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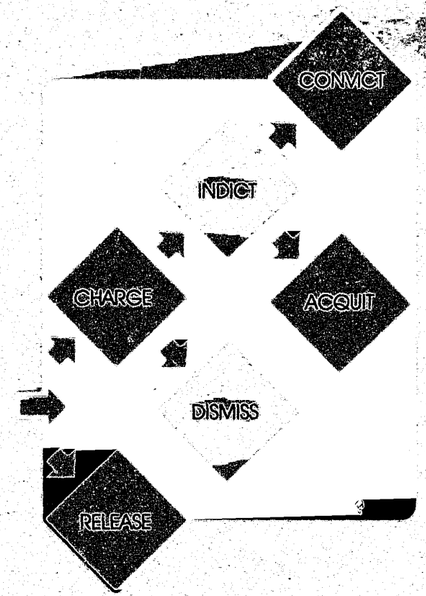
U.S. Department of Justice
National Institute of Justice

Prosecutorial Decisionmaking

A National Study



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James L. Underwood
Acting Director

PROSECUTORIAL DECISIONMAKING

A National Study

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PREFACE

This report, Prosecutorial Decisionmaking: A National Study is one of four published as a result of a three-year research project on prosecutorial decisionmaking in the United States. It presents the major findings of testing over 800 prosecutors throughout the United States. It examines prosecutorial discretion, its levels of uniformity and consistency both within and between offices and the factors used by prosecutors in making discretionary decisions.

Policy and Prosecution, presents a conceptual model for analyzing the prosecutive decisionmaking function from a policy perspective; summarizes the findings of a comparative examination of ten prosecutor's offices; and supplements the results of the on-site studies with information gathered by a nationwide survey of eighty urban prosecutors.

Prosecutorial Decisionmaking: Selected Readings is a collection of papers addressing one or more phases of the research project including methodology and analysis of findings. Many of these papers have been presented at academic and professional meetings and are collected here for the serious reader.

The Standard Case Set: A Tool for Criminal Justice Decisionmakers explains how the set of standard cases can be used by an agency for management, training and operations.

This project was supported by LEAA Grants 78-NI-AX-0006 and 79-NI-AX-0034 awarded to the Bureau of Social Science Research, Washington, D.C. The data presented and views expressed are solely the responsibility of the authors and do not reflect the official positions, policies or points of view of the National Institute or the Department of Justice.

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FOREWORD

For too long the prosecutor has been unjustly viewed with suspicion within the criminal justice system. Since it was not known how he arrived at every day decisions such as whom to charge with a crime, what crime to charge, and when and at what level to negotiate a plea, it was easily assumed that he made these choices in an irrational, inconsistent or discriminatory manner. Unfortunately, the prosecutor could not himself explain exactly how every question was resolved and could not always defend himself from charges of irrationality and inconsistency. Each prosecutor knew that he could look at a case coming into his office and on a first reading tell you whether it would have a high or low priority or be one of the vast majority of cases routinely handled. He could tell you what charge he would bring based on the facts of the case, whether he would plea bargain and at what level, and where in the processing of the case he expected a disposition. But when asked to identify what factors he had considered in making each of those judgements, and what weight he had attached to each factor, the prosecutor was usually at a loss to respond. He simply did not have the ability to measure those components of his decisionmaking process.

By providing us the tools necessary to help evaluate the basis for prosecutorial decisions, this research has laid to rest for all time the stereotype of the prosecutor as irrational and inconsistent. For the first time we clearly see upon what information the prosecutor relies when making a decision, and further, that identical factors are considered in the same circumstances by prosecutors across the country. While some may give different weight to the various factors, the fact that those same elements are still considered for each decision proves that charges of runaway use of unbridled discretion on the part of prosecutors are simply not true.

The method used to discover this nationwide uniformity and consistency in prosecutorial decisionmaking, the standard case set, was also found by our office to be very useful as a management tool. Not only can it measure levels of agreement among prosecutors in a variety of jurisdictions, but it can also be used to measure agreement among assistants and bureaus in the same office and additionally to determine whether management policies are understood by all concerned. We used the tests to justify several sweeping changes in our own office.

The work of Joan E. Jacoby, Leonard R. Mellon, Stanley H. Turner and Edward C. Ratledge has broken new ground in the area of prosecutorial decisionmaking and they should be commended for this unprecedented contribution. They have given the prosecutor the knowledge he needs to respond to unwarranted criticism of his work, and for this alone prosecutors will be eternally grateful. The ability to use these same tools for more efficient office management is a welcome added bonus.

The advisory board to this project was unanimous in its recognition of the import of the authors' findings and in its acceptance and advocacy of their techniques. I urge every professional to give the materials contained in this report very serious consideration.

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I. INTRODUCTION

A. Background

The broad discretionary power of the American prosecutor as it applies to the decisions of whether to initiate criminal proceedings, and once initiated, to change or mitigate the penalties has subjected the office of the prosecutor to criticism and surrounded its function with controversy. Although the decisive influence of the prosecutor upon the criminal justice system is well recognized, the exact nature of his power and responsibility is confusing because his role and function changes as he operates in various areas of activity--legislative, political, judicial and executive. Endowed with discretionary power exercised through decisionmaking, the prosecutor has attracted criticism with claims that there is insufficient review of control over these discretionary decisions and therefore, inconsistencies may occur in the decisionmaking process.

These are not new concerns or issues. They have been the subject of intensive discussion starting with the Wickersham Commission (1931) of the 1930's and reaching into the present. Many of the issues and criticisms surrounding discretionary power and its use are still unresolved. But to a one, all of them are directed at achieving fairness, ensuring consistency and increasing uniformity in the decisionmaking process.

The result of this concern has been an intensive and comprehensive examination of prosecutorial discretion from many perspectives (Teslik, 1975). It has produced "standards" to maximize uniformity but it has still not yet provided techniques to measure the degree of uniformity and consistency achieved by the application of these standards and their relative effectiveness.

The development of standards as the first logical response to controlling prosecutorial discretionary power has been a necessary, though difficult task. Foremost, and most powerful in their prescription, are the American Bar Association Standards (1971) published after years of deliberation and development. The ABA standards address the ethical, professional and legal responsibilities of the prosecutor in the charging process and cite the requirement for policy manuals to support uniform and consistent application of policy. In 1973, the work of the National Advisory Commission on Criminal Justice Standards and Goals (NAC, 1973) substantially expanded the development of prosecutorial standards by viewing the prosecution function as part of a criminal justice system. These standards addressed the problems of inconsistency in function and uncertainty in results. To show its concern, the NAC designated, as second priority, the improvement and upgrading of the prosecutive and defense function.

Guided by the NAC standards, LEAA supported the efforts of the states to translate the standards and goals into working models suitable to their own specific environments. A nationwide standards and goals project was conducted by the National District Attorneys Association (NDAA, 1977) based on earlier studies by the National Center for Prosecution Management (NCPM,

1973). Its purpose was to examine the relevance of developing and applying standards to diverse groups of prosecutors' offices.

It seemed reasonable that the requirement for any specific standard was not universal but was dependent on the nature of the office. A one-man, prosecutor's office, for example, did not face the problems of policy transference and consistency in decisionmaking that confronted large urban offices. Thus, the standards proposed by the National Advisory Commission, needed a sorting by type of office into different orders of priorities. The NDAA effort reaffirmed that standards and policy statements could be set in general terms; however, their implementation often rested on factors external to the prosecutor.

While the NDAA effort pointed to the sophistication needed in applying standards to the decisionmaking function of the prosecutor, the work of the California District Attorneys Association (1974) resulting from its Uniform Crime Charging Project was published in 1974 as a two volume work. It showed many issues arising from prosecutor's discretionary power as it addressed the intake and charging function. This unique and innovative project utilized the best minds and most experienced judgment of California prosecutors in establishing standards and guidelines for charging. It examined the use of office procedures to improve the charging process, it set forth the general policy guidelines, discussed evidentiary requirements for case prosecution, presented alternatives to prosecution and, in general, produced the first attempt to examine and specify the considerations inherent in operating a charging process.

In 1975, the Bureau of Social Science Research (Jacoby, 1976), as a part of a national evaluation of pretrial screening programs, added a new dimension to the standard setting task by concluding that in addition to legal and evidentiary factors, a primary consideration in the decision to prosecute cases was the policy of the prosecutor. They noted that the consistent and uniform application of policy produced disposition patterns that were rational, could be logically derived and, hence, could support evaluation activities.

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

Standards address the basic issue of the extent to which uniformity and consistency can be installed and maintained in the prosecutor's decisionmaking process. Decisions are the critical focus in this quest because they make manifest the discretion allowed the prosecutor and its consequences.

Historically, much of the effort made to control differences within an office and to minimize their disruptive effects, has concentrated on the

charging function because of its "gatekeeper" role. Charging or policy manuals have been developed, case review and approval procedures instituted, and memoranda and staff meetings have promulgated the agreement and consensus sought. All this was done with the expectation that consistency and uniformity would result, and it was successful. Despite the fact that the charging or policy manuals usually suffered from either being overdeveloped and too detailed or too generalized for practical use, even though the case review and approval procedures were employed more on an exceptional basis than routinely, and although the memoranda and staff meetings occurred sporadically as crises or problems arose, uniformity and consistency in the decision process generally developed to some measurable and acceptable level. In reality, chaos is not the mark of a typical prosecutor's operation.

The standards development and setting task took the necessary first steps in identifying the areas most sensitive to the issues of uniformity and consistency, fairness and equity. However, it did not address the next set of questions--namely, what constitutes uniformity, how can it be measured, and what are its legitimate ranges of variation. In the ideal and abstract world, we can define uniformity as existing when all persons consider the same factors and reach the same conclusion or make the same decision. Consistency exists when the decisions made by those delegated decisionmaking power agree with those made by the leader. In the real world of prosecution, we know that there are a number of intervening variables that degrade this ideal state of uniformity and consistency. They can be divided generally into two categories: those that are external to the prosecutor and over which he has little or no control; and those internal to his function over which he exercises a great deal of control.

The research of the National Center for Prosecution Management (1974) identified eight factors in the external environment which significantly affected the character of the prosecutor's operation. They ranged from the size of the office to the number and type of law enforcement agencies and arrest reporting systems, types of court structure and processes, and the characteristics of the defense system. These factors have special significance for comparative assessment of uniformity among prosecutor's offices. Their influence in creating environments that hinder, or impede, the achievement of uniformity, limit the options and strategies available to the prosecutor, and circumscribe his response needs to be determined. For example, the probability of achieving uniform and consistent decisionmaking practices is greatly reduced if the police reports are not standardized, complete or timely; if the prosecutor does not have the authority to review cases prior to their filing in court; if the court system is bifurcated; if there is no public defender system, or alternatives to prosecution, and not enough funding to adequately support necessary services. Under these conditions, the external environment may set up a number of barriers impeding success in reaching the ideal state of uniformity.

Nevertheless, the prosecutor is a resourceful creature. He has adapted to many of these difficulties by using those factors under his control to mitigate the adverse effects of the environment. The primary reason for his survival even at a level of organizational and functional sophistication can be attributed to his wide-ranging discretionary power.

The very power that is so often subject to criticism and attempts to control, contains the key to his success. He can make decisions with regard to policy. He can pursue as a primary goal rehabilitation, punishment, or efficiency, and his decisions reflect these goals. He can manage his resources in various ways to support these objectives. He can, for example, distribute his personnel to ensure that the charging decisions reflect his priorities, and that dispositions occur as he expects them. He can assign to these areas, the more experienced, or the least experienced personnel as he so judges. The organizational and management structure of his office becomes the primary means of insuring conformance with his policy and achieving the desired outcomes. The prosecutor may also use a variety of strategies to achieve his goals. Some of these strategies may be precluded by the external conditions; but most are available as tools. Plea negotiation, diversion, discovery, and sentence recommendation are among the most important. How he uses them can significantly affect the course of work in his office and the operations of the criminal justice system. Within this world, he can subjectively measure his success and evaluate the extent to which the decisions made by the assistants are consistent with his policy.

In 1977, the Bureau of Social Science Research, was awarded a grant to conduct research on prosecutorial decisionmaking. This was a multifaceted study, employing both qualitative and quantitative assessments of the effects of policy on decisionmaking. Policy and Prosecution (Jacoby, Mellon and Smith, 1980) explored the concepts and techniques of policy analysis as applied to prosecution. It used both on-site visits and a mail survey to study the dynamics of the prosecutors' decisionmaking process as it moved from intake to accusation, and from trials to postconviction activities. This qualitative assessment validated the existence of differences in policies; and identified the importance of office stability and the assistant prosecutor's experience in setting policy and developing standards. It also highlighted the need for accountability and feedback to provide a self-correcting mechanism to the system; and the need to examine the use of programs and procedures for their consistency with the goals of the office.

The survey of 80 urban prosecutors was an attempt to collect by questionnaire that which was collected by on-site vitits. Its purpose was to identify the extent of diversity in prosecutive systems and the prevalence of various styles of operation which affect dispositional patterns. In this respect, a "State of the Art" of prosecution in the U.S. was gathered. The results showed the overwhelming importance of the charging function and the level of discretionary control existing in these jurisdictions.

The research reported in Policy and Prosecution, while documenting the dynamics of decisionmaking and isolating some of the more important factors in the process, could not measure the degree to which decisions were made uniformly among assistants or in congruence with its policy directives. That task required a different set of methodological tools. Even though the traditional techniques of management, organizational and systems analysis could be used to determine how policy is transmitted through a prosecutor's office, the statistical tests to measure the extent of transfer were not available. These had to be developed and tested, before a large-scale national program could be undertaken.

B. Objectives

The purpose of this research was to develop statistical concepts and tools that could be used to measure the levels of uniformity and consistency in the prosecutor's decisionmaking function; set a base for comparative studies either among assistants within a single jurisdiction, or among jurisdictions; to identify the factors taken into consideration by the decisionmakers and to determine which decisions are policy dependent or universal (i.e. policy-free).

The long-range goals which could not be accomplished within this research period, but which are integral to it, are to develop tools and techniques that are sensitive enough to show the extent to which justice is distributed equitably throughout the prosecution process; and powerful enough to offer methodological alternatives to our present reliance on time-consuming, basically inefficient and costly, on-site evaluations.

C. Concepts and Approach

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

The test instruments developed for this research are: (1) a standard case set; and (2) a case evaluation form. The standard case set consists of 254 criminal cases of varying type and seriousness and presented in a "statement of fact" format. Each case contains enough information to bring it through an adversarial type of probable cause hearing, but not necessarily enough to sustain a proof beyond a reasonable doubt required at trial. The case set also includes the criminal histories of the defendants. These are presented in a form similar to that used in police arrest records. The seriousness of the defendant's record can be varied with respect to the offense as needed. Appendix A presents samples of cases, with their attached criminal histories, and the case evaluation form.

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

The quantification of prosecutorial activities is predicated on the availability of data and their transformation into statistical aggregates. While the purposes for quantification may vary, thereby producing demands for different types of data elements, the number of ways that data can be

collected is quite limited. Three basic methods can be noted: (1) extracting information from an operating system so that it describes the entire activity of the system; (2) sampling the universe under study to produce estimates of its descriptors and (3) developing test instruments to produce indicators that simulate the universe. Each of these three methods have incorporated within them certain powers and limitations which must be taken into consideration before one is selected in lieu of another to meet the needs of a particular study or research project.

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

One of the most complete data collection systems of this type can be found in the PROMIS system which is reportedly being installed in about 36 prosecutor's offices throughout the United States (Inslaw, 1978). It has the potential ability, because of its scope, to provide a wealth of information for the vast majority of research and evaluation studies made about prosecution and parts of the court systems in the United States.

But the usefulness of PROMIS and other similarly constructed tracking systems for research (and operations) is as much a function of its data entry procedures as its inherent capacity. The reliability of the controls established for validating the data entries to ensure its completeness and accuracy vary substantially from site to site. Without proper data audits and verification, significantly large error rates may result from either erroneously entered data or missing information. This is particularly troublesome when audits are not undertaken because the magnitude of the error simply is not known. To illustrate the potential dimensions of this problem, an unpublished verification study of the accuracy of the data entries into the PROMIS system in Washington, D.C. was conducted by two of the authors in PROMIS' earliest years (1971); the results showed an error rate that ranged from a low of 15 percent to as high as 30 percent for the data elements collected.

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

To counteract some of these difficulties, consideration was given to collecting information by sampling files maintained at different jurisdictions. Sampling introduces a different set of considerations. Primary is the comparability of the universes being sampled. Collection procedures also may be complicated if the files or records are not in accessible order or are incomplete. Jurisdictional variations pose problems with both types of data collection approaches. Some files may not contain cases rejected for prosecution, misdemeanors, trials de novo, appeals, cases transferred to another court or into alternative treatment programs, acquittals or even dismissals, and so forth. Sampling cases from prosecutor's files where jurisdictional variations are extensive always entails, first, determining what is not in the file; and, then, hoping the subsequent problems can be solved. Either approach would yield a product having limited analytical power for our purposes.

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

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

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

The characteristics of these files cannot be understated as one approaches the task of comparative research. Because the ability of research to compare the dispositions of one office with another is severely constrained by: (1) the extent that the nature and quality of crime varies from community to community; (2) the courts' processing modes and policies; and (3) the nature of the state constitutional and legislative environment.

These considerations may not necessarily apply equally in all comparative studies. They are critical here, however, because our objective is to explain prosecutorial behavior and measure uniformity primarily through the analysis of dispositional events. The requirement that statistical tools and concepts be flexible enough to operate in a number of widely diverse environments assumes that the external factors that might confound the analysis be held as constant as possible. The best technique for performing comparative studies of this sort appears therefore, to lie in the development of instruments that can be used to test effects either within an office or on a comparative level among offices. The development of the standard case set and the case evaluation form offered itself as the most feasible and practical way for meeting the needs of these research objectives.

The decision to pursue the development of test instruments in the form of a standard case set was made because it either solved or reduced the problems encountered in using actual files. It also controlled the effects of different external factors on the types of cases presented for prosecution; standardized the quality, content and format of the information presented for evaluation; controlled the type of cases presented, thereby creating the ability to design and analyze experiments; required recording all the independent variables pertaining to the case set only once, thereby minimizing coding and computer costs while expanding the potential analytical base; and modified and refined the information presented until it attained its highest analytical power.

This research looks at the actions and decisions taken based on simulated materials. Some may question this approach; but it does have its value and a history of use in many other areas. Decision games have been used by industry, by the defense establishment and, of course, most recently in space exploration research. The fact that they are called games, such as war games, does not mean that they are trivial. Indeed, quite the contrary.

If there are any errors that are likely to occur with this type of research, it is that simulated decisions are generally more carefully made than the routine decisions that are made in actual life. Given this type of bias, the question is, then, why use simulated cases? The reason is because in decisionmaking, people cannot really think about how they make decisions. (Introspection is not the best way of trying to understand how people make decisions). Thus it is easier by controlling certain aspects of the thought process to obtain some insights as to its dynamics.

This type of approach was used by Wilkins in developing sentence guidelines and working with the Parole Board (Wilkins, 1978). There, at first glance, it appeared that the parole board's decision was binary. Either a parole was granted or not, or the defendant was released or not. It was only after 6 months of work, as Wilkins relates, that the determination was made that the questions were not binary but rather one that was qualified by the expectations of the length of time to be served. Coupled with the need to examine decisionmaking across legal systems, simulation offers a feasible way to obtain insights into this process on a systematic basis.

If there is one major advantage in using a simulated set of cases, it is that it permits one to get away from making or measuring policy based on the "dramatic incident". The dramatic incident is a poor guide. Policy should follow and be derived from the majority of cases. If one is to measure policy, it should be done, first, by determining what the policy is, and, then, seeing if the cases follow it. The decisions asked and the responses given are valid as long as the simulation reflects a slice of reality. Thus, to measure uniformity and consistency in decisionmaking, the simulated standard case set, drawn from actual files and its decision-oriented evaluation form was an attractive approach.

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

D. Assumptions

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

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

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

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

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

5. As a result of the test instrument approach adopted, it is assumed that the assistants' assessment of his reality is accurate and conversely in areas which he has no experience or knowledge, his assessments will agree with reality only by chance. *

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

E. Methodology

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

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*The notion that responses or decisions are hypothetical--that is they are made without reference to which alternative will occur and thus, operate under uncertainty as to which will occur--has to be the subject of discussion. In Sellin and Wolfgang's The Measurement of Delinquency (New York: John Wiley and Sons, 1964), pp. 319-333, a justification is made that all decisions are hypothetical. There is also a body of data from psychophysics that bears on the question of the relation between what is (objective measures) and what seems to be (subjective measures). The upshot is that there is a fairly straightforward relationship. For example, see S. Smith Stevens, "A Metric for Social Consensus," in Science Vol. 151, No. 4 (February, 1966), pp. 530-541, which shows that subjective and objective measures can be related by simple mathematical structures. A special experimental design was tested in this research to measure variations in decisions. When the attorney was asked to respond either as "you yourself" or "you as an assistant prosecutor" there were no significant differences in responses indicating an internalizing of the professional role and expectations.

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

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

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

3. Determine the level of sanctions recommended by the prosecutor with respect to crime; and

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

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

After choosing a test instrument approach for measuring decisions and the dynamics of decisionmaking, an important issue had to be resolved:i.e., whether the purpose of the research was to provide a comparative analysis of decisionmaking practices among jurisdictions, or whether it was to identify the important factors taken into consideration by attorneys in making decisions. The design implications were obvious. If comparative analysis was the goal, then the same set of cases should be administered to all jurisdictions. The fact that this would provide responses to only a sample of 30 cases effectively precluded an analysis of the factors important to decisionmaking and influenced by policy.

The first phase testing of 4 jurisdictions used the same set of cases primarily because it was important to test the sensitivity of the instruments before proceeding further. The second phase testing 11 jurisdictions, comprised by setting 5 sites aside to be tested with a single set of cases and using the remaining 6 sites to expand the sample size. The research design adopted is discussed in detail in Prosecutorial Decisionmaking and Selected Readings (Jacoby, 1980) and summarized here.

The standard case set is not representative of any known universe. It has been deliberately constructed to distribute cases as uniformly as possible along the three dimensions mentioned. Thus, it does not show a high frequency of

less serious crimes such as traffic offenses, driving under the influence or simple trespassing; nor does it have a low frequency of murder, rape and the more serious crimes. If representativeness is desired, the responses to the standard case would have to be weighted by the frequencies of these crimes as they occur in the actual universe. Representativeness was unimportant for our purposes since we were measuring decisionmaking over the full range of seriousness and thus, had to construct this uniform distribution to achieve this goal.

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

The ultimate power of a test instrument such as this lies in its ability to examine the dynamics of discretionary decisionmaking and to provide jurisdictional comparisons. Yet, as will be seen from the analysis of the data, even these instruments are not free from analytical problems, both methodological and interpretive. Despite this, the results obtained indicate that there is substantial power in the use of this technique.

F. Development and Components

The standard case set was initially drawn from a sample of almost 200 closed cases in the Attorney's General's office in Wilmington, Delaware. Since the files in that office were organized by offense type, the sample included some of each of the various types.

These cases were reviewed by project staff for acceptability as part of the case set. The major reasons for exclusion were because the cases did not represent criminal offenses (for example, some were dispositions of bench warrants or rulings on mental competency hearings) or they were extraditions. Administrative matters were excluded from the standard case set. The Deputy Project Director, Leonard Mellon, a former prosecutor with more than ten years experience also reviewed each statement of fact for clarity and preciseness. The assumption built into the case set was that the decisions of an assistant prosecutor should not be confounded by uncertainty since the purpose of the test was to measure decisions based on facts not inferences or supposition. For example, if the statement that a search and seizure was faulty was not included in the facts, it was added. Or if the extent of injuries was not specified, it was stated.

After the qualitative review of the facts, approximately 160 cases were accepted initially for inclusion in the standard case set (it presently numbers 241). The variables that were to be used in the analysis were then coded and automated. The cases were typed, edited and placed in a form suitable for testing.

The standard case set was constructed to permit testing responses along three dimensions:

- The seriousness of the offense;
- The legal-evidentiary strength of the case; and
- The criminality of the defendant.

