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# Arrests Without Conviction:

## How Often They Occur and Why

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James K. Stewart
*Director*

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# Arrests Without Conviction: How Often They Occur and Why

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90815

U.S. Department of Justice
National Institute of Justice

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## OVERVIEW

The phenomenon of arrests without conviction first came to public prominence in the 1920's. In a series of highly publicized studies by prestigous national figures, the country first learned about case attrition and such other previously hidden practices as plea bargaining. Since then scores of studies in dozens of jurisdictions have confirmed the basic facts--half or more of all arrests for serious crimes end without conviction.

What does this great amount of attrition mean? Both then and now important political and criminal justice leaders have thought it indicated a breakdown of the criminal justice system. Others have argued that the figures showed a large number of unnecessary or illegal arrests, while still others have seen the results as the natural consequence of a criminal justice system that requires increasing certainty of guilt for each successive stage of case processing.

This study has four major goals. These are to:

--Ascertain the amount of attrition for frequent, serious crimes such as robbery, burglary and felony assault.

--Examine the important factors that account for case attrition and learn more about how and why cases are rejected, dismissed, or nolled, or defendants diverted, acquitted or otherwise eliminated from the system without a conviction or a plea of guilty.

--Learn whether high attrition rates are inevitable or desirable and what effects they have on the criminal justice system and the various actors in the system.

--Determine whether there are strategies a jurisdiction could adopt that might result in a decrease of its attrition rate and what the consequences of such strategies might be.

### A. Introduction

The early studies of attrition were primarily studies of single jurisdictions--Cleveland, St. Louis, Kansas City, Chicago, New York and others. In 1932 the Wickersham Commission, the nation's first great crime commission, compared the results. Showing data from 11 jurisdictions, the Commission indicated that the number of felony cases ending in non-convictions ranged from a low of 36 percent in Milwaukee to a high of 88 percent in Philadelphia, Pittsburgh and two other large Pennsylvania cities.

Forty years later the American Bar Association studied some of the same sites. Its 1970 study showed that there was still a great amount of attrition and that the disparities among jurisdictions were as huge as ever. More recent studies by the Institute for Law and Social Research (INSLAW), the Vera Institute of Justice and others as well as newly developed statistical series, such as California's Offender-Based Transaction Statistics, demonstrate the same points with even greater precision.

The comparative studies to date have proved enormously useful, providing a sharp impetus to such important developments as early prosecutorial screening and the declining use of the grand jury. They have also added greatly to our knowledge of system functioning. Because they provide a unique method for evaluating agency and system policies and procedures, such comparisons can be even more useful in the future. If this potential to be realized, however, these comparisons must become much more accurate and precise. The first part of this study (chapters 3-5) reviews the problems involved in developing more accurate measures. It concludes that for most purposes arrest is the best starting point for measuring attrition. It also shows, however, that differences in how arrests are counted help to produce differences in attrition rates. This section will be of interest primarily to the research and statistical community.

The second part of the study (chapters 6-23) is an empirical analysis of the reasons for attrition in two jurisdictions: Jacksonville, Florida and San Diego, California. This section will be of interest to police executives, district attorneys and judges, as well as the research community. The last section (chapter 24) is a summary of study findings and implications.

B. Case Processing and Attrition

The empirical analysis is based on a review of prior research, letter and phone contacts with more than a hundred jurisdictions, brief visits to 10 sites, detailed observations in four locations, and extensive analysis of case records in Jacksonville and San Diego. The statistical analysis is based on robbery, burglary, and felony assault cases, categories chosen as being among the most serious and most frequent felony cases.

Jacksonville and San Diego were chosen as the sites for in-depth study because the police and prosecuting agencies in these jurisdictions each have well deserved reputations for excellence and because the jurisdictions represent two very different systems for handling criminal cases. Case processing in the two jurisdictions is discussed in chapters 6-9. The amount of attrition in the two jurisdictions and the different methods of counting attrition are discussed in chapter 10.

## C. Explaining Attrition

There are many explanations available as to why some defendants are convicted and others are not. Undoubtedly the most common idea is that strong cases become convictions and weak ones do not. Seriousness of the crime, badness of the defendant and status of the defendant and the victim are also widely thought to affect the disposition of cases, as are overworked officials and lenient judges. Generally these theories fall into four groups:

--Theories based on the guilt or innocence of the defendant as indicated by the evidence in the case.

--Theories based on individual characteristics of the case which are not related to the guilt or innocence of the defendant.

--Theories based on the organization, structure and policies of the criminal justice agencies and system in the community.

--Theories based on the larger political and social character of the community.

The study findings strongly emphasize the role of evidence. They indicate that:

--The factors which most strongly affect whether a given arrest will become a conviction or not are those relating to evidence.

--Whether an arrest will become a conviction or not is usually determined very early in the process.

--Most suspects who are arrested but not convicted are thought by police and prosecutors to be guilty.

--Many cases that are dropped for evidentiary reasons could be salvaged.

Police executives will be particularly interested in the chapters on police and prosecutorial processing (chapters 7-9), identification evidence (chapter 14), confessions (chapter 15), co-participant statements and other evidence (chapter 16), victim-witness problems (chapter 17), overall factors linking the offender to the crime (chapter 18), the reasons for attrition (chapter 21) and arrest policy (chapter 22).

These chapters show great differences between San Diego and Jacksonville in the way that arrests are made, that evidence such as identifications and confessions is obtained

and in the impact that different kinds of evidence have on convictions. They also show that victim-witness problems are more frequent in San Diego but more damaging in Jacksonville. These differences suggest the need for police and prosecutorial agencies to pay greater attention to how they collect and use evidence.

Prosecutors and judges will be interested in these chapters as well as the chapter on case processing (chapter 14). Persons interested in research and statistics will be particularly interested in the chapters on linking factors (chapter 18), multivariate analysis (chapter 19), reasons for attrition (chapters 20 and 21) and arrest policy (chapter 22).

## D. Summary and Implications

The project findings and implications are summarized in chapter 24. Major findings concerning the meaning of attrition are that:

--The single most important factor in determining whether a jurisdiction will have a high or a low attrition rate is the arrest policy followed in the jurisdiction.

--The single most important factor in determining whether a prosecutor's office will have a high or low conviction rate is the policy that the office follows with respect to screening and filing cases.

--A high prosecutorial conviction rate may be a sign of excellent prosecutorial performance or a sign of overly conservative charging policies. The best test is not the rate itself but the kind of charges not filed.

--A high attrition rate may be a sign of lax performance by either the police or the prosecutor, illegal or highly aggressive police work, or a very careful police command and control system which keeps unusually detailed records of police arrest activity. Again the best test is not the rate itself but the kind of marginal arrests or charges made.

The most important implications of the study for police and prosecutors are that:

--Salvageability depends upon earlier police investigation, greater investigative effort to solidify cases, and more risk taking by prosecutors.

--Police administrators need to devote much more attention to the problem of convictions. Convictions depend upon evidence and evidence is produced by the police.

--Police administrators should seriously consider shifting investigative resources from the solution of crimes, where these resources are relatively inefficient, to building cases against suspects already arrested, where the payoff might be greater.

--Prosecutors need to assist the police efforts to gather evidence and build strong cases.

--Prosecutors need to pay more attention to cases at an early stage.

## Chapter One

## INTRODUCTION

Sometime around midnight one spring evening in May 1920 two middle-aged men stopped at a Cleveland roadhouse to top off a day of drinking with a few last libations. A short while later they left, and within a half hour one was fatally shot on a downtown corner. American criminal justice has never been quite the same.

The impact of this shooting was not due to the heinousness or the timing of the crime, but to the fact that the survivor was William H. McGannon, then the chief justice of the Cleveland municipal court. It was bad enough that Judge McGannon was involved in such a sordid matter, but the affair became truly shocking when he was charged and tried. And while Judge McGannon was ultimately acquitted of the murder, the public was shocked again when he was shortly thereafter indicted and convicted on charges that he had committed perjury in the course of establishing his alibi in the original trial.

These events and the ineptness and bumbling shown by the police and prosecution in the handling of the case were so extraordinary and aroused so much public concern that the city fathers asked the Cleveland Foundation to undertake a study of the entire Cleveland criminal justice process.

Directed by Roscoe Pound and Felix Frankfurter this effort brought together some of the finest legal and social science minds of the day and produced the first great empirical study of criminal justice as a system. Conceived from the outset as a broad undertaking, this study revealed dozens of previously unknown or poorly appreciated facts about American criminal justice, including plea bargaining and the corruption and nefariousness of the commercial bail bond system. Its recommendations cover virtually every aspect of police, prosecutorial, court and correctional operations.[1]

The heart of the Cleveland survey was a series of tables describing the results of criminal cases as they progressed through the system. Dubbed "mortality tables" because of their resemblance to population statistics describing the effects of aging on persons born in the same year, these tables illustrated in unmistakable fashion the fact that only a fraction of the cases in which an arrest is made or a court charge levied ultimately result in a conviction, and that even fewer cases end with the defendant being punished in any way.[2]

While the authors of the Cleveland survey were all men of the world and the great experts of the time, even today one cannot read the report without feeling their sense of shock and

surprise at the enormous fall off in the system. Over and over again they come back to the number of dismissals and nolle prosequis, the lack of controls in the system, and the fact the prosecutor is responsible for disposing of far more cases than the jury.[3]

Whether they should have been so surprised is a question that is difficult to answer at this late hour. There certainly were earlier studies[4] and Pound himself had commented somewhat on the problem in his famous 1906 speech to the American Bar Association on the causes of popular dissatisfaction with justice.[5] Even if some people were vaguely aware of the issue, however, it seems clear that the problem was not familiar to the public at large, and its magnitude was unknown even to the country's great experts.

Several separate presentations of the statistical results were given in the report itself. In their discussion of the criminal courts, Reginald Heber Smith and Herbert Ehrmann described the results of 1,000 arrests--127 disposed of by the police, 85 nolled by the police prosecutor, 143 discharged or dismissed or found guilty of a misdemeanor, 139 no billed by the grand jury and 107 nolled by the county prosecutor, leaving 239 pleas of guilty and 118 cases that went to trial.[6] In a separate section on prosecutions, Alfred Bettman gave similar figures for both felonies and misdemeanors.[7]

The conclusions drawn were in keeping with the importance the authors attached to their findings. While duly cautious, they clearly thought that the case attrition found indicated a breakdown of the system. Smith and Ehrmann spoke of "a failure of self-government in one of the city's most vital functions."[8] Professor Frankfurter was more direct. "The most outstanding features of criminal justice in Cleveland," he said, were "the practical breakdown of criminal machinery."[9]

The Cleveland survey was big news. Cleveland was not only the fifth largest city in the country, but then as now there was a great deal of concern about crime. Other jurisdictions wanted to know if their situations were as bad as that in Cleveland. A second great survey was initiated almost immediately in Missouri and was followed in rapid succession by major studies in Illinois, New York and Massachusetts and by a whole host of lesser surveys in Georgia, Iowa, Minnesota, Pennsylvania, Virginia, Memphis, Los Angeles, and other places.[10]

In jurisdiction after jurisdiction these studies confirmed the findings of the Cleveland survey. There were huge dropoffs nearly everywhere. And while there was no unanimity as to the cause, a great deal of the blame was attributed to problems in the prosecutorial and court process.

Herbert Hadley, a former St. Louis prosecutor who had gone on to be attorney general and governor, stated the issue most forcefully in the Missouri survey:

> [These figures] indicate that of those committing major crimes such as homicide, burglary, robbery and assault, not one out of ten is apprehended and adequately punished, and...if we include in our calculation only such offenders as are apprehended and prosecuted we estimate that not over 25% are convicted and adequately punished....[If one stops] to consider a similar result in the conduct of a business such as banking, transportation or manufacturing...he could more clearly realize the seriousness of the problem that confronts society today, depending as it does for the protection of life and property upon a system of apprehending and prosecuting violators of the law which is from 50% to 95% inefficient.[11]

Hadley thought there were many causes, including inadequate and inefficient police departments, inefficient prosecuting officers, poor organization of prosecutorial offices, lack of cooperation between examining magistrates, police, prosecutors and trial courts and the indifference of juries to their public duties. The overriding problem, however, was the structure of the system itself:

> But the principal defect. at least in the work of actual prosecution, that makes for an inefficient administration of justice, is our cumbersome, archaic and inefficient system of criminal procedure with the glorification of technicality and formalism which it fosters and maintains.[12]

The effect of this system "with its apparently inevitable delays and defeats of justice," according to Hadley, was to create "a flabby as compared with a stern and vigorous sense of justice on the part of public officials and the public generally."[13]

While the public soon forgot the fact of case attrition and seems to be shocked again each time it is discovered anew, the sense that case attrition is a failure of justice is one that has continued to be felt by many knowledgeable observers. It has been discussed in hundreds, perhaps thousands, of speeches, reports and publications. In 1962 O.W. Wilson, then the superintendent of the Chicago police force and one of the country's leading police theorists, commented to a conference at Northwestern University on declines of 5 to 30 percent in conviction rates shown by the Uniform Crime Reports:

> Decreases of such magnitude in conviction rates, together with the persistent increase in crime, may be taken as a warning that the scales of justice are getting

out of balance. Where lies the fault? There is no indication that police procedures used in marshaling evidence against the defendant are becoming less effective; indeed, the reverse seems more likely....Nor does it seem that prosecutors have grown less vigorous or that defense attorneys have suddenly discovered new and more successful techniques. May the explanation be found in the ever-increasing restrictions imposed on the police by legislation and court decisions...?[14]

More recently Patrick Murphy, then the New York City police commissioner, called attention to the huge amount of case attrition in a speech before the New York City Bar Association in 1972, giving the courts a "giant share of the blame" for the disturbing increase in crime then taking place in the city.[15]

Influential writers have also seen the attrition rate as a demonstration of system ineffectiveness. Ernest van den Haag in his 1975 work on Punishing Criminals contrasts the situation in Japan and New York:

> Tokyo's crime rate is much lower than the New York crime rate, neither because the Japanese have more money nor because they have more education. They do not. They do not have more severe laws either. However, the two cities have very different ways of handling crime. In 1972 the arrest rate for assaultive crimes in Tokyo was in excess of 90 percent. And 99 percent of all defendants were found guilty....[In New York on the other hand] for more than two-thirds of all felonies there are no arrests...and less than 1 percent of the arrested are tried. The rest either plead guilty to a lesser offense or are released because it is felt that no conviction could be obtained....Surely part of the explanation for the difference between U.S. and foreign crime rates lies in these figures.[16]

From the start, however, some observers noted the possibility of other interpretations. Bettman commented on such possibilities in the Cleveland report itself, and Edith Abbott did the same the next year in analyzing data she had collected from Chicago.[17] Bettman stated the problem as he saw it in the Wickersham Commission report:

> There lurks always the danger that statistics of this nature will be overinterpreted, by which is meant that conclusions will be drawn therefrom beyond what would be justified by valid processes of reasoning and logic. For instance, if the drop from the number of arrests to the number of convictions be great--that is, if the percentage of convictions to arrests be low--there is apt to be a tendency to conclude, without reservations, that the administration of justice produces results unjust to the public and that offenders are escaping convictions to an inordinate degree.

Bettman then went on to indicate the alternative possibility:

> As, however, the theory of the law is that an innocent man should not be convicted, and as arrests may be freely made without any judicial determination of probability of guilt, a large percentage without convictions is as compatible with the conclusion that an excessive number of innocent persons were arrested as with the conclusion that an excessive number of guilty persons escaped punishment.[18]

Proponents of this view were not long in appearing. Ernest Hopkins, an investigator for the Wickersham Commission itself, published a book in 1931 urging in no uncertain terms that this was the correct view.[19] Jerome Hall was another who took this position. Reviewing the first returns from the FBI's new Uniform Crime Reports in 1937,[20] he read the attrition rates, coupled with other indicators, as indicating widespread police illegality:

> The incompleteness of the data imposes sharp limitations. Sufficient is set forth, however, to indicate an enormous extent of illegal police practices.

