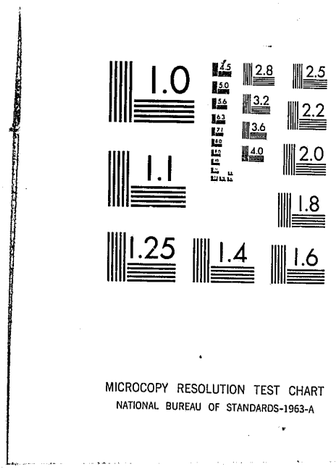

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PROVIDING INFORMATION ABOUT PROSECUTION WITNESSES: THE EFFECTS ON CASE-PROCESSING DECISIONS IN CRIMINAL COURT

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November, 1979

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ACKNOWLEDGEMENT

Research of the kind that undergirds this study, and the other studies in this series, calls for trust, inquiring minds, and an adventurous spirit from a prosecutor's office. We have been fortunate to find these qualities in abundance in the Kings County District Attorney's Office. District Attorney Eugene Gold and his Chief Assistant District Attorney Robert G. M. Keating are to be admired for their commitments to improve the administration of justice and to find empirical bases for policy; these are the commitments that lead them to be such imaginative and generous collaborators in research, even when the study is as intrusive and as disruptive of routine as this study was.

This research was conducted by the Vera Institute of Justice under grant #2456 from the intensive evaluation program of the New York State Division of Criminal Justice Services. The views expressed in this report are those of the authors and do not necessarily reflect the opinion of the Division of Criminal Justice Services.

SUMMARY

This paper analyzes the effects of three of the activities of the Victim/Witness Assistance Project (V/WAP). V/WAP was a comprehensive program addressed to the needs of victims and witnesses in the Brooklyn Criminal Court; the program was administered by the Vera Institute during the period covered by this research and was subsequently absorbed within New York City's Victim Services Agency. Other elements of V/WAP's program are analyzed in other reports in this series. Each of the activities analyzed here was a systematic effort to alter decision-making in the court by providing a particular type of information. To courtroom prosecutors, V/WAP provided information about civilian witnesses' willingness (or unwillingness) to cooperate with the prosecution. To supervisors in the prosecutors' office, V/WAP provided lists of cases with chronically uncooperative witnesses and witnesses who could not be located. To the courtroom prosecutor and to the court, V/WAP provided information about police witnesses' regular days off.

- When V/WAP was able to inform courtroom prosecutors that a civilian witness, absent from court on a hearing date, was in fact interested in prosecuting and willing to come to court another time, the information enabled prosecutors more frequently to overcome defense motions to dismiss; this effect was strongest in cases which otherwise would have been the most likely to be dismissed.

- Cases with chronically uncooperative witnesses reached disposition twice as quickly when V/WAP informed prosecutors' supervisors that the witnesses could not ever be expected to appear at court.

- When V/WAP provided information about police witnesses' duty schedules, the court more often avoided adjournment of cases to police witnesses' regular days off. (Adjournments to dates when officers are unavailable for duty usually result in further adjournments and wasted court appearances by the other parties.)

This paper attempts to illustrate how and explain why each type of information had its effect when V/WAP made it available in a systematic way. To do so, the paper presents and makes use of an analytic framework for understanding the court decision-making process within which V/WAP worked.

CONTENTS

INTRODUCTION

This paper examines the effects of three activities undertaken in the Brooklyn Criminal Court by the Victim/Witness Assistance Project (V/WAP).[1] Although, as its name suggests, V/WAP was designed to provide a wide array of services to crime victims and prosecution witnesses, it also set out to overhaul witness management practices and to act as a resource of information about witnesses for the Brooklyn District Attorney's Office and the Brooklyn Criminal Court. The sections below present data from three evaluation studies which examined the effectiveness of V/WAP in its role as a provider of information. The paper attempts to explain the effects of these V/WAP activities upon case disposition, by reference to an understanding of how dispositions are reached in Brooklyn Criminal Court.

The Dispositional Process: Concepts

An understanding of the impact of V/WAP (or any reform program) requires knowledge of the process whose outputs the program is attempting to modify. In this evaluation, the program activity being examined is the provision of information to criminal court decision-makers for the purpose of guiding them to choose one or another alternative. The decision-making process itself, and the stakes of the various parties in one alternative or the other, must therefore be understood before it can be known why a particular program activity succeeded or failed in influencing decisions.

Criminal courts dispose of the great majority of the cases brought before them through negotiation; the time-honored ideal of adjudication by trial is rarely realized. This is true whether the court is a high-volume, fast-paced urban court like Brooklyn's or a more leisurely-paced suburban or rural court; further, negotiation seems to have been the mode of disposition preferred by courts for a very long time (see, for example, Heumann, 1977). In other words, in most cases prosecution and defense do not play out full adversarial roles in a winner-take-all courtroom trial drama. They generally cooperate with the court and with each other to the extent necessary to reach an administrative solution through negotiation.

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1. Appendix A provides a brief description of the entire V/WAP program and its evolution, and of the other research reports in this series.

However, conflict is far from absent in a process where decisions are reached by negotiation. Prosecution and defense still have organizational goals which are in conflict. The prosecutor's office aims to protect the community from dangerous criminals; the defense bar aims to do whatever can be done to shield clients from the burdens of conviction and sentence. Plea negotiation helps meet these conflicting goals as well as efficiency goals of the court: negotiation can guarantee the prosecutor's office a high likelihood of conviction with a minimum expenditure of time and resources; negotiated solutions are usually acceptable to defense attorneys, who obtain (or believe they obtain) lighter sentences for their clients than they would receive after trial; and negotated dispositions appear more likely than trials to help the court prevent delay and reduce case backlog. Negotiation introduces a high degree of predictability to the dispositional process, permitting all parties to avoid the uncertainties of trial--the unpredictable outcomes from jury deliberations and the unknown demands on organizational resources.

The conflicting interests of the prosecutor's office and defense bar are represented in plea negotiations by individuals who function within what Eisenstein and Jacob (1977) have termed courtroom "workgroups" consisting of a prosecutor, a defense attorney, and a judge--the basic decision-making unit in criminal court. It is at this workgroup level that success or failure is determined for any reform program that tries to affect court outcomes.

When the defense attorney and prosecutor come together in a courtroom workgroup to dispose of their caseload, they pay attention to the adversarial goals of their respective organizations, but they also recognize as mutual goals the avoidance of the uncertainty of trial and the preservation of the spirit of cooperation necessary for the workgroup to maintain an acceptable level of productivity. Eisenstein and Jacob suggest that the priority given by courtroom workgroups to the conflicting or to the mutual goals depends upon the

strength of the organizational norms of adversariness maintained in their respective organizations and the negotiating flexibility that workgroup members are given by those organizations.

In other words, where adversarial norms are strong and workgroup members are permitted to accept a limited range of negotiation outcomes for a particular type of case, the negotiation process would be expected to have a more adversarial quality. Eisenstein and Jacob have argued that this kind of negotiation process makes it difficult for courtroom workgroups to arrive at mutually-acceptable case dispositions and thereby contributes to court delay; Utz (1977) has argued that it also leads to uneven application of sanctions against defendants. These authors argue that, where adversarial norms of the prosecutor's office and the defense bar are weaker and workgroup members have greater flexibility in deciding what disposition is appropriate in a case, the negotiation process is likely to be more consensual in nature, cases may be processed more rapidly, and sanctions may be applied against defendants in a more consistent fashion.

Criminal court caseloads tend to consist of a few frequently occurring offenses--what Sudnow (1965) refers to as "normal crimes." In any local criminal court, prosecutors and defense attorneys learn the kinds of dispositions that the other side expects in these routine cases. And, over time, precedents come to be established which suggest the disposition that is viewed as appropriate for each type of incident. Establishing norms for appropriate punishments, or a set of "going rates" (Rosett and Cressey, 1977), is an important device for speeding up the negotiation process and reducing some of the conflicts that may arise between prosecution and defense. Adopting such a classification system may permit workgroups to avoid disagreement about the proper penalty for the crime, and to concentrate instead on reaching consensus about what the crime is.

However, a courtroom workgroup can find it far from easy to decide what the crime is, for their working definition of the crime is seldom synonymous with the criminal charges drawn from the penal code. Penal codes do not distinguish injuries resulting from a barroom brawl between

two acquaintances from similar injuries sustained in an unprovoked attack by a stranger; both incidents are assaults of a certain degree. Yet common sense suggests that the two offenses will not always be seen to merit the same punishment--a distinction sure to be reflected in the informal system of going rates adopted by criminal court workgroups. Thus, it becomes important to the workgroup to examine a defendant's motives and intent, victim provocation, and other factors, in determining which going rate applies to a particular case. This is where discussion between prosecution and defense is likely to be focused. This is also where disagreement may occur, particularly when a prosecutor's office has insisted on rates for most types of cases that the defense bar views as unreasonably high; where this has occurred, a defense attorney may attempt to obtain a disposition acceptable to his defendant by trying to alter the prosecutor's perception of the case type.

The Dispositional Process: Brooklyn Criminal Court

Brooklyn Criminal Court is one of the nation's busiest urban courts. It is the point at which over 60,000 felony and misdemeanor prosecutions originate each year. Some of the more serious felonies proceed to the grand jury and, if indicted, are sent to Supreme Court for disposition. However, most felony arrests--as well as all misdemeanor arrests--reach their disposition in the Criminal Court.

Cases in Criminal Court begin in the complaint room, where felony arrests are screened by one of a team of seasoned prosecutors who form the Early Case Assessment Bureau (ECAB). ECAB supervisors initially determine whether or not to prosecute felony arrests, and whether to prosecute them as felonies or as misdemeanors. All felony cases are assigned a "track," which is an indication of the type of disposition the Bureau believes acceptable to the prosecutor's office. The track serves as a guide to less-experienced prosecutors who handle the case subsequently. Viewed another way, it sets limits on the ability of courtroom prosecutors to negotiate with other members of courtroom workgroups.

Once a case has been tracked, an accusatory instrument is drawn up, and the case proceeds to arraignment. At ar-

raignment the formal charges against the defendant are read. Because of the judges' need to keep up with the tremendous volume of cases coming into the court, arraignment is also the stage at which over half of the court's caseload reaches disposition--by plea to a misdemeanor charge, by dismissal, by adjournment in contemplation of dismissal, or by transfer to another court. Plea negotiating at arraignment is terse and rushed. The cases settled at this stage are the ones that require only minimal discussion. Cases which are more complex or in which ECAB has directed that a misdemeanor conviction is unacceptable are adjourned; if such a case is a felony charge, it is adjourned to a preliminary hearing and if it is a misdemeanor charge, it is adjourned for trial.