The quantification of the seriousness of the offense and the identification of the variables influencing the evidentiary strength of the case required more design and development work than was originally anticipated. An initial attempt to apply the original Sellin and Wolfgang (1964) scores to the offense characteristics was unproductive. The original Sellin and Wolfgang scales, developed in 1960, presented some methodological difficulties and some weights that were culturally obsolete. (For example, in 1960 no numerical distinction existed between the seriousness of drug offenses involving heroin or marijuana, nor between the acts of possession or sale.) Revised scales had been developed for the PROMIS system in 1970 that eliminated some of the cultural obsolescence. These were adopted here because of their simplicity and reasonableness even though new Sellin and Wolfgang scales were made available by INSLAW (1978) to replace the 1970 version. The newest revisions were received from INSLAW but after attempting to code the cases, they were rejected because they were: (1) methodologically even weaker than the original Sellin and Wolfgang; (2) so complicated that they could not be coded with any reasonable degree of efficiency; and (3) produced such complicated results after analysis that the data were difficult to interpret. Additionally, since both the 1970 and the 1978 versions are still not entirely satisfactory, all the basic data elements that are considered important to both scales were also coded with the expectation that future analyses may help straighten out the discrepancies and the methodological weakenesses. This increased the work anticipated but created a more valuable data base for future research on this subject.

The legal-evidentiary strength of a case is of prime concern to prosecutors; yet, it has never been subjected to a systematic conceptualization or articulation so that its important elements can be tested or ultimately identified. A concept of evidentiary strength was developed that isolated four component parts: (1) the inherent complexity of an offense; (2) constitutional questions; (3) evidence--both physical and testimonial; and (4) the defendant's role and relationship to the participants in the crime. (Mellon: 1980). Within each of these areas, variables were included that ha been found important from other studies and research. The factors identified as important in the Vera Study of Felony Arrests in New York City (Vera Institute, 1977), the Major Offense Bureau of the Bronx (NCPM, 1974), PROMIS (INSLAW, 1978), Jacob and Eisenstein's Felony Justice Study (1977), the Alaska Plea Bargaining Study (Rubinstein, Clarke and White, 1980), to name a representative few were reviewed, sorted and finally placed on a coding sheet. Additionally, an inherent complexity scale was established for all NCIC coded offenses.

There is no guarantee that all the important elements have been included; rather, this effort reflects a "best guess" approach. But since the "guess" is based on reliable studies, informed experienced prosecutors, and other workers in the criminal justice arena, it probably is not too far off the mark.

Excluded from the data set were the so-called "illegitimate" variables of race and socio-economic status. This was because the assumption was made that if you can demonstrate that the criminal justice system uses legitimate factors to make decisions, and can measure the extent to which they explain the variance about decisions, then, a logically stronger defense against the imputations of unfairness can be set forth by the research.

Conceptually, then, the approach adopted by the staff was to introduce the legitimate variables to the research plan and measure their explanatory power. The remaining, unexplained variance about the decisions, then, could be attributed to omitted variables (such as race, socio-economic status, evidentiary factors, defendant motivation, contrition, etc.) and noise. If the explanatory power of the legitimate variables was high (for example, the probability of disposition by trial yielded an r^2 of .69), then, there would be little left for race or other omitted variables and noise to explain. Now that the basic power of the legitimate variables has been determined, it is possible to introduce new variables of interest, such as race, and test for their influence if one so desires.

In doing so, however, other design requirements are added that need consideration and which also supported the project staff's decision to reject the notion of including race in this research. Race can be correlated with a number of variables that were of primary interest to this research. For example, the correlation that exists between blacks and jail status would affect the incarceration and length of sentence variables. Placed in the design without proper controls, the variable, race, would tend to covary with a large number of other variables and produce results that would damage the overall research. To introduce race as a variable would have meant putting one black and two whites (or vice versa) into each of the cells, thereby increasing the complexity of the research design by adding another dimension and reducing our ability to control the variables of interest if we held with a balanced complete design. Thus from a practical and logical view, these variables were withheld. From the results of the analysis, it appears that our decision was not invalidated.

Once the concept of legal-evidentiary strength was developed and the important variables identified, all 150 cases were coded. The coding task was divided into two parts. The objective, non-legal factors were coded by project staff. The elements that required legal interpretation or prosecutorial experience (such as, sufficiency of evidence to make a prime facie case, existence of constitutional questions involving search and seizure, Miranda, etc. and the inherent complexity of proving this offense) were coded by Leonard Mellon, the Deputy Director of the project. Obviously, this subjective assessment may introduce bias into the data and validation was sought through replication by others having prosecutorial experience. One

prosecutor consultant recoded the 30 cases used in the Phase I testing activity. His responses were compared to the project's and discrepancies were resolved. Another prosecutor, reviewed each of the test cases and their legal-evidentiary fact patterns for inconsistencies, ambiguities, and other debilitating or confusing factors.

Although far from perfected, the cases today have been tested, their variability noted where it occurred and their consistency likewise. The variables coded for testing can be adjusted as more information is gained about the relationships between the component evidentiary parts and their significance. However, since every variable that seemed reasonable and available has been included, it is important to remember that before the file is to be used extensively, the unimportant factors should be eliminated. If not, subsequent use of the file in its "raw" state would introduce unnecessary inefficiencies due to unimportant or irrelevant information.

The criminal history of the defendant is the third component of the standard case set. Its quantification by a scale that could reflect the seriousness of the defendant's criminal history was sought. The original PROMIS system, for the lack of a better tool, modified the Base Expectation scale developed by Gottfredson (1962) to predict recidivism from California correctional institutions. This scale considers a number of facts that are available to and considered important by bail release agencies, or probation and parole departments such as employment history and community stability. However, these facts are not generally available to the prosecutor at intake, nor does he necessarily consider them important. A scale was needed that would be responsive to the prosecutor's intake function and charging decision and based simply on the criminal history of the defendant. The incorporation of this developmental task into the research project was undertaken so that we could analyze the importance of the defendant's prior record relative to the seriousness of the offense and the evidentiary strength of the case with respect to charging decisions.

A sample of 100 criminal histories held by the New Jersey State Police, were stripped of identifiers, and reformatted. From these 100 records 25 were selected to provide a wide range of criminal activity and length of record. Initial testing for response variation was made by Dr. Stanley Turner using Temple University students. The results showed a basic level of consistent response, but revealed the need for some adjustment. The records were adjusted and modified, anchors set, and a response scale of 1-7 established for subsequent testing by assistant prosecutors.

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

Later testing of a larger sample showed that noting dispositions produced different responses than when they were withheld and that knowing whether the defendant was convicted was most important.

In the second phase of the research, the number of criminal histories available for testing was expanded when a simulated model was developed (Turner, Ratledge, 1980) that was capable of generating criminal histories based on probability statements having both statistical and empirical reliability and reproductiveness. The latter was validated by special testings of prosecutors to determine whether criminal histories were reasonable or strange. Since a scale of the seriousness of criminal histories has yet to be developed (this occurred in 1980), the design stratification was based on the number of arrests for crimes against the person. Future tests will be able to provide for the scaling of the overall seriousness of the criminal history.

The conceptualization and design of an evaluation form was the last activity undertaken in developing the quantitative tools for this research. The evaluation form would specify the dependent variables that would be used to measure uniformity and consistency within the conceptual frame established for this project. Since the primary objective was to produce an instrument capable of measuring differences in dispositional decisions, the major policy decisions were set with respect to the urgency of the case for prosecution, whether it should be accepted for prosecution, what the expected disposition would be, at what level of court processing and with what sentence. The process oriented questions included two probes: (1) to determine the extent to which the assistants agreed in their assessment of the court processing systems after intake; and (2) the extent to which they agreed on reasonable and appropriate outcomes. Since it is largely unknown how the prosecution process changes over time, or what other factors come into play after the case has been accepted for prosecution, these questions were asked to explore these areas for additional knowledge.

In one respect, these process questions moved the project beyond its original scope, which was to examine the screening and accusatory functions, to an examination of the entire prosecutorial process. In another respect, since the site visits showed the importance of examining the entire function not just part of it, then it was reasonable to examine the extent to which the final expected outcomes explain part of the intake and accusatory decisions.

The case evaluation form incorporated into its design the basic elements of the conceptual framework set forth in Policy and Prosecution. The policy of the prosecutor was sought by the questions concerning priority for prosecution; the accept/reject decisions and the sentencing recommendations; the strategies and programs used by jurisdictions or attorneys to reach disposition, level and type. Some aspects of the organizational structure through which policy was implemented, and the allocation of resources consonant with the office's priorities were captured by identifying the organizational unit to which the assistant was assigned, the months of prosecutorial experience each assistant had, and the identification of the policy maker or leader of the unit.

The collection of this organizational assignment and the experience level of the assistant was important also because it not only indicated the experience level of the office, but how the experience was distributed and how organizational units within an office differ, if they do. Whether this personnel information can be integrated into the functional activities of prosecution--intake, accusatory, pretrial, etc.--so that organizational statements can be made is an interesting question, but one not pursued here.

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

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

Thus, the first problem of defining the policy-making leader was initially resolved by identifying all the possible leaders in the office and using, where feasible, the highest ranking one. It would seem that, ultimately, it might be beneficial to analyze policy leaders at all levels. Support for this latter statement can be found in the analysis of the Brooklyn, Detroit, and Baton Rouge tests.

The second problem, that of obtaining information from the leaders was not resolved, only mitigated. The testing places a demand on the chief prosecutor's time that, in some instances, simply cannot be met. This was the case in Brooklyn and New Orleans, but fortunately not so in Salt Lake City. In an effort to reduce the time needed to evaluate the set of cases, the standard evaluation form, at the suggestion of Brooklyn's First Assistant, was modified and a Gold form created that eliminated all open-end responses, speeded up the evaluation process, yet captured enough information to permit analysis with the rest of the office.

Pretests were performed in Miami and Norfolk, where the evaluation form called for open-ended responses. After each of these two trials, the

questions were reworded to further clarify their meaning and intent. The open-ended mode made completion time-consuming. It took the attorneys from 2-3 hours to read, evaluate and complete the forms for just 10-12 cases. Not only was time a problem but other difficulties were uncovered. For example, the original set of cases were biased toward the serious end of the scale for both offense and evidentiary strength. A more representative range was obtained. Problems existed with respect to the definition of crimes--these included the names of the crimes, state variations in defining what are crimes, and definitions and distinctions between misdemeanors and felonies. All were important because the standard case set was designed for comparative analysis purposes. Most of these were resolved by changing either the questions or responses that could be selected on the evaluation form.

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

In the fall of 1978, the standard case set was tested at four sites:

- Attorney General's Office, Wilmington, Delaware
- County Attorney's Office, Salt Lake City, Utah
- District Attorney's Office, Orleans Parish, Louisiana
- District Attorney's Office, Brooklyn, New York

The last three sites had participated in the policy analysis component of the project, having been studied by teams composed of staff members and consultants. Thus, findings interpreted here are based on the actual knowledge of the policy and operations of the offices. The Attorney General of Delaware, was not studied as part of the policy analysis segment of this project, but consultant Edward Ratledge had worked closely with this office since 1972. As a result, his extensive knowledge of the office's rules and procedures coupled with his long association with our research permitted the substitution of his findings as equivalent to the site visits the other offices had undergone.

Two sites, Brooklyn and Wilmington, were tested first. Based on a critique of the standard case set supplied by both prosecutor's offices, the set was adjusted--one case was eliminated, another substituted for it, and the statement of facts in others were clarified--especially as they addressed the questions of seriousness of injury, type of identification made, and the relationship of the defendant to the other parties in the incident.

The Brooklyn and Wilmington tests were conducted personally by the project staff at the sites where they explained and helped administer the testing procedures. Follow-up visits were also made to collect the test

results and receive critiques of the cases. In New Orleans and Salt Lake City different procedures were used and evaluated. The New Orleans office was visited only once prior to the testing when the purposes and procedures were explained; the Salt Lake City office was tested without any on-site visits. Mail and telephone communications were used to explain and administer the tests. Based on a review of all methods used, the preferred method was the one-visit one. This was also helpful because it permitted direct observation of the office and its procedures thereby aiding in the interpretation of the results. In 1979 and 1980, 11 additional sites were tested, 5 receiving the same set of cases for another comparative analysis and 6 receiving different sets for each agency. In all, 855 prosecutors or their assistants were tested in 15 jurisdictions with 279 cases.

The general matrix design followed in each office is shown in Table I-1 below.

TABLE I-1

DISTRIBUTION OF CASES BY CHARACTERISTICS

Seriousness of Defendant as Measured by Number of Arrests for Crimes Against the Person	Seriousness of Offenses as Measured by Sellin/Wolfgang Score			
	Low 1-3	Medium 4-6	High 7+	Total Cases
0	3	3	3	9
1-3	3	3	3	9
4+	3	3	3	9
Total Cases:	9	9	9	27
	Number Assigned Randomly to a Cell:			+3
			TOTAL:	30

Three cases were assigned to each of the 9 cells, and 3 were randomly assigned so that 30 cases could be tested by each jurisdiction. All cases varied by legal-evidentiary strength which was randomly assigned throughout the cells. The tests took about 1-1/2 to 2 hours to complete and ended in June 1980.

G. Analysis

The analysis of the test was conducted on three levels. First, the nationwide results were analyzed to: (1) identify the significant factors used by prosecutors in making decisions; (2) to identify which decisions were generally universal or policy free and those that were policy dependent; (3) to identify jurisdictions that appeared to differ from the norm; and (4) to highlight relationships and the dynamics in prosecutorial decision-making. These results are presented in Chapter III.

Second, a comparative analysis of two sets of sites was conducted. Four sites received one set of cases in Phase I, five sites received another set in the Phase II research. The results of these tests will be presented to: (1) show differences in policy styles and decision patterns; (2) compare levels of uniformity and consistency between offices; and (3) present provisional insights into the decisionmaking process. This latter is qualified by the fact that only 30 cases can be used for the analysis. Therefore, unlike the stability gained from the national analysis of 279 cases these results are not necessarily as reliable. The importance of this chapter lies in the insight it sheds on the different perceptions different agencies hold and the amount of variation that can occur both within and among offices.

Third, the effects within some of the larger offices were analyzed to measure levels of agreement among assistants and among different organizational units or structures in an office. The importance of this analysis lies in its ability to note differences within offices that may be significant.

Finally, a special analysis was undertaken to test the sensitivity of the preceding analyses. The hypothesis tested was that if the findings of the national study explained enough of the variance surrounding decisions, then the factors identified as important could be used to predict what decisions would be made about individual cases with respect to expected or recommended dispositional routings (RDR). Using a discriminate function analysis, an RDR model was constructed for some of the offices and tested on individual case decisions. With a less than one percent error rate, the power of the analysis seems promising.

It is especially important to note that differences that may appear in the second and third types of comparative analysis have to be interpreted with caution. It is one thing for a researcher to measure differences in decision patterns; it is entirely another matter for the practitioner to determine whether these differences are either observable in the real world or even if they have meaning. This question underlies all the analyses presented in Chapters IV and V and must not be ignored.

Analyzing the dependent variables presented other difficulties. (See Appendix C for a detailed, technical discussion of the methodologies used.) Many of the responses represented nominal scale values and, therefore, required statistical techniques not commonly used. Other difficulties arose from the need to define some of the concepts before they could be analyzed. For example, one of the more difficult was what consitutes agreement. If one assistant expects case disposition to occur at preliminary hearing and another at arraignment, how far away from perfect agreement are these two responses? The answer, of course, requires utilizing different methodological techniques and subjecting the responses to other analytical procedures. This is a complicated task. For this report, we have taken a more limited and restrictive approach--defining agreement as perfect agreement between responses. The need for continued work in this area is, of course, indicated and underway.

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

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

H. Organization of the Report

The results of this research are presented in a sequence that conforms with its goals and objectives. Chapter II summarizes the major findings and conclusions of the testing of 855 prosecutors and assistant prosecutors in 15 jurisdictions throughout the U.S.

Chapter III reports the factors of significance in prosecutorial decisionmaking, the dynamics of their relationships with respect to various decisions and the issues of policy vs. policy-free decision factors.

Chapter IV is divided into three parts. The first compares the differences between the responses of the sites as they evaluate the same set of cases. The second reports on the amount of agreement found between the assistants and the chief policy makers in the office. It examines the extent to which, if you know the chiefs' policies and priorities, you can predict the assistants' decisions. Or conversely, it measures the amount of congruence between the leader and his followers. As a further test, the leaders of each of the offices are then matched with the assistants in offices other than their own. This permits a measurement of the amount of congruence that would occur if, in fact, they were transferred to head up offices operating in different decisionmaking environments.

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

Chapter V addresses the complexities within an office created by organizational structure, size or programs. It examines the differences that occur within smaller organizational units and among different levels of policy leaders. This analysis, the first of its kind in the United States, was made possible because of:

- The active cooperation of the participants, particularly the Brooklyn District Attorney, the Wayne County (Detroit) Prosecuting Attorney and the East Baton Rouge Parish District Attorney.

- Marked differences in the organizations of the offices and the structure of the decisionmaking functions.

In addition, good fortune also enabled us to test an entering class of 65 assistant prosecutors before they received job training. As a result, a base was set for measuring the extent of uniformity and consistency that would occur after 7-1/2 months experience when the group was retested. The results of this special analysis are presented in this section.

Chapter VI shifts emphasis from measuring agreement levels among decisionmakers to predicting decisions that one could expect to occur on an individual case basis. Special emphasis is given to the power of the priority for prosecution variable to explain case disposition routes and 30 cases are systematically examined by the RDR model. In this section, we were not trying to discover new facts but rather validate some aspects of the case set as an accurate and sensitive indicator of different types of prosecutorial decisionmaking.

Appendix A includes samples of the case set and evaluation form used in testing. Appendix B summarizes the major characteristics of the participating jurisdictions and Appendix C discusses the analytical methodologies employed. Appendix D presents the Legal-Evidentiary variables used in analysis.

II. FINDINGS AND CONCLUSIONS

The prosecutor, a locally elected official, with largely unreviewable discretionary authority to bring criminal actions, who sets the level of the charge and who may terminate a prosecution at any time, operates not without critics. Efforts to curtail the discretionary power of the prosecutive function have been consistently made and have almost consistently failed. In the late 19th Century, court cases were brought forward in these attempts and in 1931 the Wickersham Commission deplored the power of the prosecutor, the scope of his responsibilities, the political nature of his office and the unreviewability of his decisions. All were considered detrimental to the good administration of justice.

The critics of prosecution base their disapproval on the thesis that history has documented that when one individual maintains supreme control and domination over other individuals and society as a whole, it is inevitable that injustice will result. Such appears to be the case with the prosecutor. No other position in the criminal justice system wields such vast discretionary and unreviewable power. Hence critics argue that it should be placed under control.

Reports of prosecutorial abuse and discrimination present to the public a stereotypical picture that paints the prosecutor as an unjust, arbitrary, capricious official, who represents the interests of a select group and uses his discretionary authority to prosecute or plea bargain as he deems fit. The role of the prosecutor to invoke sanctions against those who violate state and local laws and to be the public's advocate in these criminal proceedings is rarely portrayed in the sensationalism that surrounds such exceptional events as Watergate.

Yet it is to the ordinary, daily routine of prosecution that the critics should look to support their claims of abuse and discrimination. Hidden from the spotlight of public attention and media exposure, it is in the decisions about these routine cases that truer measures of inconsistencies and inequities should be found and measured. Since each criminal matter is subjected to essentially the same set of sequential decisions--to charge or not; to plea bargain or not; to try or not; to recommend sentence or not--the decisions made in aggregate should present a stronger, more reliable indicator of the state of discretionary decisionmaking and prosecution than any one single, and often exceptional, criminal case.

The primary purpose of this research was to examine the dimensions of prosecutorial decisionmaking in the United States; to determine how decisions are made; what factors are used by prosecutors to make decisions; what influences are brought to bear on them because of policy, court systems, legislative environments and the community, the extent to which they agree about decisions and conversely the extent to which they differ. Understanding the dynamics of the process of decisionmaking was our primary concern.

A. The Dynamics of Decisionmaking

The major finding of this research is that there is an overwhelming consistency in the prosecutorial decisionmaking system that transcends state and local boundaries, policy differences and criminal systems. The basic consistency is so strong that many of the factors used by prosecutors in decisionmaking have been identified and can even be used to predict decisions about specific cases with very little error.

In one respect this should not be surprising. Despite the critics and the stereotypes, prosecution has functioned for over three hundred years. It has developed as an integral part of societal growth, adopting its values and responding to its expectations and norms. Thus, it has absorbed criteria for decisions that society has espoused and the law has articulated. These revolve around three factors--the seriousness of the offense, the criminality of the defendant and the legal-evidentiary strength of the case.

The differences that emerge between jurisdictions or even within offices are differences of scale rather than differences in criteria. One prosecutor weights the use of a gun more seriously than the defendant's criminal history; another views the amount of injury inflicted more important than a common law relationship between the victim and the defendant.

In a society based on local autonomy, represented by locally elected prosecutors who uphold state and local priorities, differences in prosecutorial policy as reflected by decisions is to be expected and were found in this study. The important point that was revealed in examining these differences was that they largely resulted from shifts in emphasis on these three case dimensions, not from the introduction of new factors.

The primary conclusion is that prosecutors are rational and consistent in making decisions. They follow a set of rules and principles which they apply to each of the major decision areas and which generally hold despite local jurisdictional differences. The major set of rules and principles follow.

1. When asked to rank cases in order of priority for prosecution, with few exceptions, prosecutors consider all the dimensions of the case. The most serious crime--that which resulted in severe injury or extensive property loss or damage, the most serious defendant as determined by his criminal history; and the strongest case from a legal-evidentiary perspective received the highest priority for prosecution. As these factors diminish in seriousness or strength, case priority is reduced concomitantly. This is as it should be. There should be prioritizing of prosecutorial resources and attention. If the relationship were otherwise, one could seriously question the prosecutor's system of values.

   Priority is therefore a powerful explainer of case processing. The higher the priority, the more likely the case is to move to trial status, be disposed of by jury trial and receive a sentence involving incarceration. The lower the priority, the more likely it is to be disposed of by a plea to a reduced charge, and

earlier in the process. The lowest priority cases are either not accepted for prosecution or are plead out, with few sanctions imposed, early in the process. There is a stratification process that rationally distributes work and permits the allocation of prosecutorial resources on a priority basis.

2. With respect to the decision to accept a case for prosecution, the major finding is that the prosecutor relies primarily on the legal-evidentiary strength of the case, considering whether it meets the criteria for legal sufficiency and whether or not constitutional rights have been violated such that the evidence might be legally inadmissable. To a lesser extent, the seriousness of the offense is also taken into consideration. Overall, however, one can state that the decisions to file a case for prosecution are based on legal and evidentiary matters. Prosecutors tend to agree almost universally as to what should be accepted and what rejected. Only three jurisdictions out of fifteen showed significant differences in the decision process, and all of these were offices that tended to reject proportionately more cases through the use of extensive screening. Thus, the standards espoused by the ABA, the National District Attorneys Association and the the National Advisory Commission on Standards and Goals with respect to screening clearly are being used as criteria for this decision.

3. There are two major types of adjudicated disposition in the United States, either a disposition resulting from a plea of guilty or that resulting from a trial. The preferred strategy varies greatly by the jurisdictions, as they opt for either a plea-oriented or trial-oriented form of operation. Whether the tendency to dispose of cases by plea or by trial is forced upon the office by the capacity of the system is difficult to determine from the tests. For example, a backlogged court system is simply not capable of holding too many trials since they are the most time consuming effort in the process. Hence, the use of pleas as a major disposition is enhanced. It is obvious from the results of this research that both the tendency to rely on pleas more than trials (or vice versa) as the major form of disposition varies significantly among the jurisdictions. Unlike priority and charging, the form of dispositions adopted by a jurisdiction is not universal.

   Despite these regional and local variations, however, there are rational and logical dynamics that increase the probability of cases being disposed of by a plea or by a trial and these generally can be stated as follows: The less serious the offense, the less serious the defendant's criminal history and the presence of evidentiary factors that would increase problems with proving the case, tend to enhance a disposition by plea.