Twenty years later this was still the interpretation being given by some knowledgeable observers such as Caleb Foote.[21]

More recent interpretations tend to focus on attrition as part of the process of screening and eliminating the weaker cases. Following a review of both old and new studies, Edward Barrett in 1962 concluded that "the data...amply demonstrate that our system of criminal courts is organized to deal with a situation in which police and prosecutors screen out all but the most clearly guilty before involving the courts." "The decision to charge," he pointed out, "is regarded as far more serious than the decision to arrest--in fact it is usually thought of as calling for admissible evidence showing a high probability of guilt."[22]

Wayne LaFave in his work on arrest for the American Bar Foundation also noted the possibility that different standards of proof were required at different stages of proceeding. While his review of court decisions indicated no "express judicial recognition" of a difference in police and prosecutorial standards, he nonetheless concluded that the "police may sometimes properly arrest a person whom the prosecutor may properly refuse to charge."[23]

Still more recent analyses of the attrition problem go off on yet another tack. Utilizing newly developed automated information systems and more extensive methods of research made possible by greater funding, they have sought to examine empirically both the reasons for attrition and the kinds of situations in which attrition occurs.

Forst, Lucianovic and Cox state some of the reasons for such a focus at the outset of their analysis of Prosecutor Management Information System (PROMIS) data for Washington, D.C.:

> The central notion of this study is that more informed policy decisions may be possible after examining the extent to which factors under police control are systematically related to "desirable" court outcomes. Assuming that it is generally undesirable for the police to arrest a person and for the prosecutor or court to then drop all the charges, what can the police do to decrease the rate at which persons arrested are not convicted? How important is the recovery of tangible evidence, such as weapons and stolen property, to the convictability of an arrest? How important are witnesses, both in number and type? Under what circumstances does the delay between the time of offense and the arrest hinder the prospect of conviction?[24]

The study suggests that the police can do much to improve convictability by increasing the emphasis on physical evidence, by finding more witnesses and by other means.

A study by the Vera Institute of Justice of the attrition rate in New York City emphasized the situational aspects of the problem.[25] This study provides a richness of detail not available in any of the other studies. It concludes that much of the attrition is due to the fact that the victim and the offender had some kind of prior relationship and that this tends either to undermine prosecution of the case or to make prosecution undesirable.

It seems obvious from the above that there is much that we know about the attrition process. It exists in many places and has persisted for a considerable period of time--over 50 years and perhaps longer.

Despite the fact that attrition has long been known, however, we still do not know the answers to a number of the more important questions posed in the earliest studies. Does attrition indicate poor police practice and bad arrests at the outset? Or is it the exact opposite--an unforgivable failure on the part of the system to convict criminals who have already been apprehended and identified? Or is it some third less dramatic alternative such as an inevitable process of screening and sifting that is necessary in any fact-finding endeavor and particularly one that establishes progressively higher standards of proof as more serious consequences attach?

It is, of course, possible that all of these are true to some extent. Even within the confines of a single system, they are not mutually exclusive, and it is certainly possible,

perhaps even probable, that more than one is necessary to explain attrition in different jurisdictions.

One of the goals of this study is to shed new light on these questions by comparing the amount of attrition and the reasons for attrition in different jurisdictions. Other goals are to:

--Obtain a fuller understanding of the reasons why there is such a high attrition rate of cases in the criminal justice system.

--Examine the important variables that account for case attrition and to learn more about how and why cases are rejected, dismissed, or nolled, and defendants diverted, acquitted or otherwise eliminated from the system without a conviction or a plea of guilty.

--Learn whether high attrition rates are inevitable or desirable and what effects they have on the criminal justice system and the various actors in the system.

--Learn if there are strategies a jurisdiction could adopt that might result in a decrease of its attrition rate and what the consequences of such strategies might be.

The first five chapters of the study seek to create a framework for analyzing the problem of attrition. Chapters 6 through 22 discuss the results of field work in Jacksonville, Florida and San Diego, California. Chapter 23 summarizes some of the more important organizational theories that have been advanced to explain attrition and chapter 24 provides a summary of the study.

## A. Assumptions

While the logic underlying concerns about case attrition is rarely described in any detail, one of the major underlying premises clearly is that criminals are going free and that this weakens the force that the criminal justice system brings to the fight against crime.

Under this view case attrition and knowledge of case attrition would appear to be particularly damaging to the deterrent effects of the criminal law. These effects--at least in their classic formulations--depend on the swiftness and the certainty of punishment. If many defendants are never caught, half of those who are are never convicted, many of those convicted never punished and these facts known to many, the person contemplating a criminal career could well conclude that his or her odds are pretty good and that there is no reason to be inhibited. The possibilities of punishment are simply unlikely and too remote.

Case attrition is also damaging to the incapacitation effects of the criminal justice system. These effects keep the criminal from committing crimes by locking the criminal away from society and by preventing access to potential targets for crimes. If many defendants are never caught, half of those who are are never convicted and many of those convicted never incarcerated, the criminal law will have a relatively small incapacitation effect.

The effect of case attrition on crime control is more equivocal under concepts of rehabilitation. Under some concepts of rehabilitation apprehension and conviction are necessary in order to bring the offender into contact with the rehabilitative apparatus. They may also be seen as psychologically positive because they force the offender to confront reality or have a purging effect. Some theories of rehabilitation and deviance, however, do not view convictions as positive contributions. They view contact with the system as criminogenic and contact with the penal system as especially criminogenic. They are particularly concerned that mountains not be made out of molehills and look on benevolent neglect as the best way of handling at least some situations. Under these theories the conviction of marginal offenders may not be a plus for crime control.

This is not the place to review the evidence or the debate as to these different conceptions. It is pertinent to note, however, that the extensive debate which has taken place concerning these matters in recent years has focused much more on the efficacy of punishment than the necessity for apprehension and conviction. Most of the quantitative studies simply begin with convicted cases and attribute all effects to the penalties involved. Isaac Ehrlich's well known works, for example, attribute the major differences in homicide rates among the states to the use of the death penalty.[26] Even the National Academy of Sciences evaluation of deterrence primarily discusses punishments rather than apprehensions and convictions.[27]

Case attrition--at least in the sense of people getting away with something--also offends our concept of justice and equal treatment. While there is no definitive formulation of justice, most formulations include something of the idea that wrongs be righted and that crimes be punished. Case attrition hints and sometimes shouts that this is not being done, that in fact many are getting away with serious crimes. This is widely seen as unjust and widely perceived as due to favoritism or caprice. It weakens the commitment of the populace to the norms embodied in the criminal law.

While case attrition is very damaging to the accomplishment of the goals of the criminal law, only a few studies

discuss the effects of convictions on crime rates and even these contribute little to our knowledge. For the purposes of this study we have assumed that increasing the number of convictions of those who are guilty is a desirable goal. Although we cannot prove this assumption, we believe it to be largely true insofar as the serious crimes discussed in the study are concerned. We note, however, that even for these crimes there are some cases for which it seems better to forego a full conviction policy. We are of course aware of the great overcrowding of prisons and recognize this as a constraint limiting the impact of further convictions on the crime rate. Ultimately, however, we do not believe this alters the desirability of convicting the guilty.

## Chapter Two

## THE COMPARATIVE DIMENSION

Case attrition is not only a tool for analyzing the operation of criminal justice in a single jurisdiction but also a method for comparing the functioning and effectiveness of criminal justice in different jurisdictions. A favorite comparison of the early surveys was to contrast attrition in the American system with that of England--which was always found to be a great deal less.[1] The van den Haag comparison of Tokyo and New York in the previous chapter is simply one of the more recent of a long line of such comparisons.

Despite the frequency of offhand comparisons of this kind there have been relatively few attempts to make systematic comparisons. Some of the early surveys compared localities within their respective states and the Illinois survey compared Chicago and Milwaukee.[2] Only Raymond Moley and Alfred Bettman, however, made significant attempts to compare a number of different jurisdictions. Bettman's comparison in the Wickersham Commission report of 1932 is the more complete analysis.[3] It showed data from 11 different jurisdictions, with conviction rates ranging from 12 to 64 percent, as shown in Table 2-1. (Moley's data showed a range of 19 to 64 percent for eight jurisdictions.)[4]

These statistics were felt to be important and were used to indicate that the phenomenon of case attrition (called "eliminations" in the earlier works) was a common feature of American criminal justice. The statistics also allowed a comparison of the way that jurisdictions went about the business of criminal justice, indicating great variety both in the procedures used and in their particular importance. In some places the grand jury was clearly important, while in others there either was no grand jury or it was not a significant stage. Similar variety appeared in the importance of the preliminary hearing, dismissals by the prosecutor or the court, and trials. In some jurisdictions cases tended to be eliminated early, while in others most attrition came relatively late. Almost anyone could see that the parts of the system were closely related, and that a large number of early eliminations was likely to mean fewer later on, while a small number of early eliminations was likely to mean more at a later stage.[5]

The fact that some cities and jurisdictions had much higher conviction rates than others was noted but not studied very closely. Both Bettman and Moley called attention to the fact that Milwaukee's conviction rate was much higher than that of the other cities studied, and made the assumption that Milwaukee must be doing something right.[6] Both, however,

Table 2-1

A Statistical Analysis of the Disposition of Criminal Cases

| | New York City, 1925 [1] | New York City, 1926 [1] | 4 large Pennsylvania cities, 1926 [3] | Chicago and Cook County, 1926 [4] | New York up-State cities over 100,000, 1925 [5] | New York up-State cities over 100,000, 1926 [6] | Cleveland, 1919 [7] | St. Louis, 1923-24 [8] | Baltimore, 1927 [9] | Baltimore, 1928 [9] | Milwaukee, 1926 [4] | Cincinnati, 1925-26 [10] | Jackson County Mo. (Kansas City), 1923-24 [8] | Multnomah County, Oreg. (Portland), 1928 [11] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **PRELIMINARY HEARING** | | | | | | | | | | | | | | |
| Total cases entering preliminary hearing | 19,084 | 8,144 | 31,439 | 11,251 | ... | 1,603 | 3,927 | 1,492 | 2,311 | 2,248 | 1,838 | 1,446 | 1,697 | 737 |
| No disposition indicated | ... | ... | 546 | 36 | ... | ... | ... | (15) | ... | ... | ... | ... | (15) | 34 |
| Eliminated on responsibility of prosecution | 83 | ... | 118 | 3,359 | ... | ... | 439 | 107 | ... | ... | 57 | 146 | 523 | [13] 89 |
| Discharged | 7,747 | 3,255 | 19,400 | 2,386 | ... | 531 | 483 | 119 | 396 | 342 | 235 | 239 | 257 | 25 |
| Disposed of as misdemeanor | 3,090 | 1,308 | 1,177 | 17 | ... | 355 | 80 | 110 | [14] 139 | [14] 111 | ... | 378 | 23 | 301 |
| Bond forfeited or never apprehended | 31 | 7 | 153 | 462 | ... | ... | ... | (15) | ... | ... | 22 | 6 | (15) | ... |
| Other dispositions | 125 | 173 | [15] 1,989 | 94 | ... | 12 | 24 | 81 | 104 | 113 | 1 | 20 | 55 | ... |
| Pending | 3 | 35 | 7 | 7 | ... | 33 | ... | (15) | ... | ... | 4 | ... | (15) | ... |
| Total eliminated | 11,079 | 4,778 | 23,390 | 6,361 | ... | 931 | 1,026 | 417 | 639 | 566 | 319 | 789 | 858 | 449 |
| Remaining | 8,005 | 3,366 | 8,049 | 4,890 | ... | 672 | [16] 2,901 | 1,075 | 1,672 | 1,682 | 1,519 | 656 | 839 | 288 |
| **GRAND JURY** | | | | | | | | | | | | | | |
| Total cases entering grand jury | 8,005 | 3,366 | 8,049 | 4,890 | 1,177 | 672 | [16] 3,236 | [17] 1,075 | 1,672 | 1,682 | ... | 656 | [17] 839 | 288 |
| No disposition indicated | 2 | ... | 19 | 75 | 1 | 1 | ... | ... | ... | ... | ... | 3 | ... | 12 |
| No true bill | 2,262 | 840 | 895 | 1,388 | 155 | 90 | 697 | 6 | 107 | 71 | ... | 175 | ... | 55 |
| No information issued | ... | ... | ... | ... | ... | ... | ... | 69 | ... | ... | ... | ... | 35 | ... |
| Other dispositions | [14] 119 | 3 | 8 | 39 | 34 | 24 | ... | ... | ... | ... | ... | ... | ... | ... |
| Pending | ... | 1 | 17 | 1 | ... | 1 | ... | ... | 28 | 59 | ... | ... | ... | ... |
| Total eliminated | 2,383 | 844 | 939 | 1,503 | 190 | 116 | 697 | 75 | 135 | 130 | ... | 178 | 35 | 67 |
| Remaining | 5,622 | 2,522 | 7,110 | 3,387 | 987 | 556 | 2,539 | 1,000 | 1,537 | 1,552 | ... | 478 | 804 | 221 |
| Original indictments | ... | ... | ... | 1,866 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 81 |
| **TRIAL COURT** | | | | | | | | | | | | | | |
| Total cases entering trial court | 5,622 | 2,522 | 7,110 | 5,253 | 987 | 556 | 2,539 | 1,000 | 1,537 | 1,552 | 1,519 | 478 | 804 | 302 |
| No disposition indicated | 4 | ... | 148 | ... | 2 | ... | ... | (15) | ... | ... | ... | ... | (15) | ... |
| Eliminated on responsibility of prosecution | 143 | 48 | 725 | 1,6[illegible]8 | 39 | 33 | 518 | [19] 102 | 49 | 55 | 86 | 81 | [13] 271 | 57 |
| Dismissed by court | 684 | 317 | 35 | 28 | 11 | 4 | 15 | 37 | ... | ... | 170 | ... | 9 | ... |
| Acquitted | 505 | 224 | 2,146 | 580 | 47 | 21 | 228 | 83 | 257 | 236 | 72 | 40 | 40 | 10 |
| Bond forfeited or never apprehended | 1 | ... | 72 | 124 | 4 | ... | 90 | (15) | ... | ... | 18 | 7 | (15) | ... |
| Other dispositions | 38 | 48 | 64 | 76 | 35 | 19 | 67 | 82 | ... | ... | 3 | 27 | 77 | ... |
| Pending | 243 | 128 | 65 | 225 | 48 | 26 | 25 | (15) | 76 | 61 | 1 | 7 | (15) | 46 |
| Total eliminated | 1,618 | [22] 765 | 3,255 | 2,671 | 186 | [23] 103 | 943 | 304 | 382 | 352 | 350 | 112 | 406 | 113 |
| Guilt established—total | 4,004 | 1,757 | 3,855 | 2,582 | 801 | 453 | 1,596 | 696 | 1,155 | 1,200 | 1,169 | 366 | 398 | 189 |
| On Plea | ... | ... | ... | ... | ... | ... | ... | 585 | ... | ... | ... | ... | 289 | 168 |
| Guilty of offense charged | 763 | 229 | ... | 453 | 539 | 267 | 978 | ... | ... | ... | 689 | 142 | ... | ... |
| Guilty of other offense [21] | 2,700 | ... | ... | [22] 1,633 | 106 | ... | 220 | ... | ... | ... | 16 | ... | ... | ... |
| Felony | ... | 496 | ... | ... | ... | 67 | ... | ... | ... | ... | ... | 29 | ... | ... |
| Misdemeanor | ... | 817 | ... | ... | ... | 62 | ... | ... | ... | ... | ... | 68 | ... | ... |
| Other pleas | 55 | 7 | ... | ... | 7 | ... | 17 | ... | ... | ... | ... | ... | ... | ... |
| By conviction after trial | ... | ... | ... | ... | ... | ... | [23] 367 | ... | ... | ... | ... | ... | ... | 21 |
| Offense charged | 219 | 101 | ... | 184 | 102 | 47 | ... | 97 | ... | ... | 428 | 105 | 99 | ... |
| Other offense [21] | 113 | ... | ... | 306 | 20 | ... | ... | 14 | ... | ... | 18 | ... | 10 | ... |
| Felony | ... | 55 | ... | ... | ... | 3 | ... | ... | ... | ... | ... | 7 | ... | ... |
| Misdemeanor | ... | 50 | ... | ... | ... | 7 | ... | ... | ... | ... | ... | 15 | ... | ... |

Footnotes on pp. 188–189.