In post-arraignment Criminal Court parts, most cases are terminated by negotiated plea or by dismissal--very few misdemeanor cases go to trial, but some felony cases survive the preliminary hearing and are bound over to the grand jury for indictment and Supreme Court disposition.

Two aspects of the plea negotiating process in Brooklyn Criminal Court are of special importance to understanding the effects of V/WAP's interventions. First, because the manpower available for prosecution and defense functions is limited, cases must be settled quickly and almost always without substantial investigation. Cases that the system considers serious may receive greater attention and be more fully investigated at a later time, during grand jury and/or Supreme Court proceedings. But for cases terminated in Criminal Court, courtroom workgroups must reach consensus about the value of each case on the basis of sketchy, and often second-hand information. Second, the process of negotiation has a decidedly adversarial tone.

One reason for this adversarial tone is that the District Attorney's Office accepts nearly all arrests for prosecution. In jurisdictions where prosecutors screen out cases in which there is doubt about the sufficiency or reliability of the evidence necessary for conviction, the usual assumption of workgroup members may be that a defendant in court can be proved guilty by trial; the question they must resolve is, what is he guilty of? In Brooklyn Criminal Court, however, the defense seems more often to assume that there may be serious question whether any penalty

against the client should be accepted; that is, what has the prosecutor got that should make the defense agree to negotiate at all? This defense view is buttressed by the fact that over 40 percent of cases entering Brooklyn Criminal Court are eventually dismissed.

Another reason for the adversarial style of negotiation in Brooklyn Criminal Court is that ECAB reduces the negotiating flexibility of courtroom prosecutors when, by assigning a "track," it fixes the value of the case. Deviation by courtroom prosecutors from ECAB instructions is not encouraged; dispositions that depart from what is indicated as acceptable by the ECAB track are reviewed by supervisory staff, as are all dismissals in felony cases. The relative inflexibility of a courtroom prosecutor when negotiating dispositions encourages delaying tactics by the defense attorney who may believe the prosecution case will not prove as strong as it appeared to ECAB, who knows that the prosecution case weakens with age, and who hopes that a dismissal will result if disposition can be avoided long enough.

Another manifestation of the adversarial style of negotiation in Brooklyn Criminal Court is the lack of open discovery; that is, the prosecutors are reluctant to "tip their hands" by detailing the prosecution case to the defense attorneys, who are viewed more as opponents than as workgroup colleagues. That the prosecutors give priority to adversarial organizational goals is also suggested by the relative rarity of dismissals initiated by the prosecution; it is largely left to the defense and to the court to see that weak cases are ejected from the system.

For the purposes of the present evaluation, however, the most significant manifestation of adversariness is the importance of the civilian prosecution witness's[2] cooperation as a factor in determining the ultimate disposition of a case. Not trusting the representations of prosecutors, defense attorneys in many cases are unwilling to negotiate a plea until they have seen that the key prosecution witness is willing to come to court and to testify. Thus, if such a witness--usually, the complainant--fails to come to court,

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2. The term "civilian prosecution witness," as it is used in this paper, means complainants, eyewitnesses, and other prosecution witnesses except police.

the case is likely to be adjourned to a new date. When the witness repeatedly fails to appear, the court is likely to dismiss the case on the motion of defense counsel.

If negotiation does occur in the absence of a witness who was asked to appear, witness cooperation becomes one of the factors considered by the courtroom workgroup in deciding what going rate applies to the case. Without the cooperation of witnesses, cases are at best given a lesser value than they would otherwise get and the negotiated disposition is likely to serve less well the goals of the prosecutor's office.

The Expected Use of V/WAP's Information in the Dispositional Process

As an agent of reform, V/WAP can be viewed as helping to define and facilitate systemic, as opposed to organizational, goals. Although some authors (e.g., Packer, 1968) have chosen to view the court system as an organization, Mohr (1976) has pointed out the inappropriateness of that concept. According to Mohr, since there is no central management or compliance system in the courts, much of the meaning of the term "organization" is lost when it is applied to the fragmented process by which cases are brought to disposition in courts. Each constitutent organization--prosecutor's office, defense bar, and the court--tends to pursue its own narrow organizational goals. While a process built upon separation of powers and adversariness of method has benefits, the danger is that larger concerns--systemic interests--may be completely neglected in the process.

V/WAP's court reform mission can be seen as an attempt to draw the attention of the constituent organizations to some of these neglected matters--the systemic interest in efficiency, and the complaining witnesses' interest in having their views considered in the dispositional process. Towards these ends, V/WAP began providing to the prosecutor and to the court several types of information about prosecution witnesses -- information that had not before been routinely gathered or used.

V/WAP hoped that the use of this information by Criminal Court decision-makers would change the dispositional

process and, in some cases, the dispositions. The information systematically gathered and provided by V/WAP included:

- for each civilian witness, data flowing from V/WAP's attempts to contact and to notify the witness of upcoming court appearances, including statements made by the witness that would permit a prosecutor to assess whether or not the witness was really interested in cooperating with the prosecution (this information was provided on what was called the "Court Part Information Sheet," or "CPIS");

- for each civilian witness who appeared chronically uncooperative, a specially flagged CPIS (this was called the "Recommended Immediate Action List," or "RIAL"); and

- for each police witness, data from the police duty schedule regarding the officer's availability for appearance at court on particular dates in the future.

V/WAP's information about the willingness of civilian witnesses to cooperate was provided to courtroom prosecutors on a case-by-case basis. The information was obtained in the course of V/WAP's routine efforts to notify witnesses of upcoming court dates. Its purpose was to give prosecutors a clear idea of whether a witness who was absent from court on a particular date remained interested in prosecuting. When a key witness is absent at a court hearing, defense counsel is likely to ask the court to dismiss the case. It was hoped that, if V/WAP stated that a witness remained interested in the case, the prosecutor would have the backing necessary to convince the court to adjourn the case so the witness would have another chance to appear. In providing the CPIS information, V/WAP sought to advance the interests of those witnesses (usually complainants) who want their cases prosecuted, but are unable to attend court on a particular date because, for example, they are ill or have other obligations that conflict with the court's calendar.

V/WAP's list of cases with chronically uncooperative witnesses was designed to reduce pointless adjournments in Criminal Court. Many such cases, in which witnesses refused to appear or could not be located, were being adjourned

again and again, often because courtroom prosecutors did not want to be responsible for a dismissal or a reduced plea. Most were eventually being dismissed by the court, but only after the resources of the criminal justice agencies had been wasted, and after the defendant had been required to make numerous appearances. Recognizing that there was little to encourage courtroom prosecutors to take positive action toward speedier disposition of such cases, V/WAP developed the Recommended Immediate Action List--a list of pending cases in which it was considered very unlikely that an essential witness would ever appear to testify. The list, regularly updated, was forwarded for review to the Criminal Court Bureau Chief of the prosecutor's office; the Bureau Chief in turn forwarded the information to his courtroom prosecutors, with instructions on how to handle the cases. Usually courtroom prosecutors were instructed to take whatever action was necessary to dispose of RIAL cases, and were authorized to accept lower pleas.

The third type of witness information was produced for coutroom prosecutors and court "bridgemen" (the court officers who control caseflow in the courtroom), in an attempt to reduce the delay that arises when cases are adjourned to dates when a key police witness is scheduled for a regular day off.[3] To aid case scheduling, V/WAP informed prosecutors and bridgemen of the days on which each police witness (normally the arresting officer) would be available to come to court. Without the police officer, the adjourned case often cannot proceed on the scheduled return date, and is adjourned again. When this happens, the court's time, the prosecutor's time, the defendant's time, and civilian witnesses' time are wasted. Prior to V/WAP's intervention, there was no effective procedure for police duty schedules to be taken into account when adjournment dates were chosen. Information about police duty schedules was, in theory, provided by police officers themselves. However, in practice, many officers were not present in court to provide it because they had been excused or placed on alert status for the court hearing at which it became necessary to set the adjournment

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3. Police officers are not required to come to court on a regular day off unless the defendant is in jail pending a preliminary hearing; in the latter instance, officers can be compelled to attend, but must receive overtime wages.

date. Further, even when officers were present in court, they often appeared not to be offering the court information about their duty schedules.

The remaining sections of this paper discuss the results of providing each of these three forms of witness information: an attempt is made to explain the results by reference to the preceding discussion of the dispositional process. In this regard, it is important to keep in mind that case-processing decisions were made at the workgroup level, where cooperative witnesses were needed and where the basic organizational costs and benefits were generated. The key to understanding the impact of these V/WAP activities is, therefore, to analyze how they affected inter-organizational exchanges within courtroom workgroups.

In general, V/WAP's interventions may be expected to have affected the functioning of workgroups in three ways. The first would have been to alter the outcome of workgroup negotiation by strengthening the bargaining power of one party over another. (By providing a courtroom prosecutor with better information about an absent witness's willingness to cooperate--information that would not have been readily available to defense or to the court--V/WAP might have given the prosecutor a stronger position from which to negotiate for further adjournment.) The second would have been to change the amount of freedom a workgroup member felt he had in the negotiating process, by encouraging administrators in his organization to ease or to tighten policies. (By providing its information about chronically uncooperative witnesses to the Criminal Court Bureau Chief, V/WAP invited the Chief to take action which would encourage courtroom prosecutors to overcome their normal reluctance to accept dismissals or lower pleas.) Finally, V/WAP would have been expected to reduce the dependency of workgroup members on other, less reliable sources of the information they need to make decisions. (V/WAP would, to a degree, reduce workgroup dependency on arresting officers as the source for information about dates when they would be available to attend court.)

EFFECTS OF PROVIDING COURTROOM PROSECUTORS WITH INFORMATION ABOUT WITNESSES' INTEREST (OR LACK OF INTEREST) IN THE PROSECUTION

Like most urban criminal courts, Brooklyn Criminal Court has a very high rate of non-cooperation among civilian prosecution witnesses. On any given day, more than half of those witnesses whose appearance is required are absent from court. When a needed prosecution witness is absent, defense counsel may be unwilling to negotiate a plea and may move for dismissal of the case. The prosecutor must quickly decide whether the best course is to seek an adjournment, try to negotiate a plea, or allow the case to be dismissed by the court. To make this decision intelligently, a prosecutor must know whether the absent witness is willing to come to court in the future. If he is, the prosecutor may wish to argue for an adjournment. If he is not, the prosecutor may try to negotiate a lesser plea than he would otherwise have accepted, or acquiesce in a dismissal by the court. If the prosecutor wishes to seek an adjournment or negotiate a plea, he must argue that his witness is still willing to come to court in spite of the witness's current absence. To do this effectively, he may need immediately to provide to the judge or defense attorney some ground for believing that the witness is, indeed, willing to come to court on a future date.