   On the other hand, as the offense increases in its severity, as the criminal record of the defendant grows longer, with the presence of stronger evidence and with the use of a gun in the crime, the case is more likely to be disposed of by a trial. The

exception to this occurs when a cases is inherently complex. If it requires time consuming proofs which are common to bad check cases, and organized or economic crime cases, for example, then the case is more likely to be disposed of by a plea. This probably is a reflection of the system's desire to conserve the resources of the court. For all other cases, it is the marginal ones--those which are questionable in evidentiary strength and less of a priority for prosecution--that are disposed of by pleas.

4. A disposition by plea instantly conjures up the issue of plea bargaining. One aspect of this was examined in the research when the dynamics of disposing of cases at a reduced level were explored. Not surprisingly, there are vast local and jurisdictional differences in attitudes. Some jurisdictions are more amenable to using this procedure, others are more restrictive in its use. Nevertheless, despite these jurisdictional variations, there is still a general principle that operates with respect to whether a case will be reduced. A case has a higher probability of being disposed of at a reduced level as the defendant's criminal record decreases. Pleas to reduced charges also tend to occur when the defendant confesses or if the case is very complex.

   These are the only positive factors that increase the probability of obtaining a plea to a reduced charge. What emerges from the analysis is that there are more restrictions against plea bargaining then conditions for it. The probability of reducing a charge for a plea is <u>decreased</u> if a gun is involved in the crime, if the criminal history of the defendant is a lengthy one and if there is a known relationship between the defendant and the victim. Under these circumstances, when the seriousness of the case is clear, the prosecutor is not inclined to take a plea of guilty to a reduced charge.

   Plea bargaining is an integral part of the criminal justice system and the prosecutor's decisionmaking system. This analysis shows that it is based on factors that tend to constrain its use rather than enhance it. Thus the claim that plea bargaining is used indiscriminately is not substantiated here. Of more importance is the finding that there are identifiable factors that come into play in prediciting its use and that they are rational.

5. Prosecutors have strong value systems about who should be incarcerated, who should be placed on conditional release and who is set free. There is some regional variation about the imposition of sanctions. Seven out of the fifteen sites tested are more likely to impose jail and penitentiary sentences than the rest. This may be indicative of other influences such as jail capacity or the sentencing practices of the court. For whatever cause however, the likelihood of incarceration is based on a dynamic relationship between objective factors. Incarceration is most likely to occur if a defendant has a lengthy and serious record, was involved in a very serious crime in which someone was injured or killed who was intimately related to the defendant (such as

family), if there was a gun involved in the commission of the crime and there is overwhelming proof of guilt. If the imposition of sanctions is used as an indicator of the value of the case to the adjudicative process then what is made clear by this test is that punishment is not arbitrary or capricious but rather it is applied rationally and consistently. The most serious sanction is reserved for the most serious defendant involved in the most serious crime, particularly when that crime was committed against someone who was intimately related to him. The least serious sanctions are imposed on the first offenders and where the evidence appears marginal.

6. There are a few other results that should also be mentioned. The first makes note of the absence of some dimensions in the prosecutor's decisionmaking process. The decision whether to accept or reject a case for prosecution does not consider the criminal history of the defendant. Whether this is a response to the general unavailability of this information in many jurisdictions or whether, in fact, the prosecutor basically relies upon the evidentiary strength of the case to make this decision, cannot be ascertained here. But it is of interest to note that a person's criminal record does not play a part in the charging decision.

   The second absence occurs in the decision to reduce the charge for a plea. Under these circumstances the seriousness of the offense is not considered. Reduction decisions are based primarily on the criminal history of the defendant (the less serious, the more likely that a reduction would be permitted) and the legal-evidentiary strength of the case. (The more complex, the more likely a reduction.) The only exception to this rule is when a gun was used.

   There appears to be a reward system operating in the criminal justice world. This can be observed in the circumstance where the defendant confesses. Under this condition a plea to a reduced charge is enhanced and the probability of being incarcerated is decreased.

   Finally, the importance of the use of guns emerges throughout this research as a significant factor. The use of weapons has always beer onsidered serious but the universal penalties imposed by the prosecutor are obvious and strong. The use of a gun increases the priority of the case for prosecution. It decreases the probability of the case being disposed of by a plea and by a plea at a reduced charge. It increases the chances of a defendant going to trial, and ultimately has a strong bearing on the decision to incarcerate. Guns are taken very seriously by the prosecutor and this shows clearly in this research.

In conclusion what emerges from research is the amazing consistency that prevails in prosecutorial decisionmaking systems throughout the United States. Prosecutors are reasonable; they are rational and their decision

choices are interpretable. The decisionmaking system orders cases by priority and handles them according to the resources available. Because there is a rationale to the decisionmaking process as it operates today this research establishes a baseline with respect to the factors involved in decisionmaking. It provides a means for monitoring and measuring the decisionmaking process. The existence of variation and differences is shown to be possible and the results of this test show that it is also understandable. The research solidly confirms that the prosecutor is rational, consistent and not capricious in his decisionmaking. For whatever reason, be it the existence of the police, defense counsel, the courts, the media, or even societal expectations the prosecutor does not wield his discretionary power indiscriminantly. Instead, he operates rationally within a system of constraints that permit little variation and capriciousness. Thus for the critics who argue for increased controls on the prosecutor's discretion, there is little in this research to support such demands. On the contrary, there is much to support the continuation of this orderly function as it affects the checks and balances in the system.

B. Policy and Environmental Differences

A second objective of the research was to determine the extent to which different policies produced different methods of prosecution. Previous work had indicated that the results could be observed in the patterns of dispositions which would vary according to policy. A trial-oriented office having a no plea bargaining stance, for example could be differentiated from an office working with a system efficiency approach which sought early dispositions and relied on plea negotiation as a facilitator.

One of the questions implied by this research was that if policy variations produce different patterns of dispositions, then could a conclusion be reached that one policy is better than another; or that one policy is more discriminatory than another; or that the existence of policy variations is in itself desirable in our society; or that all prosecutors should be forced to conform to a single national (Federal) norm?

These are difficult and complicated questions and research should not be conducted or its results reported to support judgments. Rather it should report findings, facts and insights whether they support, repudiate or even make no difference to public policy questions. The findings of the comparative tests of first, four prosecutors' offices, and later, another set of five offices lend insight, however, to these questions. They show that policy differences exist and that they can characterize and distinguish offices--marking them with their own styles and color.

Some offices screen cases intensively, declining to prosecute twice the number of cases as others. Some use pleas as a primary dispositional vehicle; others strain the trial resources of the court to its limits. Some dispose of cases early in the adjudication process, others as late as the first day of trial. The pattern and character of an office emerges as one views the declination rate at intake, whether the office is plea or trial oriented in its dispositional strategies, the reliance on jury trials to dispose of cases and the extent of charge reduction allowed. As these vary, so too does the policy of the office seem to vary.

By transferring policy leaders from one jurisdiction to another, and measuring the levels of agreement that these "new" leaders have with the assistant prosecutors in the office, a test for classifying offices into homogeneous decisionmaking groups is generated. If low levels of agreement are recorded, then the policy of the "new" leader is not compatible with the decisionmaking policy held by the office. If the levels are high, then the two offices, while even structurally different, share the same policy. The importance of this occurs in the real world as two or more philosophically compatible prosecutors transfer knowledge and programs among compatible environments.

Yet, despite these policy differences, there emerges another conclusion. That is, that the existence of jurisdictional differences does not mean that the prosecutive function is inequitable. Although the scales may be weighted differently, the criteria for choice remain the same. Thus one could conclude that policy variations can exist within an equitable system of justice and prosecutors may choose those that suit their community without violating the criteria of objectivity and measurement.

The last test for inequity in this research lies in the last decision point tested--namely the prosecutors' statements as to what constitutes a reasonable and appropriate sentence. Incarceration, or "piped in sunshine" as it is referred to in the Alaska Plea Bargaining Study (Rubinstein, et al. 1978) represents the most severe of penalties. Yet, despite policy difference, the tests show that with few exceptions prosecutors generally agree on who should be sent away; namely, those with serious criminal records whose guilt is beyond doubt. Anything less is punished by fewer restrictions on the freedom of the defendant.

The conclusion that can be drawn is not new or unusual. It merely conforms to the nature of our democratic society. Namely, policy and procedural differences are possible as long as the societal goals of consistency, equity and democracy are upheld. The prosecutor's office in New Orleans does not look like its counterpart in Brooklyn, and the prosecutor in Buffalo has little in common with the operations of the Seattle office. But despite these differences in policy and environment, all the offices tend to co-exist in harmony because they rely on essentially the same set of criteria in making decisions.

The issue of policy variations and its concordance with the concept of equity are not incompatible. The findings here reaffirm the principle that as long as variations in policy are the result of different weightings of the same set of factors, then the decisionmaking system is intrinsically the same.

As it was noted in the introduction, this research did not determine what the unexplained variance surrounding the decisions could be attributed to. This research did not identify all the factors used by prosecutors in their decisionmaking. It is quite likely that there are still others that may increase the explanatory power of the results presented here. Even though the percent of variance explained was quite high (for example, the factors predicting priority

explains 57% of the variance and those that predict trials or incarceration, close to 60%), still there is a need to pursue the identification of other factors that might be considered or to respecify the factors that have been identified to see if they can be made more efficient or can be replaced by the variables that they may indicate. This research represents only a first step in this regard, identifying other areas for further examination.

C. Operational and Management Utilities of the Standard Case Set

Although the results of this research affirm the basic rationality of the prosecutive system, they are not far removed from having a practical utility as well. Prosecutors, like other public officials, need tools and techniques to assist them in monitoring and evaluating the performance of their agency.

The standard case set as a test instrument has practical utility to to both newly elected, and experienced District Attorneys. For the newly elected prosecutor, it offers a means of identifying the decisionmaking system that is operating in the office he won, and even permits a match of his set of decisions with those of his assistants to measure levels of consistency. Similar to the uniformity and consistency tests that were conducted in the comparative site analysis, this test permits the identification of areas where differences exist. The results provide a basis for the next step, the articulation of policy if it is missing, or workshops, conferences and other communication if needed to clarify policy.

The set may also be used to identify policy that is currently being used by the office. For example, by noting what cases would be plead to a reduced charge, what cases would be expected to go to trial, and what cases would be accepted, the prosecutor has a means of identifying differences that may exist. In this way a newly elected prosecutor is given a powerful tool that not only portrays the character of the existing process but overcomes staff resistance to changes resulting from the implementation of either new policy or a different emphasis.

For the experienced District Attorneys, the standard case set permits management and organizational evaluation. In Kings County (Brooklyn), District Attorney Gold responded to the test by changing his hiring policy when he noted that the most deviant responses were generated by attorneys who had had prior prosecutorial experience elsewhere. Now only attorneys with no prior prosecution experience are employed by the office. Additionally, personnel assignment procedures were changed in the Appeals Bureau, where attorneys traditionally had little operational knowledge or exposure to the routine criminal case processing. New procedures were instituted to transfer twelve attorneys from the Appeals Bureau to Criminal Court, Grand Jury and the Supreme Court on a rotating basis. The office also thinks that the standard case set may offer benefits in the recruitment and training area. Because measures of consistency can be obtained, it is possible to monitor within smaller organizational units whether the highest levels of agreement about

specific decisions are reached by those units that make that decision. For example, the organizational unit handling intake where the accept/reject decisions are made should record the highest levels of agreement for this decision. Similarly, trial assistants should show higher levels of agreement with respect to case reduction or trial expectations.

The major benefit of the standard case set is that it demonstrates that policy transference between the prosecutor and his staff is measurable as long as everyone participates in taking the test. In Wayne County, this was clearly evident when the "Out-County" attorneys were compared with the Recorders Court attorneys in the city of Detroit. This comparison showed that there was clear agreement with respect to the processing of cases even though the two groups had little daily contact, the court systems were totally different and the crime composition was not the same. After twelve years, the policy of Prosecuting Attorney Cahalan was firmly implanted in the office and followed by the staff.

The examination of differences among the trial teams that formed the basic organizational structure of the District Attorney's office in Baton Rouge, Louisiana showed another utility for the standard case set. Five trial sections, each manned by three to five attorneys, clerical staff and investigators, were autonomous in their decisionmaking. They each decided what to charge (if at all) and then brought the cases in their section to disposition. Subject only to the policy direction and supervision of District Attorney, Ossie Brown and his First Assistant, their level of agreement was unknown. The tests showed that there was overall accord with the exception of one trial section which appeared to take a different, more severe, policy stance. This was to be pursued by the management of the office to determine whether it was acceptable to them or whether it required some further action. Additionally, one set of responses in one section did not appear to be logically consistent with the operations of that group, and that group was to be examined.

If one thinks of administering the standard case set as part of a physical examination to periodically check up on the health of the policy of the office, its general utility is underscored and its flexibility limited only by the prosecutor's imagination.

D. Methodological Findings

The decision to develop and use a standard set of cases for this research was made after careful consideration of a number of factors. As a result, it produced a series of benefits giving scope to the findings presented here yet it incurred limitations as well. The major benefit was that by developing a standard set of cases, the researchers were able to control the experimental variables and design the experiment for a specific purpose. The added benefit of this flexibility is that the standard case set can be used for other experimental purposes. It can focus on different parts of the adjudication process, such as intake or trials; on special crimes such as robbery; or on different types of criminals such as first offenders or career criminals. As a result, it provides the researcher with far more powerful tools for testing and analysis, and most importantly supports research for comparative studies.

The responses to the standard case set evaluations are based on perception and expectations. They reflect the attorneys subjective assessment of the questions asked in light of their operating environment. Nevertheless, this does not weaken the results nor open the door to a serious criticism for using this type of technique. Although the field of psychometric research has indicated that persons respond with respect to their own environment when perceptions are tested, a deliberate attempt was made to support these findings in this research. Therefore, tests were included to examine this question. All tests to date indicate that the attorneys respond in terms of their own operational reality and not on the basis of some unknown universe or even on the basis of some idealistic sense of prosecution. In one test, half the attorneys in a jurisdiction were randomly assigned questions that asked for perceptions based on their role as "you, yourself." The other half was asked to respond as "you as an assistant prosecutor." The analysis of the results showed no significant differences in the responses. In another analysis, the results of testing in the Kings County (Brooklyn) office showed that indeed when operations or processes were unfamiliar to attorneys, wide variations occurred in the responses simply because they were guessing. Thus it appears that if the universe is unknown, no other alternative is substituted other than guesses. This is supported by the recent study of Tom Church (1980) in which the Wayne County prosecuting attorneys were asked to respond with respect to an idealized situation. The results indicated that their responses were reality based and that they were not capable of responding to some unknown or even idealistic reality.

For all the benefits offered by the standard case set, there were losses as well. Test results do not reflect actual rates or actual crimes in a jurisdiction. For example, a community may have more violent crimes or fewer violent crimes than those included in the case set. In gaining experimental control through the use of a uniform distribution, a representative distribution was precluded. Thus the results are not representative of the actual crime rate in a community or workload in a prosecutor's office. If this is desired a different sample needs to be employed.

At the present time 241 cases have been tested and are now ready for use by other researchers at a minimal cost. Since the data are already coded and automated, analyses of responses similar to the ones used in this research can be performed by the research staff at a minimal cost. In addition, since the variables of importance are now identified, other researchers and evaluators may use them to create their own mix of experimental designs, forming new sets of standard cases that can be used for special purposes.

Further testing is particularly important because the results of this research may reflect some unknown response bias. Obviously, the standard case set was administered only to those offices who agreed to this type of testing or who were large enough to support an organizational structure. The group of offices that would not agree to this and their characteristics is, of course, unknown. The responses of small offices has not been tested. As a result, the responses analyzed here may reflect the decisionmaking processes of only the large and more professionally open jurisdictions which in itself may enhance the findings of consistency and uniformity. As more and more jurisdictions are tested, the possibility of this type of response bias should decrease.

Finally, the results should be validated to the extent possible. If the results reflect the policy preferences of the prosecutors, then these should be observable under real, operating conditions. It is important therefore that the next step - that of validation - be undertaken as soon as possible to give the research the credence it deserves.

If the factors identified in this project can be used to predict the major decisions made by prosecutors about ordinary cases in a jurisdiction and if these predictions can be tested against actual case decisions, then a true validation can be undertaken. The potential power of the RDR model (Recommended Dispositional Routing) should be tested in operating environments.

III. THE DYNAMICS OF PROSECUTORIAL DECISIONMAKING

A. Introduction

The primary purpose of this research was to determine the extent prosecutors exercise their discretionary power in a uniform and consistent manner. This can be explored from three perspectives:

- Nationwide--one may view prosecution as a decisionmaking process and identify those factors held in common in making decisions and those that are subject to jurisdictional variation.
- Comparatively--one may examine responses given by different jurisdictions to the same set of cases to measure the effect of policy or the environment on the uniformity of these decisions among different offices.
- Internally--one may identify within an organization, differences in perceptions and expectations that may degrade the uniformity and consistency in the decisionmaking within that organization.

This chapter presents the results of the nationwide testing of 855 assistant prosecutors and chief prosecutors in 15 jurisdictions throughout the United States during the period of 1978 to 1980. It is based on responses to 241 cases all of which conform to the experimental design displayed in the Introduction.

The purpose of this testing was to obtain a large data base so that the results of the analysis of factors affecting decisionmaking would be as reliable and as stable as possible. The specific objectives of this nationwide testing were:

- To identify the factors taken into consideration by prosecutors in making various decisions;
- To determine whether these factors are constant throughout the United States or vary by jurisdiction; and
- To identify where the differences occur and, if possible, the reasons why they occur.

Such reasons may stem from policy differences, socioeconomic or environmental differences, or simply the capacity of the system in the various jurisdictions.

The research question was to see if prosecutorial decisionmaking was as arbitrary, capricious, inconsistent or uncontrolled as many critics claimed or to what extent was it based on reasonable, logical, and even predictable factors.

The assumption was that if prosecutorial decisionmaking systems were rational, decisions should be based upon statistically identifiable factors

that operate in a rational or reasonable manner. The question of what constitutes "good" or "bad" decisionmaking systems was not examined here; nor was it intended to be. That evaluation lies in the public policy arena. Prior to understanding any evaluation of that nature, it is first necessary to examine the workings of the process as it exists today and to understand its dimensions. This was the task undertaken in this research activity.

The analytical technique employed for this analysis was multiple regression. The independent variables that describe each case with respect to the seriousness of its offense, the criminal history of the defendant and the legal-evidentiary strength of the case (some 65 in all) were analyzed for their ability to predict the responses given to the questions and to explain the variance surrounding these responses. The responses are represented as percent distributions, hence they are treated as continuous variables.

The seriousness of the offense was indicated through the use of the Sellin/Wolfgang (1964) scale. This scale measures the seriousness of the offense primarily based upon personal injury and property loss. The criminality of the defendant is measured by a newly developed scale, the Turner/Ratledge scale (Jacoby, 1980, Appendix A). This scale is derived from responses to and an analysis of almost 7,000 criminal histories. It is a composite scale reflecting the criminality of the defendant as indicated primarily by the number of convictions for crimes against the person and "hard" drug-related crimes.

The legal-evidentiary strength of the case was not expressed in terms of a scale. Thus approximately 28 factors were included as independent variables and these were tested in the multiple regression. The legal-evidentiary strength of the case is separated into four components. The first is the inherent complexity of the case for prosecution. For example, bad check cases are more complicated, more complex to prosecute than a simple assault. The second dimension of the legal-evidentiary strength of the case lies in the constitutional issues which may arise from bad searches and seizures, the failure to read the defendant his rights and so forth. The third area lies in the testimonial strength of the case. Whether or not the victim is willing to testify and whether there is corroboration from two or more police or civilian witnesses are important considerations. One witness is not significant, but the corroboration by two or more is. Finally, the last component is the circumstances of the arrest. This involves the type of arrest or identification, whether evidence or the stolen property was found in the defendant's possession, whether a gun was involved in the crime, and whether the defendant admitted, confessed or denied his involvement. These variables were introduced to the analysis. Until an economy can be achieved by the development of legal-evidentiary scales, this type of approach is unfortunately still the only one feasible at this time.

To measure whether there were jurisdictional differences each of the 15 sites were coded with dummy variables. This means that one site, Polk County (Des Moines), Iowa, was designated as the base site. The remaining 14 jurisdictions were compared to it. To identify which site was present for the analysis a one (1) was recorded if it was present, a zero (0), if absent. In this way tests for jurisdictional difference could be performed.

It should be noted that if Polk was not different from the regression model, any jurisdictional variation, if significant, would produce regression weights having both positive and negative signs. A detailed discussion of the methodology used in this analysis may be found in a companion report, Prosecutorial Decisionmaking: Selected Readings.

The results presented in the following section are, therefore, rather straight forward. All factors identified are significant at the .05 level or less.

B. Findings

1. Priority of a case for prosecution.--The priority of a case for prosecution is indicated by a scale ranging from 1 to 7, where 1 is the lowest priority, 4 is average, and 7 reflects the highest priority. The priority variable is one of the most powerful of all those tested. This is because it includes in one number a consideration of all three dimensions of a criminal case--the seriousness of the offense, the criminality of the defendant and the legal-evidentiary strength of the case. It has been found to have little variation among jurisdictions; and, as will be shown in Chapter VI, it has strong explanatory power in stratifying caseload and predicting dispositional routes.

Priority is a reasonable descriptor of prosecutorial behavior. It has not, however, been examined for factors that can be quantified until now. Intuitively and empirically we know that the lowest priority cases (namely the one's and two's) tend to be rejected at intake or to be disposed of as early as possible by a plea. The more serious cases proceed to trial.

This test shows that priority is affected within these three dimensions by a number of factors as displayed in Table 3-1. The seriousness of the offense has a positive relationship to priority; so too the criminality of the defendant. Within the legal-evidentiary aspects, different relationships exist. If there is a consitutional issue, the priority of the case is decreased (the regression weight is -.50). In contrast, priority is increased if corroboration by two or more police and/or civilian witnesses is possible, the defendant admits to involvement and a gun was used.

The variable that specifies the relationship of the victim to the defendant (either intimate or known) is an interesting one having different effects on the decisions made. For priority, it tends to lessen the case's overall value because generally these cases breakdown later when the complaining witness or victim later refuses to press charges forcing the case to be dismissed.

There were only three jurisdictions that appear to be different from the national norm. All three tended to view the priority of cases for prosecution as slightly lower. This may be due in part; to the fact that they are large jurisdictions with high volumes of more serious crimes. Kings County, for example with 40,000 felony arrests a year and Dade County with 22,000 felonies may indeed reserve higher priorities for serious crimes than tested here. It is important to note, however, that although they operate with a reduced value scale, they still consider the same factors in assessing priority.

The important fact is that the priority variable reflects a unanimity shared by all the prosecutors tested throughout the United States. The R-square which indicates the percent of explained variance for this regression analysis is 57.

TABLE 3-1

FACTORS AFFECTING THE PRIORITY OF A CASE FOR PROSECUTION
AS MEASURED ON A SCALE OF 1 TO 7
(1=Low, 7=High)

Type	Factor	Regression Weight
Offense:	Sellin/Wolfgang	.09
Criminality:	Turner/Ratledge	.29
Legal-Evidentiary:	Inherent complexity	.19
	Constitutional issues	-.50
	Two or more police witnesses	.50
	Two or more civilian witnesses	.37
	Relation victim to defendant, intimate	-.37
	Relation victim to defendant, unknown	.31
	Defendant admitted involvement	.22
	Gun involved	.82
Jurisdictional:	Dade County, FL	-.39
	Jackson County, MO	-.38
	Kings County, NY	-.75

R^2 (percent of explained variance) = .57

2. Accepting cases for prosecution.--The decision whether to accept a case for prosecution signifies a critical juncture in criminal justice. Either the whole array of criminal adjudication resources are called into play or they are not. The bases for this decision have been subject to controversy and standard setting alike. Thus the importance of this analysis shows that first there is little variation among prosecutors with respect to what decision is made. And, second, they base their decisions primarily on the legal-evidentiary strength of the case and the seriousness of the offense. Of equal interest is the fact that the criminality of the defendant does not emerge as a significant variable.