Source: National Commission on Law Observance and Enforcement, Report on Prosecution 186-187 (1931) (Report No. 4).

contented themselves with calling for further research and neither attempted to explain Milwaukee's good fortune (or that of Baltimore which came in second in the conviction derby).[7]

After Bettman and Moley's work, it was nearly 40 years before any serious attempt was made to compare the outcome of cases across jurisdictional lines. It was not until 1970 when Donald McIntyre and David Lippman presented their work on "Prosecutors and Early Disposition of Felony Cases" that any significant new information was developed.[8] This new data covered a number of the same jurisdictions included in the older studies. It showed that there was still a great amount of attrition and that the disparities among jurisdictions were as huge as ever, as shown in Table 2-2. It also suggested that early screening by prosecutors was becoming more important.

Studies by Lee Silverstein in 1965 and Wayne Thomas in 1976 also contained some cross-jurisdictional conviction information but did not focus on this issue.[9] Similarly the national court statistics collected by the Bureau of the Census from 1933-46 contained information from which comparisons of convictions in cases reaching the courts might have been made but there were no major studies which attempted to do so.[10]

The most significant recent comparative study of conviction rates is that made by Kathleen Brosi using PROMIS data.[11] This study encompasses 13 jurisdictions. Data were available for five of these jurisdictions from the point of arrest, as shown in Figure 2-1. The attrition rates range from 67 percent in New Orleans to 32 percent in Cobb County, Georgia.

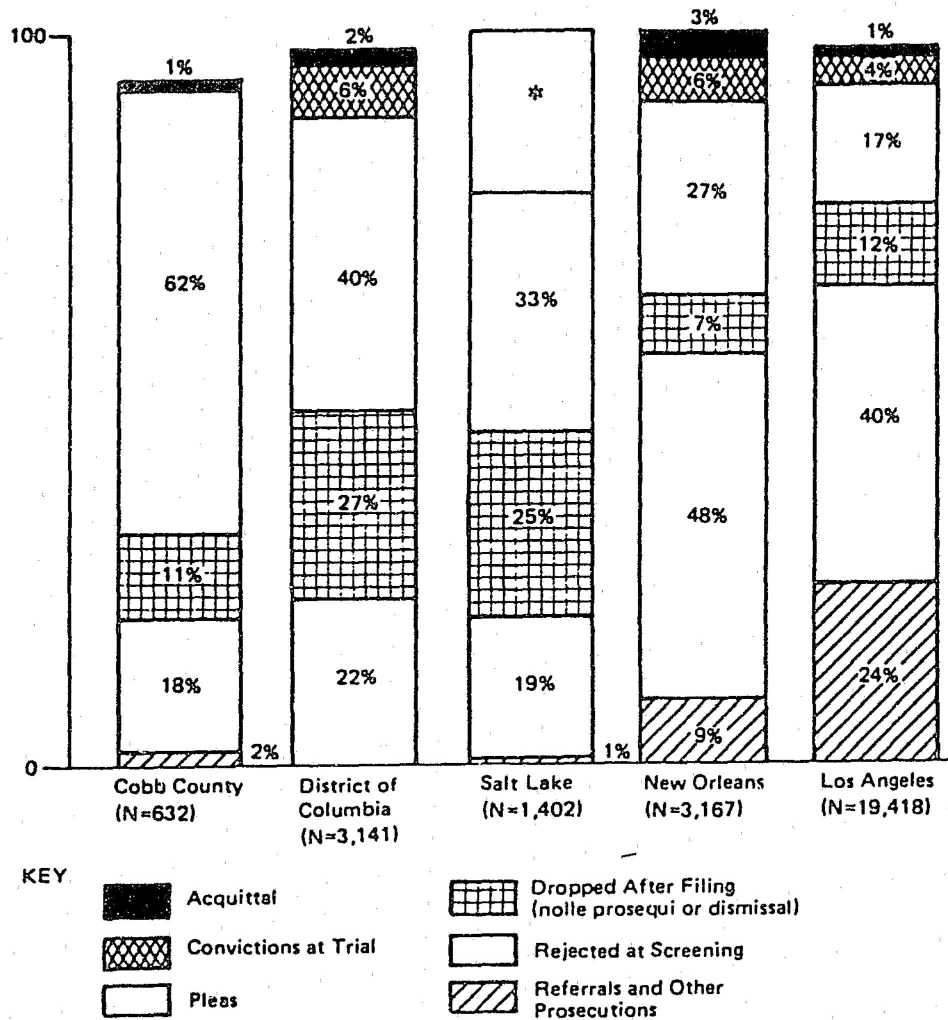
Data are also available from Offender-Based Transaction Statistics and from judicial council and other statistics which allow comparisons to be made within a number of individual states. By far the best such data is the OBTS data from California. As indicated in Table 2-3, these data also show a wide variation in conviction rates in major counties.

In addition to these studies and reports which collect information in a comparable way and which present the information collected in a common format, there are a great many studies, reports and analyses of individual jurisdictions from which comparative tables might be and sometimes are compiled.

The comparative studies present both more opportunities and more problems than the individual studies. They are in a sense natural experiments showing the results of the distinctive features of each system. They show that jurisdictions differ greatly in the number of defendants released on bail, the time to disposition, and the pattern of representation. They also show that in some jurisdictions the police release a great many arrestees while in others they release none, and

Figure 2-1

Disposition of Criminal Cases From Arrest
PROMIS Data, January to June, 1977--Felonies




Note: Totals do not always add to 100; open cases and administrative and "other" dispositions are not included.

*Data not available.

Source: K. Brosi, A Cross-City Comparison of Felony Case Processing 7 (1979).

Table 2-2

MAJOR DISPOSITIONAL POINTS IN FELONY CASES

| | Cook County (Chicago) Population: 5,500,000 | Los Angeles County Population: 7,200,000 | King's County (Brooklyn) Population: 2,600,000 | City of Detroit Population: 1,700,000 | City of Baltimore Population: 980,000 | Harris County (Houston) Population: 1,800,000 |
|---|---|---|---|---|---|---|
| Number of felony arrests | 22,000 | 69,000 | 15,000 | 20,000 | 8,000 | 16,000 |
| Police screening | In all jurisdictions studied there were no records kept on the number of releases or "dropped charges" at the police level. Unofficial estimates from police officials, however, indicate there is relatively little screening of felony cases after arrest; estimates ranged from 1% to 2% in Chicago to around 10% in Baltimore and New York. | | | | | |
| Prosecutor screening | Only in major cases, business frauds & white collar crimes. | Extensive screening: approx. 50% of cases are rejected. | Only in major cases or highly publicized ones. | All cases are reviewed; approx. 30% are rejected. | Only in major cases or highly publicized ones. | Review at examining trial (preliminary hearing) reduces caseloads 25%. |
| Preliminary hearing | Major dispositions point; approx. 80% of cases receive final disposition. | 10% dropout; hearing is formal & designed to produce transcript for later trial. | Major dispositions point; approx. 65% of cases receive final disposition. | Majority of defendants waive preliminary hearing. | Little screening; no records available; prosecutor usually not present. | 25% of cases screened out (see above). |
| Grand Jury | Approves virtually all of prosecutor recommendations. | Less than 1% of cases are referred to G.J. (information used). | Rejects about 5% of cases, mostly on recommendation of D.A. | None (information used). | Approx. 3% of cases are rejected. | Approx. 10% of cases are rejected. |
| Indictments or informations | 5,000 | 21,400 | 3,000 | 9,000 | 6,500 | 7,000 |
| Guilty pleas | 2,300 Conference with judge & prosecutor available on request. | 9,400 Little judicial participation in bargaining. | 2,500 Mandatorily referred to "conference & discussion" court before docketing. | 4,800 Mandatory pretrial conference without judicial participation. | 900 No practice of encouraging plea. | 5,500 Heavy emphasis on plea negotiations between prosecutor & defense. |
| Dismissals & nolles | 1,300 Mostly superfluous charges. | 1,500 | 200 | 3,500 Mostly superfluous charges. | 1,300 | 400 |
| Contested nonjury | 600 | 9,500 Majority are adjudicated on preliminary hearing transcript. | 100 | 600 | 5,000 Juries are traditionally waived. | 60 |
| Contested jury | 300 | 900 | 200 | 300 | 125 | 300 |

Source: McIntyre and Lippman, Prosecutors and Early Disposition of Felony Cases, 56 American Bar Association Journal 1156 (1970).

Table 2-3

1976 Conviction Rates--California Counties
(Percentage convicted of those arrested)

| | Robbery | Burglary | Felony Assault |
|---|---|---|---|
| Alameda | 58 | 70 | 57 |
| Contra Costa | 64 | 64 | 44 |
| Fresno | 26 | 51 | 52 |
| Los Angeles | 50 | 60 | 49 |
| Orange | 63 | 67 | 60 |
| Sacramento | 50 | 71 | 65 |
| San Bernardino | 50 | 65 | 59 |
| San Diego | 65 | 68 | 57 |
| San Francisco | 36 | 57 | 44 |
| San Joaquin | 56 | 78 | 65 |
| San Mateo | 69 | 69 | 62 |
| Santa Barbara | 69 | 72 | 70 |
| Solano | 70 | 74 | 59 |
| Ventura | 65 | 77 | 69 |
| Yolo | 64 | 75 | 66 |
| 57 counties | 52 | 65 | 55 |

Source: California Bureau of Criminal Statistics, Criminal Justice Profile--1976.

that in some jurisdictions the district attorney screens a great many cases, while in others cases are primarily eliminated in preliminary hearings, grand jury proceedings or by dismissals. They also show considerable variation in the number of trials and the extent to which the trials conducted are jury or court trials.

These studies can also be used to evaluate the distinctive features of the system relative to convictions. Does the handling of a case by a single prosecutor from start to finish result in more convictions than handling in which different prosecutors handle different aspects of the case? What is the impact of early screening, career criminal prosecution or special victim-witness programs? Does team policing increase convictions? Are simpler procedures better than more complicated procedures?

The problem side of the cross-jurisdictional studies is the comparability of the information on which they are based. If similar information is collected and analyzed, this enhances the value of the findings and conclusions. If the information collected concerns apples in one jurisdiction and oranges in others, however, the value of the conclusions drawn may be highly questionable.

Before proceeding further it is appropriate therefore to examine in some detail two major problems bearing on the comparability of studies concerning case attrition. The first of these concerns counting and measurement. It essentially revolves around the question: Are studies counting the same thing in the same way in each jurisdiction. This issue is discussed in chapter 3. The second issue is an offshoot of the first. It concerns the use of arrests as the base from which calculations of case attrition are made. This issue is discussed in chapters 4 and 5.

# Chapter Three

## MEASUREMENT

"Measurement" is one of those dull words which suggest piles of dusty books and lots of hair-splitting and essentially boring analysis. Measurement is a critical step, however, in any scientific process, and many scientific advances have resulted from improvements in measurement methods. Precise weighing techniques aided Madame Curie in her discovery of radium and the Michleson-Morley measurements of the speed of light were important steps in the general acceptance of Einstein's theory of relativity. And while the Geiger counter, the Richter scale and carbon dating are near household terms, few outside the physical sciences are aware of the enormous precision required for new discoveries or the standards now being achieved in the finest work--clocks, for example, so exacting that they lose less than a second a millenium and measurements so fine that they are accurate to one tenth of a millionth of a billionth of an inch.

Relative to total expenditures in the field the emphasis to date on measurement in the field of criminal justice has been small. Much of what we know, however, is attributable to the efforts that have been made. Whatever their defects we would be lost today without crime statistics of the kind maintained in the Uniform Crime Reports and similar measures from other countries. And while the techniques are still in their infancy, it is already clear that the development of victim surveys and self-reporting techniques have greatly enhanced our knowledge and understanding.[1]

The purpose of this chapter is to discuss the problems of measuring case attrition. While many observers are agreed that attrition is a significant indicator of system performance, the problems of measuring attrition have received little modern attention.

There is of course a considerable literature concerning problems and issues of crime statistics more generally. This literature focuses heavily, however, on the problems of measuring the number and kind of crimes and to a lesser extent on the problems of measuring recidivism.[2]

The classic attrition studies of the twenties and thirties contain a good deal of detail about their individual methods but very little discussion of the problems of comparability. The more recent studies by Vera and INSLAW occasionally allude to problems but do not discuss them in detail.

The fact that these studies do not discuss measurement problems to any great extent does not mean that there are none,

however. The Cleveland survey had three separate tabulations, each with different attrition and conviction rates. The Bettman analysis showed a conviction rate of 37 to 41 percent, Smith and Ehrmann 31 to 44 percent,[3] and figures attributed to the police department 49 percent.[4] Some of these differences can be reconciled but not all.[5] Similar problems exist in some of the other surveys.

One of the more serious problems which runs through virtually all the surveys is the failure to track cases through the lower courts. In many of these surveys all or many of the cases disposed of in the lower courts are treated as attrition cases. It is possible, however, that many of these cases wound up as misdemeanor convictions and that the attrition rates are lower than those generally portrayed.[6]

The measurement of case attrition involves at least eight different problems: (1) selection of a base from which attrition may be measured, (2) determination of a unit for counting attrition, (3) labeling the unit to be counted, (4) number of charges, (5) the problem of counting related cases, (6) the handling of cases involving more than one jurisdiction, (7) the problem of defining attrition, and (8) the special problems involved in using arrest as a base for measurement. This last problem is discussed in chapters 4 and 5.

## A. The Base for Measuring Case Attrition

One way of viewing the criminal justice system is as a series of decision points. There is a crime. The victim must decide whether to report the crime to the police. The police must then decide whether to act on the report, and if they catch an offender whether to release the offender or refer him for prosecution. The prosecution must decide whether to file the case. The judge or the grand jury or both must decide whether to hold the offender for trial and the petit jury whether the defendant is guilty or not.

Each of these decision points and others constitute possible starting places for measuring case attrition. Each also is capable of producing vastly different results. In California, for example, in 1978 the case attrition rate for felony cases varied from 43 to 14 percent depending upon the base used for making the calculation, as shown in Table 3-1.

If the choice of a base or starting point makes so much difference in outcome, which of these various starting points is the proper place to begin? As with so many questions, the answer depends on the purpose for which the measurement is being made in the first place. If the purpose is to compare the standard used by trial juries with that used by grand juries, the starting point should probably be cases referred to the

Table 3-1

Felony Attrition Rates From Different System Points

California--1978

| Base | Attrition Rate |
|---|---|
| Arrests made by police | 43 |
| Arrests referred to prosecution | 37 |
| Cases filed by prosecution | 26 |
| Cases reaching upper court | 14 |
| Cases tried | 20 |

Source: California Bureau of Criminal Statistics, Adult Felony Arrest Dispositions in California--1978.

grand jury. If on the other hand the purpose is to assess the handling of cases by the judiciary, it may be more logical to begin with cases filed in court.