Until V/WAP began its work in 1975, a prosecutor had little assistance in making this kind of decision or advancing persuasive arguments for adjournment. Witnesses who were needed in court were simply issued subpoenas to appear. Since contact information in the court's files was often incorrect or outdated, many subpoenas failed to reach the witnesses for whom they were intended. Except in the relatively rare instances when a prosecutor found time personally to contact a witness by phone, he had no idea whether that witness was likely to come to court. If a witness did not appear, the prosecutor had no way of knowing whether the person failed to get the subpoena, was ill or otherwise temporarily unavailable, refused to cooperate, or had lost interest in the case. Thus, the prosecutor had no way of knowing his best course of action -- to seek an adjournment, hoping that a witness would appear on the next date; to dispose of the case through a plea bargain; or to acquiesce in a defense motion to dismiss.

V/WAP took over from the court and District Attorney's Office the responsibility for notifying prosecution witnesses of court dates. It tried to reduce the wearing down of witnesses after repeated trips to court by expanding the on-call procedure (or witness "alert") begun several years before by the Appearance Control Unit (an earlier Vera Institute project); a witness who qualified for alert status was summoned to court by phone only after it was determined, on the day the case

was scheduled, that the case was ready to move forward. Other witnesses were notified of court dates not only through the mail but also by phone or, if they had no phone, by a personal visit from a project representative.

For all witnesses, information about whether they were contacted, how they were contacted, their willingness to come to court and their ability to do so, their attendance record on past dates, and their special needs or problems, was conveyed by V/WAP to courtroom prosecutors daily, on a document called the court part information sheet ("CPIS"). Thus, for the first time, witness information was systematically available to prosecutors to guide them in making decisions about their cases.

It was expected that the CPIS document would enable prosecutors to organize their caseloads better and would reduce the time court officials waste waiting for witnesses who are unlikely to show. It was also anticipated that the CPIS information would allow prosecutors to make more informed decisions about how to proceed when a necessary witness was absent from court. If V/WAP's document indicated that an absent witness remained cooperative and interested in prosecuting, it was hoped that the prosecutor would succeed in getting an adjournment to give the witness another chance to appear. In cases where the CPIS did not evidence absent witnesses' continuing interest, it was expected that prosecutors would be more likely to seek pleas to lesser charges, or to concur in defense counsel motions to dismiss.

The purpose was not only to inform the prosecutor's decision, but also to help him carry it out. It was expected that the prosecutor's argument for adjournment and against dismissal would be strengthened if he could draw the court's attention to the absent witness's statement of interest in prosecuting, obtained by V/WAP during V/WAP's notification effort and presented on the CPIS document. In other words, it was expected that the CPIS information provided by V/WAP would further the interests of witnesses who want cases prosecuted, by enhancing the prosecutor's ability to exact outcomes favorable to his office and to the witnesses.

Method

To examine the effect on case outcomes of V/WAP's basic witness information, a sample of "case-court dates" (defined below) was drawn from V/WAP's computer files. For simplicity's sake, a case had to have exactly one civilian witness to be eligible for the sample. For each case that passed this initial test, a check was made to determine whether the witness was present or absent from court on each post-arraignment court date. All dates on which the witness was absent were included in the sample. Each case could therefore appear several times in the sample -- a "case-court date" for each occasion when the witness was absent.

The rationale behind these criteria was that V/WAP's CPIS information would be likely to affect a prosecutor's view of the case only if a witness was not in court. In that event, messages communicated to the prosecutor about V/WAP's ability to contact a witness or about the witness's interest in prosecuting might be expected to influence the prosecutor's decision to try to adjourn or to dispose of the case on that date. It was reasoned that, if a witness were present in court, he could speak for himself and V/WAP's information would be redundant.

There were 7,732 case-court dates in V/WAP's computer system at the time of sampling (March, 1978) that met the study's criteria. From the information on the CPIS sheets that had been forwarded to prosecutors on these case-court dates, witnesses were initially trichotomized into "cooperative witness," "uncooperative witness," and"no assessment possible" categories. Witnesses were included in the "cooperative" category if CPIS indicated to the prosecutor that the witness was willing to appear and/or that he was unable to appear on that date. Witnesses fell into the "uncooperative" category if V/WAP's CPIS told the prosecutor that the witness was unwilling to appear, had a history of non-appearance, or could not be located. When the CPIS showed that V/WAP had not been able to establish personal contact with the witness, the witness was included in the "no assessment possible" category. Because there were no consistent differences in the case-court date outcomes of the "uncooperative" and "no assessment possible" categories, they are combined in this report.

Findings and Analysis

Table 1 shows that, when CPIS indicated an absent witness was cooperative, cases were more likely to be adjourned (84%) than when the CPIS document did not (76%).

TABLE 1

V/WAP's INFORMATION ABOUT WITNESS COOPERATIVENESS, BY COURT OUTCOME ON THAT COURT DATE

	Adjourned	Dismissed	ACD	Pled Guilty	Transferred to Grand Jury	Total*
Information that witness is cooperative.	84%	5	3	6	1	100% (n=1,797)
No information that witness is cooperative.	76%	15	3	5	1	100% (n=5,704)

Because of the large sample, virtually any difference between groups would be statistically significant. Therefore, significance tests are deleted in this and the subsequent two tables.

* Excludes bench warrants and cases transferred to Family Court.

Correspondingly, more cases were dismissed in the absence of positive indication of witness interest (15%) than when the CPIS offered evidence of the witness's continuing interest (5%). In other words, with a clear indication from V/WAP that an absent witness was cooperative, prosecutors were apparently able to argue successfully for adjournment. However, without CPIS evidence that the witness would be cooperative, prosecutors seemed less able to give the court a persuasive reason to adjourn a case and, as a consequence, more cases were dismissed.

While the overall effect of V/WAP's CPIS information appeared minor, it was expected that the effect would be strongest where the prosecutor's argument for adjournment was usually weakest. On most case-court dates, the prosecutor already had the upper hand--because judges are reluctant to dismiss so long as the possibility remains that an absent witness may be interested in prosecuting and may be outraged if the case is dismissed. (This is evidenced by the fact that dismissal occurred on only 15% of the court dates where V/WAP did <u>not</u> indicate interest on the part of absent witnesses.)

In some cases, however, the presumption of the court or defense counsel may be that an absent witness is not ever going to cooperate in prosecuting the case. This is likely to be the presumption in cases that involve a prior relationship between witness (i.e., complainant) and defendant. In the view of court personnel, such witnesses have a reputation for being fickle; they are perceived as often changing their minds about wanting to prosecute, once the arrest has been made and the immediate crisis has subsided.

Cases that have been calendared several times previously constitute a second category of cases in which prosecutors' arguments for adjournment might be expected to fail without evidence from V/WAP of the complainant's continued interest. Because the court is conscious of its backlog and of the need to conclude old cases, it could be expected to have less patience with absent witnesses in cases which have already been adjourned several times.

In these two types of cases--cases involving a relationship between witness and defendant and cases in which there have been several previous adjournments--the likelihood of a dismissal is high if a crucial prosecution witness is absent. It is here that V/WAP's information about witnesses' interest would be expected to have the greatest effect; a positive V/WAP statement about the witness's interest could help tip the balance in favor of the prosecutor seeking adjournment.

Table 2 shows that V/WAP's CPIS information did have the greatest effect in cases involving the closest witness-defendant relationships (family or friends). Within this category of cases, the adjournment rate was 14 percentage points higher and dismissal rate 16 points lower when V/WAP's CPIS showed the absent witness as cooperative than when the CPIS did not.

TABLE 2

V/WAP's INFORMATION ABOUT WITNESS COOPERATIVENESS, BY TYPE OF VICTIM/DEFENDANT RELATIONSHIP AND COURT OUTCOME ON THAT COURT DATE

		Adjourned	Guilty Pleas and Grand Jury Transfers	Dismissals and ACD's	Total*
No Relationship:	Information that Witness is Cooperative	84%	8	8	100% (n=1,331)
	No Information that Witness is Cooperative	77%	7	16	100% (n=4,052)
Weak or Moderate Relationship:	Information that Witness is Cooperative	86%	6	8	100% (n=234)
	No Information that Witness is Cooperative	75%	2	23	100% (n=755)
Close Relationship:	Information that Witness is Cooperative	87%	5	8	100% (n=225)
	No Information that Witness is Cooperative	73%	3	24	100% (n=888)

*Excludes bench warrants and cases transferred to Family Court.

Table 2 also shows that when the witness and defendant had weak or moderate relationships (neighbors, acquaintances, etc.), 11 percentage points separated the adjournment rate of cases in which the CPIS indicated continuing witness interest and the adjournment rate of cases in which the CPIS gave no positive information. The adjournment rates differed by only seven percentage points in the stranger-to stranger category.

Looking at the table another way, the dismissal rate was uniformly low across relationship categories as long as V/WAP indicated that the absent witness remained interested in the prosecution of the case; the vast majority of these cases were adjourned and the witness given another chance to appear at court. Without such assurance, however, the rate of dismissals in the witnesses' absence increased as the closeness of the relationship between witness and defendant increased. Thus, the effect of V/WAP's CPIS data was to prevent the dismissal of cases involving a close prior relationship between complaining witness and defendant, where the absent witness remained interested in pursuing the case.

V/WAP's CPIS data had a differential effect according to the age of case as well. Table 3 shows that V/WAP's data about witnesses' interest had no impact on the court's decision to adjourn or dispose of cases that were being heard for the first time in a post-arraignment court part. At this early stage of case processing, the court seemed willing routinely to give the witness the benefit of the doubt and to adjourn the case in the hope that the witness would attend on the next court date. However, by the time a case had been calendared three or more times previously, V/WAP's information about the witness had a large effect; the adjournment rate in such cases was 15 percentage points higher and the dismissal rate 16 percentage points lower when V/WAP offered a positive indication of the witness's interest than when it did not.

Again, V/WAP's intervention can be seen to have had the greatest effect when the prosecutor was otherwise in the weakest position to counter a motion to dismiss.

TABLE 3

V/WAP's INFORMATION ABOUT WITNESS COOPERATIVENESS, BY NUMBER OF TIMES CASE HAD BEEN PREVIOUSLY BEFORE THE COURT

		Adjourned	Guilty Plea and Grand Jury Transfer	Dismissal and ACD	Total*
One previous appearance:	Information that Witness is Cooperative	87%	8	5	100% (n=782)
	No Information that Witness is Cooperative	87%	6	6	100% (n=1,822)
Two previous appearances:	Information that Witness is cooperative	83%	7	10	100% (n=388)
	No Information that Witness is Cooperative	77%	5	19	100% (n=1,406)
Three or more previous appearances:	Information that Witness is Cooperative	82%	7	11	100% (n=620)
	No Information that Witness is Cooperative	67%	6	27	100% (n=2,466)

*Excludes bench warrants and cases transferred to Family Court.

