENCES: SUBJECT MATTER

		Drop Charges	Reduce Charges	Plea Without Charge Reduction	Disposition Recom- mendation	Exchange of Information	Other (specify)
P + D	Disc.	24.	6	7	8	9	10
	Result	30.	12	13	14	15	11 16
P + arresting officer and/or chief	Disc.	35.	17	18	19	20	21
	Result	41.	23	24	25	26	27
P + probation	Disc.	46.	28	29	30	31	32
	Result	52.	34	35	36	37	38
P + judge only	Disc.	57.	39	40	41	42	43
	Result	62.	45	46	47	48	61a. 44
P + D + judge	Disc.	67.	50	51	52	53	54
	Result	73.	56	57	58	59	60
P + complainant	Disc.	78.	61	62	63	64	65
	Result	84.	67	68	69	70	71
P + witnesses and/or victims	Disc.	89.	72	73	74	75	76
	Result	95.	6	7	8	9	10
Merited=1 Not merited=2		100.	11	12	13	14	15
							105. 16

A-77  
3

80:2

Begin card 3.  
ID No. Cols. 1-5

Other preparation

106.	* what evidence collected?	<u>(1)</u> physical		17. _____
		<u>(1)</u> tests, reports		18. _____
		<u>(1)</u> ancillary documents		19. _____
		<u>(1)</u> witnesses		20. _____
107.	completeness	<u>(1)</u> evidence missing	<u>(2)</u> necessary evidence included	21. _____
108.	relevance	<u>(1)</u> all relevant	<u>(2)</u> some relevant	22. _____
109.	time expended in preparation by <u>prosecutor</u>	<u>(1)</u> more than 2 days	<u>(2)</u> 1-2 days	<u>(3)</u> 1/2-1 day
		<u>(4)</u> 1 hr.-1/2 day	<u>(5)</u> 10 min.-1 hr.	<u>(6)</u> less than 10 min.
110.	* time expended in preparation by all on prosecution other than prosecutor	<u>(1)</u> more than 2 days	<u>(2)</u> 1-2 days	<u>(3)</u> 1/2-1 day
		<u>(4)</u> 1 hr.-1/2 day	<u>(5)</u> 10 min.-1 hr.	<u>(6)</u> less than 10 min.
111.	opinion	<u>(1)</u> excessive	<u>(2)</u> sufficient	<u>(3)</u> insufficient
112.	* legal research done	<u>(1)</u> yes	<u>(2)</u> no	26. _____
113.	opinion	<u>(1)</u> excessive	<u>(2)</u> sufficient	<u>(3)</u> insufficient
				27. _____

STATUS OF CHARGES AT END OF EACH STAGE

ID No. Cols. 1-5	Complainant's Charges prior to hearing	Complaint as Issued	Should charge have been Brought? (1) (2)		Arraignment	Probable Cause	Trial on Merits	Finding	Disposition	Next Steps Appeal=1 Bindover=2 Direct Indictment Intended=3									
			Yes	No							Plea	Plea	Plea	S+F	M	C	P	E	D
114.	28,29	30,31	<del>32</del>		33,34	35	36,37	38	39,40	41	42	43	<del>44</del>	45	46	47	48	49	
128.	50,51	52,53	<del>54</del>		55,56	57	58,59	60	61,62	63	64	65	<del>66</del>	67	68	69	70	71	80:3
142.	6,7	8,9	<del>10</del>		11,12	13	14,15	16	17,18	19	20	21	<del>22</del>	23	24	25	26	27	
156.	28,29	30,31	<del>32</del>		33,34	35	36,37	38	39,40	41	42	43	<del>44</del>	45	46	47	48	49	
170.	50,51	52,53	<del>54</del>		55,56	57	58,59	60	61,62	63	64	65	<del>66</del>	67	68	69	70	71	80:4
184.	6,7	8,9	<del>10</del>		11,12	13	14,15	16	17,18	19	20	21	<del>22</del>	23	24	25	26	27	
198.	28,29	30,31	<del>32</del>		33,34	35	36,37	38	39,40	41	42	43	<del>44</del>	45	46	47	48	49	
212.	50,51	52,53	<del>54</del>		55,56	57	58,59	60	61,62	63	64	65	<del>66</del>	67	68	69	70	71	80:5

C. Arraignment

Disposition, if plea "guilty" or "sufficient facts"  
straight continuances

Begin card 6  
ID No. Cols. 1-5

	Reason	
226. #1		6. _____
227. #2		7. _____
228. #3		8. _____
229. #4		9. _____
230. #5		10. _____

231. continued for disposition (1)  
Yes 11. \_\_\_\_\_

If plea "not guilty"

232. if dismissal: (1) (2) (3) 12. \_\_\_\_\_  
request of J request of P request of D

233. reason (1) (2)  
insufficient complaint insufficient evidence  
(3) (4) 13. \_\_\_\_\_  
unavailability of arresting officer unavailability of witnesses  
(5) (6)  
unavailability of P unwillingness of complainant

234. continued for hearing (1) (2) 14. \_\_\_\_\_  
probable cause merits

	Reason	
235. #1		15. _____
236. #2		16. _____
237. #3		17. _____
238. #4		18. _____

239. (1) (2) (3) 19. \_\_\_\_\_  
no bail bail personal recognizance

D. Bail hearing 240. (1) (2) 20. \_\_\_\_\_  
yes no

241. P's recommendation (1) (2) (3) 21. \_\_\_\_\_  
excessive sufficient insufficient

MOTIONS FILED BY DEFENSE AND PROSECUTION

ID No.  
Cols.1-5

MOTIONS FILED BY DEFENSE 1 = motion made	Discovery (specify)	Discovery (specify)	Discovery (specify)	Discovery (specify)	Discovery (specify)	Bail	Suppress	Quash	Dismiss	Directed Finding	Separate Trial	Other (specify)
	22	28	34	40	46	52	58	64	70	6	12	18
Countered by P Yes=1 No=2	23	29	35	41	47	53	59	65	71	7	13	19
Should motion have been countered? Yes=1 No=2	254. 24	30	36	42	48	54	60	66	72	8	14	20
Form of D motion (o)ral=1 (w)ritten=2	266. 25	31	37	43	49	55	61	67	73	9	15	21
Result (a)llowed=1 (d)enied=2 (u)nder advise.=3 (w)aiver=4	278. 26	32	38	44	50	56	62	68	74	10	16	22
Opinion 1=(e)ffect.countered 2=(i)neffec. count.	290. 27	33	39	45	51	57	63	69	75	11	17	301. 23

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MOTIONS FILED BY PROSECUTION	Amend Complaint	For a view	Other (specify)	Other (specify)
Form of P motion (o)ral=1 (w)ritten=2	302. 24	27	30	33
Result (a)=1 (d)=2 (u)=3 (w)=4	306. 25	28	31	34
Should motion have been filed? Yes=1 No=2	310. 26	29	32 313.	35

II. Trial or Probable Cause

314.	dismissal entered	<u>(1)</u> request of P	<u>(2)</u> request of Judge	<u>(3)</u> request of D	36. _____		
315.	reason	<u>(2)</u> insuff. evidence	<u>(4)</u> unavailability of witnesses	<u>(5)</u> unavailability of P	<u>(6)</u> unwillingness of complainant		
		<u>(1)</u> defective complaint	<u>(7)</u> other (specify)		37. _____		
316.	opening argument	<u>(1)</u> yes	<u>(2)</u> no		38. _____		
	direct examination						
317.	logically sequential presentation	<u>(1)</u> A	<u>(2)</u> B	<u>(3)</u> C	<u>(4)</u> D	<u>(5)</u> E	39. _____
318.	skill in eliciting information	<u>(1)</u> A	<u>(2)</u> B	<u>(3)</u> C	<u>(4)</u> D	<u>(5)</u> E	40. _____
319.	what evidence was introduced?	<u>(1)</u> physical					41. _____
		<u>(1)</u> tests, reports					42. _____
		<u>(1)</u> ancillary documents					43. _____
		<u>(1)</u> witnesses					44. _____
320.	completeness	<u>(1)</u> evidence missing	<u>(2)</u> nec. evid. included				45. _____
321.	relevance	<u>(1)</u> all relevant	<u>(2)</u> some irrelevant				46. _____
	if physical evidence offered						
322.	foundation laid	<u>(1)</u> A	<u>(2)</u> B	<u>(3)</u> C	<u>(4)</u> D	<u>(5)</u> E	47. _____
323.	logically sequential	<u>(1)</u> A	<u>(2)</u> B	<u>(3)</u> C	<u>(4)</u> D	<u>(5)</u> E	48. _____
324.	cross examination	<u>(1)</u> excessive	<u>(2)</u> insufficient	<u>(3)</u> sufficient			49. _____
325.	rehabilitation of P's case		<u>(1)</u> effective	<u>(2)</u> ineffective			50. _____

Bench Conferences

Result: Favorable to D=1, Favorable to P=2, Not clear =3

326.	Conference #1		51.
327.	#2		52.
328.	#3		53.
329.	#4		54.
330.	#5		55.

- 331. number of times judge intervened on behalf of P on direct \_\_\_\_\_ 56.
- 332. number of times judge intervened on behalf of D on direct \_\_\_\_\_ 57.
- 333. number of times judge objected on behalf of P \_\_\_\_\_ 58.
- 334. number of times judge objected on behalf of D \_\_\_\_\_ 59.