If case attrition is to be a measure of the performance of the system in handling defendants, its normal use, the starting point will be with arrests. The choice of arrest as the starting place for assessing total system performance is not without difficulty. It is, however, a clear choice. One virtue of arrest as a starting point is the broad picture which it gives. As it is earlier in the processing chain than any of the other feasible starting points, it gives more of the picture than any of the other possibilities. A second virtue is that noted by Thorsten Sellin who argued that the measures of crime closest to the crime itself were the most objective because they were least contaminated by acts of discretion and agency policy.[7]

By far the most persuasive reason for choosing arrest as the basic starting point are the near fatal defects of all the other possible starting places--at least for comparative purposes. The problem with starting points other than arrest for comparative purposes is that made by Professor Sellin--they are too affected by agency policy. As a result they may miss much of the action or create appearances which are unwarranted. In 1977, for example, the attrition rate for robbery in San Diego County, California was 51 percent if measured from the point

of arrest but only 17 percent if measured from the point of cases filed in court. In Riverside County, California the rate was 41 percent from the point of arrest (lower than San Diego) but 31 percent from the point of filing (higher than San Diego).[8] Which county had the higher attrition rate?

If rates were calculated only from cases filed in court, they would be very misleading as to overall system performance. They would suggest that San Diego was convicting a far greater percentage of defendants than Riverside (83 versus 69 percent). In fact, however, all that is happening is that San Diego has a very strict screening policy, which tends to weed weak cases out of the system at an early point. Riverside on the other hand files most cases and eliminates its weak cases later. Thus with the filed-in-court measure the timing of attrition affects the apparent rate of attrition.

Similar problems exist with most other starting points. Cases received by the prosecutor is probably a better measure than cases filed in court but fails to take into account cases released by the police. Since police agencies differ greatly in the extent to which they release defendants without referral to the prosecutor, this measure can also be very misleading. Cases indicted, cases going to trial and other similar measures are subject to even greater problems.

Worse yet are starting points which might be conceived earlier than arrest. While as a factual matter it is probably true that many potential defendants are contacted by the police prior to arrest and released without apprehension, these contacts are generally not systematically recorded and are probably incapable of precise definition.

B. Unit of Count

A second important issue in measuring attrition concerns the decision as to what is to be counted.[9] Obviously if attrition is to be compared from jurisdiction to jurisdiction, it is essential that the same thing be counted in each jurisdiction.

This principle is easier to state than to accomplish, however. The American system of criminal justice differs enormously from state to state and from locality to locality. Different jurisdictions have different crime patterns, different methods of interaction among the police, the prosecutor and the courts, and most importantly different methods of aggregating or separating cases.

A number of situations pose particular difficulties in establishing uniformity. One is that of dealing with multiple offenses. Some examples:

--A defendant is arrested and charged with a robbery which happened last week and a burglary which happened a year ago. Is this one case or two?

--A defendant who was arrested yesterday in the course of a robbery already has a previous robbery charge pending in court. Is this one case or two?

--A defendant who was arrested today in the course of a burglary assaulted the arresting officer after the arrest. One case or two?

--A defendant who was arrested today in the course of a burglary confessed to 13 other burglaries. The original burglary plus three of the other burglaries are charged by the prosecutor. Is this 14 cases, four cases or one case?

A second difficulty concerns alternate or duplicate charges. One common situation involving this problem is the apprehension of a person in possession of property that was taken in a recent burglary. This situation often occurs when a car is stopped and found to contain property taken several days previously in a burglary, but there is no other evidence to connect the driver to the burglary.

In this situation the most common charge is possession of stolen property. In many states, however, if the apprehension is close enough in time to the burglary, there is a presumption that the possessor is a thief.[10] Many police agencies and prosecutors will consequently charge burglary as the primary charge or will levy both charges.

To make matters even more complicated there are sharp differences between states in the law that applies to this situation. Some states, such as Florida, treat the burglary and the later possession of stolen property as separate offenses and permit defendants to be convicted and punished for both.[11] Other states, such as California, view the offenses essentially as one and permit punishment for either but not for both.[12] Even in California, however, both may be charged initially, and it is only at the sentencing stage that some election must be made as to the offense involved.[13]

From a measurement point of view the question which this situation raises is whether there is one case or two.

A similar but somewhat easier and less frequent situation concerns lesser included offenses. Occasionally for reasons which are not altogether clear either the police or the prosecutor will charge both robbery and theft for the taking of

property on a single occasion. Here the law is quite uniform throughout the various states that the defendant may only be punished for one of the charges.[14] Most counting systems are also quite clear that this situation should be considered as only one case. It is not always clear, however, that the clerks and other persons who actually produce the statistics in this situation do in fact treat this as a single situation.

Another problem of this type concerns the type of victim and multiple victims.

--A single offender holds up three people walking down the street and takes money from each, is apprehended and charged with three counts of robbery. One case or three?

--A single offender holds up a bank, puts 10 people up against the wall at gunpoint but takes money only from the bank. One case or 11?

--If the offender took money from the individual defendants as well as the bank is the count the same or different?

--The defendant burglarizes a house in which four college students live, taking property from each. Is this one case or four?

Another situation involves multiple acts against a single victim:

Defendant robs victim with a gun. Defendant gratuitously shoots victim in the foot. Is this one crime--a robbery--or two, a robbery and an assault?

Still another situation involves multiple offenders:

Two defendants rob one victim. Both are charged with the crime. Is this one case or two? Does it matter whether both defendants are charged in the same instrument or not?

These situations pose many difficulties because different jurisdictions and different counting systems resolve the issues in different ways. The result is that it is rare that attrition counts from one jurisdiction can be compared with those from another.

While not always used by existing systems, some rules are available for resolving some of these issues. The Uniform Crime Reports has a well-developed system for counting crimes which can be used to answer many of the questions concerning how arrests and the processing of defendants should be counted.[15] These rules are particularly helpful in determining how to

count cases involving multiple victims or multiple acts against the same victim. There are many important questions, however, which these rules do not resolve.

The Uniform Crime Reports counting rules could and to some extent have been used to solve other issues as well, including that of multiple charges. The UCR solution to this problem, however, contains a number of hidden pitfalls. There are two principal issues which relate to attrition--what to count and how to characterize the outcome.

The UCR solution and that adopted by PROMIS, the OBTS system, the Vera research, and others is to count all the charges levied as a result of the arrest of the defendant as one case and then to discuss the outcome in terms of whether there was a conviction on any charge in the case.[16]

In cases where there is only one arrest charge this "one-defendant-one-case" measure works well. In cases with more than one charge, however, it can be highly misleading. Because the Uniform Crime Reports and most other systems count multiple-charge cases according to the most serious charge, the single-unit measure may be particularly misleading in cases involving relatively serious crimes such as robbery, burglary, or felony assault.

Although virtually never discussed, there is an implicit assumption in statistics based on single-unit measures of overall case outcome that the ultimate case disposition has some relationship to the most serious charge. In many instances of course this assumption is warranted. If a defendant is arrested for armed robbery, charged with both robbery and a gun offense and enters a plea bargain in which the robbery charge is dropped on condition that the defendant plead guilty to the gun charge, the portrayal of one robbery case and one conviction given by the single unit counting system seems reasonable.

The single-unit method of counting seems less reasonable, however, in treating other very different situations in exactly the same way. If the defendant was initially arrested on a gun charge, had a robbery charge added because "the defendant looks something like the guy who robbed the bank last week," and then ultimately was convicted only of the gun offense, the system would count this as one "robbery" case and one conviction, and it would do this even if the district attorney refused to charge the robbery because the suspect had an iron-clad alibi for the robbery.

Such a characterization is misleading in two different ways. First, the case is really a gun case and it is misleading to call it a robbery case. Secondly, because of the artificial inflation to "robbery," the ultimate outcome appears to be a

charge reduction, while in fact it is an on-the-nose conviction.

This kind of situation can also occur in other ways. The defendant is arrested today for a robbery which just took place, and a charge is added to cover a burglary which he is suspected of doing three months ago. If the burglary charge eventually sticks but the robbery charge is dropped because the victim says the defendant is not the robber, the single unit system would nonetheless count the case as: one robbery case, one conviction, and in many counting schemes would probably imply a plea bargain to a lesser charge.

Including the UCR-PROMIS-OBTS system of counting there are at least nine methods of handling the multiple charging problem. Some of these methods are in actual use, while others are simply possibilities which exist. The nine systems are:

(1) Case--Begins with the charge or set of charges indicated at the time of arrest or of presentation to the prosecutor.[17]

(2) Most serious police charge--Begins with a single police charge such as robbery, burglary, etc. Outcomes measured in terms of whether convicted on the particular charge or any lesser included charge.

(3) Charge--Treats as a separate matter each individual police or prosecutor charge.[18]

(4) Charge--(radical)--Treats as a separate matter each individual police or prosecutor charge including charges for inconsistent crimes or lesser included crimes. Any counting system based on charge is in effect based on this method unless there is very strict control over the placing of police or prosecutor charges or some data transformation is undertaken before counts are made.

(5) Prosecutor count--Begins with the charges contained in a single count of a prosecutor charging instrument. As methods of charging vary, there is some variation in this counting method. In San Diego separate counts are generally filed for each robbery victim. Since the Uniform Crime Reports instruct the police to count the number of events rather than the number of victims, this means that there are many more counts of robbery than police charges of robbery. This method could be used as a way of measuring from arrest by relation back. Some prosecutor counting systems use this measure.

(6) Crime--Begins with a particular offense (a robbery or a burglary) rather than an offender or a charge.

Outcome measured in terms of whether the offender is convicted for this particular offense or in some instances whether the defendant is convicted for any of a related series of offenses. Used as a limited measure in some of the PROMIS studies.

(7) Case (second definition)--Begins with all charges arising out of a particular transaction, including charges against all co-defendants. Outcomes can be measured in several different ways. The most common are whether there is any conviction or the number of defendants convicted. This measure is used in some prosecutor offices and could be extended to arrest by relation back.

(8) Consolidated cases--Begins with either of the previous case definitions but includes any pending cases consolidated with the principal case. Outcomes measured as discussed in the previous case methods. Is used by some courts but is not a particularly important measure.

(9) Defendant--Particular defendants may be arrested more than once during particular time periods. The measure does not differ greatly from arrest for serious crimes such as robbery and burglary but differs significantly for offenses such as public drunkenness. Is sometimes used both for research and operational purposes. Outcomes can be measured in a variety of different ways.[19]

C. Labeling the Unit to be Counted

Related to the problems just discussed is that of labeling the unit to be counted. There are at least two separate issues involved in this problem: (1) how to achieve uniformity in the labels given particular offenses, and (2) how to achieve uniformity in the characterization of multiple events.

Characterization of Particular Offenses. At common law burglary involved breaking into and entering the house of another in the nighttime. In modern American law, however, burglary may be committed in the daytime, against commercial as well as residential buildings and in many jurisdictions without a breaking.[20] As a technical matter in the jurisdictions which do not require a breaking, the entry of a person into a retail store with the intent to commit a theft is a burglary.

In counting crimes reported to the police such an event would generally be counted as a larceny rather than a burglary--partly because Uniform Crime Report instructions so require and partly because it is usually not possible to tell

from the crime itself when the thief formed the intent to steal the item.[21]

If a thief is apprehended, however, it may be possible to determine when the intent was formed, as for example when the thief has been entering and leaving the store repeatedly with items or when the thief is wearing clothing which is specially outfitted to assist in the shoplifting. In this circumstance in some jurisdictions the thief may be arrested for burglary rather than for larceny. In other jurisdictions, however, burglary will never be charged in this situation and the crime will always be called larceny.

In theory the Uniform Crime Report rules would apply to this arrest situation just as they would to the report of the crime to the police. As a practical matter, however, the arrest is much more likely to be counted by the offense charged under state law. Since these laws differ from state to state, there is likely to be variation in the way the arrests are counted. Other problems of this kind exist.

Multiple Offenses. The problem of labeling multiple offenses has already been discussed to some degree. Generally if a single label is given to these offenses, it is the most serious charge according to some system of hierarchy. This method works reasonably well where the most serious charge is solid or the most solid charge but is misleading where it is a very weak charge. This problem is compounded by the fact that different jurisdictions appear to have different policies as to the number of charges entered at either the police or the prosecutorial level.

There are also problems involved in the hierarchy used to label cases. The UCR has a clearcut hierarchy that is used by many jurisdictions. For Part I offenses it runs as follows: homicide, forcible rape, robbery, aggravated assault, burglary, larceny, and auto theft.[22] The California Bureau of Criminal Statistics, however, follows a different hierarchy based on the California penalty structure.[23] This generally tracks the UCR scheme but, for example, places some aggravated assaults ahead of robberies. Consequently if a given case involves both a robbery and the right kind of aggravated assault, in California it would be considered an aggravated assault but in Florida a robbery.

An additional characterization issue concerns charges added after the initial arrest. If the defendant is arrested for a burglary in progress and while transporting him to jail the arresting officer comes to believe that the defendant is also guilty of an earlier robbery, most jurisdictions would include both crimes on the arrest report but would count the arrest for statistical purposes as a robbery.[24]

Suppose, however, that the robbery charge is not discovered until two or three weeks later while the burglary is pending trial. Should the case still be reclassified as a robbery? If the defendant is still in custody, some jurisdictions would reclassify the whole transaction as a robbery while others would not. If the defendant is not still in custody, however, in many jurisdictions he would be rearrested and the new arrest would be counted as an additional arrest.[25]

D. Number of Charges

The problem of counting multiple charge cases is aggravated by the fact that different jurisdictions follow radically different policies and customs as to the number of charges placed. It is theoretically possible of course that these differences reflect actual differences in behavior on the part of the person arrested. The indications, however, are that this is not a major part of the explanation. Observations in this study indicate, for example, that many cases are simply handled differently. This poses a serious issue as to how the counts should be made.

The same problem exists at the prosecutorial level. Jurisdictions appear to follow vastly different policies. In some, every possible charge is likely to be included, while in others all charges up to two or three are likely to be included but not any additional charges--the theory being that additional charges bring extra work but no additional penalty time.

Similar variations exist with respect to the number of charging documents. In some jurisdictions there are legal or policy considerations which mandate the use of as few charging documents as possible. Generally the consideration involved here is that related matters can be handled more efficiently if handled together. In other jurisdictions, however, there is a premium on filing charges as separate matters. The consideration here is that often budgets are tied to the number of cases.

The result of these considerations is that the number of charges vary enormously. In the recent Georgetown study of plea bargaining the average number of prosecutorial charges per case varied from around one in El Paso, Texas, to nearly four in Delaware County, Pennsylvania.[26]

E. The Problem of Counting Related Cases

In many jurisdictions it is quite common for one case or charge to be dropped in return for a plea to another charge or another case. There are also occasions in some jurisdictions in which cases are dismissed or not charged because actions such as probation or parole revocation are contemplated or have occurred. In those cases the defendant does not completely

escape some formal sanction and there is in at least that sense no attrition. Many existing studies and statistical systems, however, count these kinds of outcomes as attrition.[27] This would seem to be an error, at least for comparative purposes. While it is certainly reasonable to display the number of cases in which this kind of disposition occurs in order to show how cases are handled, the better approach to counting attrition would appear to be to omit these cases from the totals since the disposition is reported elsewhere. At a minimum in making comparisons all jurisdictions should be treated alike.

The Brosi study appears to involve a number of these issues. In this study New Orleans lists "prosecute other case" as a reason for 12 percent of the rejections at screening, while plea bargaining is listed as accounting for 22 percent of the attrition in Indianapolis and 8 percent in New Orleans.[28] No attrition in either Los Angeles or Cobb County is attributed to these reasons. It seems highly doubtful, however, that at least in Los Angeles there are no cases disposed of as a result of plea bargains in other cases. This suggests either that this category is not listed as a reason in the Los Angeles codes or that these cases have been removed from the Los Angeles figures.