* * *

The results of the study reported in this section of the paper suggest that V/WAP's information on witnesses' willingness to cooperate permitted prosecutors more effectively to oppose defense motions to dismiss, when witnesses were absent from court.[4] Providing information showing that a witness does want the case prosecuted and is willing to come to court had the most effect when the case was one which would otherwise have a high probability of dismissal--that is, a case involving a close witness/ defendant relationship or one that had already been adjourned several times. For these cases, V/WAP's positive information about witness interest apparently strengthened prosecutors' arguments for an adjournment to give witnesses another chance to appear; thus, V/WAP was altering the usual interaction in courtroom workgroups. The result of this intervention was to promote the interests of witnesses who could not or did not come to court on a particular date, but who wished the case prosecuted.

4. Because it was not possible to employ a true experimental design in the study, the results must be viewed somewhat tentatively. It cannot be conclusively determined that the prosecutor was relying solely on V/WAP's information about witnesses' interest. It may have been, for example, that arresting officers present in court gave the prosecutor the same information about witnesses as V/WAP did, and that it was the police officer's story, rather than V/WAP's assessment, that equipped the prosecutor to argue persuasively for an adjournment. This seems unlikely, however, since arresting officers are often themselves absent from court, and in any event, seldom have contact with civilian witnesses outside the courtroom after the arrest has been taken through the initial part of the process.

EFFECTS OF PROVIDING SUPERVISORS IN THE PROSECUTOR'S OFFICE WITH INFORMATION ABOUT CHRONICALLY UNCOOPERATIVE WITNESSES

One of V/WAP's early goals was to promote court efficiency by reducing the number of court-dates necessary to reach dispositions in Criminal Court. Initially, the project sought to achieve this by decreasing no-shows among civilian witnesses, thereby making an impact on one of the major causes of adjournment. When earlier studies in this research series indicated that V/WAP had not increased the attendance rate of civilian witnesses, the project turned to another means to reduce unnecessary adjournments.

When, in the project's estimation, an essential witness (most often the complainant) was extremely unlikely ever to come to court, the project notified the Criminal Court Bureau Chief in the prosecutor's office. A list of such cases was forwarded to the Bureau Chief's office several times weekly. Cases chosen for the list were ones in which an essential witness had established a history of non-attendance over several court dates, and/or in which the witness had expressly refused to appear or could not be located. The Bureau Chief, in turn, was to identify these cases to his trial assistants and to give instructions for handling the cases in court.

Prior to V/WAP's introduction of this procedure, such cases were typically adjourned repeatedly until dismissed by the court. In the adversarial environment of Brooklyn Criminal Court, courtroom prosecutors were reluctant to move for dismissal of such cases. Their safest course of action was to try to get the cases adjourned; courtroom prosecutors rotate frequently, making it unlikely that a prosecutor who gets the court to adjourn a problem case would find himself in the same court part on the adjourned date.

The desire of prosecutors everywhere to avoid dismissals was reinforced in Brooklyn Criminal Court by management policies of the Criminal Court Bureau. Through its Early Case Assessment Bureau (ECAB) and its review

of disposed cases, as discussed above, management limited the flexibility of the office's relatively inexperienced courtroom prosecutors in negotiating dispositions within their workgroups. The purpose of these policies was to place responsibility for making judgments about the "worth" of cases with seasoned complaint room prosecutors and with administrators, not with novice courtroom prosecutors.

However, the inability of courtroom prosecutors to negotiate freely with the court and with defense counsel works to prolong the lives of cases with chronically uncooperative witnesses, and to waste resources of criminal justice agencies. Ironically, it also may have the result of increasing dismissals when courtroom prosecutors continue to press for settlements which, in light of increasingly evident witness problems, are unrealistically high and not agreeable to defense counsel.

By bringing cases with chronically uncooperative witnesses to the attention of the Bureau Chief, V/WAP hoped that the prosecutor's office would take affirmative measures to terminate them, either through dismissal or negotiated plea. It was believed that the Bureau Chief would be more attuned to the systemic need for court agencies to process cases expeditiously, and, feeling less constrained by adversarial norms, would press the courtroom prosecutors to dismiss or to offer substantially reduced charges in exchange for a plea.

V/WAP's list of cases with chronically uncooperative witnesses, called the Recommended Immediate Action List (RIAL), was first regularly presented in the fall of 1976. Initially, it met with little success. The Bureau Chief, in almost all instances, wanted V/WAP to take additional measures to bring in the witness before he would agree to take action (e.g., V/WAP would be asked to send a strongly-worded subpoena to the witness, or to seek additional witness contact information from prosecution or police records).

Results from this early version of the list suggested that, rather than reducing adjournments, V/WAP's action to bring problem cases to the attention of the Bureau Chief

actually prolonged the lives of these cases and increased the number of court-dates required to dispose of them. It was also found that more guilty pleas and fewer dismissals occurred in cases placed on the list than in comparable cases not included on the list. It appeared that courtroom prosecutors, aware that one of their cases was being scrutinized by a supervisor, were even more reluctant than usual to acquiesce in dismissal of the case by the court. They may instead have made more strenuous efforts to negotiate a plea, or at least to see that the case was adjourned so they would not have to shoulder responsibility for dismissal.

The list was discontinued to permit V/WAP to assess its initial effects. With a new director of V/WAP, and a new Criminal Court Bureau Chief, a second version of the RIAL was introduced early in 1978. This time, cases were eligible for the Recommended Immediate Action List only if the witnesses: (a) had established a pattern of non-attendance; and (b) had refused to appear or had proved to be unlocatable. In addition, V/WAP made sure that it had exhausted all reasonable means to bring witnesses to court before including a case on the list forwarded to the Brueau Chief.

Method

In March, 1978, an experiment was begun to evaluate the impact of the revised RIAL. After V/WAP staff selected cases for the list on a given day, a member of the evaluation staff randomly deleted cases from the list; CPISs were forwarded to the Bureau Chief's office for half of the eligible cases and not for the other half. Both sets of cases were tracked; information was collected on the number of times each case was scheduled by the court, the disposition of the case, and several other factors. By August, 1978, the sample included 72 cases forwarded to the Bureau Chief, and 77 cases not forwarded for purposes of the evaluation.

Findings and Analysis

The results of the experiment showed that cases which were forwarded to the Bureau Chief reached disposition twice as quickly as cases that had been deleted from the list. The former required an average of 0.6 adjournments after appearing on the list, compared to 1.2 adjournments for control cases.[5] Thus, V/WAP's primary objective in forwarding the list--reducing needless adjournments--was achieved.

However, V/WAP's intervention affected the substance as well as the speed of the disposition. Cases placed on the list were twice as likely as control cases to end in guilty pleas, and correspondingly less likely to be dismissed (see Table 4). In some of the cases that

TABLE 4

TYPE OF DISPOSITION IN CASES WITH UNCOOPERATIVE WITNESSES, ACCORDING TO WHETHER OR NOT CASES WERE FORWARDED TO THE CRIMINAL COURT BUREAU CHIEF FOR REVIEW

	Dismissed	ACD	Pled Guilty	Sent to the Grand Jury	Bench Warrant	TOTAL**
Cases forwarded to the Bureau Chief	36%	11	36*	7	10	100% (n = 72)
Cases not forwarded	62%	13	17	5	3	100% (n = 77)

$x^2 = 14.09$, $p < .01$

*Includes one case in which one defendant pled guilty and charges against a co-defendant were dismissed. In all other cases involving co-defendants, dispositions for both defendants were the same.

**Excludes five cases still open at the time of data analysis.

V/WAP forwarded to the Bureau Chief for review, V/WAP received from the prosecutor new information on how to contact witnesses appearing on the list. But the greater frequency of guilty pleas among the cases included on the Recommended Immediate Action List is not attributable

5. $F(1,146) = 5.96$, $p < .02$.

to any greater success in getting the witness to court. (Ninety-three percent of witnesses whose cases were listed never appeared in court after being identified on the list, compared to 90 percent of the witness in the control cases.)

The most likely explanation for the difference in dispositions between the two groups of cases is that the prosecutor's office, knowing that such cases could not be won at trial (or would eventually be dismissed by the court if further adjournments failed to produce the uncooperative witness), was induced to make or accept a lower plea offer. Rather than fruitlessly holding out for a higher plea until witnesses appeared, courtroom prosecutors--acting in response to their Bureau Chief's directive--may have been taking the initiative to negotiate pleas while they still could. Unfortunately, the type of data needed to confirm this explanation--a complete record of plea offers for each case in the sample--was beyond the scope of the present study. But it is known that the Bureau Chief's practice was to instruct courtroom prosecutors to dispose of RIAL cases, and to authorize pleas to much reduced charges.

V/WAP's Recommended Immediate Action List seems to have altered the usual disposition process in these problem cases by giving the Bureau Chief access to information which otherwise would have been unavailable to the prosecution, and which may have been unavailable to the defense or the court. The Bureau Chief, in turn, seems to have relaxed office policy in these cases, and allowed courtroom prosecutors to accept less favorable (but more realistic) dispositions than they would otherwise have viewed as acceptable. In the long run, this worked in favor of the prosecutor's office by making it possible for courtroom prosecutors to engage in successful negotiation within workgroups and thereby to avoid dismissals. However, V/WAP's intervention seems to have resulted in defendants entering pleas of guilty without knowledge that essential witnesses were unavailable, a result that raises legal and ethical issues. It is faster, but is it fair? Whether such issues require remedial action and, if so, by whom--V/WAP, the prosecutor, the court, or the defense bar--cannot be determined from the study alone.

EFFECTS OF PROVIDING COURTROOM PROSECUTORS AND THE COURT WITH INFORMATION ABOUT THE AVAILABILITY OF POLICE WITNESSES

When a case is scheduled for court hearing on the arresting officer's regular day off, the officer is usually not required by Police Department policy to attend court, and this often means that the case cannot proceed and must be re-scheduled to another date; in the meantime, civilian witnesses and defendants may have made a pointless trip to court. If the defendant is in jail pending a preliminary hearing, or if the case is marked "Final vs. People" (see below), officers can be brought in on their days off. In this event, however, they must be paid overtime wages. Another instance of V/WAP's attention to systemic concerns was its attempt to reduce the frequency with which cases are scheduled to officers' days off, through supplying the court with information about dates on which police witnesses are available to attend court.