Objections made by Prosecution

	Timely=1, Untimely=2	Sustained=1 Overruled=2	Merited=1 Unmerited=2, Not Clear=3
Objection #1 335.	60.	61.	62.
#2	63.	64.	65.
#3	66.	67.	68.
#4	69.	70.	71.
#5	72.	73.	74.
Id No., #6	75.	76.	77.
Cols. 1-5 #7	6.	7.	8.
#8	9.	10.	11.
#9	12.	13.	14.
#10 3:4	15.	16.	17.

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Objections made by Defense

	Sustained=1, Overruled=2	Merited=1, Unmerited=2, Not Clear=3
Objection #1 345.	18.	19.
#2	20.	21.
#3	22.	23.
#4	24.	25.
#5	26.	27.
#6	28.	29.
#7	30.	31.
#8	32.	33.
#9	34.	35.
#10 354.	36.	37.

355. summation by P (1) (2) (3) (4) (5) (6)  
A B C D E None 38.
356. final argument (1) (2) (3) (4) (5) (6)  
A B C D E None 39.
357. recommendations made by P (1) (2)  
yes no 40.
358. (1) (2) (3)  
maximum in between minimum 41.
359. at request of judge? (1) (2)  
yes no 42.
360. accepted? (1) (2) (3)  
yes in part no 43.

B. Professionalism

361. command of law (1) (2) (3) (4) (5)  
A B C D E 44.
362. familiarity with case management A B C D E 45.
363. command of rules of evidence A B C D E 46.
364. trial tactics A B C D E 47.

C. Completeness of observation

365. Follow case to conclusion in District Court? (1) (2)  
Yes No 48.

80:8

GUIDELINES FOR TASK 1 INTERVIEWS

1. Names and staffing of DCPs in Prosecutorial District
2. Full or part-time status
3. Types of cases prosecuted
4. Additional responsibilities of DCPs
5. Other prosecutorial personnel and staffing in Prosecutorial District
6. General impressions of the Programs
7. Particular benefits
8. Drawbacks
9. Recommendations for improvement

SUPERIOR COURT ASSISTANT DISTRICT ATTORNEY  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

SUPERIOR COURT ASSISTANT DISTRICT ATTORNEY  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

Arthur D. Little, Inc. (ADL) is in the process of evaluating the District Court Prosecutor Program (DCPP) by request of the Massachusetts Committee on Criminal Justice (MCCJ). The purpose of this study is to provide MCCJ, the Legislature, the Governor, and other decision makers with up-to-date information concerning the DCPP. The study results will aid in arriving at decisions concerning possible state take over of the program.

The following questions are related to cases bound over or appealed to the Superior Court.

1. In those cases bound over or appealed to the Superior Court, do you receive case information from the District Court level?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

**CONTINUED**

**2 OF 4**

10. What are your personal feelings about trying cases at the District Court level yourself?

11. What do you believe is the best solution to prosecution at the District Court level?

DISTRICT COURT PROSECUTOR  
INTERVIEW GUIDE

DISTRICT COURT PROSECUTOR  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION [EXPRESS CONFIDENTIALITY]

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1. How many years have you been a District Court Prosecutor (DCP)?  
[Sometimes referred to as ADA]

1a. Date of employment \_\_\_\_\_  
Month Year

2. How many years have you been a DCP in this district court?

2a. Date of employment \_\_\_\_\_  
Month Year

3. How long have you been prosecuting? At the district court level?

Please answer the remaining questions based on your experiences of the last twelve months as a DCP within this district court.

4. Are you full-time or part-time?

5. How many hours per week do you work as a DCP? \_\_\_\_\_

5a. How many days per week? \_\_\_\_\_

5b. How many weeks per year? \_\_\_\_\_

5c. Do you maintain regular office hours? If yes, what are they?

6. Are you permitted a private practice? Do you have a private practice?

7. What is your present salary as a DCP?

8. Are you considered an ADA assigned to the district court?

8a. Do you currently have the same authority as an ADA?

8b. Do you feel you are a part of the DA's office? Why?

9. Do you operate under policies and guidelines set by the office of the DA?  
What are they? [Probe]

screening

pre-trial conference

plea bargaining and negotiation

case direction (particular cases)

investigative process

information reporting and record keeping

police-DCP-cooperation

time and attendance

continuances

appeals

others

[Cross-check answers with questions 17-20 for compliance]

10. Who do you report to? What kind of supervision do you receive?

11. Where do your instructions come from? What are they?  
[Examples]

12. Who do you report your time to? How do you do it?  
[Time sheet - daily - weekly]

13. Who evaluates your performance? How often? What criteria are  
used to judge your performance?  
[Probe] Winning cases

14. Do you supervise or provide guidance to anyone? Who? [Probe for supervision of PPs or AOs.] For what purpose(s)? How?

14a. Do police officers consult you before bringing charges against defendants? How often? What type of cases? For what purpose?

15. What facilities are available to you? [Office, desk, etc.]

15a. What support services are available to you? [Professional and clerical]

16. What other types of prosecutors serve this district court?

[Give interviewee Handout No. 1]

16a. For each category of prosecutor applicable, please check the percent, by type of cases, they generally prosecuted in this district court within the last twelve months?

[Give interviewee Handout No. 2]

16b. Approximately, how many cases have you prosecuted in the last twelve months?

17. Would you please explain the process you follow in prosecuting a case? [Differentiate between type of cases, if necessary.] Does it differ by type of case?

17a. How do you initially receive the cases to be tried by you?  
Are they assigned to you? By whom? On what basis? When  
do you receive them? [Case scheduling procedures.]

17b. Once you receive a case to prosecute, what are the next steps  
and approximately how much time do you spend on each?  
[Probe]

screening

research

negotiate, plea bargain

preparation

logistics

trial

follow-up; appeals or bindovers; case summaries  
to Superior Court

18. What other functions do you perform as a DCP?

[Probe: administrator, advisor, trainer, insure sufficiency  
of search warrants, etc.]

18a. Have you received requests for advice from police departments in the last twelve months? [Regarding the issuance of search warrants, evidentiary procedures, etc.] Approximately how many? What subject(s)? What time of day were the requests made?

18b. Have you advised police in areas of "Stop and Frisk," "Search and Seizure," "Identification Procedures," "Lineups," etc. How often? Who? When? What subject(s)?



20. What do you feel are your major responsibilities as a DCP?

21. What do you believe is the most difficult aspect of being a DCP?

17. We are aware (as much as we can be) of the pressures you must face as a DCP. How and when do you decide to place unusual time and effort into the prosecution of a particular case? [Probe: Where do the priorities come from? How are they resolved, etc.?.]

22a. Do you find yourself at any time with conflicting pressures? [E.g., pressure to prosecute to the fullest extent on the one hand and to dismiss cases at the district court level when warranted, on the other, etc.) What are they? How do you resolve them?

23. Various types of criminal activity sometimes trigger more concern at a particular time for a variety of reasons. Would you be more likely to be responsive to the prosecution priorities established by the DA or the prosecution priorities based on local community concern? Why?

24. What do you see as the similarities and differences between your duties and responsibilities as a DCP and those of a PP? AO? TC? Any other differences? How do you relate to each?

24a. What do you see as the advantages or disadvantages with each type of prosecution category prosecuting cases?