Another problem concerns the handling of cases in jurisdictions where prosecutorial responsibility is split such as where felonies are prosecuted by one agency and misdemeanors by another. In such jurisdictions a case which is rejected for filing as a felony by one agency may be filed by the other agency as a misdemeanor and a conviction may result. If this case is treated statistically as a rejection based on the actions of the first agency, the picture presented can be very misleading. In the Brosi study, for example, the attrition rate shown for Los Angeles was 76 percent, the highest in the study.[29] The study noted the potential effect of referrals to city prosecutors and indicated that if all referrals were assumed to be convictions, the attrition rate would be 52 percent, a much lower figure. While the study indicated that the actual number of referral convictions was unknown, it is possible to obtain this figure from California OBTS data which includes the results of referrals to city prosecutors for roughly the same time period. This data shows an overall attrition rate for the county of around 50 percent, a rate much closer to the other jurisdictions reported.[30] A similar problem is involved in computing the attrition rate for New Orleans, the city with the study's second highest attrition rate.[31]

F. Multiple Jurisdictions

Criminals like other citizens in the United States are highly mobile. It is not uncommon therefore for a defendant who is suspected of a crime in one jurisdiction to be arrested in another. If the arrest is made specifically for the original

jurisdiction, these cases are not supposed to be counted for UCR purposes,[32] and presumably would not appear in any attrition accounting. Local counts sometimes include these arrests, however, and if attrition rates are calculated not by tracking specific cases but by comparing the number of arrests with the number of persons found guilty, they magnify the attrition rate. This may be a very common occurrence.[33]

A related situation involves transfer of the case to or from the federal authorities. For years bank robbery cases in which arrests were made by local police agencies were turned over to the federal authorities for prosecution because the penalties in the federal courts were stiffer. Generally these cases would be counted as arrests for the local police agency under UCR rules but would not be included in any local offender based tracking system counts.

Cases transferred from federal jurisdiction to local authorities would generally be counted in the same way as cases transferred from other states or local agencies. They typically are included in prosecutor counts if charged, but are not included in local offender based tracking systems which begin with arrest.

## G. Definition of Attrition

One problem relating to the definition of attrition has already been discussed. That is the situation involving multiple charges. If a defendant is charged with robbery and public drunkenness, the case would normally be counted as a robbery case under PROMIS and OBTS counting rules. If the defendant is convicted only on the drunkenness charge, should the case be counted as an attrition case or as a conviction case?

The answer generally given by PROMIS and OBTS is that the case should be considered a conviction case involving a charge reduction.[34] A more complicated solution would be to report multiple charge cases separately or to report the outcome in several different ways--to report both on the outcome of the robbery charges and the outcome of cases involving robbery charges, for example.

A different kind of problem is that of refiled cases. In almost all jurisdictions there are some cases in which the police or the prosecution will first decide to drop the case and then at some later time to reinstitute it. These cases present several counting and definition problems. Should they be counted as one case in which the outcome is that of the refiled case or should they be considered two cases in which the outcome of the first is a nonconviction and the second is the outcome of the refiled case?

Neither the PROMIS nor the OBTS instructions and studies discuss this problem. A telephone survey of 10 large California

counties, however, revealed that most counties count this kind of situation as two cases. This survey also revealed sharp differences in the extent of refiling. Most counties reported very low rates of refiling. Fresno County, however, reported a refiling rate of nearly 50 percent of all dismissed cases. In 1976 this county had a robbery attrition rate of over 75 percent--the highest of any county examined.

On a national basis the percentages of cases in which there are refilings can be expected to vary a great deal. State statutes differ considerably in the extent to which refilings are subject to speedy trial limitations or other restrictions.

Another issue concerns cases in which the disposition is not a clearcut conviction or a clearcut nonconviction (acquittal, dismissal, refusal to charge, etc.). Some dispositions involving this problem include determinations of mental incompetence, civil commitments for mental disorders, bail skips whose cases are held in abeyance pending reapprehension, and cases still pending. Quite a number of cases of this kind were included in the surveys of the twenties and thirties.[35]

These cases present two problems. One is simply that of finding out what happens when there is a disposition. A second is that many of these cases never receive any formal disposition. How should these cases be counted? The number of cases involved may differ markedly in different jurisdictions. In the New Jersey OBTS system, for example, over 15 percent of the 1974 felony arrests were still listed as pending as of January 1, 1977, and in some counties the percentage was considerably higher.[36] In this extreme situation it seems clear that the pending cases should at some point be counted as attrition cases. In the more normal situation the solution is not so clear. The pending cases should certainly be displayed but should probably be excluded from comparisons between jurisdictions based on single numbers.

Another category of cases in which there is no clearcut distinction between convictions and non-conviction cases are those which end with a disposition involving diversion or some other kind of pretrial intervention program.

Formally of course these are cases in which there is no conviction. As a practical matter, however, in some jurisdictions the cases are much the same as convictions. In Jacksonville, Florida, for example, there is rarely any doubt about the guilt of the defendants or the provability of the cases involved in this kind of disposition and the dispositions often are quite similar to the dispositions which might have been expected if the case had gone to court. In other jurisdictions, however, concern has sometimes been expressed that diversion is used primarily with defendants against whom there is no provable case. Obviously there is considerable room for variation from jurisdiction to jurisdiction.

Another category which could in theory be troublesome is that of probation and parole violations. In many jurisdictions one third or more of the felony defendants are on probation or parole. Often these defendants are subject to a great deal of additional punishment under the terms of their existing probation or parole. It is also sometimes easier or more expedient for the prosecution to bring about a probation or parole violation than to try to convict on the new case. Among other things the standard of proof required for a probation or parole violation is generally that of proof by a preponderance of the evidence rather than beyond a reasonable doubt.[37] In addition in many jurisdictions the courts have decided that illegally seized evidence may be introduced in a probation or parole violation proceeding even though this is constitutionally not permitted in a criminal trial.[38]

Chapter Four

# THE PROBLEM OF DEFINING ARREST

While it seems clear that for most purposes arrest is by far the best of the possible bases which might be used for measuring case attrition, the choice of arrest is not free of problems. There are at least five major difficulties. These are discussed in this chapter:

(1) Ambiguity in the legal definition of what constitutes an arrest.

(2) Uncertainty in the amount of evidence legally required to make an arrest.

(3) Major variations in the operational definition of arrest used for statistical purposes.

(4) Differences in the state laws governing arrests.

(5) Variation in the amount of evidence practically required for making arrests.

In recent years there has been a revival of interest in the studies of the twenties and thirties and a number of comparisons have been made between the attrition rates shown in these studies and those of today. This kind of comparison and other long-term comparisons are useful for the perspective they provide upon present practices and the clues they offer as to how the system can be changed and improved. Unfortunately there are at least three additional major difficulties in making historical comparisons of attrition rates:

(6) Changes in arrest practices and evidentiary standards due to increased police respect for law and the clarification of legal standards.

(7) Changes in legal standards brought about by the increasing dominance of federal law.

(8) Changes and clarifications in statistical reporting instructions.

These problems are discussed in chapter 5.

## A. Ambiguity in the Legal Definition of Arrest

The classic definition of arrest as the word is used in the criminal law is that stated by Blackstone:

> the apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime.[1]

A more modern definition is that contained in the American Law Institute's Restatement of Torts which says that an arrest is the "taking of another into the custody of the actor for the actual or purported purpose of bringing the other before a court, or of otherwise securing the administration of the law."[2]

While these definitions are helpful, neither the statutes of most states nor the United States Supreme Court has adopted these or any other authoritative definition of arrest.[3] Similarly neither of the two most recent model codes of criminal procedure--the American Law Institute's Model Code of Pre-Arraignment Procedure and the Uniform Rules of Criminal Procedure--even attempt to define the term "arrest."[4] To make matters even more confusing it is clear that the definitions given above are too narrow in at least one respect. They can be interpreted to mean that any forcible restraining of the person against his or her will constitutes an arrest. At least as far as federal constitutional principles are concerned, however, the United States Supreme Court indicated clearly in Terry v. Ohio that a brief stop for the purpose of investigating a crime is not an arrest.[5]

A recent text discusses the problem:

> The question of what constitutes an arrest is a difficult one. On one end of the spectrum, it seems apparent that detention accompanied by handcuffing, drawn guns, or words to the effect that one is under arrest qualifies as an "arrest" and thus requires probable cause. At the other end, a simple questioning on the street will often not rise to the level of an arrest. Somewhere in between lie investigative detentions at the stationhouse...[which the Supreme Court has said is close to a traditional arrest].[6]

A workable definition therefore might be that an arrest is any restraint of the person against the will and beyond that restraint required for a brief investigatory detention. While this definition has the virtue of encompassing most of the current case law, it leaves open the question of what constitutes a brief investigatory detention. This issue arises thousands of times daily on the streets of America, producing dozens of written decisions by the appellate courts every year, and hundreds, perhaps thousands, of unwritten orders by the trial courts. While these decisions tend to be along generally similar lines, they vary considerably from state to state and locality to locality.

B. Ambiguity in the Amount of Evidence Legally Required for Arrest

Since 1949 the minimum amount of evidence necessary to make an arrest in the United States has been governed by the

standards of the Fourth Amendment.[7] Generally this has been interpreted to mean that there must be "probable cause" in order to make an arrest. The police have probable cause to arrest where:

> the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the...[suspect] had committed or was committing an offense.[8]

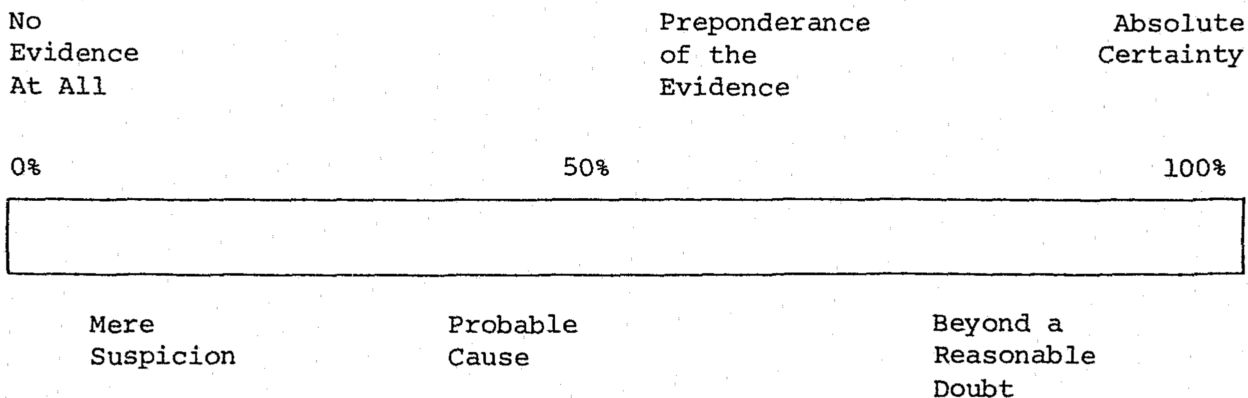
"Probable cause" can be contrasted with "mere suspicion," which the Court has said is not enough evidence to make an arrest. How much evidence is required to constitute probable cause? Figure 4-1 sets forth a scale going from no evidence at all to absolute certainty. The scale also indicates the standard required for conviction in criminal cases--"proof beyond a reasonable doubt"--and that required in civil cases--"proof by a preponderance of the evidence."

On this scale it is possible to indicate something of the relative position of "probable cause" but not its exact position. It is clear that probable cause is considerably less than "beyond a reasonable doubt" and considerably more than "mere suspicion." It is not at all clear, however, whether probable cause means "more likely than not" or whether it requires 51 percent certainty.

The United States Supreme Court has not ruled on the issue but nearly all authorities agree that the degree of certainty need not be 51 percent where there clearly was a crime and it is also clear that one of two or three suspects is the culprit.[9] In this instance there is probable cause as to all the suspects. In other situations there is considerable disagreement as to the appropriate standard. Professor LaFave, one

Figure 4-1

Standards of Proof



of the country's leading authorities on arrest, argues that probable cause requires a showing that the defendant has more likely than not committed a crime.[10] The American Law Institute's Model Code of Pre-Arraignment Procedure, however, rejects this position and suggests that it is not supported by authority.[11]

While rarely litigated in the abstract terms here discussed, these standards are obviously applied every day by thousands of police officers, prosecutors and judges. It would be surprising if their decisions were wholly uniform.

C. <u>Variations in the Statistical Definition of Arrest</u>

There are a number of indications in the literature that different agencies use different operational definitions in their statistical reporting of arrests. Perhaps the most thoroughly documented work is a study of juvenile arrests in Los Angeles County.

Through interviews with juvenile officers, police chiefs and the clerks actually responsible for filling out statistical forms, Klein, Rosenzweig and Bates reviewed practices and opinions in 49 separate departments.[12] Interviews with 77 juvenile officers yielded considerable confusion:

> In some instances an arrest was defined as a booking. In others it meant any detention at (or citation to) the station. In yet others it seemed to refer to any recorded contact between an officer and a juvenile. Finally, a few officers maintained that any street contact in which the juvenile was stopped for interrogation could constitute an arrest.[13]

Interviews with the chiefs of 47 surburban departments produced similarly varied responses. Twenty-one of the chiefs identified booking as the stage of processing which identifies the arrest. The remaining 26 chiefs, however, gave 10 different answers.

The departmental clerks were more consistent, with 80 percent using "brought to the station" as their operational criterion for inclusion in their statistical reports to the California Bureau of Criminal Statistics. Of the remaining nine departments six used booking as the criterion (thus omitting juveniles who were counseled at the station but released). Two departments had no consistent procedure and the ninth included field contacts in its arrest statistics.

More detailed questions indicated that even among the departments which used "brought to the station" there was some variation. Among other things if a juvenile was exonerated,

some departments did not count the arrest. A number of departments used multiple counting systems, one for reporting to the Bureau of Criminal Statistics and another for reporting to the Uniform Crime Reports or for local purposes. No department was found which used a definition as broad as the one promulgated by the Bureau of Criminal Statistics.

Counting juvenile arrests poses a number of special problems, and it is likely that there is more uniformity in the counting of adult arrests. There are indications nonetheless that these kinds of problems also exist with adult arrest counts.

Research by the Police Foundation during 1975-76 indicates considerable variation among a number of major city police agencies.[14] This research found that in the San Jose, California, department "arrest" is defined as charging:

> But in Denver...all persons brought to a station house were counted as arrested. Cincinnati was reported to make frequent use of "investigative detention," in which suspects were kept in custody at a police station for up to twenty-four hours without being counted as having been arrested. In Detroit, arresting patrol officers turn everything over to detectives at the station house, where the detectives...released ar estimated 50 percent of the persons arrested for major felony offenses because of weak evidence or other reasons; contrary to UCR instructions, the persons released were not counted as having been arrested.[15]

Based on its work the Police Foundation suggests that counts in different cities may be based on as many as five different points of reference:

(1) Contacting suspects on the street.

(2) Transporting suspects to a police station.

(3) Detaining a suspect at a police station.

(4) Booking a suspect at a police station.

(5) Filing charges against a suspect with a prosecutor.

What little information there is from other studies tends to support the view that there may be considerable variation in the ways arrests are counted. Writing in 1960, Ronald Beattie, the first Director of the California Bureau of Criminal Statistics and the co-author of the Oregon survey, pointed to the fact that collection of arrest data by the Uniform Crime Reports was relatively rew and not as complete as that for crimes reported to the police.[16] His assessment of national arrest reporting at that time concluded:

> [T]he national totals are quite meaningless. If they were published by state and city, undoubtedly there would be even greater inconsistencies here than have already been observed in the crime data.