Table 3-2 shows that as the seriousness of the offense as indicated by the Sellin/Wolfgang scale increases, the probability of acceptance does also. But more importantly, the special emphasis placed on the legal and evidentiary factors indicates that prosecutors rely, primarily, on the legal and evidentiary strength of the case. Those that do not survive this

TABLE 3-2

FACTORS AFFECTING THE DECISION TO ACCEPT A CASE FOR PROSECUTION

Type	Factor	Regression Weight
Offense:	Sellin/Wolfgang	1.0
Legal-Evidentiary:	Constitutional issues	-18.7
	Two or more police witnesses	9.4
	Relation victim to defendant, intimate	-9.2
	Property found in possession of defendant	9.8
Jurisdictions:	Hennepin, MN	-14.0
	Salt Lake City, UT	-10.0
	Orleans, LA	-10.0

R^2 (percent of explained variance) = .31

scrutiny or that are not legally sufficient tend to be rejected by the prosecutor.

The most important factor considered by the prosecutor is whether constitutional issues are present in the case. If they are, they decrease the probability of its being accepted. The probability of acceptance is increased if there is corroboration by two or more police witnesses. Interestingly, the corroboration by civilian witnesses was not significant reflecting perhaps the ordinary dependence of the prosecutor on police reports and testimony at this point in the process. Other evidentiary strength increases the probability of acceptance--property found in the possession of the defendant is important.

As noted earlier the relation of the victim to the defendant poses significant problems. If it is intimate, the effect is to reduce its likelihood for prosecution because of the tendency for the victim to drop the complaint or refuse to cooperate after a period of time. This shows in the -9.2 regression weight.

Three jurisdictions appear to have significantly higher standards for acceptance than the norm. In reality, each of these jurisdictions places strong emphasis on the intake, screening function. Their charging policy is to review cases intensively at that point which results in higher declination rates. The fact that they appeared as statistically different in this test is encouraging.

The importance of this analysis is that it clearly shows the prosecutor's strong reliance on the legal-evidentiary aspects of cases when the decision to accept is being made. The percent of the variance that is explained by these factors is 31.

3. Disposition by guilty plea.--If a case has been accepted for prosecution, the work of the office shifts to bringing about its expected disposition. Dispositions may be classified into three types--pleas, trial, or other which includes a large proportion of dismissals. The analysis here focuses on the factors that contributed to an expected disposition by a plea of guilty.

Table 3-3 presents the results of this analysis. What is instantly obvious is the vast amount of jurisdictional variation that appears. This is not unexpected since a major assumption of this research was that the policy of the office influences its dispositional pattern. In addition, it was also assumed that court capacity and other environmental factors would have an effect. Of the 15 sites tested, 10 of them showed significant differences from the regression model.

TABLE 3-3

FACTORS AFFECTING THE DISPOSITION OF A CASE BY A GUILTY PLEA

Type	Factor	Regression Weight
Offense:	Sellin/Wolfgang	-1.3
Criminality:	Turner/Ratledge	-10.7
Legal-Evidentiary:	Two or more police witnesses	-6.1
	Two or more civilian witnesses	-6.7
	Relation victim to defendant, intimate	-18.4
	Relation victim to defendant, known	-7.5
	Defendant confessed	19.0
	Defendant admitted involvement	-13.7
	Gun involved	-10.1
Jurisdictional:	Baton Rouge, LA	-13.2
	Dade, FL	10.7
	Erie, NY	13.7
	Kings, WA	-9.3
	Kings, NY	12.6
	Maricopa, AZ	19.0
	Orleans, LA	-11.7
	Salt Lake City, UT	-10.8
	Wayne, MI	8.7
	Wilmington, DE	11.5

R^2 (percent of explained variance) = .51

This is not to say that these 10 use a different set of criteria. To the contrary, as the weights indicate, there are other dimensions that are also important in predicting the likelihood of whether cases will be disposed of by a guilty plea.

The negative weight on the Sellin/Wolfgang scale shows that as the seriousness of the case decreases, the likelihood of a guilty plea increases. The Turner/Ratledge criminality scale also indicates that the less serious the defendant's criminal history, the more likely the case will be disposed of by a guilty plea. In general, guilty pleas tend to occur in the less serious cases and those where the evidence is marginal.

As the evidentiary strength of a case weakens, the case is more likely to be disposed of by a plea of guilty. If the defendant confesses, obviously a guilty plea is ensured. This is not true if the defendant only admitted his involvement in the crime. As will be shown next, the likelihood of a disposition by guilty plea decreases while the probability of disposition by trial increases. An admission clearly poses a different set of problems and issues for the prosecutor than a confession.

As the strength of the case increases disposition by trial is more likely. Thus the availability of two or more witnesses decreases the probability of a plea. If the case has been accepted, then the relationship of the victim to the defendant plays a strong role in the type of disposition (whether by plea or trial). These negative weights indicate that the case is less likely to be disposed of by a plea since the victim indicates that he or she is willing to testify and cooperate in carrying the case forward to its conclusion. Similarly if a gun was involved in the commission of the crime, the seriousness of this act is so great that it, too, decreases the probability of disposition by a plea. The percent of the variance explained by these factors is 51.

4. Disposition of case by trial.--The mirror image of the guilty plea analysis may be seen in the factors affecting the disposition of cases by trial. Jurisdictional variations are abundant, indicating the effects of policy and system capacity. Some jurisdictions are clearly more trial oriented than others--Orleans, Salt Lake City and Baton Rouge being outstanding examples of this. Despite these variations, the overriding dynamic operating to bring cases to disposition by trial is that the more serious the offense, the more serious the criminal history of the defendant and the stronger the evidentiary strength of the case, the higher is the probability of a trial.

There are only two exceptions to this relationship. If a case is inherently complex, the tendency is to dispose of it by a guilty plea rather than by trial. This is reasonable given the amount of resources trials consume even under normal circumstances. If the defendant has confessed, then the disposition of the case will be more likely by plea than by trial. The other factors clearly show that the stronger the evidence in the case the more likely it is to move to a trial status. The percent of the variance explained by these factors is 66.

TABLE 3-4

FACTORS AFFECTING THE DISPOSITION OF A CASE BY TRIAL

Type	Factor	Regression Weight
Offense:	Sellin/Wolfgang	1.3
Criminality:	Turner/Ratledge	9.5
Legal-Evidentiary:	Inherent complexity	-2.8
	Two or more police witnesses	6.9
	Two or more civilian witnesses	6.0
	Relation victim to defendant, intimate	14.3
	Relation victim to defendant, known	9.3
	Defendant confessed	-17.3
	Defendant admitted involvement	14.0
	Gun involved	10.5
Jurisdictional:	Baton Rouge, LA	12.2
	Dade, FL	-13.4
	Erie, NY	-15.7
	Hennepin, MN	-10.0
	Kings, NY	-20.6
	Maricopa, AZ	-15.4
	Orleans, LA	12.0
	Salt Lake City, UT	10.5
	Wayne, MI	-8.5

R^2 (percent of explained variance) = .66

5. Disposition of cases at a reduced level.--The most controversial aspect of discretionary decisionmaking has been about the disposition of cases at a reduced level. Generally, this is used as an indicator of plea bargaining although other reasons also exist. The extent to which cases were disposed of at a reduced level from what was originally filed should be dependent on office policy and it is--7 of the 15 sites reported significant differences.

The relationship affecting the probability of a case being disposed of by a plea to a reduced charge is simple. As the criminality of the defendant increases and the evidentiary strength of the case hardens, the possibility of a disposition by a plea to a reduced charge decreases. The negative weights attached to the Turner/Ratledge criminality scale indicates this; so also does the fact that the victim knows the defendant, the defendant only admitted his involvement and a gun was involved in the crime.

The probability of a case being disposed of by a plea at a reduced level is enhanced if the case is inherently complex, thereby indicating the

TABLE 3-5

FACTORS AFFECTING THE DISPOSITION OF A CASE AT A REDUCED LEVEL

Type	Factor	Regression Weight
Criminality:	Turner/Ratledge	-5.0
Legal-Evidentiary:	Inherent complexity	3.0
	Relation victim to defendant, known	-8.3
	Defendant confessed	8.6
	Defendant admitted involvement	-5.0
	Gun involved	-5.0
Jurisdictional:	Erie, NY	38.7
	Jackson, MO	12.8
	Kings, NY	35.3
	Maricopa, AZ	23.3
	Orleans, LA	-9.4
	Wayne, MI	34.4
	Wilmington, DE	10.9

R^2 (percent of explained variance) = .55

prosecutor's concern for efficiency; and, if the defendant confessed, thereby suggesting that rewards might be built into the system.

Thus, it appears that the chances of pleading to a reduced charge depend primarily on the criminality of the defendant and the strength of the case. It is interesting to note that the seriousness of the offense was not a significant factor in this decision. The percent of variance explained by these factors is 55.

6. Incarceration as a sentence.--The most severe sanction that can be imposed upon a defendant is, of course, incarceration. The prosecutor does not exclude this consideration from his actions or his decisionmaking since ultimately it forms one measure of his expectations about a case. Therefore, when the responses to what was a reasonable and an appropriate sentence cited incarceration, the factors contributing to it were analyzed, for two purposes:

- To determine whether there were jurisdictional variations, whether this decision was policy dependent, or whether universal in its value judgment.

- To attempt to determine what were the factors that the prosecutor considered as he recommended this most severe of all sanctions.

The results of the analysis showed that there was some jurisdictional variation, 7 out of the 15 jurisdictions took a significantly harsher stance

TABLE 3-6

FACTORS AFFECTING INCARCERATION AS A REASONABLE AND APPROPRIATE SENTENCE

Type	Factor	Regression Weight
Offense:	Sellin/Wolfgang	1.0
Criminality:	Turner/Ratledge	21.1
Legal-Evidentiary:	Inherent complexity	-4.8
	Two or more police witnesses	8.6
	Two or more civilian witnesses	13.1
	Relation victim to defendant, intimate	33.5
	Defendant confessed	-17.5
	Defendant admitted involvement	6.9
	Gun involved	15.9
Jurisdictional:	Dade, FL	11.0
	Hennepin, MN	24.0
	Jackson, MO	19.0
	Kings, WA	29.0
	Lake County, IN	20.2
	Maricopa, AZ	17.0
	Wayne, MI	12.0

R^2 (percent of explained variance) = .59

toward incarceration than the site that was used as the base, proposing up to 29 percent more incarceration than the base. No prosecutor's office took a less severe stance. Therefore, one could conclude that there is general agreement about a basic type of defendant that should be incarcerated and a few jurisdictions arguing for more to be incarcerated. This may reflect the amount of jail capacity or the judiciary's attitudes toward incarceration both of which factors cannot be tested here.

With respect to what the factors are that tend to increase the probability for incarceration, first, all the dimensions of the criminal case, the seriousness of the offense, the criminal history of the defendant and the legal-evidentiary strength are brought into play. However, the most important two categories are the latter. First offenders are not generally or typically incarcerated. The fact that the Turner/Ratledge scale has a regression weight of 21 indicates that the criminal history of the defendant plays a strong part in the likelihood of incarceration.

Prosecutors also rely on factors that show the evidence of guilt to be overwhelming--a gun was involved and the personal safety of the victim was endangered, for example. There are two exceptions to this:

- If the defendant confessed to the crime, the probability of incarceration is decreased (which may also indicate the existence of rewards in the criminal justice system); and

- If the case is complex the probability of incarceration is decreased.

This may merely reflect the tendency of these cases to plea to reduced charges that do not involve incarceration as a sanction.

The condition that contributes the most to increasing incarceration is when the relationship of the victim to the defendant has been intimate. One can assume that the case has gone all the way through to trial because the record of the defendant was bad and the offense serious enough to overcome any of the victim's normal tendency to let the matter drop. Also significant is the corroboration by police and civilian witnesses and the use of a gun. The results show that incarceration decisions are based on all dimensions but by far the most important are the criminal history of the defendant, his potential for violence, and the legal-evidentiary strength of the case. The percent of the variance explained is 59.

C. Conclusions

We can conclude from this analysis that there are, indeed, factors common to prosecutors that explain their discretionary decisions. They generally agree on priority of cases for prosecution--taking into consideration the seriousness of the offense, the criminality of the defendant and the case's legal-evidentiary strength. At only two decision points were all three dimensions not considered. The decision to accept cases for prosecution does not consider the criminal history of the defendant as a factor; and the decisions to reduce a charge for a plea does not consider the seriousness of the offense as a significant factor.

They tend to accept a case primarily on the basis of the strength of its evidence and legal sufficiency, as indeed the ABA and NDAA standards espouse. They tend to dispose of cases by plea and at a reduced level when they are either inherently complex (thereby taxing system resources) or the legal-evidentiary strength of the case is marginal and the defendant's criminal record is of a less serious nature. Those cases that move to trial status are those where the evidence is strong, the defendant is a recidivist and the offense is severe. If recommendations are made for incarceration they are based primarily on the criminality of the defendant and the legal-evidentiary strength of the case.

There is a clear indication that the decisions about pleas, trials, and reductions vary by jurisdiction with differences due to either policy, or to other environmental factors such as volume, court capacity, etc. The result is that the decisions being made by the prosecutors are based on legitimate and objective factors. They are consistent in their application regardless of jurisdiction or policy and they assume different weights as they relate to the different decisions. In the dynamic decisionmaking process of the prosecutor there is an underlying and constant set of factors that are being used in a rational, consistent and interpretable fashion.

IV. UNIFORMITY AND CONSISTENCY IN DECISIONMAKING

A. Introduction

The standard case set was first administered to 350 assistant prosecutors in 4 jurisdictions. In this first set, each assistant responded to 30 cases, 24 of which were identical for all offices--the difference resulted from changes that were made to the original set of cases after they were tested in Brooklyn and Wilmington. These two jurisdictions responded to the original 30 cases; Salt Lake County and Orleans Parish responded to the modified set of cases. Of the 6 cases which changed, one was a new case, the remainder only reflected modifications to clarify points. The second set of cases was administered to 260 assistant prosecutors in 5 jurisdictions. All responded to the same set of cases. This set was not the same as those given the first set. Hence, comparability between all 9 jurisdictions is not possible. Each group must be examined separately. The participating jurisdictions are identified in the following Table 4-1.

For the Phase I group, the results of the tests are based on 30 cases when the standard case set is being tested within an office and a subset of 24 cases when the interoffice results are being presented. The Phase II group is based on another set of 30 cases.

The following tables (Tables 4-2 through 4-8) present the percent distributions of the responses to the questions asked on the evaluation form. The question asked is displayed at the head of the page, followed by the distribution of responses for each of the two site groups and a brief commentary.

Each commentary addresses three primary issues:

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

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

3. A critique of the question itself with respect to its ability to add to our knowledge about prosecutorial decisionmaking.

TABLE 4-1

PROSECUTORS PARTICIPATING IN TESTING THE STANDARD CASE SET

Jurisdictions	Number of Assistants	
	Office Total	Responding
PHASE I		
District Attorney Eugene Gold Kings County (Brooklyn), New York	320	282
Attorney General Richard Weir Wilmington, Delaware	18	13
District Attorney Harry Connick Orleans Parish (New Orleans), Louisiana	61	34
County Attorney Paul Van Dam Salt Lake County (Salt Lake City), Utah	24	21
TOTAL	423	350
PHASE II		
District Attorney Ossie Brown Baton Rouge, Louisana	27	33[a]
District Attorney Edward Cosgrove Erie County (Buffalo), New York	76	71
Prosecuting Attorney Ralph Martin Jackson County (Kansas City), Missouri	35	33
County Attorney Dan Johnston Polk County (Des Moines), Iowa	24	18
Prosecuting Attorney William Cahalan Wayne County (Detroit), Michigan	116	105
TOTAL	278	260

[a]Includes 9 investigators.

B. Results of the Administration of the Standard Case Set

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

TABLE 4-2

PERCENT DISTRIBUTION OF ACCEPT/REJECT RATES BY JURISDICTIONS

	Jurisdictions				
PHASE I:	Kings	Wilmington	Orleans	Salt Lake	
Total %	100	100	100	100	
Accept.....	85	89	78	79	
Reject.....	15	11	22	21	
PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
Accept.....	82	90	79	86	85
Reject.....	18	10	21	14	15

The standard case set differentiates between acceptance and rejection standards among jurisdictions in making charging decisions while holding constant influencing factors such as, different type of crimes, the quality of police reporting, and different amounts of available information.

There appear to be two different types of intake processes--one that operates at a 10-14 percent rejection level; the other at about double the rate. Even though the assistants are looking at the same set of cases, one type (Brooklyn and Wilmington) rejects proportionately few cases; the other (Orleans and Salt Lake) exhibits a rejection rate almost double that of the first. This distribution is entirely consistent with the policies and procedures used in the offices. Kings County (Brooklyn) and Wilmington both review cases for legal sufficiency. In contrast Orleans rejects up to 45 percent of the cases referred to it. In Phase II, the low rate of Erie County (10%) reflects the fact that this jurisdiction does not review charges before they are filed by the police in the court.

The question is simple and no difficulties were experienced with the responses. Although its value lies in its ability to quickly discern differences in levels of acceptance one must remember that the upper bound on rejections (about 20%) is deliberately set by the experimental design employed. Thus only relative differences between sites should be examined. On this basis, differences in rejection rates are obvious.

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

TABLE 4-3

PERCENT DISTRIBUTION OF EXPECTED DISPOSITIONS BY JURISDICTIONS

Dispositions	Jurisdictions			
PHASE I:	Kings	Wilmington	Orleans	Salt Lake
Total %	100	100	100	100
Plea.....	62	63	37	42
Convict.....	21	32	52	52
Acquittal.....	1	0	2	1
Dismiss.....	1	0	0	0
No true bill.....	0	0	0	0
Can't predict.....	3	2	5	3
Other.....	12	3	4	2

PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
Plea.....	42	71	62	57	64
Convict.....	48	19	29	36	24
Acquittal.....	1	2	2	1	3
Dismiss.....	2	2	0	1	2
No true bill.....	0	1	0	N/A	0
Can't predict.....	6	4	6	5	7
Other.....	2	3	1	1	1

This table demonstrates that the standard case set can be used to distinguish a plea oriented prosecution system from a trial oriented system (trials are the sum of convicts and acquittals). The plea is shown to be the preferred disposition for over 60 percent of the cases tested in both Kings and Wilmington, and Erie, Jackson and Wayne. The trial oriented policy of Orleans and Salt Lake, and Baton Rouge is sharply delineated by the relatively smaller proportion of expected dispositions by pleas as compared to the higher trial conviction rates.

Of additional interest is the tendency for the assistants to predict only successes. Some of the dispositions that normally occur in any office, such as nolles, dismissals, acquittals, etc. are not chosen in any significant degree even though the cases include a group that are evidentially defective. This may be due to a number of reasons. Attorneys may not be able to predict dispositions if they rarely occur; are not part of an office-approved

dispositional strategy; are outside of their control or if they contain future difficulties that are not visible from the information presented.

The question's major value is to distinguish between two types of offices by their dispositional outlets. Since trials require more resources and different operating procedures, one can also assume that this may distinguish between two very differently structured offices.

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

TABLE 4-4

PERCENT DISTRIBUTION OF DISPOSITION LOCATION BY JURISDICTIONS

Exit Point	Jurisdictions			
PHASE I:	Kings	Wilmington	Orleans	Salt Lake
Total %	100	100	100	100
First appearance.....	16	0	3	1
Preliminary hearing.....	15	1	2	6
Grand jury.....	1	0	0	0
Arraignment.....	12	1	10	5
After arraignment before trial.....	30	52	29	33
First day trial.....	3	13	1	2
End bench trial.....	1	5	7	11
End jury trial.....	23	29	48	42

PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
First appearance.....	1	6	2	4	2
Preliminary hearing.....	2	21	18	1	4
Grand jury.....	0	6	0	0	0
Arraignment.....	19	1	0	6	5
After arraignment before trial.....	24	43	46	48	56
First day trial.....	3	1	4	0	2
End bench trial.....	15	2	1	2	5
End jury trial.....	37	20	30	37	26

This table indicates how the standard case set can describe the major exit points for the caseload in an office. The location in the process where dispositions occur provides a good indication of the entire system's dynamics.

After categorizing the process steps into the broad functions of intake, accusatory, pretrial and trial, we see that in Orleans and Salt Lake, over 50 percent of the cases move into the trial process, whereas in the other two sites, 70 to 80 percent of the cases are disposed of before the first day of trial. Similarly, Baton Rouge is obviously trial oriented with 52 percent of its cases expected to be disposed of by trial.

This table also shows how the external environment forces the occurrence of certain dispositional patterns. For example, the zero disposition rate in the grand jury in Wilmington occurs because the Attorney General is not represented at grand jury proceedings. As a result, the jury hands up indictments and the grand jury rarely no-bills the police complaints. In contrast, Erie County (Buffalo) uses the front part of its system to dispose of a relatively high proportion, probably to compensate for its lack of case review at intake. The high rates of dispositions in the period after arraignment and before trial probably reflect systems where negotiated pleas are a preferred form of disposition.

This question could be more meaningful if it incorporated a time dimension in the process steps. Without a sense of the amount of system time involved in reaching the different process steps, it is difficult to impute delay or inefficiency to the system. For example, although Wilmington appears to wait until long after indictment to start disposing of its cases (52% in the period after arraignment and before trial), this is not slow. In this fast moving system the time period from arrest to arraignment is about four weeks and to first day of trial is generally ten weeks. Additionally, the Attorney General will not dispose of a case which has been accepted for prosecution until an indictment has been returned.

The value of this question is that it provides a sense of the system's dynamics indicating where the major dispositional outlets are located in the adjudication process. Some jurisdictions are more "front loaded" than others and the extent to which this occurs can be indicated.

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

TABLE 4-5

PERCENT DISTRIBUTION OF LEVEL OF DISPOSITION BY JURISDICTIONS

Level of Disposition	Jurisdictions			
PHASE I:	Kings	Wilmington	Orleans	Salt Lake
Total %	100	100	100	100
As Charged:				
Felony.....	25	62	70	55
Misdemeanor.....	8	13	22	18
Violation.....	6	0	0	1
Lesser Charge:				
Felony.....	30	13	5	16
Misdemeanor.....	25	11	2	8
Other.....	6	1	1	1

PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
As Charged:					
Felony.....	44	18	59	49	29
Misdemeanor.....	24	8	12	32	14
Violation.....	0	10	1	0	1
Lesser Charge:					
Felony.....	18	27	14	6	43
Misdemeanor.....	24	8	12	32	14
Other.....	3	5	1	3	2

The standard case set can be used to identify the extent of use of charge reductions as dispositional strategies. Whether usage is dictated by policy preference or imposed by a lack of system capacity is not obvious from the test. Orleans policy of rigorous screening and no plea bargaining clearly has been transmitted through the office as reflected in the very few cases (7%) that are expected to be disposed of by a "breakdown." Kings (Brooklyn) on the other hand, accustomed to disposing 40,000 felony arrests in 29 courtrooms per year uses plea negotiation extensively. Wayne (Detroit) has a formally structured pretrial conference at which pleas are negotiated. This could be reflected in the high (43%) rate of cases reduced but kept at a felony rather than a

misdemeanor (12%) level. Parenthetically, it is interesting to note that in the Phase I group, Salt Lake departs from the pattern followed by Orleans for the first time. The data suggest that although both offices perform rigorous intake review, Salt Lake, unlike Orleans uses plea negotiation as a dispositional route.

The question was constructed with difficulty since it had to be worded so as to overcome the problem of interstate variations in definitions of felonies, misdemeanors and violations. This difficulty was overcome in part, by analyzing the preferences of an office to reduce charges to achieve a disposition, not what legal label they would give the crime, by letting the category "misdemeanor lesser charge," remain ambiguous. The ability to identify from what original state the charge was reduced was lost; however, simplicity and dynamics were gained.

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

TABLE 4-6

PERCENT DISTRIBUTION OF APPROPRIATE SENTENCE BY JURISDICTIONS

Sentence	Jurisdictions				
PHASE I:	Kings	Wilmington	Orleans	Salt Lake	
Total %	100	100	100	100	
None	4	0	1	0	
Fine or conditional release	16	7	6	4	
Probation	20	31	25	33	
Incarceration	59	60	68	62	
PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
None	1	2	0	0	1
Fine and/or restitution	11	9	4	18	5
Conditional release	2	7	1	1	1
Probation	26	22	23	25	26
Incarceration	61	60	72	56	68

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

All sites (except Jackson (Kansas City)) substantially agree, despite charging policy, dispositional strategies, and levels of disposition, as to which defendants should be locked up. In contrast, the most variation occurs in the lesser sanctions of fines, restitution and forms of conditional release other than formal probation. While policy variation is more circumscribed for the serious cases, it is apparently less constrained for the less serious cases--a condition that is reasonable and to be expected.