24b. In the absence of the PP, how would your role as a DCP change? With what effects?

25. What are your views on intake screening by the prosecution?

25a. What are your views on full-time DCPs? Would it affect your willingness to work as a DCP?

25b. What are your views on vertical prosecution?

26. Are you familiar with the recommendations of the Cox Commission report, as related to the District Courts? [If yes.] Some believe that the continuation of the DCP in some form is essential to the success of the "Cox" reports' recommendations for strengthening the District Courts. Do you agree or disagree? Why?

DCP-IG

27. May I ask you a little about your experience, training and education, especially in regard to prosecution? Where did you go to school? Did you receive any specific education (i.e., courses) in prosecuting? What?

27a. Did you receive any specific training in prosecuting? What?

27b. Have you received any training as a DCP? When? What?

27c. Which of the following--experience, training, education--has been the most beneficial to you as a DCP? Why?

\_\_\_\_\_ experience

\_\_\_\_\_ training

\_\_\_\_\_ education

27d. What would you recommend in terms of experience, training, and education to an individual who wanted to become a DCP?

27e. How long do you believe it would take the average newly employed DCP to become an experienced prosecutor?

28. How did you become a DCP? [tested, competitive exam, interviewed, recommended]. Why did you want to be a prosecutor (DCP)? Where do you go from here?

DCP-IG

29. Are there any suggestions or comments you would like to make regarding the DCP or DCPs? Police Prosecutors? Arresting Officers, serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecution in general?

29a. What improvements could be made in your role as a DCP?  
If additional resources (funds) were made available?  
If funds were cut, what functions would you suggest be eliminated first?

30. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of this District Court?

[Probe for other than DCP.]

DCP-IG

POLICE PROSECUTOR  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

POLICE PROSECUTOR

INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

Arthur D. Little, Inc. (ADL) is in the process of evaluating the District Court Prosecutor Program (DCPP) by request of the Massachusetts Committee on Criminal Justice (MCCJ). The purpose of this study is to provide MCCJ, the Legislature, the Governor, and other decision makers with up-to-date information concerning the DCPP. The study results will aid in arriving at decisions concerning possible state take over of the program.

1. How many years have you been assigned to this District Court?

1a. Date of employment \_\_\_\_\_

Month                      Year

1b. Do you prosecute any cases outside your jurisdiction?  
For whom?

2. How long have you been prosecuting cases? (Years)

3. How long have you been a police officer? (Years)

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PP-IG

Please answer the remaining questions based on your experiences of the last twelve months as a Police Prosecutor within this District Court.

4. How many hours per week do you spend performing duties related to the prosecution of cases?

4a. How many days per week?

4b. How many weeks per year?

4c. [If applicable.] How do you spend your other time?

4d. What is your rank?

4e. [If a PP prior to advent of DCP,] How many hours per week did you spend performing duties related to the prosecution of cases prior to the advent of DCPs?

5. What other types of prosecutors serve this District Court?

[Give interviewee Handout No. 1]

5a. For each category of prosecutor applicable, please estimate the percent of cases, by type, generally prosecuted in this District Court within the last twelve months?

[Give interviewee Handout No. 2]

5b. Approximately how many cases have you prosecuted in the last twelve months?

PP-IG

6. Do you have policies and guidelines with regard to prosecution that you work under? What are they? Who sets them? Are they written?

[Ask for a copy.]

PROBE:            screening  
                  pre-trial conference  
                  plea bargaining and negotiation  
                  case direction (particular cases)  
                  investigative process  
                  information reporting and record-keeping  
                  DCP-police cooperation  
                  time and attendance  
                  continuances  
                  appeals  
                  others

[cross-check answers with questions 10-14 for compliance]

PP-IG

7. While serving as a police prosecutor, who do you report to?  
Who is your immediate supervisor? What kind of supervision  
do you receive?

7a. Where do your instructions come from? What are they?

[EXAMPLE]

7b. Who evaluates your performance as a prosecutor?

7c. How often?

7d. By what standards?

[PROBE] winning cases.

8. Do you supervise or provide guidance to anyone? Who?  
[Probe for AOs, police witnesses, etc.] For what purposes? How?

8a. Do police officers consult you before bringing charges  
against defendants? How often? What type of cases?  
For what purpose?

8b. Do you receive other requests for advice from members of your  
department? [Regarding the issuance of search warrants,  
evidentiary procedures, etc.] Approximately how many in the  
last 12 months? What subjects? What time of day were requests  
made? Do you respond to them or refer them elsewhere?

9. What facilities are available to you? Where? [office,  
desk, etc.]

9a. What support services are available to you? Where?  
[Professional and clerical]

10. What are your duties and responsibilities as a police prosecutor?

10a. [If prosecution of cases is mentioned] Would you please explain the process you follow in prosecuting a case? [Differentiate between type of cases, if necessary]. Does it differ by type of case?

10b. How do you initially receive the cases you prosecute? Are they assigned to you? Why whom? On what basis? When do you receive them? [case scheduling procedures]

10c. Once a case is assigned to you to prosecute, what steps do you follow and approximately how much time do you spend on each? [Probe]

- screening
- research
- negotiate, plea bargaining
- preparation
- logistics
- trial
- follow-up
- other

11. How much time do you spend on the other functions you perform  
as a PP?

[Probe] Administrator, advisor, trainer, insure sufficiency  
of search warrants, etc.]

PP-IG

12. What percent of your total time do you spend on the above mentioned functions of your job? [Give interviewee Handout No. 4]

<u>Function</u>	<u>% of Total Time</u>
Screening before complaint is issued	_____
Legal research	_____
Negotiate, plea bargain	_____
Preparation (establishing prosecution plan, reviewing police reports, responding to motions, interviewing arresting officer(s) and witnesses)	_____
Logistics (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to trial)	_____
Time spent waiting for trial, etc.	_____
Trial	_____
Follow-up (appeals and bindovers, case summaries to Superior Court)	_____
Record-keeping and reports	_____
Other	_____
	_____
	100% of total time

12a. [If a PP prior to advent of DCPD.] Has the percentage of time spent on the above functions changed over the years?

13. What do you feel are your major responsibilities as a PP?

14. What do you believe is the most difficult aspect of being a PP?

15. We are aware (as much as we can be) of the pressures you must face as a PP. How and when do you decide to place unusual time and effort into the prosecution of a particular case? [Probe: Where do the priorities come from? How are they resolved? Etc.?.]

15a. Do you find yourself at any time with conflicting pressures? [E.g., pressures to prosecute to the fullest extent on the one hand and to dismiss cases at the District Court level when warranted, on the other, etc.] What are they? How do you resolve them?

16. Various types of criminal activity sometimes trigger more concern at a particular time for a variety of reasons. Would you be more likely to be responsive to the prosecution priorities established by the DA or the prosecution priorities based on local community concern? Why?

17. What do you see as the similarities and differences between your duties and responsibilities as a PP and those of a DCP? AO? TC? Any other differences? How do you relate to each?

17a. What do you see as the advantages or disadvantages with each type of prosecution category prosecuting cases?

18. [If interviewee has been a PP since advent of DCPD.] What do you believe the impacts (positive and negative) of the DCPD has been in this District Court? Why?

[PROBE: past versus present]

19. In the absence of the DCPD, how would your role as a PP change? With what effects?

20. May I ask you a little about your experience, training, and education, especially in regard to prosecution?

20a. Which has been most beneficial to you as a PP? Why?

- experience
- training
- education

20b. Have you received any specific training in prosecuting?

- initial academy training
- in-service or refresher training
- Police Prosecutor Association meetings and lectures
- Other

20c. Have you received any specific education in prosecuting?

- College or university program [Evidence, courtroom procedure, criminal law, criminal practice]
- law degree
- other

20d. What would you recommend, in terms of experience, training, and education to an individual who wanted to become a PP?

20e. How long do you believe it would take the average newly assigned PP to become an experienced prosecutor?

21. Are there any suggestions or comments you would like to make regarding the DCPD or DCPs? Police Prosecutors? Arresting Officers serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecutors in general?

21a. What improvements could be made in your role as PP if the DCPD continued?

22. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of this District Court?  
[Probe for other than DCPP.]