He then discussed the procedures being followed by the California bureau which solved some of the problems but not all:

> However, this method does not overcome the deficiencies arising out of the fact that a large number of independent agencies reporting summary information simply cannot supply data that have the comparability and uniformity desired.[17]

Nor was he optimistic about the possibilities of using local departmental reports. "Nearly every police department publishes" such reports, he said, but "there is little uniformity to be found...and seldom can satisfactory comparisons be made...."[18]

While Beattie did not discuss the point, it is undoubtedly relevant to his conclusions that the California bureau had during the several previous years turned up such widespread discrepancies among California departments that the bureau's annual report was forced to caution that the later data was not comparable to the former.[19]

One of the more troubling parts of the Police Foundation preliminary findings is the description of unrecorded arrests. This practice has been confirmed in other studies and in the present project. A detailed study of arrest practices in Philadelphia in 1951 reported numerous "unrecorded" adult arrests.[20] In addition in the course of the present study a number of cases were observed in which defendants were clearly taken into custody but released without any recording as an arrest. In one such case a defendant was picked up on a burglary charge and brought to the police station for questioning. At the conclusion of the questioning, the police decided that this person was not the offender and released him from custody. No arrest report was completed.

In another jurisdiction observed in this study officials indicated that there were many defendants brought to the police station for questioning and released without recording as arrests. These officials also told about a nearby jurisdiction in which this practice was much more frequent, and where the purpose of the nonrecording was to make the department look good statistically with respect to convictions.

The most common point indicated in the literature and observed in this study as the event from which adult arrests

are counted is the booking. Even this, however, is not as uniform an event as might first be thought. In some jurisdictions booking occurs early, almost as soon as the defendant is brought to the station. In other agencies, however, intermediate steps may be required. The arresting officer in San Diego must secure the permission of the station commander before booking a defendant. In other agencies the case must be processed through the detective bureau before booking can take place. In one department booking is not considered to have occurred until the defendant is charged by the prosecutor.

Even where the focus is research alone, there are problems in defining the meaning of arrest. A 1967 study by Black and Reiss for the President's Crime Commission based on field observations of police behavior in Boston, Chicago, and Washington and using law students as observers illustrates the issue:

> Perhaps the greatest difficulty occurred in operationalizing the definition of an arrest. What the necessary and sufficient conditions are to comprise an arrest are far from clear. One criterion would be "booking" for an offense, but in the field setting observers were not always able to obtain that information....Operationally an arrest was said to occur in a field setting whenever an officer announced that the citizen was under arrest, he called for a police vehicle to transport the persons to the station, or he transported them in the vehicle to which he was assigned on a "take you in" announcement. It is known that some of these persons were subsequently released without booking.[21]

## Chapter Five

## THE LEGACY OF THE SUSPICION ARREST

> There is a striking similarity between the Wickersham Commission statistics for the 1920s and PROMIS statistics for the first six months of 1977. In 1977, too, about half of the cases were dropped after arrest but before plea or trial. [K. Brosi, A Cross-City Comparison of Felony Case Processing 3 (1979).]

In the course of human history sixty years is a very short time. In the history of police practices in the United States, however, the difference between 1920 and 1980 is more like the difference between the ancient Greeks and the astronauts.

Our knowledge of the twenties today tends to come from the movies--a rather comfortable image of flappers, speakeasies and colorful gangsters like Bonnie and Clyde. This picture is not inaccurate but there was a harsh underside to the period also.

It was in many respects a lawless time. It was the era of Al Capone, mobster killings which the authorities seemed unable to control and great concern about corruption and "the fix."[1] It was also an era in which there was a considerable outcry about police illegality. In 1931 a commission appointed by President Hoover--viewed by some as a law and order president--found it necessary to devote a whole volume of its final report to urging an end to such third degree tactics as rubber hoses and all night relay interrogation.[2]

In this era when there was a major crime it was common for police officials in many cities to order a "roundup" or a "dragnet," in which dozens or perhaps even more suspects would be forcibly brought to the police station for questioning and investigation. In such cases there often was very little if any evidence against some of the suspects. These arrests were consequently called "suspicion" arrests or arrests "for investigation" because they were based upon suspicion rather than probable cause. In many departments this form of arrest was not limited to the high visibility homicide or the spectacular crime but was also used as a matter of routine, everyday investigation.[3]

Neither this practice nor the third degree was invented in the twenties. Both were themselves remnants of still cruder and more widespread problems of an earlier day.[4] Even so the number of suspicion arrests which occurred seemed enormous. According to the chief of police thousands of defendants were booked in

St. Louis throughout the decade of the twenties "as suspected of robbery," and it is likely that there were many similar bookings for other crimes as well.[5] In Boston between 1928 and 1933 nearly 3,500 "suspicious persons" were arrested each year, and the 1932 Detroit police report showed 24,962 persons as "detained for investigation."[6]

The Wickersham Commission was also of the view that suspicion arrests were widespread.[7] While its report focused mainly on the problems of third degree interrogation tactics, it also reported the use of suspicion arrests in half a dozen cities. One roundup in Chicago was described which involved 2,000 persons all by itself.[8]

Ernest Hopkins, an investigator for the Commission, later elaborated on some of the evidence found in a book of his own. He thought Chicago, New York and St. Louis were the worst offenders but reported problems in many other cities, including Baltimore and Denver.[9]

These figures have great relevance to historical comparisons of case attrition rates. If this great number of suspicion arrests is included in the base from which the attrition studies of the twenties were made and if these figures indicate arrests made on less than probable cause, it is not surprising that the conviction rates were so low. Moreover, since there has been considerable pressure to eliminate the use of suspicion arrests based on less than probable cause during the intervening half century, these conditions would raise serious questions about the comparability of the older and the more current studies. Would increases in current conviction rates as compared with the earlier rates mean that the process of investigating and prosecuting criminals has been improved or simply that the number of arrests based on less than probable cause has declined?

The fact that these earlier arrests were called "suspicion arrests" does not necessarily mean, however, that they were based on less than probable cause. In many states there is nothing illegal about calling an arrest "on suspicion," if there is in fact probable cause for the arrest (just as there is nothing which makes an arrest lawful by saying that it is for "robbery" or "burglary" if there is in fact no probable cause).[10]

The question therefore is whether these arrests which were labeled "suspicion" were based on probable cause or not. It seems likely that in many departments they were not. In Dallas a newspaper expose in 1930, for example, found that there had been 8,526 persons booked "on suspicion" in 1929 and 1,873 in the first three months of 1930.[11] The civilian police commissioner was reported as thinking the practice lawful but unable

to find any legal authority to support his position. The chief of police had a clearer understanding: "It is not legal. But illegality is necessary to preserve legality."

Evidence from Chicago also supports the view that a great number of these arrests were based on less than probable cause. Hopkins quotes with approval an order issued by Acting Chicago Police Commissioner John Alcock on January 7, 1931:

> In looking over the figures of arrests and convictions during the past year I note an appalling difference between the number of persons arrested and the number convicted. This is not attributable in any great degree to the lack of co-operation by the prosecuting attorneys, judges, and juries. Anyone familiar with police methods heretofore prevailing knows that the reason for this was largely because most of the arrests were made without judgment or any regard for the sacredness of citizens' rights of liberty. No person should be arrested without good and sufficient reason and he should then be vigorously, intelligently, and fairly prosecuted....
>
> To correct this situation the following regulations will be strictly observed by all members of the department:
>
> The indiscriminate arrest of persons not suspected of a crime, who are able to give a good account of themselves and who are not guilty of any violation of any law or ordinance, will not be tolerated....
>
> Commanding officers will be held strictly accountable for the enforcement of this order, and they will file charges against any member violating same.[12]

Hopkins also reported the results of the first five months under the order, indicating that the number of arrests dropped from 77,241 in this period in 1930 to 52,963 in 1931. He also reported sizeable increases in the conviction rate in both the municipal and criminal courts.[13]

Was this great number of suspicion arrests included in the base used by the attrition studies of the twenties and thirties? In some instances it seems clear that it was not and that in fact the actual attrition rates were much greater than those shown. The best example is that of the Missouri survey. For St. Louis this survey showed an overall attrition rate for 1923-24 of about 70 percent--based on the number of arrest warrants requested.[14] While the survey did not go into detail, it indicated that the number of warrant requests was the same as the number of arrests.[15]

For robbery the rate was closer to 75 percent. The survey found this figure self-explanatory and requiring "little comment."[16] Nearly 10 years later, however, Gehlke and Sutherland in their article on crime in Recent Social Trends pointedly omitted the St. Louis arrest data from their calculations of the trends of crime. The reasons were outlined in a footnote:

> St. Louis is omitted because of the practice of the police of that city, as explained in a letter from Chief of Police J.A. Gerk, to book known police characters arrested in their daily round-ups "as suspected of robberies." The effect of this procedure is to inflate the totals of arrests for major offenses beyond all relation to the actual number of major crimes. In 1930, 13,979 prisoners were held in St. Louis on robbery charges. For the same year the number of robberies reported by the police as known to them was 1,965. The table below, showing reported arrests for robbery in St. Louis, probably shows the effect of this policy on the number of arrests for robbery.
>
> 1919.....1,402 
> 1920.....2,081 
> 1921.....5,279 
> 1922....17,449 
> 1923....11,340 
> 1925....14,638 
> 1930....13,979[17]

This footnote is interesting for two very different reasons. First, it shows that the number of arrests for robbery for 1923-24 was at least five times greater than the 2,075 robbery offenses which were reported in that year and nearly thirty times greater than the number of arrest warrants requested by the police. When matched with the survey data on sentences, the indication is that the attrition rate was more than 99 percent.[18]

The second interesting aspect of this footnote is that the chief statistician for the Missouri survey, as he had been for the Cleveland survey, was Professor Gehlke, the co-author of the footnote. Had he known about this great number of suspicion arrests in 1922-24 when the survey was underway and simply not said anything about them? Or was he ignorant of them until some later time such as 1930 when Hopkins published his observations about suspicion arrests in St. Louis?[19] And what of Raymond Moley? He too had been involved in both the Cleveland and the Missouri surveys and several others as well by 1928 when he published his book which equated arrest warrant requests in St. Louis with felony arrests.[20] Whatever the answer to these questions it seems clear that the Missouri survey at least did

not base its conclusions on the total number of arrests as far as St. Louis was concerned. The situation is less clear for a number of the other surveys.[21]

A. Decline in the Use of the Suspicion Arrest

One of the major differences between criminal justice in the time of the Cleveland survey and that of today is the sharp decline in the use of suspicion arrest.

Because of the scarcity of detailed information about the suspicion arrest both then and now it is not possible to chart the decline with any degree of precision. Some clues are provided, however, by the Uniform Crime Reports and by data from individual cities. By far the best information available concerns Washington, D.C., where the city commissioners appointed a blue ribbon committee in 1961 to study the practice.[22]

The committee found that suspicion arrests were widespread in the District of Columbia in 1961. Among other things it determined that these arrests were made almost wholly on suspicion of felony as opposed to misdemeanor offenses, that there were no clear standards as to when such arrests were to be made, and that suspicion arrests were made in all parts of the city, at all times of the year, and were not limited to the early hours of the morning or to periods of darkness. The percentage of women arrested was found to be less than that involved in other felony arrests but the racial percentages were similar to those for other felony arrests.

The committee's investigation indicated that relatively few suspicion arrests ever resulted in prosecutorial charges. Only 5.7 percent of those arrested on suspicion in 1960 and 1961 were charged, and not all of these were charged with the offense originally suspected.

The committee also evaluated over 900 cases from one precinct to determine the extent to which there was probable cause for the arrests. This evaluation indicated that in 1960 and 1961 probable cause was present in only 52 percent of the suspicion arrests.

Despite the problems found the committee report also showed a sharp decline in the use of the suspicion arrest. It found that in 1941 such arrests had accounted for nearly two-thirds of all felony arrests in the city, but that by 1961 the percentage had dropped to around one-third, as shown in Table 5-1.

Table 5-1

Arrests for "Suspicion" as Percentage of Total Arrests in Connection With Felonies

| Year | Felony Arrests (Including "Suspicion" Arrests) | Arrests for "Suspicion" | Percentage |
|---|---|---|---|
| 1941 | 16,558 | 11,215 | 67 |
| 1946 | 23,553 | 15,691 | 66 |
| 1951 | 16,613 | 5,128 | 31 |
| 1956 | 19,594 | 8,180 | 42 |
| 1957 | 17,716 | 7,562 | 43 |
| 1958 | 17,290 | 7,072 | 41 |
| 1959 | 16,489 | 6,676 | 40 |
| 1960 | 16,398 | 6,437 | 40 |
| 1961 | 15,747 | 5,524 | 36 |

Source: District of Columbia Commissioners' Committee on Police Arrests for Investigation, Report 11 (July 1962).

This decline can also be seen in the Uniform Crime Reports. The problem of suspicion arrests was clearly understood by the Committee of the International Association of Chiefs of Police that designed the Uniform Crime Reports. In its final report in 1929 the Committee noted that while "suspicion" was not an offense, it was "the ground for many arrests" in those jurisdictions where the law permitted.[23] The report consequently recommended that "suspicion" arrests be listed as a separate category in the list of crimes that has subsequently become Part II of the Uniform Crime Reports.

Statistics concerning suspicion arrests began to appear almost immediately in local police reports. They were not included when the FBI began to publish the Uniform Crime Reports in 1930, however, because the early issues contained no arrest statistics. This changed in 1932 when information about arrests based on fingerprint records submitted to the Bureau began to be included in the reports.[24] These tabulations do not cover all arrests because fingerprint cards often were not submitted for many arrestees, particularly those for minor offenses. The first tabulations showed that 15.6 percent of all fingerprint cards received concerned persons arrested on suspicion or for investigation. The number was larger than the number of cards received for either robbery or burglary arrests and about the same as the two combined.

By 1951 when tabulation on the basis of fingerprint cards ceased suspicion arrests had dropped to about 5 percent of the total cards submitted but was still a major category.[25]

In 1952 the Bureau began to collect arrest data directly from police agencies. Unfortunately the jurisdictions submitting information represented only about a seventh of the nation's population. This information showed a total of 44,350 suspicion arrests, about 3.5 percent of the total number of arrests in these jurisdictions. If projected on a national basis, the total would have been over 300,000 suspicion arrests. Projected on a national basis the number of suspicion arrests almost immediately began to go down--slowly at first but then at a more rapid rate. In 1981 the total stood at 12,879--an all-time low and less than 0.2 percent of the total number of arrests nationally.[26]

At first blush it might be thought that these figures define the suspicion arrest problem nationally, particularly since the departmental reports upon which they are based do seem to do so for some of the jurisdictions already discussed. The issue is not so simple, however. Some departments seem to have reported large numbers of suspicion arrests as ordinary arrests, others appear to have reported ordinary arrests as suspicion arrests and still other agencies appear to have omitted reporting suspicion arrests altogether.

Many of these problems are undoubtedly due to a failure on the part of reporting agencies to follow the UCR guidelines. The guidelines themselves, however, are far from clear. Read closely they practically invite confusion.

"Arrest" for UCR purposes was originally defined as:

> the taking of a person into custody in order that he may be held to answer for a public offense. Arrest must be carefully distinguished from a court summons and a police notice or citation.[27]

"Persons charged" were defined as:

> all persons within the police jurisdiction against whom criminal charges are brought. These charges may be made after arrest, summons, or notice (citation).