While the responses were originally delineated into finer categories, the diversity of programs limited analysis. For example, the adjournment in contemplation of dismissal (ACD) is a conditional discharge route available in Kings (Brooklyn) and is used extensively to dispose of minor cases. That disposition was not found in any other jurisdiction although similar dispositions by other names often were available. More power was given to the analysis by grouping the sentences into broad sanction categories based on the amount of restrictions placed on the liberty or freedom of the individual. Incarceration appears to be the most universally agreed upon sanction. The others vary as the restrictions lessen.

Q. 6. IF JAIL OR PENITENTIARY TIME, HOW LONG?

TABLE 4-7

PERCENT DISTRIBUTION OF YEARS OF INCARCERATION BY JURISDICTIONS

Years Sentenced	Jurisdictions				
PHASE I:	Kings	Wilmington	Orleans	Salt Lake	
Total %	100	100	100	100	
Less than 1	8	4	3	16	
1 - 2	52	37	22	48	
4 - 6	16	20	11	26	
7 - 12	14	22	13	3	
13 - 23	7	13	16	2	
24 plus	4	5	35	5	
PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	99	100	100	100	100
Less than 1	0	0	0	0	0
1 - 3	60	69	64	66	67
4 - 6	37	31	36	34	33
7 - 12	1	0	0	0	0
13 - 23	1	0	0	0	0
24 plus	0	0	0	0	0

The wide differences displayed between the jurisdictions with respect to the appropriate length of incarceration reflect both local sentencing and parole practices. Thus the lengths as related to actual time served are basically unreliable or uninterpretable. The fact that Orleans and Salt Lake, both of whom have rigorous charging standards and a trial-orientation, sentence differently, is not interpretable by the results alone. Orleans assistants felt that 64 percent of the defendants should be locked up for seven years or more. In contrast, Salt Lake assistants felt that only 10 percent should be locked up for that period of time.

The question needs to be restated or researched. The effects of local sentencing practices as they are influenced by parole and probation decisions, good time credits and habitual offender acts should be separated (if possible) from the values of the attorneys before this severity scale can have analytical power.

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

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

TABLE 4-8

PERCENT DISTRIBUTION OF PRIORITY SCORES BY JURISDICTIONS

Priority	Jurisdictions			
PHASE I:	Kings	Wilmington	Orleans	Salt Lake
Total %	100	100	100	100
1 - Low.....	14	7	10	12
2	14	9	10	11
3	15	18	9	10
4 - Average.....	25	28	29	28
5	15	18	16	15
6	12	15	14	15
7 - High.....	6	5	12	8

PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Total %	100	100	100	100	100
1 - Low.....	9	8	10	5	9
2	11	14	13	8	13
3	15	15	14	15	13
4 - Average.....	34	32	36	38	35
5	16	16	13	15	15
6	9	10	10	14	11
7 - High.....	6	5	4	5	5

A primary reason for developing the standard case set was to determine whether prosecutorial priorities were environmentally and policy free and whether they could be prioritized. As the previous questions indicated, many of the prosecutors' responses were dependent on the environment and/or policies that were in effect. This is not true for priority. This scale exists without regard to the environmental factors or the local criminal justice system characteristics. This is important because it permits priority to be used normatively to set the value of cases for prosecution and to set it early in the prosecution process.

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

There is a substantial amount of agreement in the priority of a case among all offices. The way in which the office chooses to dispose of low priority cases, for example, is a matter of policy. In Orleans, they decline to prosecute them. In Kings County (Brooklyn), they plead them. The scale appears to be a useful stratifier of dispositional actions as we will see.

C. Consistency: Agreement of Assistants to Leaders

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

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

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

The second factor that must be considered in explaining any relationship observed is the extent of inherent agreement--we assume that there is a high degree of agreement among attorneys independent of policy that stems from a homogeneity based on ethical standards and education.

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

The amount of agreement was measured by matching the responses of the leader in the office with the assistants'. For each match a one was scored, for each disagreement a zero was scored. The average match was then computed. It should be noted that this is a restrictive measure since it is based on exact agreement and does not allow for other "acceptable" responses.

To measure the effects of policy, the responses of the leaders in the offices comparatively analysed (Phase I and II) were matched to the responses of the assistants in other offices. This had the effect of transferring the policy leader to another office operating within a different environment. Thus it measured the extent of congruence between the leader and his "new" staff. The basic agreement observed under these conditions could be attributed to non-policy factors. Since all four sites had been studied, it was possible at the outset to determine that the policies and procedures varied widely. The differences in dispositional patterns also reaffirmed the validity of this approach.

Finally the amount of agreement due to cultural, ethical and educational factors was indicated by tests performed in Kings County (Brooklyn) on a class of newly hired assistants and a comparison of these results with other more experienced assistant District Attorneys in the office. It was assumed that the effects of law school education and ethical standards could be most clearly observed under this condition and produce measures of high reliability because of the size of this incoming group of 65 assistants.

4. Analysis

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

The following tables show the levels of consistency reached in the offices for each of the major decisions. Since for any one office only a small sample of cases (30) was available for analysis, the variables were collapsed in the following fashion:

Variable	Categories
Intake.....	Accept Reject
Disposition Type.....	Plea Conviction All other
Disposition Location.....	Early--pretrial (1,2,3,9) Middle--trial (5,6) Late--end trial (7,8)
Disposition Level.....	Felony (1,2) Misdemeanor (3,4) Other (5,6,9)
Disposition Reduction.....	As charged (1,3) Reduced charge (2,4) Violation and other (5,6,9)
Sentence.....	Release (1,2) Conditional release (4,5,6,7) Incarceration (8,9)

Table 4-9 presents the results of the agreement found between the leaders and the followers based on the percent match on these variables. The reader is cautioned that the level of agreement is artifically higher for screening since there are only two choices whereas for the others, there are three responses possible.

It is obvious that there is a vast amount of basic agreement within the offices far exceeding what we might expect from random chance. Rarely are levels less than 50 percent, and for some variables, the agreement reaches almost to 90 percent.

TABLE 4-9

CONSISTENCY: PERCENT OF AGREEMENT BETWEEN THE POLICY LEADERS AND ASSISTANTS BY JURISDICTION AND DISPOSITION VARIABLES

Disposition Factors	Jurisdictions				
PHASE I:	Kings		Wilmington	Orleans	Salt Lake
	Experienced	New			
Priority.....	67	-	63	56	58
Intake (accept, reject)..	89	82	87	76	80
Disposition Type (plea, convict, other).....	57	53	60	56	54
Exit Location (pretrial--early, trial--middle, end trial--late).....	57	48	58	59	50
Reduction Level (original, reduced other).....	49	50	61	N/A	N/A

PHASE II:	Baton Rouge	Erie	Jackson	Polk	Wayne
Priority.....	63	64	67	66	62
Intake (accept/reject)...	83	76	77	85	87
Disposition Type.....	52	60	60	49	49
Exit Location.....	55	48	55	48	47
Reduction Level.....	50	54	59	67	47
Incarceration.....	67	80	73	75	76

The nature of the decisions shed light on where most variability occurs and why. Intake, sentence and priority decisions show higher levels of consistency than those about strategies to disposition (plea or trial) or location in the process (before trial, by the first day of trial or at the end of trial). One interpretation is that the assistants and leaders do agree more on those decisions over which policy control is exercised than on those that rely on events over which they have little control and hence, are less predictable.

It also appears that agreement is more likely when the outcome being predicted is under the prosecutor's control and when knowledge and experience are interjected into the prediction. As Table 4-9 points out, the "new" assistants in Kings showed consistently lower levels of agreement about the type of disposition that would be reached and the location of the exit from the system--they simply had no experience in these areas.

Even though intake decisions rate the highest in consistency in all jurisdictions, the highest agreement occurred in Kings (89%) with limited screening and the lowest in Orleans (76%) with extensive screening. This anomaly highlights an important concept that explains what otherwise might appear paradoxical. Namely, why should a rigorously controlled, screening-intensive office such as Orleans with a trial-oriented prosecutorial stance show the most disagreement about accepting or rejecting cases at intake. The dynamics of this follow:

1. Offices that perform the least amount of screening (with the lowest rejection rates) have the highest level of agreement. Kings and Wilmington reject 15 and 11 percent of their cases and agree with their leaders, 89 and 87 percent of the time, respectively. Polk and Wayne reject 14 and 15 percent of their cases and agree with their leaders 85 and 87 percent of the time, respectively.

2. Conversely, offices that perform the most screening (i.e., have the highest rejection rates) have a lower level of agreement (Orleans and Salt Lake reject 22 and 21 percent of their cases and agree 76 and 80 percent of the time, respectively. Jackson with a 21 percent rejection rate has a consistency level of 77 percent.

A reasonable explanation for this is that as an office cuts deeper into the middle of its case load, it disagrees more in the decisions about what to accept and what to reject. Decisions at either end of the distribution are simple: the most serious are accepted; the trivial, rejected. Thus, the variability that arises with intensive screening which increases the number of candidates for rejection is not unreasonable.

What is important here is that the agreement rates are misleading unless they are explained in conjunction with what the office is attempting to do at intake and whether the office screens intensively or not. This is particularly true if one examines the apparent contradictory stance of Erie County (Buffalo) where the rejection rate is the lowest of all sites tested (10%) and agreement with the leader similarly the lowest (76%). At this

site the prosecutors do not review police charges before they are filed in the court, hence they do not have an opportunity to reject cases; nor, are there policy guidelines for them to follow in the absence of this function. Thus, the measure of agreement or congruence needs to be interpreted with respect to the characteristics of the universe in which decisions are made, and the policy of the office.

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

Of equal importance, and limiting the value of this finding, is the fact that an interpretation of the measures of agreement is extremely difficult. By itself, using agreement levels alone may be misleading. As we saw with the screening in Orleans, a relatively low level of agreement does not necessarily mean that there is less consistency in the system; rather it may mean that the universe under consideration for decisionmaking is expanded. It may also indicate that the predicted outcomes are not under the prosecutor's control but subject to external forces about which the decisionmaker has little experience or knowledge, thereby becoming little more than a "guess." While the effect of some of these factors can be statistically identified, ultimately what emerges is the realization that we still do not have a pure measure of what constitutes disagreement or its obverse, consistency.

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

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

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

One would assume that the level of agreement would be lower unless the office into which the policymaker was moved was compatible with his own. One would also assume that if agreement was higher then there were circumstances in that office that made it more desirable than the ones in his own office. What these circumstances are cannot be explained by the measures.

To develop these measures, it was necessary to reduce the number of cases in the Phase I test to 24. This latter figure represents the number of cases that were identical to all offices (remember six had been modified). The Phase II tests are based on 30 cases. The same procedure was applied to these cases as in the previous section. Each assistant's response was matched to the leader moved into the office and a percent agreement measure computed for the "exact" matches. The tables that follow show the results for each of the dependent variables.

Table 4-10 presents the amount of agreement expressed between the policy maker and the assistants with respect to the priority of the case for prosecution. What is of major interest here, is the relative stability of the amount of agreement independent of where the policymaker is moved.

TABLE 4-10

LEVEL OF AGREEMENT ABOUT PRIORITY FOR PROSECUTION OBTAINED BY TRANSFERRING POLICY MAKERS INTO OTHER OFFICES

Leader	Followers			
	Kings	Wilmington	Orleans	Salt Lake
Kings.....	67	66	63	65
Wilmington.....	60	63	63	59
Orleans.....	63	56	56	58
Salt Lake.....	56	60	58	58

This table represents a good baseline for setting agreement levels without regard to resource availability or policy preference. It shows that the priority for prosecution is relatively independent of a leader-follower relationship--the agreement varies a maximum of 5 points anywhere you put the leader. This can be interpreted as the amount of commonality among prosecutors in assessing priorities for prosecution. The subsequent tables will show that this same universality does not exist when we introduce the more policy or process dependent variables of intake, types of disposition, exit points and level of disposition.

Table 4-11 presents the amount of agreement that would occur at intake with respect to the acceptance or rejection of cases for prosecution. Since this is the area where most agreement occurred internally in all the offices, it is interesting to note the proportionately high levels that are maintained even upon transfer. To read this table, concentrate on the rows first. These

show, for example, the agreement of the leader in Kings County (Brooklyn) (row 1) to his followers (assistants) in Kings County (Brooklyn) is 89 percent. Moving the Kings County leader to Wilmington (column 2) the match is again 89 percent, then to Orleans (column 3) where his agreement with those assistants is only 77 percent. Finally, moving the Kings County leader to Salt Lake (column 4) produces an agreement level of 80 percent. If you read down the columns, you will be identifying the level of agreement the assistants in an office had with the different leaders.

As it should be, the highest levels of agreement occur, for the most part, on the diagonal. This means that the policymaker mainly agrees with his own assistants most. If one looks off the diagonal, at the effects of moving the leaders, we see that the lowest levels of agreement about what to accept for prosecution would result if the Salt Lake prosecutor were moved to Kings County (56%) and the best agreement (89%) would result if the Kings County (Brooklyn) leader were moved to Wilmington. It would appear that these two offices are compatible in their intake decisions.

TABLE 4-11

LEVEL OF AGREEMENT ABOUT SCREENING OBTAINED BY TRANSFERRING POLICY MAKERS INTO OTHER OFFICES

Leader	Followers			
	Kings	Wilmington	Orleans	Salt Lake
Kings.....	89	89	77	80
Wilmington.....	79	83	83	79
Orleans.....	65	65	70	64
Salt Lake.....	56	77	74	76

The Wilmington leader agrees as much with the Orleans assistants as his own (83%) and the Orleans assistants are in more agreement with every other leader than their own. One interpretation for this occurence might be that there is genuine disagreement between the intake decisions of the Orleans Parish policy leader and the assistants. From this test, if the assistants were free to set intake policy, they would accept more cases than they presently are allowed to and be more in accord with the decisions of the Wilmington policy setter. In fact, if we examine how the Orleans leader fares in any other office, we see that, with one exception, he rates lower than all other jurisdictions. In other words, there is less agreement with his intake decisions than in any other office.

Tables 4-12 and 4-13 show the effects of transferring leaders and the extent to which their predictions about case dispositions agree with assistants in other offices. Since two dispositional outcomes, the type of disposition--plea, conviction or other--and the point of exit--early, middle or late in the prosecution process--are dependent on the policy and procedures

of the office and criminal justice system, these tables indicate some of the consequences of changing policy without regard to the local criminal justice systems operations and procedures.

We assume that the assistants in the office "know" their system and that any reduced levels of agreement reflect the amount of discord that would arise if one prosecutorial system were imposed on another that was not compatible. If the levels remain the same, we can tentatively conclude that this is because the processes and/or policy are compatible. Overall, the level of agreement is much lower than that recorded for the charging decision. There is also greater variability across the offices, the difference in agreement has now extended to a maximum of 27 percentage points (from a low of 38 to a high of 64). As noted before, the trial-oriented jurisdictions of Orleans and Salt Lake show substantial agreement and when the policy makers are moved from their own jurisdiction into each others, there is either improvement or little change in the leaders' levels of agreement with the assistants. The same pattern holds for Kings County (Brooklyn) and Wilmington, both plea oriented offices.

TABLE 4-12

LEVEL OF AGREEMENT ABOUT TYPE OF DISPOSITION (PLEA, TRIAL, OTHER) OBTAINED BY TRANSFERRING POLICY MAKERS INTO OTHER OFFICES

Leader	Followers			
	Kings	Wilmington	Orleans	Salt Lake
Kings.....	56	57	38	45
Wilmington.....	57	64	43	43
Orleans.....	52	47	55	61
Salt Lake.....	41	63	51	52

An interesting facet of this examination is exposed when we examine levels of agreement with the Wilmington office. It appears from this table that all the leaders (except Orleans) would prefer the dispositional pattern predicted by the Wilmington assistants (plea to the original charge) more than any other pattern. But, most of the assistants would prefer to stay right where they are. One could infer from this that the leaders apparently perceive expected dispositions differently from the assistants who are probably either more parochial or more operationally realistic in their outlook. This may reflect a difference between the policymakers' overall concern with management and the office's ability to maintain expected dispositional standards, and the assistants practical, case/trial orientation. The difference may identify areas that are not in accord with the agency's goals or expectations.

Table 4-13 shows the range of differences that may occur if an outsider does not "know" the system and attempts to apply his expectations

independent of this knowledge. Of all the variables, case exit depends both on the policy of the office, the structure of the court process and the opportunities available as exit points. For example, if felonies are processed through a lower, misdemeanor court prior to bindover to the felony court, guilty pleas to felonies at this level generally cannot be taken; the exit point must occur later in the process, sometimes even after the accusatory process has been completed and the defendant arraigned. (This is the situation in Wilmington).

TABLE 4-13

LEVEL OF AGREEMENT ABOUT POINT OF EXIT (EARLY, MIDDLE, LATE) OBTAINED BY TRANSFERRING POLICY MAKERS INTO OTHER OFFICES

Leader	Followers			
	Kings	Wilmington	Orleans	Salt Lake
Kings.....	60	40	39	41
Wilmington.....	44	62	45	39
Orleans.....	45	50	56	66
Salt Lake.....	44	43	55	49

Thus it is not surprising to see that with the exception of Salt Lake, each of the policymakers shows more internal agreement about where a case will exit than with any other office. In Salt Lake the prosecutor finds more agreement with his partner in Orleans (55% as compared to 49%) and the Salt Lake assistants agree even more (66% agreement with Orleans). Why this occurs is questionable. However, it may be due to the fact that the trial-orientation of Salt Lake is degraded by the routine availability of only a single judge thereby minimizing the opportunity for this type of disposition. Although this variable has only limited value for comparative analysis, it is important in an individual office analysis because it indicates where in the process the exit points are loading. If combined with process time and capacity measures, it could become a useful management tool and aid in increasing office efficiency.

D. Uniformity: Agreement Among Assistants

1. Introduction. The first part of this section examined the amount of consistency between policymakers and the assistants. It assumed and tested the existence of a causal relationship between the two levels in the office and found that there was, in fact, evidence to support the hypothesis of policy transfer. It tested the strength of this agreement by showing the effects of training and experience in the office; this was indicated in Kings County (Brooklyn) by an 18 percent increase in agreement when new and experienced assistants were compared. By moving the policy leader to other offices and measuring the levels of agreement that resulted, an indicator of differences due to policy or other factors was obtained. These showed that there

is generally more decisionmaking consistency within an office than can be produced by transferring policymakers to other offices. In those instances where the same or higher levels of agreement were recorded by the transfer the effect could be attributed to the offices having the same or similar prosecutorial policy stances. Finally, an indication of the levels of disagreement with the leaders' policy could be obtained by comparing the two sets of expectations and the levels of agreement assistants reached with other policy makers.

This leads to the second part of this research, namely the examination of uniformity among assistants. By definition, uniformity exists when there is consistency with a policymaker. But it may also exist when the policy of the decisionmaker is at odds with that of the assistants'. The task was to obtain a measure of the amount of uniformity existing in an office, independent of the policymaker.

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

There are, of course, some factors already mentioned that will effect the basic level of uniformity. One which increases this level is the standardized education attorneys receive. Another, which reduces it is the organizational structure through which policy is transmitted. It is assumed that the type of organization used by an office may impose barriers to the vertical transmittal of policy from the top down; or to the horizontal transmittal from one organizational unit to another. Uniformity, then, measures not merely the effects of the vertical transmission (which is included in the consistency measure) but the horizontal as well. Implicit in the organizational influence is, of course, the primary variable, office size.

The size of an office, more than any other single variable should carry within it the power to profoundly effect the amount of uniformity in the office. Any barriers that might be imposed by the organizational structure should be practically non-existent in small offices and offer the highest probability of being an impediment in large offices. Fortunately this research examined offices that range in size from a low of 18 assistants in Wilmington to a high of 320 in Kings County (Brooklyn). While the effects of organization are difficult to measure within the smaller offices; comparisons can be made across the offices that might lend some insight into the power of the variable.

The purpose of this analysis is to determine whether the standard case set can measure variations in agreement levels within smaller organizational units, with what type of measurement techniques and for what purposes. Because the Kings County (Brooklyn) District Attorney's office was so interested in organizational analysis for their own management and planning functions, they supported an extensive, in depth analysis of their organization that was composed of 320 assistants allocated to 11 clearly defined organizational units.

3. Methodology. The approach taken was first, to measure the amount of agreement among all assistants in the office and second, to attempt to show

differences that might be attributed to policy, size of office and standardized training.

The methodology used was to assume that each assistant was a leader, match all other responses to that assistant, sum the total number of matches and divide by the number of comparisons made. This produced an average level of agreement among assistants. The policy leader was not included in this matching process.

Table 4-14 presents the results for each of the offices with respect to the responses to the standard case evaluation. Chapter V following this considers the internal uniformity and consistency as it was measured organizationally in Kings County, Wayne County and East Baton Rouge Parish.

TABLE 4-14

UNIFORMITY: PERCENT OF AGREEMENT AMONG ASSISTANTS BY JURISDICTION AND RESPONSES

Jurisdictions	Priority	Accept/ Reject	Disposition		
			Type	Location	Reduction
PHASE I					
Kings.....	-	80	39	33	33
Wilmington.....	-	89	53	55	54
Orleans.....	-	71	40	44	62
Salt Lake.....	-	73	37	34	39
PHASE II					
Baton Rouge.....	63	82	51	56	54
Erie.....	63	87	62	47	56
Jackson.....	64	77	54	52	52
Polk.....	68	85	58	56	63
Wayne.....	61	83	54	55	52

4. Results. The standard case set documents the differences in the amount of agreement within the offices, as well as among offices. Generally, decisions that are subject to either policy control or to universal agreement have the highest agreement levels--namely intake and priority for prosecution. The process oriented responses, those predicting the type of disposition and its exit location, generally indicate less agreement among the assistants and more differences of opinion.

The variability that exists in some of these levels point to principles that need to be highlighted:

1. One could hypothesize that the reason why Wilmington has such consistently higher levels of internal agreement over all variables is due to the small size of the office (only 18 assistants). If size is a factor in promoting agreement among decisionmakers, then we should look to the larger offices, examine the levels of agreement that exist under more complex organizational circumstances and in the next section we will see that much of the variation found in Kings County can be attributed to the existence of separate and distinct bureaus. Wayne County (Detroit) however, with a functionally less complex organization is able to achieve levels of agreement among its 116 assistants that are comparable to Wilmington. Clearly, organizational complexity is a factor that must be considered in decisionmaking. Whether uniformity should be the same for all organizational units for all decisions is a matter of debate.

2. The fact that Salt Lake County (24 assistants) scores consistently low on the scale indicates the effects of no centralized authority. Each assistant in this office was responsible for case prosecution with little policy direction or guidance imposed by the leader. The comparative difference can be seen in Baton Rouge where the use of 5 fairly autonomous trial sections was held under strong policy control.

3. The interesting overall result is the great amount of stability in these measures. They tend to cluster tightly within a narrow range and deviations are noticeable. There may, indeed, be levels that one can use for comparative evaluations or to set baselines for the development of standards.

E. Conclusion

Although the results are important in showing the power of the standard case set to measure levels of uniformity; they are disappointing because they do not yield many clues as to reasons for variations. A number of hypotheses should be tested including effects due to the size of office, the organizational structure, the experience level of the assistants, their exposure to the prosecution process and the strength of the prosecutor's policy. What is consistently reaffirmed, however, is the finding that the highest levels of agreement are recorded for the intake decisions and the priority of the case for prosecution.

V. DECISIONS WITHIN AN OFFICE

A. Introduction

In much of the preceding analysis, the assumption was made largely for the sake of analytical simplicity, that there was only a single leader or policymaker in any office. We recognize, of course, that this is not generally true--many leaders may be identified at different organizational levels if the structure is large enough to support formally established units. In offices that are relatively small, or where socialization among the assistants is high, policy and priorities are transmitted more informally. In these instances, few formal structures or rules are required; and the identification of the policy-setter may be more difficult to determine.