Choosing an appropriate adjournement date often involves bargaining, not unlike the process for negotiating dispositions. Prosecutors, judges, defense attorneys, and court bridgemen participate in the process and may haggle over dates to a greater or lesser degree. The court must be cognizant of the statutory right of felony defendants held in pre-trial detention to a preliminary hearing within 72 hours of arraignment, and the court must be cognizant of the number of cases already scheduled for particular dates. Defense counsel must be cognizant of his schedule of cases, many of which may be in other courts. Prosecutors must take into account the time required for production of police lab reports and for additional investigation.

It is the prosecutor's concern to see that his police witnesses as well as his civilian witnesses are produced when required by the court, and therefore he is the one who must speak up if the police witness would not be available on a particular proposed date. He, in turn, looks to the arresting officer to inform him of his future availability.

However, courtroom prosecutors are often too harried to get availability information from the officer. In addition, many officers are excused or are placed on alert by V/WAP, and therefore are not present in court to give their schedules to the prosecutors. More fundamentally,

wasted adjournments may be of greater concern to the court than to prosecutors or police officers. The prosecutor's main concern--obtaining a conviction--is not usually jeopardized by an officer's absence resulting from an adjournment to his day off. The date prior to dismissing a case for failure to prosecute, the court marks it "Final vs. the People," and gives the prosecutor one more chance to produce his witnesses; under these circumstances, the prosecutor's office can require the attendance of an arresting officer even on his day off. Similarly, there is little incentive for an officer to attempt to prevent an adjournment to his day off, and--if it has been marked final by the court--the officer may actually benefit from an adjournment to his day off since he will receive overtime wages to appear in court.

This situation is a good illustration of the point that the court system is a collective of individuals belonging to different organizations, each with different organizational and personal goals. At the courtroom workgroup level, only the judge is likely to be concerned with the wasted adjournments that result from inattention to officers' days off, but the court has no direct access to information about officers' schedules.

V/WAP, with its attention to systemic concerns, was interested in promoting efficient case management practices. By supplying information about officers' days off to the prosecutor, V/WAP reduced the reliance of the prosecutor on the police officer for duty tour information. By supplying the same information to the court bridgeman, V/WAP reduced the court's reliance on both prosecutor and police officer for the information. This procedure, in other words, provided to the court--which was most likely to be concerned with eliminating needless adjournments--a new conduit to reliable information about the future availability of police officers for attendance at court.

Method

After it had become a routine matter for V/WAP to provide information on police witnesses' duty tours,

the information was deleted for a random sample of cases. From August 15 to August 26, 1977, V/WAP's computer was programmed to eliminate police officers' schedules from the court part information sheet and from the bridgeman's list in one of every four cases. The experiment was supplemented by several days of court observations by a member of the evaluation staff, who recorded interactions between prosecutor, judge, defense counsel, and bridgeman when they were choosing adjournment dates. The sampling procedure yielded a total of 489 cases in which duty tour information was provided and 148 cases in which it was deleted.[6]

Findings and Analysis

Over all cases in the sample, the proportion of cases adjourned to officers' days off did not vary according to whether or not the officer was present in court, and able to provide his duty schedule information himself, at the time the date was chosen. This confirmed the belief that police officers were not themselves an effective check against cases being adjourned to their regular days off.

In sample cases for which V/WAP's duty tour information was not provided, 26 percent were adjourned to officers' days off. Based on an analysis of police duty charts for the sample period, one would have expected 29 percent of the adjournment dates chosen to have been officers' regular days off if adjournment dates had been chosen at random (that is, if no attention had been given to regular days off in setting dates). The 26 percent rate of adjournment to regular days off observed when V/WAP's information was withheld does not differ significantly from the 29 percent rate that would be expected if the date selection process had been random.[7]

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6. The original sample was larger, but to facilitate data collection, only officers who worked under the "A" Duty Chart were included in the final sample. These officers comprise about three-quarters of the police witnesses V/WAP handled.

7. $x^2 = 0.82$, N.S.

Again, these data suggest that the court's conventional methods of obtaining police duty tour information to use in setting adjournment dates were ineffective.

In cases where V/WAP's duty tour information was provided, however, only 19 percent of cases were adjourned to officers' regular days off. Under this condition, the proportion of regular days off chosen was significantly different from the 29 percent that would be expected if police duty tour information was not being considered in selection of future court dates.[8]

Thus, the study tends to confirm V/WAP's belief that information on officers' schedules was not getting to the court. It also suggests that V/WAP's attempt to establish itself as a reliable supplier of police duty tour information was a successful one.

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8. $x^2 = 23.83$, $p < .01$.

CONCLUDING OBSERVATIONS

This paper has reached for an understanding of the effects of providing the prosecutor's office and the court with several types of information about prosecution witnesses. As an aid to interpretation of the data, the paper presented an analysis of the dispositional process in Brooklyn Criminal Court.

Each of the three types of witness information examined in these studies was found to affect decisions made in individual cases. These positive evaluation results suggest at least that V/WAP has achieved credibility as a supplier of information about prosecution witnesses. It is interesting to note that this credibility may be increasing over time. Limited efforts to assess the impact of V/WAP's provision of witness information were undertaken early in the project's history, but yielded negative results. However, by the time the present studies were conducted, after the project had been in existence for three years, the project's information was having a demonstrable effect on case decision-making. While the project's impact in this area is still limited, the trend suggests that V/WAP's witness information is becoming an integral part of the dispositional process.

It could be argued that V/WAP's activities have their effect largely because of several specific aspects of the dispositional process in the Brooklyn Criminal Court. One is the high volume of cases, which limits the resources available to criminal justice agencies for investigation of cases and which focuses workgroup members' attention on the need to dispose of cases as quickly as possible. In a more leisurely-paced court, prosecutors or judges may be more likely themselves to seek out the kinds of witness information V/WAP provides to the prosecutors and courts in Brooklyn.

Another aspect of the dispositional process that may influence the need for the types of information V/WAP provides is adversariness in the negotiation style of workgroups, which is reflected in the prosecutor's need (if he is to obtain a plea) to demonstrate to the defense that civilian witnesses are cooperative. Two of the V/WAP activities discussed--providing courtroom prosecutors with information evidencing the degree of witness

interest in pursuing a case, and providing the Bureau Chief with that information for the list of chronically uncooperative witnesses--are salient to the prosecutor because he must know what kind of cooperation to expect from witnesses if he is to make decisions which promote the goals of his office. Smith (1979) contrasts the prosecutor's need for witness cooperation in the adversarial environment of Brooklyn Criminal Court with the ability of the prosecutor to negotiate successfully without the witness in the more cooperative environment of Suffolk District Court. In the Suffolk District Court dispositional process, as described by Smith, it is reasonable to expect that these V/WAP interventions would be less needed by the prosecutor.

Finally, the limited freedom of courtroom prosecutors to negotiate dispositions in Brooklyn Criminal Court is the key to understanding the need for, and effect of, V/WAP's Recommended Immediate Action List. V/WAP's intervention induced the Bureau Chief to relax usual office policies in cases with chronically uncooperative witnesses. Only in this way was it possible to break the counter-productive cycle of repeated adjournments and case dismissals which resulted from courtroom prosecutors insisting on terms of negotiation that became unacceptable to defense attorneys as they became aware of the problems prosecutors were having producing these witnesses.

The extent to which the dispositional process in other jurisdictions presents similar qualities to the process in Brooklyn Criminal Court is not known. Therefore, it is not clear whether interventions like the ones described here are widely needed. However, it can be predicted that if such measures are adopted in other areas, their success will hinge in part on the extent to which caseload pressures, norms of adversariness, and flexibility of prosecutors in negotiating dispositions are similar to those found in Brooklyn Criminal Court.

REFERENCES

Eisenstein, James and Herbert Jacob. Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little, Brown and Company, 1977.

Heumann, Milton. "A Note on Plea Bargaining and Case Pressure." Law and Society Review, Vol. 9: 515, Spring 1975.

Mohr, Lawrence B. "Organizations, Decisions, and Courts." Law and Society, 10(4) (1976), 621-642.

Packer, Herbert L. The Limits of the Criminal Sanction. Stanford, California: Stanford University Press, 1968.

Rosett, Arthur and Donald R. Cresey. Justice by Consent: Plea Bargains in the American Courthouse. New York: J.B. Lippincott Company, 1977.

Smith, Barbara. The Prosecutor's Witness: An Urban/Suburban Comparison. Unpublished Ph.D. Dissertation, State University of New York at Stony Brook. May, 1979.

Sudnow, David. "Normal Crimes: Sociological Feature of the Penal Code in Public Defender's Office." Social Problems, Vol. 12: 255, 1965.

Utz, Pamela. Justice and Negotiation in the Criminal Courts. Unpublished Ph.D. Dissertation, University of California at Berkeley, January 1977.

APPENDIX A: THE VERA INSTITUTE'S VICTIM/WITNESS ASSISTANCE PROJECT: AN ACTION-RESEARCH PROGRAM

Many of the assumptions that guide today's efforts at reforming the criminal justice system--however time-honored and common-sensical they are--may be too simple, or simply false. Certainly, various programs built on these assumptions do not work as expected. Because the Victim/Witness Assistance Project proceeded from some of these assumptions and, through research and experience, shifted its objectives and methods to what appears to be a more solid base, this record of interplay between action and research in the evolution of the program may be of some interest to a wider audience.

Background: The Discovery of Witness Disaffection and the Rise of the "Victim Movement"

The rapid increase in urban crime this country experienced during the 1960s and early 1970s, and the alarm it engendered, brought immediate and persisting criticism upon the criminal justice system for failing to control crime. More slowly, it was realized that police, prosecutors and judges rely heavily on the cooperation of the public--they are not able to perform their functions in a vacuum. Evidence of the extent to which the public was not cooperating emerged from the series of victimization studies begun in the late 1960s;[1] not only did the surveys show actual

crime, reported in the surveys, to be three to five times higher than crime reported to the police, but they also surfaced widespread lack of confidence in the law enforcement and criminal justice systems. Among the most frequent reasons for not reporting crime, according to the surveys, was the belief that criminal justice officials either could not, or would not, do anything about it. This evidence sparked renewed intellectual and programmatic interest in the plight of the victim.