DISTRICT COURT JUDGE  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

DISTRICT COURT JUDGE

INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

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1. How many years have you served as a district court judge? \_\_\_\_\_  
years
2. How many years have you presided in this district court? \_\_\_\_\_  
years
3. Please answer the remaining questions based on your experiences of the last twelve months as a district court judge.

[Give interviewee Handout No. 1]

Which of the following prosecute within your court? [Check as many as apply]

\_\_\_\_\_ DCP - District Court Prosecutor(s)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the district courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney--ADA.)

\_\_\_\_\_ PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

\_\_\_\_\_ AO - Arresting Officer(s) - serving as prosecutor

A police officer or detective serving as prosecutor because he is the arresting officer.

\_\_\_\_\_ TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a district court for cases within his jurisdiction.

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DCJ-IG

[Give interviewee Handout No. 2]

Definitions used in questions 4-19 below.

Definitions

A simple case: A case consisting of a factual variable or combination of variables that makes the prosecution of the case a rather uncomplicated process, fairly free from secondary complications, and overall causing little difficulty. An example of such a case would be one that is frequently tried in your district court and generally requires little evidence to prove any element.

A complex case: A case consisting of a factual variable or a combination of variables that makes the case a rather complicated and/or difficult process. An example of such a case would be one that consists of one or more difficult elements to prove, requires a substantial command of the law, persuasion, and use of trial tactics by the prosecutor.

Cases Prosecuted

Below are four small tables, one for each prosecutorial category of interest. For each applicable category, estimate how its prosecutorial case load is divided up among the four types of cases, based on the cases you have heard in this district court prosecuted by members of that category within the last twelve months. If a category of prosecutors does not serve in your court, mark "not applicable." Make sure that the estimated percentages add up to 100%. For example, the judge who filled out the table below estimated that 60% of the cases which DCPs prosecuted before him in the last 12 months were simple felonies, another 25% were complex felonies, and 15% were complex misdemeanors. None of the DCPs' cases were simple misdemeanors.

E X A M P L E

District Court Prosecutor(s)

Simple misdemeanors	<u>0</u> %
Complex misdemeanors	<u>15</u> %
Simple felonies	<u>60</u> %
Complex felonies	<u>25</u> %
Total	100%

District Court Prosecutor(s)

Arresting Officer(s)-serving as prosecutor

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>		<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
4. Simple misdemeanor	____%		12. Simple misdemeanor	____%	
5. Complex misdemeanor	____%	<input type="checkbox"/> not applicable	13. Complex misdemeanor	____%	<input type="checkbox"/> not applicable
6. Simple felonies	____%		14. Simple felonies	____%	
7. Complex felonies	____%		15. Complex felonies	____%	
Total	100%		Total	100 %	

Police Prosecutors

Town/City Solicitor(s)/Prosecutors

<u>Type of Case</u>	<u>% of Cases Prosecuted</u>		<u>Type of Case</u>	<u>% of Cases Prosecuted</u>	
8. Simple misdemeanor	____%		16. Simple misdemeanor	____%	
9. Complex misdemeanor	____%		17. Complex misdemeanor	____%	
10. Simple felonies	____%	<input type="checkbox"/> not applicable	18. Simple felonies	____%	<input type="checkbox"/> not applicable
11. Complex felonies	____%		19. Complex felonies	____%	
Total	100%		Total	100%	

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Arthur D Little Inc

DCJ-Q

20. What has been the impact (positive and negative) of the District Court Prosecutor Program (DCPP) on the administration of justice within your court?

PROBE: 20a. Does the DCP promote the adversarial process of justice within your district court? (How or why?)

20b. Of those categories of prosecutors (PP, TC, AO, DCP) within your district court, who would be the most and least suited to match the "new aggressiveness" on the part of the defense counsel? (Remember to respond in terms of the typical prosecutor found in each category.) Why?

20c. Which category of prosecutor is the (most, least) suited to be viewed by the public as impartial in his contribution to the administration of justice? Why?

20d. Have you observed a change in the police prosecutors' performance as a prosecutor since the advent of the DCPs? If yes, in what respect?

20e. Do you believe the DCP has changed the presentation of the defense? Why?

21. Has the DCPD changed the quality with which the Commonwealth is represented in criminal proceedings in district courts? How or why not?

PROBE: 21a. Who is (most, least) qualified to serve as prosecutor within your court? (Remember to respond in terms of the typical prosecutor found in each category.) Why?

21b. In the last 12 months, have you ever requested that a DCP handle the prosecution for a particular case? If yes, how many times? What type of cases? Why?

21c. Have you established any rules or regulations, or set guidelines, as to who can prosecute certain cases? What are they? Why?

22. What type of prosecutor allows you to assume a more neutral role during court proceedings? Why?

23. Has prosecution by DCPs led to a change in the number of serious charges, when warranted by the facts? Why? Can you give an example? Are there data available to support your answer? Where?

24. Has prosecution by DCPs led to a change in the proportion of cases being disposed of at the district court level? Why? Can you give an example? Are there data available to support your answer? Where?

25. Do you have an indications that the DCPs have advised the police in areas of "Stop and Frisk," "Search and Seizure," "Identification Procedure," etc. What are they?

26. Do you have any indications that the DCPP has assured the sufficiency of search warrant affidavits before execution? What are they?

27. Has prosecution by DCPs led to a change in the proportion of cases continued at the district court level for want of prosecution witnesses? Why?

28. Is there a real need for the DCP? For all cases? Which ones?

28a. For those cases you believe require a DCP, are not police prosecutors adequate? (Differentiate police prosecutors vs. arresting officer.) Why not?

28b. Could not a training program in prosecution produce adequate police prosecutors? Arresting officer prosecutors? Why or why not?

28c. What are the difficulties with prosecution by the Town/City Solicitors/Prosecutors? Can you compare and contrast the prosecution of a Town/City Solicitor/Prosecutor with a DCP?

29. Do the DCPs in your court serve full-time or part-time?

29a. (If full-time) What would be the consequences if all DCPs served part-time? Is it necessary for all DCPs to serve full-time? Why?

29b. (If part-time) What would be the consequences if all DCPs served full-time? Would it be necessary for all DCPs to serve full-time? Why?

30. How long does it take the typical prosecutor (by category) who has argued cases in your court to become proficient as a prosecutor? Why?

category

months

DCP

Police Prosecutor (full-time)

Town/City Solicitor/Prosecutor

Arresting Officer

- .31. Some people believe that the continuation of the DCPD in some form is essential to the success of the Cox recommendations for strengthening the district court? Do you agree or disagree? Why? Are there no alternatives?

32. Are there any suggestions or comments you would like to make regarding the District Court Prosecutor Program or District Court Prosecutors? Police Prosecutors? Arresting Officers? Town/City Solicitors Prosecutors? Prosecution in general?

33. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of the district court?

[Probe for other than DCPF]

CLERK OF COURT  
INTERVIEW GUIDE

CLERK OF COURT  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTERVIEWER \_\_\_\_\_

DATE \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

Arthur D. Little, Inc. (ADL) is in the process of evaluating the District Court Prosecutor Program (DCPP) by request of the Massachusetts Committee on Criminal Justice (MCCJ). The purpose of this study is to provide MCCJ, the Legislature, the Governor, and other decision makers with up-to-date information concerning the DCPP. The study results will aid in arriving at decisions concerning possible state takeover of the program.

I'd like to ask you two sets of questions. The first set of questions are concerned with the prosecution's participation in preparation of complaints, search warrants, etc. The second set will be more open-ended and will give you an opportunity to express your role and relationships to those serving as prosecutors within your district court--what it presently is, and what you think it should be.

1. How long have you served as Clerk of Court? \_\_\_\_\_
2. How long have you served this district court as Clerk of Court? \_\_\_\_\_  
[Give interviewee the Handout No. 1]

DEFINITIONS

DCP - District Court Prosecutor(s)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the district courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney-ADA.)

PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

AO - Arresting Officer(s) - serving as prosecutor

A police officer or detective serving as prosecutor because he is the arresting officer.

TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a district court for cases within his jurisdiction.

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CC-IG

3. How often do those serving as prosecutors within your District Court insure the sufficiency of search warrant affidavits prior to their execution? [Give interviewee Handout No. 3.]

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____
Arresting Officer	_____	_____	_____	_____	_____	_____	_____
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____

3a. How does this occur? [Ask for examples]

3b. [If the DCP is either the only one or the one most frequently determining the sufficiency of search warrants], which prosecution category, if any, would insure the sufficiency of search warrant affidavits if there were no DCPS?