"Suspicion" arrests for the purpose of counting Part II arrests were defined as follows:

> After examination by the police, the prisoner is either formally charged or released. Those formally charged are entered in one of the above offense classes. This class is limited to "suspicion" arrests which are released by the police.[28]

At the risk of being tiresome a few of the more important questions which these definitions raise are:

--Whether suspicion arrests are included within the overall definition of arrest? If not, and it would appear that that is the correct answer at least in a linguistic sense, does this give support to those agencies which did not report suspicion arrests in any way?

--How should the ambiguities in the "arrest" and "persons charged" definitions be resolved? Does "charge" mean a filing in court, a presentation to the prosecutor for a charging decision or simply and quite differently the fixing of a label of some specific crime by the police, thus distinguishing the case of a suspicion arrest which is defined as involving no specific offense.[29]

--If dragnet arrests are made for dozens of people in connection with a specific crime, how should these be classified in light of the requirement that suspicion arrests not be for a specific crime? Presumably these should not be included as arrests because the persons involved are not being held to answer for public offenses. Does this then mean that these arrests should not be recorded at all?

These problems indicate that the Uniform Crime Report figures on suspicion arrests cannot be taken too literally as defining either the extent of suspicion arrests at the outset or of the practice today. The trend which these figures indicate, however, is probably a passable indicator of the broad outline of the decline in use of the suspicion arrest.

B. <u>Present Day Significance</u>

The relevance of the suspicion arrest to historical comparisons of attrition is extremely clear. These comparisons can only be fully accurate when suspicion arrests are included in the totals or some method of standardizing arrests is used. The relevance to present day analyses of attrition is less clear. Without a doubt there has been a decline in the number of arrests called "suspicion arrests." The indications are also that there has been a huge decline in the actual number of suspicion arrests. Because we have very few studies of the decision to arrest and virtually none which discuss the problem of whether there was probable cause for the arrest to take place, however, we do not know to what extent vestiges of past practices remain. Given the difficulty of changing established organizational behavior it would be surprising if some residue did not exist.

A related problem is that of arrest record keeping. We know that the statistical systems under which present day counts of arrests are made are by and large those which were set up at the time the Uniform Crime Reports was created, and that these were the systems which had difficulty coping with the problem of the suspicion arrest. And while it is clear that there have been a number of improvements over the years in these record keeping systems and in the instructions under which they operate, some of the original problems and ambiguities still seem to be present at least in the instructions.

## Chapter Six

# ATTRITION IN JACKSONVILLE AND SAN DIEGO

Thus far this study has been an analysis of the concept of attrition and the problems of measuring attrition. This chapter begins an analysis of the amount and reasons for attrition based on information gathered from field work in Jacksonville, Florida and San Diego, California.

This study is based on a review of prior research, letter and phone contacts with more than a hundred jurisdictions, brief visits to 10 sites, detailed observations in four locations, and extensive analysis of case records in two jurisdictions--Jacksonville and San Diego. The statistical analysis is based on robbery, burglary, and felony assault cases, categories chosen as being among the most serious and most frequent felony cases. The samples were drawn from arrests during 1978 and 1979, and are described in more detail in Appendix A.

Jacksonville and San Diego were chosen as sites for study because the police and prosecuting agencies in these jurisdictions each have well deserved reputations for excellence and because they represent two very different systems for handling criminal cases. In making these selections dozens of other jurisdictions were contacted by letter or phone and eight other sites were visited. In order to provide a basis for comparison detailed observations were made in two of these jurisdictions--Fort Worth, Texas and Oakland, California.

One of the most persistent complaints about criminal justice in America today is the complexity and delay built into our system of criminal procedure. These factors are felt by many to cause a significant amount of attrition and to weaken and undermine the deterrent effect of the convictions and sentences which are entered. Hardly a day goes by without some major call for better, more streamlined procedures in order to cope with the increasing tide of crime.

In this context the Florida system of court organization and criminal procedure stands almost alone in its apparent simplicity and capability for fast action. Unlike most American jurisdictions which process felony cases through two or even three layers of courts Florida relies primarily on one.

Even more significant is the procedure followed once a case gets to court. There the case goes through a minimum of interim procedures before being ready for trial. Except for death penalty cases neither a preliminary hearing nor an indictment by the grand jury is required, whereas almost all

other American jurisdictions require one or both of these procedures. The questions which naturally arise are whether this simplicity actually makes any difference, and if so, whether defendants are fairly treated in the process. While answering these questions is not the major purpose of this study, it is clear that the Florida system represents one major, even if a somewhat unique, approach to American criminal justice.

The California system represents a second major approach to criminal justice problems. While not as simple as the Florida approach, it is less complicated than a number of other systems such as that in New York, as shown in Figure 6-1. The California system involves a preliminary hearing and processing through a two-level court system, but does not involve a grand jury hearing or a lot of unnecessary appearances in court.

## A. Jacksonville

Named for Andrew Jackson who fought Indians in the area before the War of 1812, Jacksonville is located on the St. Johns River in Northern Florida. In 1968 the city merged with

Figure 6-1

Principal Stages of a Felony Case

| Florida | California | New York |
|---|---|---|
| Arrest | Arrest | Arrest |
| Complaint | Complaint | Complaint |
| First appearance in court | First appearance in court | First appearance in court |
| Depositions | Preliminary hearing | Preliminary hearing |
| Pretrial conference | Information | Presentation to grand jury |
| Plea or trial | Arraignment in upper court | Indictment |
| | Pretrial conference | Arraignment in upper court |
| | Plea or trial | Pretrial conference |
| | | Plea or trial |

Duval County to form a consolidated city-county government encompassing approximately 550 square miles. The principal industries are insurance, shipping and some light manufacturing. The home of the Gator Bowl and several military bases, Jacksonville is the second largest city in Florida and has grown rapidly in recent years. In 1980 the population was 75 percent white, 25 percent black, and totaled 570,000. There is no significant Cuban or other Hispanic population.

Police responsibilities in Jacksonville are handled by the Duval County Sheriff's Office. This agency is a part of the combined city-county government and is headed by an elected sheriff. Housed in a modern, efficient building in downtown Jacksonville, this agency in 1980 had approximately 1,000 sworn officers and 1,200 total employees.

The prosecutorial responsibility in Jacksonville is handled by the State's Attorney for the Third Florida Circuit. This agency has responsibility both for Duval County and for two smaller adjacent counties. Formally it is an agency of state government and receives its funds from the state administration. The state's attorney is a locally elected official, however, and the office operates in much the same fashion as local prosecutor's offices in other jurisdictions. In 1980 the office had approximately 55 attorneys and 80 total employees.

B. San Diego

San Diego is the southernmost city in California and is at points contiguous with the Mexican border. Long in the shadow of Los Angeles, its 875,000 residents now make it the second largest city in California and the tenth largest city in the nation. It has a considerable amount of aerospace industry and some of the most important military installations on the west coast. In 1980 the population was approximately 70 percent white, 10 percent black, 15 percent Hispanic, and 5 percent other.

Police responsibilities in San Diego are handled by the San Diego Police Department, an agency of city government. The department is headed by a chief who is appointed by the mayor and confirmed by the city council. In 1980 the department had 1,400 sworn officers and 1,700 total employees.

Prosecutorial responsibilities are handled by the San Diego County District Attorney. This office is an agency of county government and is headed by an elected district attorney. About 50 percent of the total population served by the office lies in the city of San Diego. In 1980 the office had about 130 attorneys and 400 total employees.

City ordinance violations and some misdemeanors are prosecuted in San Diego by the City Attorney's Office. This

office has both civil and criminal responsibilities. In 1980 out of a total of 80 attorneys approximately 20 devoted their attention to criminal matters.

## C. Other Criminal Justice System Similarities and Differences

The criminal justice systems in the two jurisdictions have many similarities:

--Both the police and the prosecutor in the two jurisdictions are very management minded. Each agency devotes considerable attention to planning and is characterized by a high degree of management control and direction.

--The police in both jurisdictions emphasize the patrol function and work actively toward its improvement.

--Both prosecutors eliminate weak cases through rigorous early screening.

There are also important differences:

--Jacksonville uses the Indianapolis plan under which police officers are allowed to use their police vehicles during off duty hours on the theory that this gives a greater amount of police visibility. San Diego uses the more conventional system in which cars are manned solely by on-duty officers.

--Jacksonville uses a system of vertical prosecution in which the attorney who files the case is responsible for handling it to disposition. San Diego on the other hand relies on a horizontal system of prosecution in which cases are passed from one group of attorneys to another. In this system charging decisions are made by specialists in charging and felony cases are tried by highly experienced teams of trial attorneys.

--Jacksonville prosecutors are primarily young attorneys seeking trial experience. San Diego prosecutors are more experienced and are largely career attorneys. They average around seven years in the office.

--While both offices have special career criminal prosecution units, San Diego has invested more heavily in this activity. Its unit has the reputation of being one of the best in the country.

## D. The Study

The study focuses on robbery, burglary and felony assault cases. Because the definition of burglary differs greatly from

jurisdiction to jurisdiction the study emphasizes burglaries that involve breaking into homes and buildings. Other offenses such as intentional shoplifting and the entering of locked cars which are classified as burglaries in some states but not others are counted but are not analyzed in detail.

Particular emphasis is also given to stranger-to-stranger assaults, a category which has received much less study than assaults involving relatives, friends and acquaintances.

Chapter 7 discusses police processing of cases in the two cities, chapters 8 and 9 prosecution and court handling and chapter 10 the counting of attrition in Jacksonville and San Diego. Succeeding chapters concern individual case characteristics as they bear on attrition, a more detailed analysis of evidentiary characteristics, an analysis of factors considered in conjunction with each other, an analysis of the reasons for attrition arrest policy in the two jurisdictions, and an analysis of the extent to which system performance might be improved.

## Chapter Seven

# POLICE PROCESSING IN TWO CITIES

The police are organized primarily to prevent crime, maintain the peace, apprehend criminals and perform certain essential community services. Once a crime has occurred the major focus is on apprehending the criminal. If successful in this, the police also generally bear the responsibility for documenting the case and presenting it to the prosecutor for further action.

This chapter primarily describes what happens after an arrest is made in Jacksonville and San Diego. Because what happens after arrest depends partly on how the arrest was made, however, the chapter necessarily discusses this also.

It was once widely thought that the most arrests were made by detectives, following careful police investigation a la Sherlock Holmes or television crime portrayals. Modern research indicates, however, that for many of the more common crimes most arrests are made soon after the crime and at or near its scene, and that in most police departments arrests of this kind are made largely by patrol officers. Even in these departments some crimes are of course solved by detectives following an investigation. In such situations the arrest may be made by the investigator who solved the case or by patrol officers who have been alerted to look for the particular person.

The role that detectives play in apprehension efforts varies a great deal. In some departments investigative units have no patrol function and limit their activity to trying to solve crimes in which no immediate apprehension has been made or processing cases in which an arrest has been made by a patrol officer. In other police departments investigative units take a more active apprehension role. Generally they still follow up crimes in which no immediate apprehension has been made but are also expected to conduct a specialized kind of patrol. The robbery squad seeks to prevent robberies or apprehend robbers and the burglary squad to prevent or apprehend burglars, for example. In departments of this kind some of the on-the-spot arrests are made by investigators rather than patrol officers.

Just as departments differ in the way that they make arrests they also differ greatly in the way they handle cases once an arrest has been made. In some the arresting officer is responsible for documenting the case and presenting it to the prosecutor, while in others the arresting officer turns the case over to the detectives for further handling. In still others the arresting officer handles some cases and the detectives others. In some departments patrol officers are

expected to give Miranda warnings and question arrestees, while in others they are instructed to leave this for the detectives. Detectives in some departments are on duty around the clock and are thus available to pick up on cases as soon as an arrest has been made; in other departments they work much more restricted schedules and necessarily begin work on the cases the next day or even later.

There are also important variations in the way that the police transfer cases to the prosecutor. Often these variations are due in part to the local law governing how quickly a defendant must be brought into court. In jurisdictions that require the defendant to be brought before the magistrate immediately presentations to the prosecutor are often oral rather than written, as this is quicker. In jurisdictions where charging or appearance in court is delayed, the police sometimes present the case to the prosecutor through written reports without any personal contact. More frequently, however, the police appear in person with their reports. In a few jurisdictions the police are responsible for the filing decision themselves and make no presentation of the case to the prosecutor until later in the proceeding.

## A. Jacksonville

Leaving aside jail and other correctional personnel the majority of the 1,000 sworn officers in the Duval County Sheriff's Office is assigned to patrol, which bears the brunt of the effort to combat crime and protect the public. The investigative division consists of about 100 officers and is divided into eight squads with responsibilities for particular crimes--homicide, assaults and rape, robbery, burglary, theft, auto theft, traffic homicide, forgery and pawnshops and youth investigations. Narcotics and vice are in another division. Patrol units are divided into regional commands but the detective units operate as central headquarters units.

The department emphasizes the patrol function and has made a strong effort to upgrade this even further in recent years. For some years it has employed the Indianapolis plan which allows officers to use departmental cars off duty as a means of increasing surveillance and police presence. The department also has an imaginative and well developed program for providing localized crime information to patrol officers. In recent years the department has reduced the size of its detective division and assigned the follow-up investigation of some of the more minor crimes to patrol officers.

The investigative division is responsible for follow-up investigations of the more serious crimes and for specialized patrol. Different squads work different hours but most have

investigators on duty from 6 a.m. to midnight seven days a week and duty officers who can be called at other hours. Follow-up investigations are done in all hours, but the tendency is for these to be concentrated in the day shifts and for the evening shifts to be devoted to specialized patrol efforts.

Each squad is managed separately and functions somewhat differently. The robbery squad generally operates in teams of two investigators, while homicide and burglary generally operate as individual investigators.

The policy is for the homicide and rape squad to go to the scene of every homicide and rape but to leave the preliminary investigation of assault cases to patrol. The robbery squad does not go to the scene of every robbery but departmental policy does require it to go to many, including all those when a suspect has been apprehended or identified and:

> all business and bank robberies, [other robberies] when requested by a uniform officer, when a victim or witness has been seriously injured...when the victims have been tied up or incapacitated for a long period of time, when large sums of money or property have been taken, when the robbery occurs inside a residence, motel, or hotel where a transient victim is involved, when the facts of the case indicate successful follow-up investigation can be conducted immediately, [or] when directed by a supervisor. The squad is also expected to respond to all other robberies whenever possible.

Burglary detectives do not routinely go to burglary scenes but often do go to scenes during their specialized patrol operations. This is particularly true when the burglary is reported as in progress or very recent. A significant percentage of the departmental arrests for some offenses, including robbery, are made by the detectives as a result of their specialized patrol activity.

Procedure After Arrest. When an arrest is made, the procedure is somewhat eclectic. If the arrest is made by a patrol officer, he will bring the arrestee to the detectives for further processing if he thinks anything is to be gained from this. If he decides that nothing is to be gained by turning the case over to the detectives, however, he books the arrestee into the jail himself. Generally if the case is turned over to the detectives or the arrest is made by the detectives, the detectives will be responsible for presenting the case to the prosecutor. If the arrest is made by patrol, however, and the arrestee is not immediately turned over to the detectives, often the patrol officer will make the presentation to the prosecutor. Local policy requires that all cases in which an

arrest is made be presented to the prosecutor, even if it later becomes apparent that there is something wrong with the arrest or the case.

Whether the arrestee is initially turned over to the detectives or not, the case is eventually assigned to a detective who is expected to insure that the case has been presented to the prosecutor and to complete a supplemental investigation report within seven days.

Patrol officers are trained in the giving of Miranda warnings and often question suspects without the involvement of detectives. A high percentage of suspects--particularly in the more serious crimes--are turned over to the detectives, however, for further questioning. The detectives also question some suspects as part of their supplemental investigation.