At the same time, an awareness began to grow that even when victims do report crimes and police do make arrests, the victims frequently fail to cooperate in prosecuting the defendants. As a result, it was believed, many cases were eventually dismissed that might have resulted in conviction if the victims had played their role. As early as 1967, the President's Commission on Law Enforcement and Criminal Justice noted that:

> "In recent years there has been growing concern that the average citizen identifies himself less and less with the criminal process and its officials. In particular, citizens have manifested reluctance to come forward with information, to participate as witnesses in judicial proceedings, and to serve as jurors. The cause of these negative attitudes are many and complex, but some aspects of the problem may be traced directly to the treatment afforded witnesses and jurors."[2]

The reluctance of witnesses to attend court, and the consequences of their failure to do so, were soon highlighted in other studies. While noting the paucity of data on the subject, the Courts Task Force of the National Advisory Commission on Criminal Justice Goals and Standards (1967) reported that the failure of witnesses to attend court proceedings was "throughout the country, the most prevalent reason for dismissal of cases for want of prosecution and a significant contributor to overall dismissal rates."[3] The Task Force found that, in New York City's Criminal Court, for example, witness non-attendance was responsible for up to 60 percent of all dismissals.

In 1972, the Center for Prosecution Management conducted a survey of prosecutors and their perceptions of the reasons for

court delay. The study found that all survey respondents thought witness non-cooperation to be a problem and to contribute significantly to court delay.[4] At about the same time, a study in Washington, D.C. revealed that nearly half of felony arrests were being rejected for prosecution at the prosecutors' initial screening, because witnesses were uncooperative (Hamilton and Work, 1973).[5]

Once the problem had been identified and publicized, expert observers and researchers began the search for causes. In most studies, the factor identified as responsible for the failure of witnesses to cooperate was their disaffection with the criminal justice system. Witnesses, it was argued, fail to cooperate because the costs and inconveniences of attending court are substantial and because, when they do attend, they are likely to be neglected or even treated discourteously by court officials (see Knudten, 1976, for a full discussion of the costs incurred by witnesses as a result of their experiences in the court system). Witnesses, the argument continued, become "turned off" and withhold their cooperation from the criminal justice system. Reasons advanced for this apparent witness disaffection included: repeated, often needless, court appearances (Banfield and Anderson, 1968; Chicago Crime Commission, 1974; Fitzpatrick, 1975); long waits in the courthouse for cases to be called (Ash, 1972); neglect by court officials, and resulting confusion about court proceedings (New York State Supreme Court, 1973; Zeignehazen, 1974); poor physical facilities (Sacramento Police Department, 1974); and loss of income and inadequate compensation (Fitzpatrick, 1975).

However, some authors argued that the disaffection of complaining witnesses results from the extremely circumscribed role assigned to the victim in modern criminal law (Ash, 1972); that is, the victim is a source of evidence which may or may not be needed by the prosecution. MacDonald (1976), reporting on a survey of district attorneys, argued that criminal justice officials manipulate witnesses to serve personal or organizational interests. Prosecutors, he suggested, are responsive to the needs, desires and expectations of victims only when, as a strategy, it is seen as likely to advance the prosecutor's organizational or individual goals.

Another theme that emerged from studies of witness non-cooperation was that complainants (or other witnesses) who

have existing ties of kinship, friendship, or other relationship to the defendant are less likely to cooperate with the prosecution than those who are strangers to the accused. A study by the Vera Institute of Justice (1977) revealed that, in roughly half of all felony arrests in New York City (excluding crimes without identifiable victims, such as possession of narcotics or gambling), the complainant and defendant had a prior relationship. Surprisingly, this included property crimes as well as crimes against the person. Furthermore, these cases, in each crime category, were dismissed at a very high rate and the dismissals were largely attributable to witness non-cooperation. Other studies (e.g., Williams, 1976; Cincinnatti Police Division, 1975; Chicago Crime Commission, 1974) reported that a witness who knew the defendant was more likely than other witnesses not to attend required court dates. Based on her findings, Williams concluded:

> "It would appear that when the victim and defendant have a close social relationship, dispute resolution may be occurring outside the courtroom. At best, one can say that such family cases, and perhaps cases between close friends, are best settled out of the criminal setting. At worst, a pattern of violence between a husband and wife may continue with the beaten spouse unable or unwilling to leave the family setting, and hence, unwilling to continue to testify in a criminal case."

Still other studies focused on poor communication between court officials and witnesses as a major cause of witness non-cooperation. Fitzpatrick (1975) reported many of the witnesses he surveyed stated that they failed to attend court dates because they had never been notified to appear. In the most extensive research effort on witness cooperation, Cannavale and Falcon (1976) found many of their survey respondents reported being willing to cooperate but had nonetheless been labelled "uncooperative" by prosecutors. A major reason for this misperception seemed to be poor communication among the police, the prosecutors, and these witnesses; many respondents who had been labelled "uncooperative witnesses" reported that they did not recall being a victim of or witness to the crime, or that they had never been asked to serve as a witness for the prosecution. Other witnesses seemed to have been labelled uncooperative because prosecutors anticipated an uncooperative attitude on the basis of their past experience with witnesses having similar characteristics. Ironically, the Cannavale and Falcon study's most important

finding -- that many "uncooperative" witnesses may not deserve the label -- made it difficult to pursue the study's original purpose of determining what factors differentiate cooperative from uncooperative witnesses.

By 1974, enough evidence was available on the extent of victim and witness non-cooperation, its consequences, and its apparent causes, for the Law Enforcement Assistance Administration to intervene. In that year, LEAA launched the Citizens' Initiative Program in the belief that:

> "it is only through the integration of citizens into the criminal justice process in a significant and positive way that crime prevention can occur. Conversely, the criminal justice system has a key role to play in requiring the citizen to abandon his apathy and to assume his obligations."

Although the first federally funded victim/witness project had begun earlier, the launching of the Citizens' Initiative Program with its objective of funding 19 victim/witness projects during its first year marked the formal beginning of what Stein (1977) has referred to as the "victim movement".

By mid-1979, more than 90 of these victim-witness projects had been funded by LEAA. Many were located within, or worked closely with, prosecutors' offices. Many programs, working with victims in their role as prosecution witnesses, had the explicit goal of reducing witness non-cooperation, and designed their program efforts with the then-current research findings on causes of witness non-cooperation in mind.[6] The largest of these projects, and the one that gave birth to the research reported in this document was the Victim/Witness Assistance Project begun in Brooklyn, in July, 1975, in conjunction with The Brooklyn District Attorney, the New York City Police Department, the courts, the New York State Division of Criminal Justice Services, and the Mayor's Criminal Justice Coordinating Council. V/WAP was administered by Vera until December, 1978, when it was absorbed by a new, independent city-wide agency, the Victim Services Agency.

Description of the Project

The Institute's effort to ameliorate prosecution witnesses' problems with the criminal court really began years earlier, in 1970, when, in cooperation with the New York City Police Department, it launched the Appearance Control Project.

Appearance Control arranged for selected witnesses (both police and civilian) to remain at work or at home on the date of their scheduled court appearances until it was determined they were needed in court. Then they were summoned by telephone. (If a police officer witness was assigned to street patrol on the day of the scheduled court hearing, the precinct was notified by telephone, and he was dispatched to court, by radio, only if his presence was actually required.)

A controlled study showed that the alert procedures neither delayed court proceedings nor led to more dismissals. The research also suggested that a city-wide program could be expected to save police time worth about $4 million annually, and Appearance Control was institutionalized within the Police Department in all New York City boroughs except Staten Island.

Although Appearance Control helped reduce the imposition of unnecessary burdens on some civilian witnesses and on the Police Department, it was not a comprehensive attack on the problems thought to cause witness disaffection with the prosecution process; although it helped keep witnesses out of court when they were not needed, it did little to encourage their presence when it was necessary. V/WAP was designed to do so.

V/WAP started with three tasks. First, in order to reduce witness confusion and unnecessary appearances, and to encourage appearances when they were necessary, the project undertook to notify all prosecution witnesses of the dates they were expected in court. Second, the project provided each courtroom Assistant District Attorney with a daily roster of witnesses (civilian and police) for every case assigned to him, indicating whether the witnesses were "expected to appear", "not expected to appear", "on standby or telephone alert", or had not been reached. And third, the project provided services that included a reception center for victims and witnesses, a children's play center, transportation to court, a crime victim hotline, a burglary repair unit, and a service counselor.

The program elements continue to increase in number and complexity under the direction of the Victim Services Agency; the description offered below reflects program operations at the beginning of 1977, when the current round of research was getting underway.

Notifications

Project operations start in the Criminal Court complaint room, the point of entry for virtually all criminal cases, where civilian witnesses are interviewed by project staff (police witnesses simply fill out a form). The resulting information is fed into an on-line computer, which creates case files that form the basis for future notifications about court appearances. Arraignment information is also fed into the computer -- docket number, witness presence or absence at arraignment, court outcome, and the date and court part for any adjourned proceeding.

As the first step in the notification process, the computer generates daily lists of "long dates" (cases adjourned for six or more days) and "short dates" (those adjourned for five or fewer days). In long-date cases, the computer prints a letter that notifies the witness of his court date and asks him to phone the project to confirm receipt of the letter. The caller may be placed on alert -- if he can get to court within an hour from his home or job and can be contacted by phone -- or he may be told to appear. (Witnesses excused from the outset receive no letter.) Whether the witness is required at court or put on alert, the notifier tries to encourage him to appear by offering sympathetic support and information about the project's services. For the short-date cases, project staff starts telephone or in-person notification efforts immediately after arraignment.

To facilitate notifications, the computer also generates three other daily lists of the short-date cases and long-date cases in which the witness has not yet responded to the letter. The first list--the one to which the staff devotes most of its energy -- shows all witnesses scheduled for appearances the next day; the second, all those who have appearances in two days; and the third, those who have appearances in five days.

The staff members try to reach persons on these three lists by telephone. If they succeed, they follow the procedure they would use if the witness had responded to the notification letter by calling the project. For serious cases, a V/WAP community representative attempts to locate in person those witnesses who cannot be reached by phone.

Every evening, the computer prints a set of information sheets on project cases scheduled for the next day in each court part. Each Court Part Information Sheet (CPIS) lists witnesses by case, as well as each witness's appearance status

(must appear, on alert, or excused), how he has been reached (telephone, letter, visit), and whether he is expected to appear in court on that day. These sheets are then forwarded to Assistant District Attorneys (ADAs) in the post-arraignment court parts to help them make informed decisions on how to proceed with their cases.

At the end of each day, the ADAs note the outcome of the proceedings (disposition, adjourned date, court part, and so on), which witnesses are not needed next time, and any additional witnesses who will be required for the next court proceeding. The information provided by the ADA is entered into the computer, and the notification cycle begins again.

The method for notifying police witnesses is similar to that for civilians, except that they are contacted at their precincts (by teletype or telephone) rather than at their homes, and officers' eligibility for alert status is determined by different, more objective standards.