4. How often do those serving as prosecutors within your district court participate in the decision to issue an arrest warrant or summons?

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
Arresting Officer	_____	_____	_____	_____	_____	_____	_____
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____

4a. How often do those serving as prosecutor within your district court review arrest warrants or summons for errors prior to issuance?

<u>Prosecutor Category</u>	<u>Always</u>	<u>Fre- quently</u>	<u>Occa- sionally</u>	<u>Infre- quently</u>	<u>Never</u>	<u>Not Appli- cable</u>	<u>Don't Know</u>
District Court Prosecutor	_____	_____	_____	_____	_____	_____	_____
Arresting Officer	_____	_____	_____	_____	_____	_____	_____
Town/City Solicitor/Prosecutor	_____	_____	_____	_____	_____	_____	_____
Police Prosecutor	_____	_____	_____	_____	_____	_____	_____

4b. How does this occur? [Ask for examples]

4c. [If the DCP is either the only one or the one most frequently reviewing arrest warrants or summons prior to issuance], which prosecution category, if any, would review arrest warrants or summons prior to issuance if there were no DCPs?

5. Do those serving as prosecutors within your district court have any input into the preparation of the trial list?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>
Police Prosecutor	_____	_____
District Court Prosecutor	_____	_____
Arresting Officer	_____	_____
Town/City Solicitor/Prosecutor	_____	_____

5a. If "yes," please explain:

5b. How far in advance is the trial date set?

5c. How far in advance of the trial is the trial list prepared?

5d. How is the prosecutor notified of the trial date? At what stage would he know? [E.g., arraignment.] How far in advance?

6. Do you see screening as a prosecutorial function?  
[If yes.] Which of the prosecutor categories ought to do it?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>
Town/City Solicitor/Prosecutor	_____	_____
Police Prosecutor	_____	_____
District Court Prosecutor	_____	_____
Arresting Officer	_____	_____

- 6a. Please explain:

7. Do those serving as prosecutors within your District Court offer to assist you in evaluating complaint(s) sought in order that they may aid in the effort to reduce overcharging, unnecessary bindovers, and de novo appeals? [If yes], which of the prosecutor categories do this?

<u>Prosecutor Category</u>	<u>Yes</u>	<u>No</u>
Arresting Officer	_____	_____
Town/City Solicitor/Prosecutor	_____	_____
Police Prosecutor	_____	_____
District Court Prosecutor	_____	_____

7a. How? [ask for examples]

8. In your opinion, has the advent of the District Court Prosecutor Program changed the quality of justice within this District Court?

\_\_\_\_\_ improved quality significantly

\_\_\_\_\_ improved quality slightly

\_\_\_\_\_ quality has remained unchanged

\_\_\_\_\_ reduced quality slightly

\_\_\_\_\_ reduced quality significantly

\_\_\_\_\_ don't know.

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Can you describe your role and relationship to the prosecutors within your district court? [Differentiate category of prosecutor.] Do you believe these to be appropriate? Should there be changes? What? How?

10. Are there other suggestions or comments you would like to make regarding the District Court Prosecutor Program or the District Court Prosecutor? Police Prosecutors? Arresting Officers serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecution in general?

11. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of this district court?  
[Probe for other than DCPD]

PUBLIC DEFENDER/DEFENSE ATTORNEY  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC DEFENDER/DEFENSE ATTORNEY  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

Arthur D. Little, Inc. (ADL) is in the process of evaluating the District Court Prosecutor Program (DCPP) by request of the Massachusetts Committee on Criminal Justice (MCCJ). The purpose of this study is to provide MCCJ, the Legislature, the Governor, and other decision makers with up-to-date information concerning the DCPP. The study results will aid in arriving at decisions concerning possible state takeover of the program.

1. How many years have you been serving as Defense Counsel in this District Court? \_\_\_\_\_  
years

2. Which of the following have served as prosecutors for cases where you were the Defense Counsel in this District Court within the last 12 months? [Give interviewee Handout No. 1.]

\_\_\_\_\_ DCP - District Court Prosecutor(s)

A lawyer prosecutor, admitted to the Massachusetts Bar, assigned to the District Courts as a prosecutor under the District Court Prosecutor Program. (Sometimes referred to as Assistant District Attorney--ADA.)

\_\_\_\_\_ PP - Police Prosecutor(s)

A police officer assigned to a given court over an extended period of time to prosecute cases within his jurisdiction.

\_\_\_\_\_ AO - Arresting Officer(s) - serving as prosecutor

A police officer or detective serving as prosecutor because he is the arresting officer.

\_\_\_\_\_ TC - Town/City Solicitor(s)/Prosecutor(s)

Town or City counsel admitted to the Massachusetts Bar, serving as prosecutor within a District Court for cases within his jurisdiction.

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Please answer the remaining questions based on your experience in the District Court of the last twelve months.

[If more than one category of prosecutor is mentioned, ask interviewee Question 3-11. If only one category of prosecutor is mentioned, skip to Q. 12.]

3. Do the prosecution categories prosecute the same types of cases? [Probe for simple-complex misdemeanors or felonies.] [If no.] How do they differ?

4. Does the category of prosecutor have an effect on you as the Defense Counsel? [I.e., case preparation, strategy, presentation, etc? ] How? Why?

[PROBE]

- 4a. Who are you (most, least) likely to consult with to narrow issues, make stipulations, etc.?
- 4b. Who is (most, least) likely to engage in constructive plea bargaining?
- 4c. Who is (most, least) likely to agree to reduced charges when warranted by the facts?
- 4d. Who is (most, least) likely to recommend or agree to diversion programs?

PD-IG

5. Generally speaking, which category of prosecutor has the (highest, lowest) quality case preparation? (We are asking you to consider the typical individual within each category based on your overall experiences of the last twelve months.)

6. Who has the (most, least) effective case presentation? Why?

[PROBE]

- 6a. Who is (most, least) skilled in trial tactics?
- 6b. Who is (most, least) likely to enter complete and relevant evidence?
- 6c. Who spends the (most, least) amount of attention to detail in proving all elements of a case?
- 6d. Who is (most, least) adept in evidentiary procedures?
- 6e. Who is (most, least) likely to present arguments in case summation?
- 6f. Who has the (most, least) skill in eliciting information from witnesses?
- 6g. Who provides the (most, least) logically sequential presentations of evidence?

PD-IG

7. Generally speaking, who is the trial judge (most, least) tempted to assist in clarifying points of law during trial sessions? Why? [Ask for examples.]

8. Does the category of prosecutor affect your decision to appeal a case? Does the quality of prosecution? How? Why? [Probe for reasons for appeal.]

9. [If applicable.] Have you observed a change in the police prosecutors' performance since the advent of DCPs? What?

[Probe for: \_\_\_\_\_ performance has improved  
\_\_\_\_\_ performance has remained unchanged  
\_\_\_\_\_ performance has declined  
\_\_\_\_\_ don't know; not applicable]

10. [If applicable.] Have you observed a change in the arresting officers' performance as prosecutors since the advent of the DCPs? What?

[Probe for: \_\_\_\_\_ performance has improved  
\_\_\_\_\_ performance has remained unchanged  
\_\_\_\_\_ performance has declined  
\_\_\_\_\_ don't know; not applicable]

11. Are there any suggestions or comments you would like to make regarding the DCP or DCPs? Police Prosecutors? Arresting Officers serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecutors in general?

12. [If only one category of prosecutor is mentioned]  
Would you please describe your working relationships with the DCPs? [Probe for pre-trial consultation, plea negotiating, diversion recommendations, etc.]

PD-IG

ARRESTING OFFICER  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

ARRESTING OFFICER  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

Arthur D. Little, Inc. (ADL is in the process of evaluating the District Court Prosecutor Program (DCPP) by request of the Massachusetts Committee on Criminal Justice (MCCJ). The purpose of this study is to provide MCCJ, the Legislature, the Governor, and other decision makers with up-to-date information concerning the DCPP. The study results will aid in arriving at decisions concerning possible state takeover of the program.

1. How long have you been a police officer? \_\_\_\_\_  
years

NOTE RANK \_\_\_\_\_

2. How long have you been prosecuting cases as the Arresting Officer?  
\_\_\_\_\_ years

Please answer the remaining questions based on your experiences of the last twelve months as an Arresting Officer prosecuting cases within the District Court.