As the organization increases in size, it becomes more structured, grouping its attorney resources into a variety of units, some of which may even be physically isolated from the central offices; others may be specialized in their function or duties. Each of these units have leaders who, presumably, are responsible to others within an established chain of command that reaches ultimately to the prosecutor himself or his chief assistants. Under these conditions, the transmission of policy may become more diffused and harder to measure for uniformity and consistency.

This section will examine the test results in three jurisdictions, each of which offered different opportunities to examine the utility of the case set from a management perspective in addition to measuring differences in decisionmaking within an office. One jurisdiction (Kings County) offered a large, complex, organizational structure. Wayne County (Detroit) provided an opportunity to measure two separate court systems in a single jurisdiction. Baton Rouge permitted measurement for differences between essentially autonomous trial teams.

B. Complex Organizations: Kings County (Brooklyn), New York

The Kings County (Brooklyn), New York, District Attorney was expressly interested in the issue of policy transference. As the third largest office in the U.S., it had a sufficiently complex structure manned by a staff of 320 attorneys in addition to support and clerical personnel to permit analysis within smaller organizational entities. There were 12 major organizational units or bureaus that were used in this analysis. The responses of 282 attorneys to the various questions were analyzed with respect to the ability of the standard case set to measure differences in agreement within and among these units and to provide further insight into some of the dynamics of complex organizations. The twelve organizational bureaus were:

1. Criminal Court, which processes misdemeanors and holds preliminary hearings for felonies

2. Supreme Court, the court of general jurisdiction
3. Homicide
4. Narcotics
5. Rackets
6. Fraud
7. Investigations
8. Indictment
9. Appeals
10. Early Case Assessment Bureau (ECAB)
11. Career Criminal
12. Training

The ECAB and Career Criminal bureaus were combined in this analysis to increase the number of responses. The training unit consisted of 65 newly hired assistants (the majority of whom were recent law school graduates), who had no prosecutorial experience, were not formerly law interns and were tested in the first week of their employment.

Each bureau or unit had its own leader who presumably transmitted the policy of the prosecutor to each individual attorney and implemented the global office policies by establishing more specific policies or procedures relating to the particular functions performed by the unit.

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

It was also assumed that the activity of the units would produce substantially different levels of agreement because not all units had equal experience with the parts of the system that the case evaluation form tested. For example, it would be expected that the Indictment Bureau would have a better understanding of intake and screening and hence, would make more uniform decisions than, say, the Appeals Bureau. Additionally, it was assumed that the Training Unit composed of newly hired attorneys would be less uniform in any of the decisions because their responses would tend to be "guesses."

As in the previous sections, two types of analyses were performed within the organizational units, the first measured the amount of agreement that each unit had with its own leader (Tables 5-1 and 5-2) and the second measured the amount of internal agreement that existed among all assistants in each unit (Tables 5-3 and 5-4).

Table 5-1 describes the conformity of assistants with their unit leaders. The figures for the "Total Office" serve as a benchmark. Highest agreement was reached with respect to the intake decision ranging from a high of 92 percent recorded by the Grand Jury section to a low of 81 percent as recorded by the Training Group. The lowest levels of agreement generally occur with respect to the process variables, both the type of disposition and the location of its exit in the process.

Table 5-2 shows the rank order of the levels of agreement by the organizational units. Tables 5-3 and 5-4 show levels and rank order of uniformity levels. Grand Jury, Narcotics and Rackets show consistently high

TABLE 5-1

LEVEL OF AGREEMENT BETWEEN ASSISTANTS AND LEADER IN THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE BY ORGANIZATIONAL UNIT AND STANDARD CASE SET RESPONSES
(In Percentages)

Organizational Unit	Number of Responses	Case Priority	Accept/ Reject	Disposition		
				Type	Location	Reduction
Total Office	282	66	89	57	57	49
Criminal Court	35	65	83	44	47	57
Supreme Court	57	64	88	58	59	55
Homicide	17	63	83	61	64	53
Narcotics	21	70	89	71	74	66
Rackets	17	69	90	62	63	61
Fraud	7	61	86	62	68	59
Investigations	11	61	85	60	57	60
Indictment	14	78	92	70	77	59
Appeals	33	62	85	53	66	53
ECAB and Career Criminal	14	68	85	43	61	56
Training	65	54	82	53	48	50

TABLE 5-2

RANK ORDER OF LEVEL OF AGREEMENT BETWEEN ASSISTANTS AND LEADER IN THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE BY ORGANIZATIONAL UNIT AND STANDARD CASE SET RESPONSES

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

TABLE 5-3

LEVEL OF AGREEMENT AMONG ASSISTANTS IN THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE BY ORGANIZATIONAL UNIT AND STANDARD CASE SET RESPONSES
(In Percentages)

Organizational Unit	Number of Responses	Case Priority	Accept/ Reject	Disposition		
				Type	Location	Reduction
Total Office	282	51	80	39	33	33
Criminal Court	35	53	84	35	26	34
Supreme Court	57	51	78	42	36	33
Homicide	17	51	70	39	38	34
Narcotics	21	50	81	48	43	42
Rackets	17	63	89	51	48	44
Fraud	7	68	89	66	55	57
Investigations	11	55	81	47	32	43
Indictment	14	64	81	46	45	41
Appeals	33	53	86	44	42	37
ECAB and Career Criminal	14	56	86	45	37	43
Training	65	46	64	26	20	28

TABLE 5-4

RANK ORDER OF LEVEL OF AGREEMENT AMONG ASSISTANTS IN THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE BY ORGANIZATIONAL UNIT AND STANDARD CASE SET RESPONSES

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

levels of assistant/chief agreement. The Trainee group generally records the lowest. Whether this high level of agreement exists because of the type of attorney assigned to these units, the specialized nature of the cases being tried that requires tight management control, or the experience level of the assistants, were areas worthy of exploration. What was needed also was an empirical interpretation about what constitutes observable differences in an office. It was important that operating officials interpret these measures for the researchers.

The results were examined, therefore, by the District Attorney's office. The analysis and interpretation produced some insights about the effect of organizations and decisions and policy transference.

1. The trainee group had substantially high levels of agreement with their leader most likely reflecting their legal education and training. The lowest levels hovered about 50 percent. With respect to agreement among themselves, absent a leader, significantly lower levels were recorded reflecting a lot of guessing.

2. Without a "working" knowledge of the system or parts of the adjudication process, agreement levels are lower, again reflecting "guesses" by the respondents. This is true not only for the trainees but for some organizational units that are so specialized or so isolated from routine case processing procedures that they too "guess" at the answers. The criminal court (misdemeanor) assistants, one step removed from the trainees show their lack of knowledge about the felony system. The specialized Appeals Bureau scores high only with respect to the location of the case exit in the process. The narcotics bureau shows little agreement among the assistants with respect to priority and intake probably because the assistants rarely see other types of cases and do not make decisions about what cases they process.

3. Agreement about decisions appears to be strongest in those units that daily make the same operating decisions, and exercise most policy control. Thus the Indictment Bureau is attuned to the policy of the office, its attorneys having the highest agreement rates with their leader even though they score lower when they are compared to each other.

4. The process variables of type of disposition and location of exit from the process, clearly show first, the lowered ability to agree with what are essentially areas beyond the prosecutor's control (lessened predictability) and second, the power of experience in the system to produce higher agreement levels. Tables 5-1 and 5-3 show that the agreement levels are substantially lower for these two variables than all the others. More importantly, however, we see from an internal examination that the lowest levels of agreement tend to occur in those organizational units that either have limited experience in prosecution (Criminal Court assistants and Appeals) or limited exposure to the total prosecution process because of specialized duties (Investigations Bureau).

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

Finally, an examination was made of the extent of uniformity existing among the assistants based on their experience. The assumption was that as the assistants become more experienced in the office, their levels of agreement should increase. From Table 5-5 it can be seen that there is relationship between experience and uniformity. The slowly, decreasing rate of increase in agreement with respect to experience leads to a tentative conclusion that acculturation occurs very early in the process (within the first year)* and after that, the basic agreement levels increase only moderately with added experience. It may well be that the value of experience lies not so much in being more uniform or consistent in making decisions but in making decisions about exceptional circumstances and being an advisor for the out-of-the ordinary cases. In this way compliance with the goals and standards of the office is not compromised. It is interesting to note that attorneys with over ten years experience appear to follow a "different drummer".

TABLE 5-5

PERCENT OF UNIFORMITY AMONG ASSISTANTS IN THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE BY MONTHS OF EXPERIENCE

Months	Number of Responses	Case Priority	Accept/ Reject	Disposition		
				Type	Location	Reduction
Trainee.....	65	46	64	26	20	28
1-12	34	51	83	36	26	33
13-36	85	52	81	41	37	32
37-60	50	55	82	42	36	37
61-120	37	55	80	45	41	40
More than 120...	10	47	65	44	39	39

Two changes were affected by the District Attorney after examining the results of the tests. First, the employment policy was changed so that only attorneys' with no prior criminal prosecution experience in other offices were hired. This was the result of some tests that showed that the greatest deviation in decisions occurred for those assistants who had previously worked in other prosecutors' offices.

*This was supported by a retest of the trainee group 7-1/2 months after employment (Mellon, Ratledge and Greenberg, 1980) that showed the trainees were indistinguishable from the criminal court assistants and most of the office.

Second, the assistants in the Appeals Bureau were assigned to criminal trials, grand jury and the Supreme Court on a rotating basis to familiarize them with the routine operations of criminal case processing. One should recognize that the tests, by themselves, were not solely responsible for these decisions--rather, they reinforced existing attitudes. The fact that the tests had a management and operational utility to large organizations is important, however.

C. Two Locations, Two Systems: The Wayne County Office of Prosecuting Attorney

In Wayne County, the third largest county in the United States (2.7 million population) the Prosecuting Attorney staffs 38 trial courts from two separate office locations. Additionally, he interacts with two essentially different court systems. Recorder's Court is a unified court, processing all offenses committed in the City of Detroit (felony and misdemeanors but not traffic). The justice system for the rest of Wayne County (called Out County) is a bifurcated system composed of four Magistrate Courts and a Circuit Court. The Magistrate Courts, scattered throughout the County, process misdemeanors and hold preliminary hearings for felonies. If a felony is bound over, it proceeds to the Circuit Court located in the City of Detroit for prosecution. The two court systems are largely independent of one another because their jurisdictions are separate and they are based on two different types of adjudication operations.

The chief of the Out County division supervises an attorney staff that is divided between the Circuit Court where felony matters are tried, and the Magistrate Courts where attorneys ride the circuit. Except at the top supervisory levels, there is little interaction between the two groups.

Many of the defendants in cases bound over to Circuit Court have waived preliminary hearing in Magistrate Court. Thus, these cases have had less prosecutorial attention or review than those being processed in Recorder's Court. This creates an increase in defective case bindovers. As a result, the attorneys in Circuit Court adopted a different plea bargaining procedure--one less rigorous and more flexible with respect to when pleas can be taken and which cases can be negotiated. For example, sentence bargaining is prohibited in the Recorder's Court, but used in Circuit Court.

The operations of the Recorder's Court impact on the main office, which is located in the same building, and the organization of the part of the office which deals with Out County matters seems far removed from the internal workings of the office. In both situations, however, trial assistants are given a large measure of independence. It is the policy of the office to allow each experienced department head to run his own department. Nevertheless, the Deputy Chief of Operations reviews all the dispositions from Recorder's Court that involve pleas and dismissals. The latter are monitored for the quality of the negotiations. Plea negotiating is permitted but under controlled and well monitored circumstances. It had been anticipated in testing the Wayne County assistants that disparity would exist in the decisionmaking process because of the differences in court structure and because of the isolation of the Out County assistants from the main office of the Prosecuting

Attorney. Surprisingly, this did not occur. A remarkable amount of accord was found to exist between assistants in the two offices.

Table 5-6 shows the percent distribution of the responses by assistants assigned to each court system and by the other remaining prosecutors in the office who had no particular court assignment.

For each decision point, there is little variation (with one exception). The assistants reject the same proportion of cases, agree on the plea-oriented stance of the office, predict the same proportion of jury trials and impose sanctions that are proportionally similar. There is an overwhelmingly clear agreement between each of these different groups.

The only noticeable difference between the two court groups appears in estimating where in the court process they expected cases to be disposed: the Recorders Court assistants expected 2 percent of the cases to be disposed of at arraignment and 58 percent after arraignment before trial. The Out County assistants shifted 13 percentage points from the period following arraignment to arraignment itself and expected 46 percent of the cases to be disposed of after arraignment, but before trial. This discrepancy is not unusual when one knows the nature of the system. The two courts have different structures and processes. In Recorders Court formalized pretrial conferences are generally held before the initial trial date, usually set for ninety days after arraignment. If a plea cannot be negotiated at the pretrial conference, the offer is withdrawn, the case jacket is stamped "NRP" (No Reduced Plea) and the case is scheduled for trial. In contrast, no formalized pretrial conference exists in the Out County Division. Rather, cases that have been negotiated will be bound over from the Magistrate Court to the Circuit Court for a plea to a felony at arraignment.

Even though the two court processes behave differently and show how the exit points for cases change, it is important to note that there is little difference with respect to the level where cases will be disposed. Misdemeanors are handled somewhat differently, but not in a manner that caused concern to the office.

In a jurisdiction with two distinctly different court systems--one dispersed throughout the Out County area, the other in a major city--one would expect differences in decisionmaking. The fact that this did not occur could be attributed to a number of factors. In part, it may be a result of maturation due to the fact that the Wayne County Prosecuting Attorney has held office for more than twelve years. The attendant stability that time brings and the opportunity it affords to communicate policy to prosecutorial assistants should not be discounted. In addition, the leadership of a strong Chief Assistant directing the Out County office and interacting with the Prosecuting Attorney's main office may assist in transfering policy to the Out County assistants. The results, while suggestive of these conclusions are not conclusive, however; further research is clearly indicated.

TABLE 5-6

COMPARISON OF RECORDERS COURT, OUT COUNTY AND OTHERS IN WAYNE COUNTY PROSECUTING ATTORNEY'S OFFICE

ALL RESPONSES

	RECORDERS	OUT COUNTY	OTHER
PRIORITY			
N=	9 14 14 31 17 12 4	9 10 10 41 13 11 8	9 13 14 36 15 10 3
Rec 1365	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7
Out 679	Lowest — Average — Highest	Lowest — Average — Highest	Lowest — Average — Highest
Oth 1063			
ACCEPT			
N=			
Rec 1373	Yes 84 No 16	Yes 85 No 15	Yes 87 No 13
Out 687			
Oth 1073			
DISPOSITION			
N=	61 Plea	68 Plea	64 Plea
Rec 1161	* No true bill	* No true bill	* No true bill
Out 566	22 Conviction	27 Conviction	24 Conviction
Oth 938	10 Can't predict	3 Can't predict	6 Can't predict
	5 Acquittal	2 Acquittal	3 Acquittal
	1 Other	* Other	1 Other
	2 Dismissal	* Dismissal	2 Dismissal
LOCATION			
N=	1 First appearance	3 First appearance	2 First appearance
Rec 1135	4 Preliminary hearing	7 Preliminary hearing	3 Preliminary hearing
Out 560	0 Grand jury	0 Grand jury	0 Grand jury
Oth 932	2 Arraignment	15 Arraignment	3 Arraignment
	58 After arraignment, before trial	46 After arraignment, before trial	60 After arraignment, before trial
	3 First day of trial	1 First day of trial	3 First day of trial
	8 End bench trial	2 End of bench trial	5 End of bench trial
	25 End of jury trial	27 End of jury trial	26 End of jury trial
LEVEL			
N=	28 Felony (as charged)	30 Felony (as charged)	30 Felony (as charged)
Rec 1113	45 Felony (reduced charge)	41 Felony (reduced charge)	42 Felony (reduced charge)
Out 553	15 Misdemeanor (as charged)	11 Misdemeanor (as charged)	14 Misdemeanor (as charged)
Oth 905	9 Misdemeanor (reduced charge)	16 Misdemeanor (reduced charge)	12 Misdemeanor (reduced charge)
	1 Violation	* Violation	1 Violation
	2 Other	1 Other	1 Other
SENTENCE			
N=	* None	1 None	1 None
Rec 743	5 Fine and/or restitution	5 Fine and/or restitution	4 Fine and/or restitution
Out 548	1 Conditional release	* Conditional release	1 Conditional release
Oth 630	27 Probation	28 Probation	25 Probation
	31 Jail	30 Jail	28 Jail
	36 Penitentiary	37 Penitentiary	42 Penitentiary

*Less than .5%

D. Trial Teams: The East Baton Rouge Parish District Attorney's Office

The East Baton Rouge Parish (Louisiana) District Attorney's office is organized into five trial team sections that retain total responsibility for the prosecution of all crimes in the parish--felonies and misdemeanors. The four to five attorneys who are assigned to each section, evaluate cases at intake to decide whether to prosecute, and at what level. They retain responsibility for case prosecution through disposition. Each section operates autonomously and is supported by it's own investigative and clerical staff. However, all five sections are physically located on the same floor of the District Attorney's office, and operate under the policy and managerial direction of a strong leader, the District Attorney's First Assistant.

Because of this, the research was interested in determining whether differences existed in the decisionmaking systems between the five trial sections. In addition, the District Attorney, agreed to extend the test to his investigators. This provided the first opportunity to test non-attorneys. Since they worked so closely with the attorneys, the assumption was that their responses would be similar to those of the attorneys.

Table 5-7 presents the distributions of the responses to the case evaluation as given by the five trial sections, the investigators and others in the office.

While some differences appear among the trial teams, on the whole there is more similarity than disagreement. All of the teams tend to be strongly trial oriented as compared to Wayne County, a plea oriented office. The arraignment and pretrial process are viewed substantially the same way, as a major dispositional outlet. And, the investigators reflected the decisions of the office although they tended to follow the more conservative decisions rather than the more liberal--restricting dispositions at a reduced level and imposing incarceration as a sentence.

The results were reviewed by the District Attorney's First Assistant to determine whether any differences were observable in real life or whether any of the results warranted follow-up. A few areas were questioned.

The highest rejection rate found in Trial Section IV (25%) reflected the philosophy of the leader of that team and was not unexpected, nor did it appear to be significantly at variance from the other results.

Concern was expressed about the low rate of jury trials anticipated in Trial Section III (29%) when it was viewed in conjunction with a 13 percent response of "can't predict" as a disposition. It was felt that this inconsistency should be clarified through interviewing the team leader.

Of most concern was the harsh stance of Trial Section II which imposed incarceration as a sentence at a 72 percent rate as compared with the other Sections whose responses ranged from 51 to 65 percent. This high rate coupled with a high rate of jury trials (41%) and few dispositions at the reduced level (20%) appeared to produce a picture of a team that was operating

CONTINUED

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TABLE 5-7

PERCENT DISTRIBUTION OF BATON ROUGE, LOUISIANA

	All Responses						
	Trial Section					Investigations	Others
	I	II	III	IV	V		
PRIORITY							
1 - Lowest	6	9	4	9	19	6	15
2	12	8	11	15	17	7	14
3	19	7	23	20	12	15	13
4 - Average	28	39	30	26	23	43	31
5	16	18	21	22	12	13	13
6	12	10	9	6	11	9	7
7 - Highest	7	9	2	3	6	7	7
INTAKE							
Accept	85	85	81	75	79	84	83
Reject	15	15	19	25	21	16	18
DISPOSITION							
Plea	40	43	39	43	47	41	41
Conviction	46	52	40	46	51	51	45
Acquittal	1	0	1	1	0	1	1
Dismissal	4	0	1	2	0	2	1
No true bill	1	0	1	0	0	0	1
Can't predict	8	3	13	7	3	4	9
Other	0	2	4	1	0	1	3
LOCATION							
First appearance	0	0	0	0	0	2	3
Preliminary hearing	3	2	1	1	0	1	2
Grand jury	0	0	1	0	0	0	1
Arraignment	30	17	17	15	9	17	25
After arraignment	12	26	31	30	38	21	16
First day of trial	3	1	8	2	0	5	3
End bench trial	18	14	13	23	21	11	14
End jury trial	35	41	29	30	32	43	37
LEVEL							
Felony	37	50	51	38	39	51	43
Felony reduced	20	11	19	17	24	19	19
Misdemeanor	28	20	24	25	32	23	24
Misdemeanor reduced	15	9	7	19	4	5	8
Violation	0	0	0	1	0	1	0
Other	1	11	0	0	0	2	6
SENTENCE							
None	1	0	0	0	0	1	1
Fine/restitution	11	4	7	22	16	10	10
Conditional release	6	3	0	2	1	1	1
Probation	26	22	29	21	32	29	23
Jail	37	22	40	38	41	30	21
Penitentiary	18	50	25	16	10	30	45

differently from the others in the office. This, too, was to be further investigated by the office.

As a management tool in the hands of the prosecutor, the case set has great practical value. Its value has to be tempered, however, by its interpretability. Absent the prosecutor's determination as to which decisions by his assistants are divergent from his, and whether the disagreement or the pattern of disagreement is intolerable, the standard case set can only illuminate differences. This experiment clearly shows the need for empirical interpretation of the test results. It also highlights the next research question that needs to be addressed--namely, how does the prosecutor determine real differences; what factors are used in this assessment and when are the limits of what can be tolerated, violated?

VI. PREDICTING THE PROSECUTOR'S DECISIONS

A. Priority as a Stratifier of Caseload

1. Introduction.--Attempts to define numerically the priority of a case for prosecution have long been made. It is well recognized that an experienced prosecutor could read through a case, examine the prior record, ruminate for a bit and then decide what he was likely to do with the case in its entire passage through the system. This act is important because it means that a prosecutor, or at least an experienced one, could combine in his head the significant elements of a case, weigh them on his subjective scale and decide what the fate of the case would be. And he could do it early--at first review. Even when he knew that circumstances would change, evidence might deteriorate, the defendant might decide to plead or not, etc., it remained true that a prosecutor felt he could announce his priority for prosecution and feel confident in his decision.

Starting with that assumption, namely, that an experienced prosecutor could subjectively form preferences or priorities for prosecution at the initial review of the case, it was the goal of this research to explicitly assay the task of translating these subjective preferences into numbers on a scale.

The results of the testing of the priority variable displayed in Chapter III, show that, indeed, it is made up of the three parts of a criminal case that reflect:

- the seriousness of the offense,
- the criminality of the defendant, and
- the legal and evidentiary strength of the case.

What the discussion about priority in that earlier chapter did not show is its ability to be a stratifier and a predictor of future prosecutorial decisions. It did not explain that priority meets the requirements for a good measure in the context of a criminal justice system. First, it is secure. In this sense it is tamper proof. A defendant cannot falsify the measure even if he determines its purposes, because it is not based on any element supplied by the defendant. Second, its acquisition time is fast. In a typical office, priority can be measured at the first review of the case by the prosecutor and generally it is. Third, it is cheap. It can be generated by clerical level personnel, and it is based completely on data elements routinely collected by the police. Fourth, it is generalizable since it can be applied to any jurisdiction in spite of variations and legal terminology. Fifth, it is embedded in a context of usage. It is especially designed to aid a prosecutor in arriving at routine decisions about defendants flowing through the criminal justice system. Thus, its use does not depend on broad styles of prosecution but instead can be accommodated to any known policy.

Even in the preliminary and provisional form that it now is in, using a set of variables to represent evidence and two scales to measure seriousness

and criminality, it does surprisingly well in forecasting the fate of a case in the criminal justice system. In fact, in the analysis of the data presented here, priority proves to be a strong and sometimes very strong predictor of such events as to whether or not a case is accepted, whether it goes to trial, whether the defendant will be locked up and whether the case is disposed of at a reduced plea. It is important to note here that not all the variables have the same weight independent of task, nor do they all have the same weight between offices, and this is as it should be. Clearly, District Attorneys have more to say about some of these decisions than others and some offices emphasize or consider different aspects of the situations as we have seen.

The purpose of the presentation of these results is to show the power of priority as it stratifies cases and predicts their different movements throughout the adjudication process. The dependent variables of acceptance for prosecution, type of disposition, disposition at a reduced charge and the type of sentence to be imposed are all presented to show that indeed priority has a direct and strong relationship to various movements within the process. It is clear from the following tables that the ability to use priority as a stratifier of caseloads, and as a predictor of the dynamics of the system, is important and should be taken into consideration in the evaluation of the adjudication process.