Services

The project's services are designed to respond to the victim's immediate and longer-term needs. Direct services include a reception center, a crime victim hotline, and an emergency repair service. A key ingredient of these services is a network of community resources and groups to which the project can refer victims of crime for help with special and long-term problems. Increasingly, the project's service components have been staffed by volunteers recruited primarily from high schools, universities, and senior citizen groups. By the end of 1976, 500 volunteer hours were being contributed each week.

The Victim/Witness Reception Center. Victims and witnesses who come to court often wait several hours in crowded courtrooms or noisy hallways, at times encountering harassment from defendants or friends and relatives of defendants. In an effort to make that wait more comfortable, the project created a reception center on the eighth floor of the court building. It provides a safe, pleasant setting in which witnesses can wait until their cases are called. The court parts communicate with the reception center by intercom. Coffee, magazines, television, and telephones are available. (By the end of 1979, over 1000 persons were using the reception center each month.)

Most people who use the center are victims referred by ADAs. The center is also available for ADAs to interview their witnesses. Reception center staff members help victims to fill out claims to the New York State Crime Victim Compensation Board (when they have suffered injury resulting in loss of earnings, medical expenses, funeral expenses, or a need for emergency financial assistance) and refer them to the project's service counselor when appropriate. A project representative, with access to a computer print-out of cases scheduled for the day, directs persons to the appropriate parts of the building and answers questions about court proceedings.

Service Counselor. The project's service counselor is available full-time in the reception center to work with victims and witnesses who have special service needs, who have been seriously traumatized as a result of the crimes committed against them, or who are intimidated and confused by the criminal court process. Besides providing support and encouragement, the service counselor and his staff of graduate students explain court procedures and the role of the victim and other witnesses in the process. If a witness reports an incident of harassment by a defendant, the counselor notifies the Detective Investigators Unit in the District Attorney's Office.

Often the crime that has brought the victim to court is not the sole source of his difficulty. For example, for a woman who filed a complaint because her husband had abused her and threatened her with a gun, the service counselor not only described the court process, accompanied her to the arraignment, and explained her case to the ADA, but also referred her to an organization for battered wives and, because she was without a source of income, expedited her application for welfare. The counselor often acts as an advocate -- writing letters or making phone calls to insure prompt action on referrals. An attempt is made to follow up each referral to determine whether the client used it, and to what end.

Children's Play Center. Many parents -- whether victims or defendants -- are unable to leave their children with relatives or cannot afford babysitters when they must go to court. For this reason the project constructed a children's play center on the fifth floor of the court building. The play center has helped ease this problem for parents and has reduced the number of small children sitting for many hours in crowded courtrooms.

The center is headed by a trained preschool teacher and accepts children up to 12 years of age; on average, over 200 come every month. Besides providing recreation and a learning environment for the children, the center offers services to parents: identification of gross health and developmental problems in their children; information on day care services and preschool facilities in their communities; material on health, nutrition, and child development and care; and referrals of those in need of social services to the Victim/Witness service counselor.

Crime Victim Hotline. The project's hotline operates 24 hours a day, seven days a week, and is staffed by full-time counselors and trained volunteers. Its purpose is to offer a listening ear and practical advice (in Spanish or English) to crime victims. The bilingual staff provides information on police and court procedures, crime victim compensation, project services, and help available in the communities. The staff is also trained to give short-term counseling in crisis situations.

The number of hotline calls averages about 130 a week, and nearly two-thirds are from crime victims. (Others include police and social service personnel who want information about the hotline.)

Emergency and Preventive Repair. The project's emergency repair service, operating six days a week, assists those who have been burglarized at hours when private repair services are not available. This service grew out of Vera's belief that,in a system that affords little comfort to victims of predatory crime and in a city where the chances are less than one in five that a burglary will lead to an arrest -- and even slimmer that an arrest will lead to restitution for the victim -- it is necessary to do more than dust for fingerprints.

The service responds to calls, from anywhere in Brooklyn, made between 7:00 and 11:00 p.m. Two repairmen, whose tour of duty sometimes ends as late as 3:00 in the morning, fix broken locks, board up windows, and rebuild doors so that private and commercial premises are secured against further break-ins. Police officers responding to crime calls tell victims about the service; the officer or victim then telephones the Victim Service hotline for help. Hotline staff members communicate with the emergency repair van through two-way radio, and the crew reports to the local precinct both before and after undertaking a repair. (In December, 1978, when V/WAP had become a part of the new city-wide VSA, the program began offering free lock installation

to elderly citizens who felt unsafe in their own homes and apartments. The Crime Prevention Unit of the Police Department conducts home security surveys for these citizens and, when recommended, VSA installs new locks. Almost 8,000 homes were secured by this method in 1979.)

In addition to delivering emergency repair services to about a thousand victims of crime since the project began, the emergency repair unit has saved many hours of patrol officers' time, which would otherwise have been spent guarding vulnerable commercial premises until the next morning when repairs could be made.

Transportation. The project provides taxi vouchers for free transportation for witnesses unable to get to and from court on their own. Witnesses eligible for the service include elderly and disabled persons who cannot afford the cost of public transportation and parents who must take very young children to court.

How Well Did the Project Work? The First Found of Research

V/WAP's effort to save witnesses unnecessary trips to and wasted hours waiting at the courthouse was a stunning success. For example, in 1979 the notification staff handled 74,145 scheduled appearances of civilian witnesses and 59,450 scheduled appearances of police witnesses -- on about half of these hearing dates, the witness was spared the necessity of appearing. Civilian witnesses were able to avoid the expense, inconvenience and irritations of 35,288 court appearances. Most dramatic, however, was the project's impact on police resources. Police officers were excused outright from attending 20,185 scheduled court appearances and officers on alert were brought in to court on only 899 occasions (6.7 percent of the 13,368 police witness alerts). The project's procedures had the effect of increasing the patrol force in Brooklyn by 15 percent, a law enforcement benefit that would have cost the city more than four million dollars to achieve by increasing the size of the force. (In this way, by diverting police resources from wasted hours in courtroom corridors to productive tours of patrol on the streets, the notifications effort pays several times over for the costs of the entire V/WAP program.)

The positive impact of V/WAP's notification and alert procedures were evident early in the project's history (Vera Institute of Justice, 1975 and 1976b). But doubts were raised, early in the V/WAP experience, about the program's ability to reduce the rate at which civilian witnesses fail to cooperate in prosecutions. (Vera Institute of Justice, 1975.) The data indicated that introduction of the program's services and notification procedures improved witness attendance rates at first post-arraignment hearings; but prosecutors were still faced with an appearance rate of only 55 percent among civilian witnesses at the first post-arraignment hearings. (The 45 percent failure-to-appear rate seemed incomprehensible when compared with the 7 percent failure-to-appear rate among defendants who had been released on their own recognizance.)

By the end of 1976 it was clear that most of the improvement noticed in 1975 had been illusory-- the appearance rate of civilian witnesses who were not excused, measured across all post-arraignment hearings, had increased only marginally, from 43 to 46 percent, since the project began.* (Vera Institute of Justice, 1976b.)

Because the research also showed that V/WAP services were appreciated by the victim-witnesses, who used them in large numbers, the Institute had to begin questioning the assumptions on which that part of the program was based: If alleviating or removing the presumed causes of victim disaffection did not increase the rate of their cooperation with the prosecutors, then perhaps disaffection was not the cause of the high failure-to-appear rates. This was powerfully suggested by the reactions

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* There is an important caveat to this finding that the project produced no statistically significant improvement in the appearance rate of prosecution witnesses. Because those witnesses who are likely to appear if called were placed on alert, they were thereby removed almost entirely from the pool of witnesses whose appearance behavior is reflected in the appearance rate. (Note: 95 percent of those who were placed on alert and then summoned to court appeared when required.) Thus, as the performance of the notification side of the project improved, and the "good risks" were increasingly removed from the population required to appear, it became harder and harder to affect the behavior of the rest of the witnesses through offers of service.

of victims and other witnesses to the reception center, children's center, transportation, and counseling services. A comprehensive study demonstrated that these services were rated highly by those who used them but it also made it clear that these favorable reactions were having no significant influence on their attitudes towards the court or on their likelihood of returning to court for subsequent proceedings. (Vera Institute of Justice, 1976a.)

Research and Program Initiatives Stimulated by V/WAP's Early Experience

After absorbing evaluation results suggesting that witness non-cooperation could not be eliminated and might not even be amenable to substantial reduction, V/WAP was at a cross-roads. The enormous efficiencies realized from the notification procedures and the clear human value of the direct services weighed heavily for continuing the basic program -- despite the lack of impact on appearance rates. Thus, these activities were carried forward. But additional work was launched.

First, it was felt that the problem of victim non-cooperation should be reconceptualized. Others had pointed out (Ash(1973), McDonald(1976), Ziegenhagen(1974), and Hall(1975)) that the victim -- the complaining witness in a prosecution -- has a severly circumscribed role to play in the process. But, in addition to being asked to play the testimonial role, complaining witnesses are persons who bring needs and expectations to their interaction with prosecutors and others in the process. Probing the subject in this direction requires a focus of research attention not only on the costs to a complainant who cooperates (e.g., time lost from work, inconvenience, unpleasant court surroundings), but also on the benefits that complainants might be seeking from the court process (e.g., help in resolving interpersonal problems, protection from the defendant in the future, restitution). In this broader context, non-cooperation might be understood as resulting from an absence of hope for any potential benefit from the process. Such an understanding would, of course, permit programs such as V/WAP to attack complainant non-cooperation in a variety of new ways. But it would require learning much more about the goals, sentiments and expectations of the complainants, and it would require analysis of such data in conjunction with what is known about the goals of the various criminal justice officials -- particularly the prosecutors.

V/WAP staff therefore undertook a series of related activities. First, the research staff undertook an extensive survey of the desires, expectations, and attitudes of complaining witnesses as they entered the Brooklyn Criminal Court process and after they had experienced it. Second, they conducted a

series of controlled experiments focused on how various kinds of information about the availability and attitudes of witnesses affected the decisions made by prosecutors. Third, because the complainant survey (and other research) suggested that many complainants in prior relationship cases might perceive a greater chance of benefit from a mediation/arbitration process than from a prosecution process, the program joined IMCR in establishing the Dispute Resolution Center for incoming felony cases of this type, and the research staff subjected this effort to controlled research. Fourth, the program staff added other services that were not so much intended to reduce disaffection as to meet complainants' case-related needs directly (e.g., administering restitution payments, helping to secure Orders of Protection from harassment or intimidation by defendants, providing staff advocates to help the complainants gain some involvement in prosecutorial decision-making about their cases).