3. What percent of your total normal work week would you estimate you spend performing duties related to the prosecution of cases? \_\_\_\_\_ percent
- 3a. What is your normal work week? \_\_\_\_\_ hours
- 3b. How much overtime per year would you estimate you spend performing duties related to the prosecution of cases? \_\_\_\_\_ hours

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AO-IG

3c. [If an AO prior to advent of DCPs.] Since the advent of DCPs, would you estimate that the time you spend performing duties related to the prosecution of cases has increased, decreased, or remained the same?

\_\_\_\_\_ increased

\_\_\_\_\_ decreased

\_\_\_\_\_ remained the same

How much? [Probe for percent of total normal work week and overtime per year.]

Why?

4. Approximately how many cases have you prosecuted in the last twelve months?

5. Do you have policies and guidelines with regard to prosecution that you work under? What are they? Who sets them?

[PROBE:]

screening  
pre-trial conference  
plea bargaining and negotiation  
case direction (particular cases)  
investigative process  
information reporting and record-keeping  
DCP-police cooperation  
time and attendance  
continuances  
appeals  
others

[cross-check answers with questions 9-14 for compliance]

6. While serving as Arresting Officer prosecutor, who do you report to?  
Who is your immediate supervisor? What kind of supervision do  
you receive?

6a. Where do your instructions come from? What are they?  
[EXAMPLE]

6b. Who evaluates your performance as a prosecutor?

6c. How often?

6d. By what standards?  
[PROBE] winning cases.

7. What facilities are available to you? Where?  
[office, desk, etc.]

7a. What support services are available to you? Where?  
[Professional and clerical]

8. Would you please explain the process you follow in prosecuting a case?  
[Differentiate between type of cases, if necessary.] Does it differ by type of case?

8a. Once a case is assigned to you to prosecute, what steps do you follow and approximately how much time do you spend on each?

[PROBE:]	screening
	research
	negotiate, plea bargaining
	preparation
	logistics
	trial
	follow-up
	other

9. What percent of your time as a prosecutor do you spend on the above mentioned functions? [Give interviewee Handout No. 4]

<u>Function</u>	<u>% of Total Time</u>
Screening before complaint is issued	_____
Legal research	_____
Negotiate, plea bargain	_____
Preparation (establishing prosecution plan, reviewing police reports, responding to motions, and interviewing witnesses)	_____
Logistics (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to trial	_____
Time spent waiting for trial, etc.	_____
Trial	_____
Follow-up (appeals and bindovers, case summaries to Superior Court)	_____
Record-keeping and reports	_____
Other	_____
	----- 100% of total time

- 9a. [If a prosecuting AO prior to advent of DCPD.] Has the percentage of time spent on the above functions changed over the years?

10. What do you feel are your major responsibilities as a prosecuting Arresting Officer?

11. What do you believe is the most difficult aspect of being a prosecuting Arresting Officer?

12. [If interviewee has been a prosecuting Arresting Officer prior to advent of DCPP.] What do you believe the impacts (positive or negative) of the DCPP has been in this District Court? Why?

[PROBE: past versus present]

13. In the absence of the DCPP, how would your role as prosecuting Arresting Officer change? With what effects?

14. May I ask you a little about your experience, training, and education, especially in regard to prosecution?

14a. Which has been most beneficial to you as a prosecuting Arresting Officer? Why?

\_\_\_\_\_ experience

\_\_\_\_\_ training

\_\_\_\_\_ education

14b. Have you received any specific training in prosecuting?

\_\_\_\_\_ initial academy training

\_\_\_\_\_ in-service or refresher training

\_\_\_\_\_ Police Prosecutor Association meetings and lectures

\_\_\_\_\_ Other

14c. Have you received any specific education in prosecuting?

\_\_\_\_\_ College or university program. [Evidence, courtroom procedure, criminal law, criminal practice]

\_\_\_\_\_ law degree

\_\_\_\_\_ other

- 14d. What would you recommend, in terms of experience, training, and education to an individual who will be prosecuting as the Arresting Officer?
- 14e. How long do you believe it would take the average newly assigned prosecuting Arresting Officer to become an experienced prosecutor?
15. Are there any suggestions or comments you would like to make regarding the DCPP or DCPs? Police Prosecutors? Arresting Officers serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecutors in general?
- 15a. What improvements could be made in your role as prosecuting Arresting Officer if the DCPP continued?

16. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of this District Court?  
[Probe for other than DCPD]

TOWN/CITY SOLICITOR/PROSECUTOR  
INTERVIEW GUIDE

Interviewer \_\_\_\_\_

Date \_\_\_\_\_

TOWN/CITY SOLICITOR/PROSECUTOR  
INTERVIEW GUIDE

DISTRICT COURT \_\_\_\_\_

INTRODUCTION

[EXPRESS CONFIDENTIALITY]

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1. How many years have you been prosecuting cases in this District Court as a TC? \_\_\_\_\_ years

Please answer the remaining questions based on your experiences prosecuting cases within this District Court in the last twelve months.

2. Approximately how many criminal cases have you prosecuted in the last twelve months within this District Court?
3. Would you please explain the process you follow in prosecuting a case? [Differentiate between type of cases, if necessary.]  
Does it differ by type of case?

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TC-IG

3a. How do you initially receive the cases to be tried by you?  
Are they assigned to you? By whom? On what basis? When  
do you receive them? [Case scheduling procedures.]

3b. Once you receive a case to prosecute, what are the next steps  
and approximately how much time do you spend on each?  
[Probe]

screening  
research  
negotiate, plea bargain  
preparation  
logistics  
trial  
follow-up; appeals or bindovers;  
case summaries to Superior Court

4. What other functions do you perform as a TC?

[Probe: administrator, advisor, trainer, insure sufficiency  
of search warrants, etc.]

TC-IG

4a. Have you received requests for advice from police departments in the last twelve months? [Regarding the issuance of search warrants, evidentiary procedures, etc.] Approximately how many? What subject(s)? What time of day were the requests made?

4b. Have you advised police in areas of "Stop and Frisk," "Search and Seizure," "Identification Procedures," "Lineups," etc. How often? Who? When? What subject(s)?

TC-IG

5. What do you feel are your major responsibilities as a Town/City Solicitor/Prosecutor?

6. What do you believe is the most difficult aspect of being a TC?

TC-IG

**CONTINUED**

**3 OF 4**

7. [If applicable.] From your experiences, what do you see as the advantages or disadvantages with each type of prosecution category prosecuting cases? [Give interviewee Handout No. 1.]

8. In the absence of the DCP, how would your role as TC change?  
With what effects?

9. May I ask you a little about your experience, training and education, especially in regard to prosecution? Where did you go to school? Did you receive any specific education (i.e., courses) in prosecuting? What?

9a. Did you receive any specific training in prosecuting? What?

9b. Have you received any training as a TC? When? What?

9c. Which of the following--experience, training, education-- has been the most beneficial to you as a TC? Why?

\_\_\_\_\_ experience

\_\_\_\_\_ training

\_\_\_\_\_ education

9d. What would you recommend in terms of experience, training, and education to an individual who wanted to become a TC?

9e. How long do you believe it would take the average newly employed TC to become an experienced prosecutor?

10. How is your TC selected?

11. Are there any suggestions or comments you would like to make regarding the DCP or DCPs? Police Prosecutors? Arresting Officers, serving as prosecutors? Town/City Solicitors/Prosecutors? Prosecution in general?

11a. What improvements could be made in your role as a TC?  
If additional resources (funds) were made available to you?

PROBATION OFFICER  
INTERVIEW GUIDE



4. What information or advice do you lend the prosecution?

DCP  
District Court  
Prosecutor

PP  
Police Prosecutor

AO  
Arresting Officer

TC  
Town/City  
Solicitor/Prosecutor

5. Is there consultation between you and the prosecution prior to the issuance of complaints?

<u>DCP</u>	<u>PP</u>	<u>AO</u>	<u>TC</u>
___ Always	___ Always	___ Always	___ Always
___ Sometimes	___ Sometimes	___ Sometimes	___ Sometimes
___ Never	___ Never	___ Never	___ Never

5a. [If Sometimes] When?