The tables that follow show the types of dispositional decisions and the percent of responses classified by priority. Following each table is a measure of G.K.Tau. This measure describes the proportional reduction in error that is possible given the knowledge of this variable. Thus, a G. K. Tau measure of .33 means that a knowledge of priority reduces the number of errors in predicting the response by 33 percent. The total analysis showed that, in general, priority predicts the responses better than the responses predict priority. This is an important point because it indicates that priority is just not a substitute for say, felony/misdemeanor classifications.

The analysis presented below is based upon the responses supplied by 9 sites and therefore, represents the results of testing of 60 cases.

a. Priority and acceptance.--Table 6-1 shows that priority is a good predictor of acceptance. For all of the sites tested a priority of 1 produces an acceptance rate of about 25 percent which increases dramatically once a case reaches a priority 2 level where the acceptance rate reaches 69 percent. The highest rates, of course, are for the top priority cases; 6's and 7's acceptance rate, tends to be 98 percent. This is not unusual considering that the earlier analysis showed that as the seriousness of the offense, the criminality of the defendant and the evidentiary strength of the case increased, the priority of the case would do so likewise. The G. K. Tau measure is 33 percent.

b. Priority and disposition.--The different dispositions broadly grouped by plea, trial or other show in Table 6-2 that as cases increase in priority for prosecution, the likelihood of their being disposed of by a trial increases. In the lowest priority group 9 percent of the cases are expected to be disposed of by trial. What is obvious from this is that the scarce

TABLE 6-1

PRIORITY AS A PREDICTOR OF: ACCEPTANCE FOR PROSECUTION

Priority	Percentage of Acceptance (All Sites)
1 - Low	25
2	69
3	87
4 - Average	95
5	96
6	98
7 - High	98

G-K Tau (percent fewer errors made using priority) = 33%

TABLE 6-2

PRIORITY AS A PREDICTOR OF: TYPE OF DISPOSITION
(In Percentages)

Priority	Type of Disposition		
	Plea	Trial	Other
1 - Low	76	9	15
2	76	10	14
3	77	13	10
4 - Average	72	20	8
5	50	42	8
6	32	59	9
7 - High	20	78	2

G-K Tau (percent fewer errors made using priority) = 14%

trial resources are reserved for the most serious cases. The G. K. Tau measure shows that errors are reduced by 14 percent using priority.

c. Priority and reduced charges.--Again, following what is now a familiar course, one can see from Table 6-3 that the tendency to dispose of cases by reduced charge is highest at the low end of the priority scale and the least at the high end. A similarly rational movement is seen when a distinction is made between whether cases are to be disposed of as a lesser felony or a lesser misdemeanor. The lowest priority cases tend to be reduced to misdemeanors, the highest priority cases that are reduced, are retained at a felony charge level. The breaking point for disposing of the case by a plea to a reduced charge appears to occur at the average priority case level. Once a case is deemed more serious than average, then its likelihood of being reduced is lessened. The error rate is reduced 12 percent.

TABLE 6-3

PRIORITY AS A PREDICTOR OF: REDUCED CHARGE
(In Percentages)

Priority	Reduced Charges		
	Total	Lesser Felony	Lesser Misdemeanor
1 - Low	43	9	34
2	46	13	33
3	56	21	35
4 - Average	56	36	20
5	45	37	8
6	29	26	3
7 - High	13	12	1

G-K Tau (percent fewer errors made using priority) = 12%

d. Priority and type of sentence.--Finally, if priority is used to stratify sentences it results in a decrease in the error rate by about 12 percent. Table 6-4 shows that there is a strong relationship between "release" as a sentence for the low priority cases; "conditional release" as a sentence for the lower to average cases; and "incarceration" as a sentence for the top priority cases.

TABLE 6-4

PRIORITY AS A PREDICTOR OF: TYPE OF SENTENCE
(In Percentages)

Priority	Type of Sentence		
	Release	Conditional Release	Incarceration
1 - Low	24	58	18
2	24	53	23
3	15	49	36
4 - Average	8	30	62
5	2	12	86
6	0	3	97
7 - High	0	1	99

G-K Tau (percent fewer errors made using priority) = 12%

2. General conclusions.--Priority works well as a predictor and stratifier of many of these adjudication actions. Ordering by these probabilities supports the original premise that there is a rating and evaluation system used by prosecutors; that the least serious cases rarely proceed to a work intensive trial status; and that there is a means now for quantifying priority and using priority to monitor the rational behavior of criminal justice systems.

Of course, the real test of priority as a variable will be in its use in real, on-going situations. If it fails to have utility there, it will fail no matter how technically perfect it is. If it has real use it will survive no matter how blemished by methodological inexactitudes. As it stands now it appears that the test of its use in real situations is the next and perhaps final test of its validity. Because it can stratify and make predictions about overall performance and case movement it, at a minimum, must be of some value to researchers and evaluators.

B. Predicting Recommended Dispositional Routing (RDR) Decisions About Specific Cases

The final activity of this research was aimed at testing the validity of these findings within an operational framework. This was done by taking the factors identified as important in decisionmaking and generating from them a model that could be used as a decisionmaking tool. By comparing the decisions made by this model to the responses made by the assistants with respect to cases, a measure of its ability to predict accurate decisions about single cases could be obtained. The true value of such a model would lie in its ability to be able to predict decisions on a case-specific basis. If, indeed, decisions are based on rational and consistent criteria, then they should lend themselves to this simulation.

The model that was developed was aimed primarily at making recommended dispositional routing decisions. The assumptions made were that: if the factors that forced decisions could be identified early in the process, then better allocations of resources could be made. Since some cases will be disposed of early in the adjudication process by less formal means such as conditional release, diversion, mediation, etc., and other cases will be more likely to go to the trial stage (namely, the most serious criminal defendants and cases with strong evidence), then early routing procedures could be developed that would add economies and efficiencies to the system. In addition if such a model did work, a valuable tool could be given to management by which they could monitor on a selected or timely basis some of the routings to determine whether the office was operating rationally or in line with policy. The Recommended Dispositional Routing (RDR) model that was developed used variables that emerged after a stepwise discriminant function analysis was performed on the data. Those that were found to be significant in at least four offices were selected and put in the model. The only variation in the models occurs in the weights assigned to the different decisions and between the offices. In one sense, this is RDR at its worse since the same variables are being used to predict all three decisions under study in nine offices. More economies could be gained if each of the offices had an RDR model tailored to meet its own policy and operational configuration. However, for purposes of this research the same factors were used for each decision, in each jurisdiction to indicate the power of the model.

The factors that were used to make decisions about specific cases in a standard case set are as follows:

- Seriousness of the offense using the Sellin/Wolfgang score.
- The criminality of the defendant as indicated by the number of crimes against the person for which the defendant was arrested and the seriousness of the last offense for which he was arrested.
- The legal-evidentiary variables of complexity; constitutional problems; relationship of victim to defendant; intimate or known; gun involved in the offense; property found near the person; arrest made within 24 hours; defendant admitted the crime; difficulty with the complaining witness.

The RDR model derived from variables was applied to each office. The following tables show the results for nine offices, four of which constituted the Phase I comparative study, and five that comprised the Phase II comparative study. The same RDR model was applied to each of the offices and a comparison was made for each case on three different variables, what the majority of the assistants chose as a decision in the office and what the model predicted they would choose. The three decisions that were examined were:

- Would the case be accepted for prosecution?--the two outcomes being accept or reject.
- What type of disposition does one expect for the case?--with three outcomes being allowed: plea, trial or other (generally dismissal).
- What sentence was reasonable and appropriate if the defendant was convicted?--with three outcomes allowed: release, conditional release, or incarceration (shown here as lock-up).

The idea of a vote was used to define "correct" decisions. In other words, if the majority of assistants voted to accept a case, then the majority vote would consitute a correct decision. In some instances, as will be seen in the tables, no majority decision was reached and hence the decision made reflected only the highest proportion. To identify when the RDR model made a mistake the rule was that if the majority of assistants in an office could not agree upon a specific outcome or disposition, then any disagreement in choices by the RDR model could not be labeled as a mistake.

The following tables present, first, by case what the majority of assistants chose and then what the RDR selected. Following this table is the vote of the prosecutors expressed as percents and an identification of where differences (or mistakes) occurred between RDR and the majority of the assistants. The accept decision differs from the others in that it records the percentage of assistants voting to accept a case for prosecution (for example, .116 means that 12% of the assistants voted to accept the case and 88% voted to reject the case). The others (disposition and sentence) record the decisions receiving the greatest percentage of the votes rendered by the assistants.

Even with this inefficient model, it is clear that the error rate is minimal enough to produce a powerful, predictive model. The model had a very low overall percentage of "incorrect" decisions. For the accept decision, the overall percentage of "incorrect" decisions was only 3 percent. Even though this decision involves a choice between only two alternatives, and only about 10 percent of the cases are rejected by the assistants, the power of the model is shown by its ability to select correctly the reject decisions. For the disposition decision, the overall percentage of "incorrect" decisions was a little greater, 11 percent. However, this is still a very low figure given that the model is not site-specific. For the sentence decision, the overall percentage of "incorrect" decisions was very low, only 4 percent. Clearly, the power of the model to predict at such a high rate lends credibility to the view of prosecutorial decisionmaking as rational and consistent.

TABLE 6-5

KINGS COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
CASE#	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
2	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
9	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
13	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
14	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
16	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
21	REJCT	REJCT	PLEAD	PLEAD	RELSE	RELSE
22	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
34	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
39	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
43	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
48	ACCPT	ACCPT	OTHER	OTHER	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
51	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
57	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
58	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
64	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
79	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
90	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	RELSE
99	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
113	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
117	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
120	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
141	ACCPT	ACCPT	PLEAD	TRIAL	CONRL	CONRL

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.889	0.	.510	0.	.739	0.
2	.806	0.	.667	0.	.694	0.
3	.958	0.	.932	0.	.698	0.
6	.986	0.	.761	0.	.946	0.
9	.991	0.	.531	MISTAKE	.731	0.
13	.423	0.	.560	0.	.646	0.
14	.800	0.	.797	0.	.921	0.
15	.986	0.	.943	0.	.686	0.
16	.884	0.	.526	0.	.830	0.
21	.116	0.	.760	0.	.640	0.
22	.981	0.	.681	0.	.890	0.
34	.972	0.	.629	0.	.970	0.
39	.940	0.	.507	0.	.975	0.
43	.977	0.	.844	0.	.894	0.
48	.806	0.	.512	0.	.658	0.
50	.556	0.	.825	0.	.549	0.
51	.083	0.	.667	0.	1.000	0.
57	.778	0.	.554	0.	.947	0.
58	.685	0.	.534	0.	.650	0.
61	.972	0.	.643	MISTAKE	.960	0.
64	.991	0.	.836	0.	.857	0.
79	.991	0.	.458	0.	.964	0.
90	.981	0.	.896	0.	.689	MISTAKE
99	.981	0.	.623	0.	.981	0.
103	.982	0.	.559	0.	.821	0.
108	.972	0.	.801	0.	.980	0.
113	.991	0.	.498	0.	.972	0.
117	.968	0.	.644	0.	.601	0.
120	.963	0.	.593	0.	.517	0.
141	.963	0.	.895	MISTAKE	.653	0.

TABLE 6-6

WILMINGTON COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
2	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
9	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
13	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
14	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
16	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
21	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
22	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
34	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
39	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
43	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
48	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
51	REJCT	REJCT	TRIAL	TRIAL	LOCKU	LOCKU
57	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
58	ACCPT	ACCPT	TRIAL	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
64	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
79	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
90	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
99	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
113	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
117	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
120	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
141	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.769	0.	.800	0.	.800	0.
2	.923	0.	.500	0.	.833	0.
3	1.000	0.	.846	0.	.538	0.
6	1.000	0.	.846	0.	1.000	0.
9	1.000	0.	.538	MISTAKE	1.000	0.
13	.769	0.	.800	0.	1.000	0.
14	.923	0.	.583	0.	1.000	0.
15	1.000	0.	.846	MISTAKE	.769	0.
16	1.000	0.	.923	0.	1.000	0.
21	.231	0.	.667	0.	.667	0.
22	1.000	0.	.538	MISTAKE	1.000	0.
34	1.000	0.	.769	0.	1.000	0.
39	1.000	0.	.615	MISTAKE	1.000	0.
43	1.000	0.	1.000	0.	.923	0.
48	.231	0.	.667	0.	1.000	0.
50	.923	0.	.917	0.	.833	0.
51	.154	0.	.500	0.	.500	0.
57	1.000	0.	.692	0.	1.000	0.
58	.769	0.	.500	MISTAKE	.700	0.
61	1.000	0.	.538	MISTAKE	1.000	0.
64	1.000	0.	.923	0.	.846	0.
79	1.000	0.	.692	0.	1.000	0.
90	1.000	0.	1.000	0.	.538	0.
99	1.000	0.	.923	0.	1.000	0.
103	1.000	0.	.692	0.	.923	0.
108	1.000	0.	.769	0.	1.000	0.
113	1.000	0.	.692	0.	1.000	0.
117	1.000	0.	1.000	0.	.846	0.
120	1.000	0.	.769	0.	.615	0.
141	1.000	0.	.923	0.	.769	0.

TABLE 6-7

SALT LAKE COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
2	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
6	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
9	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
13	REJCT	REJCT	TRIAL	TRIAL	CONRL	CONRL
14	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
16	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
21	REJCT	ACCPT	-0.	-0.	-0.	-0.
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
23	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
34	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
39	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
43	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
48	REJCT	REJCT	TRIAL	TRIAL	LOCKU	LOCKU
50	ACCPT	ACCPT	PLEAD	TRIAL	CONRL	LOCKU
51	REJCT	REJCT	-0.	-0.	-0.	-0.
58	REJCT	ACCPT	TRIAL	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
64	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
79	REJCT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
90	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
99	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
113	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
117	ACCPT	ACCPT	PLEAD	TRIAL	CONRL	CONRL
141	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.619	0.	.462	0.	.769	0.
2	.810	0.	.471	0.	.813	0.
3	.857	0.	.667	MISTAKE	.529	0.
6	.952	0.	.800	0.	1.000	0.
9	.905	0.	.737	MISTAKE	.611	0.
13	.381	0.	.500	0.	.625	0.
14	.619	0.	.538	MISTAKE	.909	0.
15	.905	0.	.579	0.	.684	0.
16	.762	0.	.625	0.	.875	0.
21	0.	MISTAKE	-0.	-0.	-0.	-0.
22	.952	0.	.800	0.	.850	0.
23	1.000	0.	.524	0.	1.000	0.
34	1.000	0.	.619	0.	.952	0.
39	.952	0.	.750	0.	.882	0.
43	.810	0.	.882	0.	.941	0.
48	.286	0.	.500	0.	.500	0.
50	.571	0.	.500	MISTAKE	.583	MISTAKE
51	0.	0.	-0.	-0.	-0.	-0.
58	.381	MISTAKE	.500	MISTAKE	.750	0.
61	.952	0.	.600	0.	1.000	0.
64	1.000	0.	.667	0.	.762	0.
79	.429	MISTAKE	.667	0.	1.000	0.
90	1.000	0.	.810	0.	.524	0.
99	1.000	0.	.762	0.	1.000	0.
103	1.000	0.	.619	0.	.714	0.
108	1.000	0.	.857	0.	.952	0.
113	1.000	0.	.667	0.	.952	0.
117	1.000	0.	.714	MISTAKE	.905	0.
120	.905	0.	.789	0.	.842	0.
141	1.000	0.	.714	0.	.810	0.

TABLE 6-8

NEW ORLEANS COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	TRIAL	TRIAL	CONRL	CONRL
2	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
6	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
9	ACCPT	ACCPT	OTHER	OTHER	LOCKU	CONRL
13	REJCT	REJCT	TRIAL	TRIAL	CONRL	CONRL
14	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
16	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
21	REJCT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
23	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
34	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
39	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
43	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
48	REJCT	REJCT	TRIAL	TRIAL	LOCKU	CONRL
50	ACCPT	ACCPT	PLEAD	TRIAL	CONRL	LOCKU
51	REJCT	REJCT	OTHER	OTHER	CONRL	CONRL
58	REJCT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
64	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
79	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
90	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
99	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
113	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
117	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
120	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
141	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.529	0.	.389	0.	.750	0.
2	.676	0.	.783	0.	.870	0.
3	.882	0.	.633	-MISTAKE	.800	0.
6	1.000	0.	.676	0.	1.000	0.
9	.971	0.	.364	0.	.871	MISTAKE
13	.118	0.	.500	0.	.667	0.
14	.588	0.	.650	MISTAKE	.900	0.
15	.971	0.	.667	-MISTAKE	.344	0.
16	.765	0.	.808	0.	.923	0.
21	.412	-MISTAKE	.571	0.	.643	0.
22	.971	0.	.727	0.	1.000	0.
23	.971	0.	.970	0.	1.000	0.
34	1.000	0.	.706	0.	1.000	0.
39	.971	0.	.848	0.	1.000	0.
43	.912	0.	.677	0.	.710	0.
48	.206	0.	.714	0.	.857	MISTAKE
50	.559	0.	.737	-MISTAKE	.789	MISTAKE
51	.088	0.	.334	0.	1.000	0.
58	.353	-MISTAKE	.667	0.	.667	0.
61	1.000	0.	.765	0.	1.000	0.
64	.971	0.	.500	0.	.871	0.
79	.794	0.	.889	0.	1.000	0.
90	.941	0.	.844	0.	.781	0.
99	.941	0.	.813	0.	1.000	0.
103	.971	0.	.818	0.	.969	0.
108	.882	0.	.897	0.	.964	0.
113	1.000	0.	1.000	0.	1.000	0.
117	.853	0.	.483	0.	.880	0.
120	.912	0.	.710	0.	.742	0.
141	.971	0.	.879	0.	.606	0.

TABLE 6-9

POLK COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
3	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
60	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
7	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
13	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
25	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
46	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
53	REJCT	REJCT	PLEAD	PLEAD	RELSE	RELSE
58	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
60	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
74	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
83	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
85	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	LOCKU
101	REJCT	REJCT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	CONRL
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
112	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
115	REJCT	REJCT	-0.	-0.	-0.	-0.
117	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
128	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
131	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
132	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
134	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
155	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
157	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
158	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.889	0.	.625	0.	.714	0.
3	.944	0.	.529	MISTAKE	.882	0.
6	1.000	0.	.500	0.	.500	0.
7	1.000	0.	.667	0.	.778	0.
13	.667	0.	.417	0.	.583	0.
15	.944	0.	.765	0.	.824	0.
22	1.000	0.	.833	0.	1.000	0.
25	1.000	0.	.500	0.	.778	0.
46	1.000	0.	1.000	0.	.833	0.
50	.722	0.	1.000	0.	.769	0.
53	.333	0.	.500	0.	.400	0.
58	.667	0.	.750	0.	.667	0.
60	.667	0.	.917	0.	.833	0.
61	1.000	0.	.889	0.	1.000	0.
74	1.000	0.	1.000	0.	.882	0.
83	1.000	0.	.833	0.	.444	0.
85	1.000	0.	.889	0.	.445	MISTAKE
101	.471	0.	.500	0.	.667	0.
103	1.000	0.	.611	MISTAKE	.944	MISTAKE
108	1.000	0.	.944	0.	1.000	0.
112	1.000	0.	.833	0.	1.000	0.
115	0.	0.	-0.	-0.	-0.	-0.
117	1.000	0.	.882	0.	.706	0.
128	1.000	0.	.471	0.	.824	0.
131	1.000	0.	.556	0.	.833	0.
132	1.000	0.	.611	0.	.889	0.
134	.889	0.	.813	0.	.733	0.
155	.722	0.	.538	0.	.454	0.
157	.778	0.	.714	-MISTAKE	.643	0.
158	1.000	0.	.778	0.	.611	0.

TABLE 6-10

JACKSON COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
7	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
13	ACCPT	REJCT	PLEAD	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
25	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
46	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
50	REJCT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
53	REJCT	REJCT	PLEAD	PLEAD	LOCKU	LOCKU
58	REJCT	REJCT	PLEAD	PLEAD	LOCKU	LOCKU
60	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
74	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
83	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
85	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
101	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
112	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
115	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
117	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
128	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
131	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
132	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
134	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
155	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
157	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
158	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.594	0.	.842	0.	.842	0.
3	.719	0.	.478	0.	.913	0.
6	1.000	0.	.767	0.	.733	0.
7	1.000	0.	.656	0.	.969	0.
13	.581	MISTAKE	.667	0.	1.000	0.
15	.969	0.	.645	0.	1.000	0.
22	.969	0.	.700	0.	1.000	0.
25	.969	0.	.419	0.	.900	0.
46	.969	0.	1.000	0.	.613	0.
50	.419	MISTAKE	1.000	0.	.538	0.
53	.219	0.	.857	0.	.571	0.
58	.406	0.	.846	0.	.727	0.
60	.625	0.	.850	0.	.789	0.
61	.969	0.	.742	0.	.968	0.
74	1.000	0.	1.000	0.	.806	0.
83	.710	0.	.955	0.	.591	0.
85	.844	0.	.778	0.	.519	0.
101	.500	0.	.733	0.	.917	0.
103	1.000	0.	.500	MISTAKE	1.000	0.
108	.968	0.	.867	0.	1.000	0.
112	1.000	0.	.938	0.	1.000	0.
115	.226	0.	1.000	0.	.571	0.
117	.710	0.	1.000	0.	.500	0.
128	1.000	0.	.531	0.	1.000	0.
131	1.000	0.	.469	0.	.969	0.
132	.938	0.	.533	0.	1.000	0.
134	.688	0.	1.000	0.	.682	0.
155	.781	0.	.800	0.	.760	0.
157	.906	0.	.828	0.	.793	0.
158	.968	0.	.933	0.	.733	0.

TABLE 6-11

WAYNE COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
7	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
13	REJCT	REJCT	PLEAD	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
25	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
46	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
53	REJCT	REJCT	TRIAL	PLEAD	LOCKU	LOCKU
58	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
60	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
74	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
83	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
85	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
101	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
112	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
115	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
117	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
128	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
131	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
132	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
134	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
155	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
157	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
158	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.750	0.	.474	0.	.723	0.
3	.951	0.	.714	0.	.947	0.
6	.981	0.	.833	0.	.614	0.
7	1.000	0.	.856	0.	.882	0.
13	.442	0.	.717	0.	.762	0.
15	.942	0.	.823	0.	.914	0.
22	.990	0.	.588	0.	.990	0.
25	.990	0.	.471	0.	.871	0.
46	.990	0.	.980	0.	.590	0.
50	.692	0.	.875	0.	.861	0.
53	.433	0.	.467	MISTAKE	.436	0.
58	.514	0.	.623	0.	.588	0.
60	.705	0.	.865	0.	.819	0.
61	1.000	0.	.696	0.	1.000	0.
74	.990	0.	.874	0.	.614	0.
83	.942	0.	.639	0.	.591	0.
85	.933	0.	.776	0.	.542	0.
101	.529	0.	.491	0.	.850	0.
103	1.000	0.	.481	MISTAKE	1.000	0.
108	.981	0.	.709	0.	1.000	0.
112	1.000	0.	.740	0.	.990	0.
115	.171	0.	.944	0.	.722	0.
117	.971	0.	.892	0.	.505	0.
128	.990	0.	.569	MISTAKE	.961	0.
131	.990	0.	.519	0.	.931	0.
132	.952	0.	.490	0.	.917	0.
134	.837	0.	.849	0.	.786	0.
155	.875	0.	.802	0.	.689	0.
157	.962	0.	.832	0.	.859	0.
158	1.000	0.	.894	0.	.788	0.