The results of the complainant survey, although they influenced the other V/WAP developments, have not yet been distilled for wider distribution. The results of the second research effort are reported in Providing Information About Prosecution Witnesses: the Effects on Case-Processing Decisions in Criminal Court (November, 1979). The results of the mediation/arbitration experiment are reported in Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases (April 1980), and reports on the other program developments should be available late in 1980. It is hoped that this series of reports will be of some use to others laboring in this field.

FOOTNOTES TO APPENDIX A

1. During the late 1960s, the President's Commission on Law Enforcement and Criminal Justice launched a series of victimization surveys aimed at finding out more than existing records could tell about the extent and consequences of crime; these early surveys were conducted by the Bureau of Social Science Research (Biderman, et al., 1967), the University of Michigan's Survey Research Center's Institute for Social Research (Reiss, 1967), and the University of Chicago's National Opinion Research Center (Ennis, 1967). These surveys showed actual crime rates to be at least double the rates derived from the FBI Uniform Crime Reports. A second major group of victimization surveys, got underway in 1970 by the Law Enforcement Assistance Administration and the Bureau of the Census, showed actual crime to be three to five times the rate of reported crime. (M.J. Hindelang, Criminal Victimization in Eight States (Cambridge: Ballinger, 1976); Carol B. Kalish, Crimes and Victims (Washington, D.C.: LEAA, 1974). Other surveys helped fill out the emerging portrait of a public dissaffected from the law enforcement and criminal justice systems. (Small Business Administration Crimes Against Small Business (Washington, D.C.: U.S. Government Printing Office, 1968); Institute for Local Self-Government Criminal Victimization in Maricopa County (Berkeley: Institute for Local State Government, 1969); Richard Richardson, et al. Public Attitudes toward the Criminal Justice System and Criminal Victimization in North Carolina (Chapel Hill: Institute for Research in Social Science, 1972); Phil Reynolds Victimization in Metropolitan Region (Minneapolis: Center for Sociological Research, 1973); Office of Crime Analysis A Study of Citizens' Reaction to Crime in the District of Columbia and Adjacent Suburbs (Washington, D.C.: Office of Crime Analysis, 1972); Joint Center for Urban Studies How the People See Their City (Cambridge: M.I.T. and Harvard, 1970); Paula Kleinman Protection in a Ghetto Community (New York: Columbia University Press, 1972); Donald Mulvihill, et al. Crimes of Violence, Volume II: A Staff Report Submitted to the National Commission on the Causes and Prevention of Violence (Washington, D.C.: U.S. Government Printing Office, 1969); National Commission on Marijuana and Drug Abuse, Marijuana: A Signal of Misunderstanding (Washington D.C.: U.S. Government Printing Office, 1972); President's Commission on Obscenity and Pornography Technical Report (Washington, D.C.: U.S. Government Printing Office, 1971); Louis Harris Study 2043 (New York: Louis Harris & Associates, 1970); American Institute of Public Opinion Study No. 861 (Princeton: Author, 1972); Gilbert Geis, "Victims of Crimes of Violence and the Criminal Justice System," in Chappell, Monahan (eds.) Violence and Criminal Justice (Lexington: D.C. Heath, 1975); and Lyn Curtis Criminal Violence: National Patterns and Behavior (Lexington: D.C. Heath, 1974).

2. President's Commission on Law Enforcement and the Administration of Justice Task Force Report: The Courts (Washington, D. C.: U. S. Government Printing Office, 1967), p. 90.

3. Reported in James L. Lacy, National Standards Concerning the Prosecution Witness (consultation paper submitted to the Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals, 1972) p.27.

4. Cited without reference in Michael Ash, "On Witnesses: A Radical Critique of Criminal Court Procedures" 1972 Notre Dame Lawyer 392.

5. Subsequently, the computerized information systems installed in prosecutors' offices in more and more jurisdictions with the aid of the Institute of Law and Social Research (INSLAW), provided increasing confirmation that witness noncooperation is a major contributor to high rates of dismissals nationally.

6. National policy and program initiatives appear not to have shifted much over the years. In 1979, the LEAA National Victim/Witness Strategy for grant funding read, in part:

> "The objective of this program is to develop, expand, and improve the services to crime victims and witnesses... It is expected that these newly generated efforts will result in: 1 An improvement in the quality of justice by satisfying the emotional and social needs of crime victims and witnesses; 2 greater willingness of the victim and witness to cooperate in the apprehension and prosecution of the offender..."

44 Federal Register 40444, 40444-45 (July 10, 1979).

BIBLIOGRAPHY FOR APPENDIX A

Ash, Michael (1972), "On Witnesses: A Radical Critique of Criminal Court Procedures," Notre Dame Lawyer, 386.

Banfield, Laura and David C. Anderson (1968), "Continuances in the Cook County Criminal Courts," University of Chicago Law Review, 261.

Bannon, James, "Law Enforcement with Intra-Family Violence." Paper printed at the American Bar Association Convention, August, 1975.

Biderman, Albert D., et al. (1967), Report on a Pilot Study in the District of Columbia on Victimization and Attitudes toward Law Enforcement (Washington: President's Commission on Law Enforcement and Administration of Justice).

Black, Donald J., "Production of Crime Rates." American Sociological Review, Vol. 35, pp 733-748, August, 1970.

Blau, Peter M, The Dynamics of Bureaucracy: A Study of Interpersonal Relations in Two Government Agencies. (Chicago: The University of Chicago Press, 1955).

Brion, Scott, "Welfare from Below: Recipients' Views of the Public Welfare System," in Jacobos ten Broek (ed.), The Law of the Poor. (Scranton: Chandler Publishing Company, 1966).

Cannavale, Frank J. and William D. Falcon (1976), Witness Cooperation (Lexington: D.C. Heath).

Carlin, Jerome E., Jon Howard and Sheldon L. Messinger, Civil Justice and the Poor: Issues for Sociological Research. (New York: Russell Sage Foundation, 1967).

Chicago Crime Commission (1974), Dismissed for Want of Prosecution, (Chicago: Author).

Cincinnati Police Division (1975), Report on Why Victims Fail to Prosecute (Cincinnati: Author).

Dill, Forrest (1976), Four Months of Victim/Witness Assistance in the Borough of Brooklyn: Outside Evaluation. Interim Report.

Eisenstein, James and Herbert Jacob. Felony Justice: An Organizational Analysis of Criminal Courts. (Boston: Little, Brown & Company, 1977).

Ennis, Philip H. (1967), Criminal Victimization in the United States: A Report of a National Survey (Washington: President's Commission on Law Enforcement and Administration of Justice).

Fitzpatrick, P. Emmett (1975), No-Show Survey (Philadelphia: Unit Report for the National District Attorneys Association's Commission on Victim Witness Assistance).

Hall, Donald S., "The role of the victim in the prosecution and disposition of a criminal case," 28 Vanderbilt Law Review 931 (October, 1975).

Hamilton, William A., and Charles R. Work, "The Prosecutor's Role in the Urban Court System: the Case for Management Consciousness," Journal of Criminal Law and Criminology (June 1973), pp. 183-189.

Hays, William L. Statistics. (New York: Holt, Rinehart and Winston, 1968).

Inbar, Michael, Routine Decision-Making: The Future of Bureaucracy. (Beverly Hills: Sage Publications, 1979).

Knudten, Richard D. (1976), Victims & Witnesses: The Impact of Crime and Their Experience with the Criminal Justice System. (Milwaukee: Marquette University Center for Criminal Justice & Social Policy).

Lacy, James L. (1972), National Standards Concerning the Prosecution Witness (consultation paper submitted to the Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C.).

McDonald, William F. (1976), "Notes on the Victim's Role in the Prosecutorial and Dispositional Stages of the American Criminal Justice Process," unpublished paper delivered at the Second International Symposium on Victimology, Boston.

Meglio, John J., "Comparative Study of the District Attorneys' Offices in Los Angeles and Brooklyn." The Prosecutor, 5: 237, 1969.

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

New York State Supreme Court (1973), The Plight of the Complaining Witness. (New York: Author).

Paulsen, Monrad G., "Juvenile Courts, Family Courts, and the Poor Man," in Jacobos ten Broek (ed.), The Law of the Poor. (Scranton: Chandler Publishing Company, 1966).

Reiss, Albert (1967), Studies in Crime and Law Enforcement in Major Metropolitan Areas, President's Commission on Law Enforcement and Administration of Justice (Washington: U.S. Government Printing Office).

Rosett, Arthur and Donald R. Cressey, Justice by Consent: Plea Bargains in the American Courthouse. (New York: J.B. Lippincott Co., 1977).

Sacramento Police Department and the University of California at Davis' Center on the Administration of Criminal Justice of the School of Law, Victim Survey (Washington: Police Foundation).

Skinner, B.F. (1974), About Behaviorism. (New York: Vintage Press).

Smith, Barbara, The Prosecutor's Witness: An Urban/Suburban Comparison. Unpublished Ph.D. dissertation, State University of New York at Stony Brook, May 1979.

Sudnow, David, "Normal Crimes: Sociological Factors of the Penal Code in a Public Defender's Office." Social Problems, Vol. 12:255, 1965.

Swasy, John (1976), Review of Witness Project Activities, September 1974 through September 1975. (Los Angeles: Graduate School of Management, University of California at Los Angeles).

Trammell, George W., Control of System Policy and Practice by the Office of District Attorney in Brooklyn and Los Angeles.

Utz, Pamela, Justice and Negotiation in Criminal Courts. Unpublished Ph.D. dissertation, University of California, Berkeley, January 1977.

Vera Institute of Justice (1976a), An Evaluation of the Victim/Witness Assistance Project's Court Based Services (New York: Author).

Vera Institute of Justice (1977), Felony Arrests: Their Prosecution and Disposition in New York City's Courts (New York: Author).

Vera Institute of Justice (1975), An Impact Evaluation of the Victim/Witness Assistance Project's Appearance Management Activities (New York: Author).

Vera Institute of Justice (1976b), An Impact Evaluation of the Victim/Witness Assistance Project's Appearance Management Activities (New York: Author).

Williams, Kristen M. (1976), "The Effects of Victim Characteristics on the Disposition of Violent Crimes," in McDonald (ed.), Criminal Justice and the Victim (Beverly Hills: Sage Publications).

Ziegenhagen, Eduard (1976), "Toward a Theory of Victim-Criminal Justice System Interactions," in McDonald (ed.), Criminal Justice and the Victim (Beverly Hills: Sage Publications).

Ziegenhagen, Eduard (1974), Victims of Violent Crime in New York City: An Exploratory Survey of Perceived Needs (New York: Crime Victims Consultation Project of the Criminal Justice Coordinating Council).

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