[If Always or Sometimes] For what purpose? (I.e., charges dropped, less serious charge(s) brought, etc.)

Purpose

DCP

PP

AO

TC

[ask for examples]

PO-IG

Arthur D. Little, Inc.

6. Do you discuss possible alternatives to formal prosecution (i.e., diversion programs, etc.) with the prosecution prior to formal prosecution?

<u>DCP</u>	<u>PP</u>	<u>AO</u>	<u>TC</u>
___ Always	___ Always	___ Always	___ Always
___ Sometimes	___ Sometimes	___ Sometimes	___ Sometimes
___ Never	___ Never	___ Never	___ Never

6a. [If Sometimes] When?  
[If Always or Sometimes] For what purpose and with what typical results?

Purpose

DCP

PP

AO

TC

[ask for examples]

7. What do you see as the impact (positive and negative) of the DCPP?

Positive:

Negative:

8. Are there any suggestions you would like to make regarding the District Court Prosecutor Program or District Court Prosecutors? Police Prosecutors? Arresting Officers? Town/City Solicitors/ Prosecutors? Prosecutors in general?

PO-IG

9. Has anything happened in the last year or so that you believe has had an effect on the number of appeals, continuances, caseload, or any other important aspect of this district court?

[Probe for other than DCPD]

10. [Other comments]

THANK YOU!

APPENDIX B

STATISTICAL AND OTHER TABLES

TABLE

## AREAS OF INQUIRY AND

Questionnaire	1 Advers.	2 Qual.	3 Neutral	4 Dispose DC	5 Reduce Charge	6 Dispose DC	7 Advise Police	8 Appeal Bindover
Judge	-8,9,-10, 13,16,19 -27 29,30,31 -32	5,(6),9, -11,12,14, 15,16,18, 19,20,23, 24,25,26, 27,28, 32,33,34, 35,38,39, 42,43, -44, 47,48,49, 52,52a	-8,18,22, 23,25,26 34,39,47, 48	7,-17 37,41, 45,46	7,-30, 36,37, 45,46	-17, -30,36, 37,41, 45,46		
DCP	-12,-13, -15,-15a -16 17,18, -19a,-19b, -19c, 20,21,22, -28 43:2,43:3, 43:5	1,-2,9, 10a,14, 20,22, (24),-25, 25a,26,32, 37,38,39, -41		12,13 15,15a, 16,19a 19b,19c, 27, 27, 43:1	12,13 16, 19a,19c, 27, 29a 43:1 43:4	12,13, 15,15a, 16, 19b,19c, 27,28, 37:3 43:1 -43:3	34(a) 34(b) 35,35a, 36	23, 37:8
PP	-10,-11, -13,-13a, -14 15,16, -17a,-17b, -17c, 18,19,20, -26, 41:2,41:3, 41:5	1,-2, 7,8a,12, 18,20, (22),-23, 23a,24,29, 37,38, -40		10,11, 13,13a, 14,17a 17b,17c, 25, 41:1	10,11 14, 17a,17c, 25,27a, 41:1 41:4	10,11, 13,13a 14, 17b,17c, 25,26, 36:3 41:1 -41:3	31(a) 31(b) 32,32a 33,33a, 34,35	21,
Clerk		8,						

TABLE B-1

CITY AND QUESTION NUMBERS

al ver	9 Reduce Cop Time	10 Search Warrant	11 Dismiss Want Pros.	12 FT	13 Screen	14 Vert. Pros.	15 Future	Other
	3,4,50, 51	50,51	10,21	6,54			33 -40 55	1,2
		30,		3,4, 4a,4b, 5a 10,-25, 25a,26, 32,42	11,11a, 11b, -25, 25a, 26,27, 29,29a, 33, 37:1	31,	6,6a, 7,7a, 8,8a	40,
		28,		3,4, 4a,4b, 5,5a, 8,-23, 23a,24, 29	9, 9a,9b, -23, 23a, 24,25, 27,27a, 31, 36:1		6,6a	
		3,			5,6,7			1,2, 4,4a

TABLE B-2  
POPULATIONS AND QUESTIONNAIRE  
AND INTERVIEW SAMPLES

Category	Total Number	Number Inappropriate*	Revised Total Number	Interviewed and/or Responding to Questionnaire		Breakdown of Total Interviewed and/or Responding to Questionnaire				Questionnaires Received Late (Not Included in Analysis)	
						Interviewed		Responding to Questionnaire			
						Number	Percent	Number	Percent		
Judges	146	7	139	69	49.6	17	12.2	52	37.4	3	02.1
DCPs	93	1	92	63	67.7	18	19.3	45	48.4	4	04.3
PPs	137	2	135	96	71.1	8	05.9	88	65.2	1	00.7
Clerks	65	0	65	51	78.5	10	15.4	41	63.1	0	0

\*"Inappropriate" includes those falling in the categories listed below:

1. No longer holding position.
2. On vacation.
3. Does not feel appropriate person to fill out questionnaire.
4. Deceased or retired.

TABLE B-3  
1977 STAFFING PLAN  
DISTRICT COURT PROSECUTOR PROGRAMS

<u>Title</u>	<u>Barnstable</u>	<u>Bristol</u>	<u>Essex</u>	<u>Hampden</u>	<u>Hampshire</u>	<u>Middlesex</u>	<u>Norfolk</u>	<u>Plymouth</u>	<u>Suffolk</u>	<u>Worcester</u>	<u>Total All Counties</u>
Chief District Court Prosecutor	1	1	1	1	1	1	-	1	1	1	9
District Court Prosecutor (all grades)	5	5	6	8	4	15	9	6	23	7	88
Criminal List Manager		1	1	1	1	1		1		1	7
Victim Specialist									1		1
Administrative Assistant	1				1				1		3
Specialist/Indictment Clerk						1					1
Secretary						1			5		6
Administrative Secretary	1	1	1	1		1		1		1	7
<b>TOTAL</b>	<u>8</u>	<u>8</u>	<u>9</u>	<u>11</u>	<u>7</u>	<u>20</u>	<u>9</u>	<u>9</u>	<u>31</u>	<u>10</u>	<u>122</u>
Total Prosecutorial (less chief)	5	5	6	8	4	15	9	6	23	7	88
Total Administrative/clerical (including chief) <sup>1)</sup>	3	3	3	3	3	5	-	3	8	3	34
Staffing Ratio: Admin./Clerical: Prosecutorial	1:1.7	1:1.7	1:2.0	1:2.7	1:1.3	1:3.0	NA	1:2.0	1:2.9	1:2.3	1:2.6
Program Status (full time or part time)	FT	PT	PT	PT	PT	PT	FT	PT	FT	PT	-
Intake Screening	no	no	no	yes	no	no	*	no	yes	no	-
Vertical Prosecution	yes	no	no	no	no	no	yes	no	no	no	-

Source: MCCJ Grant Files

1) Less part time clerical  
\* violent crime project

TABLE B-4  
 JUDGES' RESPONSES TO  
 PERCENTAGE OF CASES BY TYPE PROSECUTED  
 BY DCPs IN THE PAST 12 MONTHS

	<u>Rural</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-99%</u>
Simple misdemeanor	69%	31%		
Complex misdemeanor	60%	28%	12%	
Simple felonies	45%	45%	6%	4%
Complex felonies	55%	19%	6%	19%
	<u>Non-Rural</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-99%</u>
Simple misdemeanor	70%	20%		
Complex misdemeanor	80%	20%		
Simple felonies	35%	42%	21%	
Complex felonies	67%	13%	13%	6%
	<u>Total</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-99%</u>
Simple misdemeanor	70%	26%	4%	
Complex misdemeanor	68%	25%	8%	
Simple felonies	42%	44%	11%	2%
Complex felonies	59%	17%	9%	15%

Source: Judges' Questionnaire

TABLE B-5

DCPs' RESPONSES TO  
 PERCENTAGE OF CASES BY TYPE PROSECUTED  
 BY DCPs IN THE PAST 12 MONTHS

	<u>Rural</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>Mean</u>
Simple misdemeanors	83%	17%		15.4%
Complex misdemeanors	75%	25%		22.9%
Simple felonies	25%	75%		36.7%
Complex felonies	67%	33%		25.0%
	<u>Non-Rural</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>Mean</u>
Simple misdemeanors	90%	7%		9.0%
Complex misdemeanors	74%	22%		20.8%
Simple felonies	19%	52%	29%	40.5%
Complex felonies	55%	45%		29.4%
	<u>Total</u>			
	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>Mean</u>
Simple misdemeanors	88%	9%		10.7%
Complex misdemeanors	74%	23%		21.4%
Simple felonies	21%	58%	21%	39.5%
Complex felonies	59%	42%		28.2%