TABLE 6-12

ERIE COUNTY COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
7	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
13	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
25	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
46	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
53	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
58	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
60	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
61	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
74	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
83	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
85	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	LOCKU
101	ACCPT	ACCPT	OTHER	OTHER	LOCKU	LOCKU
103	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
112	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
115	REJCT	REJCT	PLEAD	PLEAD	RELSE	RELSE
117	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
128	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
131	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
132	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
134	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
155	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
157	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
158	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.871	0.	.426	0.	.644	0.
3	.944	0.	.716	0.	.984	0.
6	.958	0.	.912	0.	.642	0.
7	.986	0.	.843	0.	.956	0.
13	.662	0.	.532	0.	.605	0.
15	.986	0.	.855	0.	.912	0.
22	1.000	0.	.543	0.	1.000	0.
25	.944	0.	.537	0.	.754	0.
46	1.000	0.	1.000	0.	.662	0.
50	.592	0.	.881	0.	.707	0.
53	.690	0.	.612	0.	.528	0.
58	.771	0.	.815	0.	.551	0.
60	.775	0.	.891	0.	.843	0.
61	1.000	0.	.592	0.	.970	0.
74	1.000	0.	.986	0.	.783	0.
83	.957	0.	.925	0.	.687	0.
85	.986	0.	.700	0.	.456	MISTAKE
101	.725	0.	.360	0.	.618	0.
103	1.000	0.	.662	0.	.957	0.
108	1.000	0.	.732	0.	1.000	0.
112	1.000	0.	.743	MISTAKE	1.000	0.
115	.211	0.	.467	0.	.818	0.
117	.986	0.	.914	0.	.615	0.
128	1.000	0.	.634	0.	.944	0.
131	.986	0.	.629	0.	.913	0.
132	1.000	0.	.718	0.	.937	0.
134	.957	0.	.970	0.	.848	0.
155	.915	0.	.908	0.	.484	0.
157	.943	0.	.803	0.	.841	0.
158	1.000	0.	.957	0.	.671	0.

TABLE 6-13

BATON ROUGE COMPARISON OF ACTUAL DECISIONS WITH RDR PREDICTED BY CASE AND DECISION TYPE

	ACCEPT		DISPOSITION		SENTENCE	
	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED	MAJORITY SELECTED	RDR SELECTED
1	REJCT	REJCT	PLEAD	PLEAD	CONRL	CONRL
3	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
6	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
7	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
13	REJCT	REJCT	TRIAL	TRIAL	LOCKU	LOCKU
15	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
22	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
25	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
46	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
50	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
53	REJCT	REJCT	TRIAL	TRIAL	RELSE	RELSE
58	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
60	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	RELSE
61	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
74	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
83	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
85	ACCPT	ACCPT	TRIAL	TRIAL	RELSE	LOCKU
101	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
103	ACCPT	ACCPT	TRIAL	PLEAD	LOCKU	LOCKU
108	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
112	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
115	REJCT	REJCT	OTHER	OTHER	RELSE	RELSE
117	ACCPT	ACCPT	PLEAD	PLEAD	RELSE	RELSE
128	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
131	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
132	ACCPT	ACCPT	TRIAL	TRIAL	LOCKU	LOCKU
134	ACCPT	ACCPT	PLEAD	PLEAD	CONRL	CONRL
155	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU
157	ACCPT	ACCPT	PLEAD	TRIAL	LOCKU	LOCKU
158	ACCPT	ACCPT	PLEAD	PLEAD	LOCKU	LOCKU

PERCENT AGREEMENT ON DECISIONS AND LOCATION OF RDR ERRORS BY CASE AND DECISIONS TYPE

	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR	PERCENT AGREEMENT	RDR ERROR
1	.394	0.	.615	0.	.692	0.
3	.727	0.	.696	0.	.875	0.
6	.969	0.	.484	0.	.452	0.
7	.939	0.	.516	0.	.935	0.
13	.242	0.	.625	0.	.750	0.
15	.970	0.	.531	0.	.742	0.
22	1.000	0.	.909	0.	1.000	0.
25	1.000	0.	.515	0.	.909	0.
46	1.000	0.	.818	0.	.727	0.
50	.677	0.	.857	0.	.476	0.
53	.212	0.	.571	0.	.334	0.
58	.606	0.	.600	0.	.421	0.
60	.719	0.	.739	0.	.850	MISTAKE
61	1.000	0.	.879	0.	1.000	0.
74	1.000	0.	.788	0.	.758	0.
83	.906	0.	.759	0.	.655	0.
85	.970	0.	.531	0.	.375	MISTAKE
101	.688	0.	.455	0.	.765	0.
103	1.000	0.	.909	MISTAKE	.970	0.
108	.906	0.	.793	0.	1.000	0.
112	1.000	0.	.909	0.	.970	0.
115	.121	0.	.500	0.	.667	0.
117	1.000	0.	.818	0.	.485	0.
128	1.000	0.	.727	0.	.909	0.
131	1.000	0.	.625	0.	.970	0.
132	.909	0.	.767	0.	.929	0.
134	.939	0.	.581	0.	.710	0.
155	.758	0.	.652	0.	.760	0.
157	.969	0.	.645	MISTAKE	.552	0.
158	.970	0.	.516	0.	.625	0.

A detailed examination of the last nine tables shows that the decisions of the prosecutors can be predicted even using crude estimators that represent averages for these offices. An examination of the mistakes that occur show that they vary in number among the sites. For example, 3 mistakes were made in predicting Salt Lake City responses to the accept/reject decision but none was made in 6 jurisdictions. More mistakes, generally, were made in predicting dispositions by plea or trials than in the other two decision areas.

It also appears that the model fits some jurisdictions better than others indicating that jurisdictional tailoring is in order and supporting the finding of policy variations among sites. For example, in Wayne County (Table 6-11) only three mistakes were made by RDR, all located in the plea/trial disposition decision; but the count can be adjusted to one mistake because two of the mistakes occurred when there was no clear consensus on the part of the prosecutors themselves. For example, in case 53, for the decision of plea, trial or other, RDR recommended disposition by plea, and 47 percent of the assistants chose trial. Similarly, in case 103, the consensus for that "mistake" was 48 percent. If we return to our original definition that a mistake can occur only when the majority of the decisionmakers disagree with the model's choice, then in the Wayne County model, only 1 mistake between the prediction of RDR and the actual decisions occurred. A similar situation can be observed in the Erie County data (Table 6-12). Here two mistakes were recorded by RDR, but one of them, case 85, showed only 46 percent agreement among the attorneys.

Another more practical value emerged from the application of RDR to the decisions made by the jurisdiction. That was the feedback that it provided the heads of the offices. In some of the jurisdictions, the results were returned to the office with a request that the cases having the most variance (disagreement), or having the lowest levels of agreement, or predicted incorrectly by RDR be evaluated for the reasons and causes. The results were beneficial to both the researchers and the prosecutors. In some instances, the disagreement and variation in responses reflected the absence of policy or rules; in other instances, it reflected ambiguities in the case or different interpretations made by the evaluators; and finally, in other instances, it reflected a real disagreement among the staff with respect to the policy or the procedures being used. Whatever the reasons, the fact that specific incidents and examples were available for discussion and that these were known areas of disagreement sharpened the policy and decisionmaking processes in the office.

Conclusion

The importance of this type of predictive model extends beyond its ability to improve the management and operations of an office because it gives direction to the next stage of this research - namely its validation. The fact that the RDR model can predict the decisions of the prosecutors assumes that the variables that prosecutors use in decision-making have largely been identified. The final test of the accuracy of this statement, however, has yet to be made. What is needed is a validation of these results based on actual cases and actual decisions, not

perceived ones. This validation should be accomplished by sampling cases in the jurisdictions tested, applying the RDR model to them and measuring whether the predicted decision agreed with the actual ones. Each disagreement should be analyzed further to determine why it occurred, and whether it contradicted the RDR model or was due to special events extra-ordinary to the model.

A project of this nature is not simple especially with respect to the methodologies to be considered, the analysis and even the interpretation of the results. However, it offers an unparalleled opportunity to validate research based on simulated materials and perception in addition to the actual findings of the research itself.

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APPENDIX A

SAMPLE OF CASES AND EVALUATION FORM

CASE NUMBER 16

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

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

3. Witnesses:

   #1--Vehicle Owner
   #2--Arresting Officer

4. Evidence--Physical Property, Statements, Other:

   a. Testimony as to theft

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

Defendant #6

Date of Birth: 8/23/54

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

CASE NUMBER 48

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

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

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

3. Witnesses:

   #1--Arresting officer to whom the admissions were made by defendant.
   #2--Person who gave party attended by victim and defendant.
   #3--Eyewitness to stabbing.
   #4--Corroboration of Witness #3.

Defendant #19

Date of Birth: 11/8/47

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

CASE NUMBER 61

1. On May 19, 1979, the defendant, a male, was arrested and charged with Robbery in the First Degree (Hand Gun) and also Possession of a Deadly Weapon During the Commission of a Felony.

2. At approximately 1:47 A.M. on May 19, 1979 police received a call from an unidentified caller stating that a robbery was in progress at a bar in this city and that the suspect was a male driving a black Chevrolet Nova. Three officers (Witnesses #2, #3, and #4) responded in their patrol units. As Witness #2 approached the bar in question he observed a dark colored Chevrolet Nova driven by a male leaving the parking lot. Witness #2 pursued the car and stopped it approximately 8/10's of a mile east of the bar. The officer ordered the driver who was the sole occupant of the car to exit his vehicle and lie on the ground. At this point Witness #2 was joined by Witnesses #3 and #4 who arrived simultaneously. After a quick pat down, the defendant was given his Miranda rights at approximately 1:52 A.M. and was thereafter handcuffed. Witness #3, upon looking over the suspect vehicle, observed on the front seat a role of quarters and on the floor of the vehicle a cigar box and a money bag. Witness #2 and Witness #3 checked the interior of the vehicle and under the driver's seat found a nine millimeter automatic pistol with one cartridge in the chamber and six in the magazine.

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

The defendant was transported to the police station where $167 in cash was taken from his pockets, the cigar box was examined and found to contain checks and cash. The money bag was examined and found to contain cash and rolled coinage totalling $1,639.51. Several of the checks were made payable to the bar in question.

The victim, who was interviewed by a detective sergeant (Witness #6), indicated that at 1:45 A.M. that day as he was closing the bar owned by him, he set the burglar alarm and left through the rear kitchen door after locking the door. As he walked toward his automobile he passed a van parked immediately adjacent to his automobile. An unidentified subject in the van called to the victim and told him that there was a male who was acting suspiciously in the parking lot. As the person later identified as the defendant approached, he held in his hands in front of him an unidentified object which at 10 feet the victim was able to see was a gun, which the defendant thereupon pointed it at the victim saying: "We're going in and you are going to open the safe." At this time, the subject in the truck started his van and the victim said that the defendant pointed the gun at the driver and ordered him to stop, but the subject started off to the nearest phone booth. The victim said that the defendant stayed behind him and ordered him inside the bar. Once inside the bar the defendant ordered the victim to turn off the alarm system. This the victim did. Thereafter on several occasions the defendant

threatened to "blow off" his head unless the victim opened the safe. During the last of the threats, the defendant fired the gun into the floor. Once the victim opened the safe the defendant removed the cigar box with the cash and checks and took a bag from a stack and started ransacking the safe, emptying the contents into the bag. The defendant also removed cash from the cash drawers on a sofa in the office and removed rolled coins which he put in the bank bag. Thereafter the defendant ran out of the kitchen door telling the victim "If you'll remain here for five minutes, nothing will happen to you."

3. Witnesses:

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

4. Evidence--Physical Property, Statements, Other:

   a. $1,166.30 in assorted U.S. currency and coins.

   b. $640.21 in endorsed checks and money orders.

   c. Bank bag in question.

   d. Cigar box.

   e. 9 millimeter Browning semi-automatic pistol.

   f. Black leather shoulder holster with nylon straps.

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

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

Defendant #14

Date of Birth: 5/28/52

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

RESEARCH ON PROSECUTORIAL DECISIONMAKING*

Case Evaluation Worksheet

1. Case Number: _____ 2. Your Initials: _____

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

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

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

(1) Yes: _____ (2) No: _____ If no, stop here. Go to next case.

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

___1. Plea
___2. Conviction by trial
___3. Acquittal
___4. Dismissal and/or Nolle Prosequi
___5. No true bill
___6. Can't predict
___7. Other alternatives (Specify)

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

___1. At first appearance for bond setting and defense counsel appointment
___2. At preliminary hearing
___3. At grand jury
___4. At arraignment
___5. After arraignment, before trial
___6. First day of trial
___7. End of bench trial
___8. End of jury trial

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

___1. Felony
___2. Felony (lesser charge)
___3. Misdemeanor (as charged)
___4. Misdemeanor (lesser charge)
___5. Violation for infraction
___6. Other (specify)

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

___1. None
___2. Fine and/or restitution
___3. Conditional release or discharge
___4. Probation
___5. Jail
___6. Penitentiary

9. If jail or penitentiary, what should be the minimum actual time served?

(1) Years: _____ (2) Months: _____ (3) Days: _____

*LEAA Grant Number: 79NI-AX-0034.

Gold Form: 1/80

APPENDIX B

SUMMARY TABLE

SUMMARY OF CHARACTERISTICS OF PARTICIPATING OFFICES

Jurisdiction County (City)	Population	Size of Jurisdiction (Square Miles)	Number of Branch Offices	Number of Assistants	Number of Felonies Referred	Number of Law Enforcement Agencies	Police Reports Brought by:	Review Police Charges Before Filing	Percent Declined	Accusatory Type: Arrest to Grand Jury	Accusatory Type: Arrest to Preliminary Hearing to Filing of Bill of Information	Accusatory Type: Arrest to Preliminary Hearing to Bindover for Grand Jury	Accusatory Type: Arrest to Direct Filing of Information	How Often Approval Needed for Plea Offer?	Felony Indigents Defended by Public Defender	Sentence Recommendation
Wayne County (Detroit) MI	2,670,000	605	3	116	15,811	47	Courier	Yes	11	Never	Most Often	Never	Never	Always	25	Sometimes
Kings County (Brooklyn) NY.	2,411,000	70	0	325	39,500	3	A.P.O.	Yes	4	Never	Most Often	Most Often	Never	Sometimes	60	Sometimes
Dade County (Miami) FL.	1,445,700	2042	3	105	13,000	28	Courier	Yes	25	Never	Never	Never	Most Often	Sometimes	60	Usually
Erie County (Buffalo) NY.	1,113,500	1058	1	76	5,000	50	DNA	NO	DNA	Often	Never	Most Often	Never	Always	70	Never
King County (Seattle) WA	971,200	2128	1	64	6,300	34	Detective	Yes	15	Never	Never	Never	Most Often	Always	75	Always
Hennepin County (Minneapolis) MN. . .	960,000	567	0	74	4,200	29	Detective	Yes	38	Never	Never	Never	Most Often	Usually	95	Sometimes
Maricopa County (Phoenix) AZ.	748,000	9115	2	111	20,000	28	Courier	Yes	28	Often	Most Often	Never	Never	Sometimes	90	Sometimes
Orleans Parish (New Orleans) LA . . .	562,400	197	3	60	5,782	3	A.P.O. Detective	Yes	41	Never	Often	Often	Most Often	Always	90	Sometimes
Lake County (Crown Point) IN.	546,200	513	7	50	1,136	16	Detective	Yes	25	Never	Most Often	Never	Never	Always	100	Usually
Montgomery County (Rockville) MD. . .	522,800	495	3	27	1,500	3	Courier	Yes	15	Often	Never	Never	Most Often	Always	40	Sometimes
Salt Lake County (Salt Lake City) UT.	550,000	764	1	24	2,000	9	Detective	Yes	25	Never	Most Often	Never	Never	Sometimes	77	Sometimes
East Baton Rouge (Baton Rouge) LA . .	297,000	459	0	27	4,864	7	Courier	Yes	45	Never	Often	Never	Most Often	Usually	75	Sometimes
Polk County (Des Moines) IA	286,100	578	1	24	2,500	12	Detective	Yes	33	Never	Often	MD	Most Often	Usually	50	Sometimes
Jackson County (Kansas City) MO . . .	143,300	603	1	35	3,000	8	Case Review Unit	Yes	20	Often	Most Often	Never	Never	Sometimes	75	Usually
Wilmington (Wilmington) DE.	73,000	13	3	28	3,186	6	A.P.O. Detective	Yes	11	Most Often	Never	Often	Never	Sometimes	11	Usually

APPENDIX C

METHODOLOGICAL CONSIDERATIONS

Edward C. Ratledge

University of Delaware

APPENDIX C

METHODOLOGICAL CONSIDERATIONS

The purpose of this section is to set forth some of the more important methodological considerations that should be shared with others desirous of more technical information.

A. The Case Set

This research was conducted in two phases. In the initial phase, a deliberate decision was made to develop instruments which would allow absolute control over the stimuli in the experiment. The basic instrument is a criminal case and the criminal history of the defendant. This case is one of 241 which have been tested across the country. Each case in the set was developed from a real case drawn from prosecutors' files in Wilmington, Delaware, Brooklyn, New York and Miami, Florida. They were standardized to eliminate regionalism and to provide a format familiar to prosecutors. The research team altered certain facts in the case to deliberately introduce variance in the research design with respect to the strength of the evidence and the severity of the crime.

The criminal histories were generated synthetically in the second phase of the research. Hence, they are totally under the control of the research team. (Ratledge and Turner, 1980). These instruments also had their roots in real records but were later simulated to provide for complete randomization.

The final instrument administered to prosecutors and their assistants consisted of 30 of these standardized cases. Each attorney provided a response to a series of decisions that reflected the progress of the case through the adjudication process.

B. The Research Design

A balanced design with three levels of seriousness of the offense and three levels of criminality was created. These two variables were then coupled with variations in the evidentiary strength of the case which were randomly assigned in each of the cells.

The Sellin-Wolfgang scale was used to group the cases by seriousness of offense. The number of arrests for crimes against the person was used to group the cases by seriousness of the defendant.

The following groups were created:

Sellin-Wolfgang Scores: Low, 1-3
Medium, 4-6
High, 7 or more

Crimes against the person: Low, 0
Medium, 1-3
High, 4 or more

Three cases were assigned to each cell and three more randomly assigned to yield a total of thirty cases and to allow good measurement of the off-diagonal combinations.

In Phase I of the research, four sites were chosen for an extended pretest of the concepts contained in the standard case set. Each of these offices was tested with the same set of case-defendant instruments. In Phase II another comparative set of offices was chosen. All of these offices rated the same case set although a different set from those used in Phase I. In order to expand the number of case-defendant combinations, giving a wide variety of different characteristics, 6 additional sites were tested, each with completely different cases. In the final analysis, 855 attorneys responded to these instruments giving 449 different case-office measurements on 241 case-defendant combinations.

C. Data Base

A decision was made early on in this research that we would concern ourselves only with inter office variance for this analysis. Thus the dependent variables in this study represent office average responses. Our interest was not on the individual attorney but rather on the office, the policy of the prosecutor and the amount of uniformity and consistency with that policy. The focus therefore was on the policy of a single person and the amount of deviation from it. To assume that this research permits one to predict an individual decision by an individual prosecutor is to fall prey to aggregation bias, ecological fallacy or the fallacy of composition. The focus of this research is on the office and the range of variation that can be tolerated by the prosecutor. At this stage of the analysis, the reasons why individual attorneys diverge from the modal response is of less interest. (Although it has been used within several offices for policy purposes). Perhaps when data are collected on the characteristics of each attorney, some analysis of this question would be possible.

To each of these summary measures were appended the independent variables associated with that case. These were drawn from three separate files:

(1) The evidence file which contains the characteristics of the crime and the circumstances of arrest;

(2) The seriousness file which contains the elements of the Sellin-Wolfgang scale and the summary score;

(3) The criminal file which contains the attributes of the criminal history and the criminality scale.

A complete list of the variables included in the analysis follows:

(1) CONFESS - One, if there was a confession made in this case.

(2) SWSCORE - The Sellin-Wolfgang seriousness index.

(3) CRIMINAL - The Criminality scale developed in this project in log form.

(4) COMPLEX - A subjective measure of the legal-evidentiary complexity of the crime type (1 to 4) based on prosecutorial experience.

(5) CONSTPROB - One, if there was a constitutional problem in the case e.g. Miranda, Search and Seizure.

(6) CIVWITCHED - One, if there is any problem with the credibility of the witness.

(7) CIVWITPRIOR - One, if the witness has a prior record.

(8) POLWIT2U - One, if there is more than one police witness.

(9) CIVWIT2U - One, if there is more than one civilian witness.

(10) INTIMATE - One, if the defendant was intimate with the victim.

(11) KNOWN - One, if the defendant was known to the victim but not intimate.

(12) GUN - One, if a gun was used in the event.

(13) PROPOSS - One, if property was found in the possession of the defendant.

(14) TESTIN - One, if there was testimonial evidence available.

(15) FORENS - One, if there was forensic evidence available.

(16) ONSCENE - One, if arrested on the scene.

(17) HOURS24 - One, if arrested within 24 hours but not at the scene.

(18) ADMISS - One, if there was an admission made but not a confession.

(19) OFFICE - A dummy variable is entered representing each of the offices. Polk County becomes the base office.

The choice of evidentiary variables was dictated partially by experience and partly by the variation which was introduced in the cases. While some 80 variables were available for analysis, there was not enough variation to permit the use of all of them. Exploration for their effects will have to wait for an expansion of the sample.

There is at least some overlap between evidence and SWSCORE since the presence of a weapon increases the SWSCORE. Our experience shows that the seriousness of the offense does not capture all of the variance, however. With respect to COMPLEX, this variable has not yet been developed fully as a scale and thus, its interpretation is limited. Each NCIC code was rated on a scale of 1 to 4 with respect to the inherent complexity of the legal proofs required. Finally, the dummy variables representing POLWIT2U and CIVWIT2U were selected based upon the opinion of several prosecutors since they measure the existence of corroborating evidence. Because the complaining witness and the arresting officer are, in a sense, interested parties, their testimony requires backup.

D. Analysis

The models predicting each of the dependent variables are estimated using ordinary least squares regression. The first variable (PRIORITY) has a value which varies continuously between 1 and 7 while all the other variables vary between 0 and 100 percent. All the variables listed on the preceding page were included in all models.

An analysis of residuals was performed after the OLS procedure to determine if there was a problem with non-homogeneous error variance that would have suggested GLS or grouped Logit techniques. Any departure from normality was minor, as expected, although more extensive comparative technique analysis is contemplated. Further, we rejected Logit and Probit because their S-shaped curves do not fit the theoretical shape of the expected model. Typically, for example, there are a number of cases which all attorneys will agree should be accepted or should be rejected. Thus, values of 0 and 100 are not rare which is implied by the Logit/Probit models. The linear probability model estimated by OLS is clearly more appropriate than the curvilinear ones of the odds function (Logit) or the cumulative normal (Probit).

APPENDIX D

LEGAL-EVIDENTIARY VARIABLES USED IN ANALYSIS

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APPENDIX D

LEGAL-EVIDENTIARY VARIABLES USED IN ANALYSIS

Variable and Codes

Complexity of proof
0-4 Scale

Constitutional question
0 - No
1 - Yes

No. Police Witness
9 - is 9 or more

No. Civilian Witness
9 - is 9 or more

Civilian Witness Credibility
0 - no problem
1 - problem
8 - DNA

Civilian Witness Prior Record
0 - no problem
1 - problem
8 - DNA

Relation of Victim to Defendant
0 - intimate
1 - friend/acquaintance
2 - enemy
3 - business
4 - stranger
8 - DNA
9 - unknown

Were weapons a gun
0 - No
1 - Yes
2 - DNA

How were weapons connected
0 - on person
1 - in possession
2 - close proximity
3 - seen disposing
4 - seen with weapon
5 - paraphernalia found on defendant
6 - no connection possession
8 - DNA
9 - unknown

How was property connected
same as above except
5 - passed by defendant

If no physical, testimonial
0 - No
1 - Yes

Is there forensic evidence
0 - No
1 - Yes

Time from arrest to offense
0 - on scene
1 - within 24 hours
2 - within week
3 - more than week
9 - unknown

ID on-scene
0 - No
1 - Yes

ID line-up
0 - No
1 - Yes

Variables and Codes

ID Photo
0 - No
1 - Yes

ID Fingerprints
0 - No
1 - Yes

ID known previously
0 - No
1 - Yes

ID seen but not known
0 - No
1 - Yes

ID other
0 - No
1 - Yes

Admission Made
1 - Yes

Confession Made
1 - Yes

Sellin Wolfgang score
2 digits

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