Source: DCP Questionnaire

TABLE B-6

## PERCENTAGE OF TIME DCPs SPEND ON FUNCTIONS

	Rural		Non-Rural		Mean
	0-25%	26-50%	0-25%	26-50%	
Screening before complaint is issued	100%		97%		6.7%
Legal research	100%		100%		8.6%
Negotiate, plea-bargain	100%		94%		10.9%
Preparation (establishing prosecution plan, reviewing police reports, responding to motions, interviewing arresting officers and witnesses)	83%	17%	81%	19%	18.9%
Logistics (trial arrangements, arranging police and witness appearances, gathering and having on hand all material evidence related to trial)	100%		100%		9.9%
Time spent waiting for trial, etc.	92%	8%	97%	3%	5.7%
Trial	50%	50%	52%	42%	29.8%
Follow-up (appeals or bind-overs, case summaries to Superior Court)	100%		100%		4.1%
Record-keeping and reports	100%		100%		6.3%

APPENDIX C

NARRATIVE APPENDICES

INTER-RATER RELIABILITY ANALYSIS  
OF OBSERVATION GUIDE QUESTIONS

PURPOSE AND METHOD

The purpose of the inter-rater reliability analysis was to identify items on the Observation Guide whose answers would not be included in the report. These would come from the questions which included some element of what is usually referred to as "subjective judgment." Through training and a "dry run" with the Observers, we sought to inculcate common standards of judgment and interpretation of the items. Nevertheless, we believed it best to test, item-by-item, whether we had achieved this objective.

Two types of questions are included in the inter-rater reliability analysis: one asked for Observers' opinions; the other required an interpretation of facts. Factual items were included to ensure that Observers' interpretations of instructions were consistent with the intent of the item. Two subtypes of determinations are included in the "opinion" items. The first required the Observers to decide whether what was done, or resulted from what was done, was "merited." The second required Observers to grade the performance of those observed. For purposes of this analysis, it is not important to distinguish the two types of opinions.

For every pair of answers, one tallied by the Observer and one tallied by the Task Leader, for the same court case, there were three possible results. The first possibility was that the Observer and the Leader answered the question the same way, resulting in a notation of "exactly same." The second possibility, for "opinion" questions only, the Observer and the Leader differed by no more than one digit, e.g., one gave a grade of "A," the other a "B." In this case, a notation was placed in the "minor difference" column. The final possibility, "other differences," includes all "factual" questions where there was any disparity between Observer and Leader, and "opinion" questions where there was more than a one-digit deviation between Observer and Task Leader.

Six out of the seven Observers were rated by the Task Leader. (The seventh was not rated because he became ill in the middle of the study.)

RESULTS

For 41 items, we found sufficient agreement between Observer and Task Leader. "Sufficient agreement" was defined as follows:

- For "factual" questions, the answers of the two people filling in the Observation Guide were exactly the same in at least three-quarters of the cases.

- For "opinion" questions about the merit of an action, the answers were exactly the same for three-quarters of the cases.
- For "opinion" items which asked for a grade between "A" and "E," inclusive, the grade was exactly the same or only one letter-grade off in at least three-quarters of the cases.

We have listed below items which did not meet these criteria. Consistent with the purpose of the inter-rater reliability analysis, we ignored these questions in reporting results, since the inter-rater reliability did not encourage faith in their results.

The following are factual questions where more than one-quarter of the correlations consisted of "other differences":

- Q. 16 - Who assigned the case to the Prosecution?
- Q. 18 - On what basis was the case screened?
- Q. 109 - Time expended in preparation by the Prosecution.
- Q. 110 - Time expended in preparation by other than the Prosecution.
- Q. 235 - Reasons for continuances when plea is "not guilty."

The following are the opinion questions for which less than three-quarters of the correlations consisted of either "exactly the same," or "minor differences":

- Q. 20 - Whether the screening procedure was efficient.
- Q. 324 - Whether cross-examination by Prosecution was sufficient.
- Q. 325 - Whether the rehabilitation of Prosecution's case was sufficient.

TWO TYPES OF CONTROLS WHICH JUDGES  
HAVE EXERCISED OVER PROSECUTION

1. Exercising their discretionary powers over prosecution in their courts, Judges in certain Districts have ordered that no person shall represent the Commonwealth in any case, unless (s)he is a member of the Bar. These orders emphasize the strong conviction of many Judges that the Commonwealth deserves representation equal to that of the defense. It seems, then, that orders requiring prosecution by an attorney impel defendants to acquire representation which they would not otherwise acquire had the Judge not mandated prosecution by an attorney. There can be little doubt, however, that representation by attorneys on both sides improves the overall quality of justice.

2. Judges have also requested that DCPs handle individual cases. Our data shows that 58% of Judges from rural areas and 47% of Judges from non-rural areas have requested their prosecution in special instances in the past 12 months. More Judges from non-rural courts may have made specific requests since fewer DCPs in rural courts are full-time and maintain a steady presence in one court. In non-rural courts, the Judge may never need to make specific requests.

Judges interviewed said that they would request that a case be handled by a DCP if it was unusually complex or clearly headed for Superior Court. Police officers regularly ask a DCP to handle cases which involve citizens of renown in the community and assaults and batteries on police officers.

SOME LESSONS LEARNED IN THE RECORDS ANALYSIS,  
WITH IMPLICATIONS

INTRODUCTION

Three sets of trial lists were examined in the records analysis. Records were chosen from courtroom activity beginning July 1975, as part of what had already been compiled and published. A second group of cases, from the lists beginning July 1976, were examined to provide data on cases probably completed, but more recent than the first set. Finally, some cases from January 1977 were abstracted; they were representative of the present prosecutorial configuration, but more likely to be complete than current (February 1977) cases.

IDENTIFICATION OF PROSECUTORIAL CATEGORY

The first difficulty encountered was the lack of identification of prosecutor on the lists examined. For the trial list, the court is usually satisfied to identify the prosecution as "the Commonwealth." Even in those courts where a single DCP was assigned, or a PP might be deduced from location of offense, it required effort to identify the prosecutor. For cases over a year old, even memory did not serve in some cases.

In one court with limited space, documents had accumulated containing the name of the prosecutor, which would have identified category, but for lack of reference and need for space, they had been recently destroyed.

In another court, a computer printout identified the defense as to category, such as "court-appointed" or "private attorney," but not even category of prosecutor was listed. In one instance, arrangements were made to start with the list which was compiled in the Probation Office, but this posed some problems and we reverted to the Clerk's listings. The distinctions between the public listing by the Clerk of Court and the operational listings of the probation officers (kept confidential) and between lists which serve only to record transactions as against listings upon which specific activities are assigned and performed, were apparent.

NEED FOR IDENTIFICATION

The Clerk of Court, and therefore the trial list he prepares, have not had a direct relationship to the DCP Program. However, for individuals in this project, such identification becomes necessary to compare the accomplishments of DCPs with those of other prosecutors. Other

projects presently funded or contemplated would also require identification of individuals, whether offenders, victims, judges, counselors, witnesses, etc., for evaluation of programs and policies. Some type of identification of individuals involved in a case would help evaluation. Preferably, the records, including identification, would be suited to computer processing where results can be made available and studied but the individual concerned can be protected.

#### OFFENSE CODING

In examining lists for selection of cases, different procedures were encountered. In one case, code designations used by the Office of the Commissioner of Probation for motor vehicle offenses had to be interpreted. In others, abbreviations were used, at times with or without the statutory reference. One court, geared to data processing by computer, uses its own three-digit code to facilitate statistical analysis.

For this project we initially explored the progress of others in establishing a standardized offense designation (abbreviation or code). Several such undertakings are taking place, but none is complete. We therefore used our own digital code for offenses. But it is obvious that the availability of a standard coding system, and its adoption by police, courts and others, could make future evaluation projects much easier. Standardized coding of offenses would improve the ability to obtain accurate, consistent and readily available summaries of activity of all district courts. Such summaries would be materially aided if court transactions were maintained on computer information systems.

**END**