If at all possible, the detectives attempt to conduct any questioning they wish to do before the arrestee is booked into the jail. They believe that once an arrestee has been booked into the jail, the other inmates ("jail house lawyers") will persuade him not to talk and that they will not get good information. They are also concerned about an "advice notice" distributed by the public defender's office at the time of booking into the jail which warns inmates not to talk. Generally therefore they bring suspects back to the police station, conduct whatever questioning they choose, and then book the arrestee into the jail. Because of these concerns the department, subsequent to the study, directed that all felony suspects be turned over to the detectives for questioning prior to booking.

In addition to questioning the suspect the detectives normally reinterview the victim and any witnesses as part of their supplemental investigation.

B. San Diego

The field staff of the San Diego Police Department is assigned to five regional commands, each of which contains both patrol and investigative units. A few investigative units such as the robbery squad operate on a city-wide basis.

The San Diego department also emphasizes its patrol force. By far the largest portion of the force is allocated to patrol units, and the department has a long history of innovation and attention to patrol management and tactics. It was one of the early departments to invest heavily in formalized field identification procedures and more recently has been the site of several important Police Foundation studies concerning patrol techniques. One study found that one-car units were as safe as two-car units and that they were more effective. Another concerned the use of community resources.

Investigative units in San Diego are organized into squads with offense specialities--homicide, sex and assault, robbery, and burglary, for example. These squads are responsible for all follow-up investigations and some conduct specialized patrol operations. As in Jacksonville each squad operates somewhat differently. The homicide and sex crimes squad goes to the scene of all homicides and rapes and the robbery squad responds to robbery scenes as often as possible. The department is particularly concerned that robbery detectives be present whenever possible to insure that "curbstone lineups"--a procedure involving an on-the-spot presentation of a suspect arrested shortly after a crime to the victim--be conducted according to the proper legal rules. The burglary squads occasionally respond to burglary scenes but do not do so on a regular basis. The robbery squad conducts specialized patrol operations but the burglary squad generally does not. The homicide and sex squad and the robbery squad in the central district are organized to provide 6 a.m. to midnight coverage five days a week and one shift on weekends. The central district burglary squads and squads in the outlying districts provide seven-day-a-week coverage but generally on an 8-12 hour rather than a 16-hour-a-day basis.

Procedure After Arrest. When an arrest is made by a patrol officer, the procedure is generally to bring the arrestee back to the station. In the central district this is a one-story Spanish-style building surrounding a large courtyard. Generally the patrol officer drives his car into the courtyard and leaves the arrestee locked in the car while he prepares the paperwork on the case. If two or more persons were arrested at the same time, sometimes they will be left in the car together and their conversation surreptitiously recorded for later use as evidence.

After completing his arrest report, the officer first sees the "station commander," usually a sergeant, and gets approval for the arrest. This procedure involves showing the station commander the arrest report and telling him the basis for the arrest. The station commander may ask a question or two to establish the elements of the crime but generally the procedure is fairly perfunctory and is completed within two or three minutes.

The officer then checks the defendant's criminal record and includes this along with other information in his report. Many officers also check to see if this suspect is wanted for other crimes. If they believe that he is, they enter this also on the arrest report.

If the arrest is for robbery or burglary and the appropriate detective squad is on duty, the officer will then turn

the defendant over to the detectives for interrogation. The detectives then interview the suspect and after they are finished will generally turn him back over to the arresting officer to be transported to the jail. This procedure will generally be followed even if the patrol officer has already interrogated the arrestee. Patrol officers are not told to refrain from questioning suspects and are expected to use their judgment as to how best to proceed.

After the arresting officer has completed his paperwork, it goes to the appropriate detective squad and is assigned to a particular investigator. If the detectives have already interrogated the defendant, normally the assignment will go to the detective who conducted the interrogation.

Upon receiving the assignment the detective will generally attempt to review all the facts in the case. He will try to see or talk to the victim on the phone and will do the same for any witnesses indicated in the arrest report or other available reports. If the arrestee has not been interrogated, he will also generally attempt to interrogate the defendant. This involves going to the jail which is run by the sheriff's office. This is a very overcrowded building and the interrogating facilities are poor. Cooperation between the agencies is adequate but generally the procedures for interrogation are cumbersome and the results are often unsatisfactory.

If the case is a robbery case or is some other kind of case dependent upon an identification, the detective may conduct a lineup or seek to confirm the already existing identification with a photo lineup.

Once he has thoroughly reviewed the case, he must decide whether it should be presented to the district attorney as a felony, to the city attorney as a misdemeanor, or whether it should be dropped and the defendant released. While the police in Jacksonville are required to present every felony arrest to the prosecutor, the San Diego police are not. They are authorized by law to release arrestees whenever satisfied "that there are insufficient grounds for making a criminal complaint," and many arrestees are in fact released by the detectives. Generally such releases are made quickly, with a brief notation as to the reason for the release ("insufficient evidence"). The decision whether to prosecute must be made within a day or two, as an arrestee cannot be held longer than 48 hours under California law without being charged and brought to court. As a practical matter, this means that some cases must be taken to the prosecutor before the investigator is thoroughly familiar with the case.

Chapter Eight

# PROSECUTION IN JACKSONVILLE

Prosecutorial organization and methods differ widely in the United States. In the more modern and progressive jurisdictions prosecutors review cases brought to them by the police and decide which cases warrant the expense and effort to prosecute. In other jurisdictions the prosecutor simply files whatever cases the police bring forward, while in still other jurisdictions the police file the complaint and the prosecutor picks up the case at a later point.

Both Jacksonville and San Diego fall into the more modern group of jurisdictions which review cases before filing. Even within this group, however, there is a wide variety of methods and policies.

In Jacksonville there are six principal stages of processing for felony cases: (1) charging, (2) bail setting and other preliminary matters, (3) depositions, (4) pretrial conference, (5) trial, and (6) sentencing. As a practical matter most cases are either dropped at the charging stage or become the subject of a negotiated plea at the pretrial conference.

## A. Organization of the State's Attorney's Office

The Jacksonville office of the state's attorney (the third Florida circuit) is built around the concept of individual attorney responsibility. The basic principle is one case, one attorney. The attorney initially assigned makes the charging decision and handles the case to conclusion. In organizational jargon the office is organized "vertically."

Office policy seeks to concentrate resources on the most winnable cases and to force decisions about cases to be made as early as possible. Attorneys are consequently encouraged to decline charging on weak cases, are expected to gain a high rate of favorable outcomes in the cases charged, and an even higher rate on cases that actually go to trial. The theory is that losing cases should be dumped as soon as possible in order to conserve prosecutorial and court time. Supervisors keep careful statistical records on attorney performance and use these in making promotions and future assignments.

In this system cases not charged are generally viewed neutrally, cases charged but later dropped are viewed as minor black marks, while cases taken to trial and lost are viewed as more serious black marks.

The office is divided into three sections. The county court section handles misdemeanors. The circuit court section handles felonies, and special prosecutions handles complicated matters requiring extensive investigation such as organized crime or white collar crime. Junior attorneys start out in the county court section and move into the circuit court as they acquire experience and polish. Except for a few key managers, turnover is fairly rapid, as salaries are not competitive with the private sector. Generally the attorneys in the circuit court section have been in the office for a year or two.

The internal organization of the sections is also built around the structure of the courts. The circuit court, which handles virtually all felony matters, operates on an individual calendar basis. That is, cases are assigned to a particular judge at the time of filing and remain his responsibility until a disposition is reached.

At the time of the study there were four circuit court judges handling criminal matters and four principal divisions within the circuit court section of the state's attorney's office, one to work with each judge. Each of these divisions contains a supervisor and two attorneys. There were also two special divisions--one designed to work with violent crimes and one with recidivistic property offenders.

B. Charging

In felony cases prosecution in Jacksonville generally begins with a charging decision by the state's attorney's office. The process leading to this decision is normally initiated by the arresting officer or the police investigator assigned to the case.

If the arrest is made by patrol and the case is fairly open and shut, the arresting officer may place the suspect in jail and take the papers directly to the prosecutor. Alternatively, he may turn the suspect or the case over to the detectives and they will carry the papers--generally an arrest report and an offense report--to the prosecutor. Upon arrival at the state's attorney's office the officer goes first to the felony intake office where he is told which circuit judge will be responsible for handling the case. The intake office will already know about the case because the arrest is entered into a systemwide computer which makes court assignments on a rotating basis. This system is designed to prevent shopping for either a particular court or a particular prosecutor and appears to work efficiently.

If the arrestee already has another case pending, the intake office will take the case out of the normal rotation and assign it to the judge with the pending case. Similarly, if

there are co-defendants who have already been assigned to a division. If the case appears to meet the criteria for handling by one of the special divisions, a copy of the reports will be sent to the special division. The case will still be assigned to one of the normal divisions, however, and that division then becomes responsible for conferring with the special division about the case.

The police officer then goes to the division assigned. There one of the three attorneys will be handling filing for the week, while the other two are handling their normal case-loads, an arrangement which rotates each week. The police officer then meets with the attorney in the attorney's office. Normally he will give the attorney the arrest and offense reports and explain the facts briefly. The attorney will usually read the papers and then ask questions and discuss the case with the police officer. Generally the discussion will take a half hour or so, although some may be as short as five minutes or as long as an hour or two. Sometime during the session--usually at the end--the attorney will ask the officer to raise his hand, swear to the facts in the report to the best of his knowledge and sign an affidavit to that effect.

The filing attorney normally does not make an immediate decision as to whether to file the case but will generally indicate what he is thinking. He may say, "I'd like to find out what kind of record this guy has. If he has a record, I'll probably file. If he doesn't, I'll probably drop the case."

Sometimes the police officer himself will indicate that the case is weak, and the attorney will decide on the spot to drop it. In one instance observed a detective asked the attorney to decline filing so that two suspects could be released from jail. The case involved two robbery suspects who had been arrested several weeks after the crime on the strength of an identification by one of two robbery victims. After the arrest, the second victim indicated that the suspects were not the robbers and the detective concluded likewise. As the detective was not authorized under local policy to drop the case himself and release the suspects, he recommended this action to the prosecutor. The prosecutor readily concurred and marked the case "DN"--a local term meaning disposition notice or declines to file.

In cases in which there is some relationship between the victim and the suspect or some other reason to question the willingness of the victim to follow through with the prosecution, the prosecutor will almost always test the victim in some way before deciding whether to file or not. He may ask the police officer to do this, assign the task to an investigator for the state's attorney's office, phone the victim himself or

send a form letter asking the victim to sign an affidavit indicating a willingness to proceed or to come into the prosecutor's office to discuss the case. Occasionally the prosecutor will even go out and interview the victim himself. If there is any hesitation at all on the part of the victim, the case will normally not be filed.

By local agreement the police bring the case to the state's attorney's office within 48-72 hours of arresting the defendant, and normally the prosecutor will decide whether to charge or not by the seventh day when the circuit court by local rule sets the arraignment. If the prosecutor is not ready to decide, however, he simply reschedules the arraignment. If he delays beyond 21 days, Florida law requires that a defendant who is in custody be afforded an adversarial determination of probable cause. Occasionally the decision to file is postponed beyond this point, but rarely.

Under Florida law a felony defendant must be taken before a judge and be advised of the charges against him and his rights within 24 hours of his arrest. In addition, if he remains in custody, a defendant is entitled to a non-adversarial determination of probable cause within 72 hours of his arrest. In Jacksonville both procedures are normally accomplished at the defendant's appearance in court on the first day. This appearance often takes place before the police have brought the case to the state's attorney's office, and almost always before a decision has been made as to whether charges will be filed. The determination of probable cause is based on a notarized copy of the police report and is little more than a formality. This appearance also takes place in the county or misdemeanor court rather than the circuit or felony court. Normally it is the only time that a felony defendant will appear in this court.

After the initial discussion with the police officer the prosecutor will usually route the papers to the division investigator, asking that various things be done. Unlike many jurisdictions in which the police officer is expected to bring the defendant's criminal history record (rap sheet) to the initial charging session, this is not normally done in Jacksonville, and one of the routine tasks accomplished by the investigator for the state's attorney's office is to obtain the local record and any supplemental police investigation reports that may have been done. In many instances state and federal rap sheets will also be obtained. Often, however, these are slow in coming and arrive after the charging decision has been made.

The attorney can normally choose to file felony charges, refer the case to county court so that misdemeanor charges may be considered, decline to file charges or decline to file

charges on condition that the defendant agree to enter a pretrial diversion program. Generally attorneys in the office file felony charges about 50 percent of the time, refer to the county court about 25 percent of the time, and decline to file charges about 25 percent of the time. As a practical matter, they offer pretrial diversion in a few burglary cases but rarely in robbery or felony assault cases. (See Table 10-3.)

Once a decision has been made as to whether to file or not it is reviewed by the decision chief. Normally the division chief goes along with what the attorney recommends but it is not uncommon for the charges to be altered or for there to be some discussion about the appropriate action to be taken. Individual attorneys are not authorized to sign informations and this must be done by the division chief.

If the case is referred to the county court division, that division will make its own determination as to whether to file a misdemeanor case and normally will not even inform the circuit court attorney of its decision.

C. Bail and Other Preliminary Matters

Once a defendant has been booked into the jail he is eligible for release on bail. Bail is initially set by schedule and then is revised when the defendant appears for his first appearance in county court. Release on own recognizance may also be granted in county court. As the jail is overcrowded and has been under a federal court order limiting the population, a prosecutor sometimes finds it necessary to find a defendant who can be released in order to hold a defendant that he wants in custody.

As previously discussed, defendants are normally brought before the county court for bail setting within 24 hours of their arrest.

D. Depositions

In civil cases both parties are normally given substantial opportunities to find out the evidence available to the other side early in the case and in advance of trial. This is done through a variety of discovery devices, including depositions and viewing the evidence of the other party. Because the defendant's privilege against self-incrimination prevents this kind of discovery of the defendant's defense, discovery rights have been much slower to develop in criminal cases.

The United States Supreme Court has held that due process considerations require the prosecution to disclose exculpatory evidence to the defendant, but some states require the disclosure of little else, and most states do not allow use of the standard civil discovery mechanisms in criminal cases.

Florida along with Vermont and Missouri are notable exceptions to this general state of affairs. In Florida the prosecution is required to give the defense a list of witnesses in the case, and the defense is entitled to take the depositions of these and other witnesses in advance of trial. In order to exercise this right, however, the defense must also grant the prosecution the right to take depositions of defense witnesses other than the defendant himself.

Generally in Jacksonville the defense exercises its right to take depositions. Most witnesses are subpoenaed to the public defender's office where the deposition is taken with a court reporter present. The prosecutor is entitled to be present and generally is. The defendant may be present, but this is not required and the defendant often is not present.

One deposition observed involved a young black defendant who had thrown a rock into a store window, grabbed some shoes and run. There were witnesses and the defendant was nabbed by the police about a block away with the shoes still in hand. The public defender, a young black attorney who had been in the office for several months, had apparently subpoenaed the store owner, the arresting officer, an evidence technician, and a witness.

The first deposition taken was that of the store owner and this was followed by that of the evidence technician. The deposition of the evidence technician was typical. The public defender did all the questioning. He began with standard questions about the officer's name, length of service and experience and then asked about the incident. The officer indicated that he had taken photographs of the broken window, but that he had not taken fingerprints from the rock because the rock was not printable. The prosecutor, a woman who had been in the office for a year and a half and who was relatively new to the felony division, asked no questions and the whole deposition took about 10 minutes. The evidence technician's story didn't add much to the case but the questioning didn't show any holes in it either.

After this deposition everyone waited for the arresting officer and the witness but neither ever came in. The public defender asked for a certificate indicating that the arresting officer and the witness had not appeared. Issuing such a certificate would have meant that the prosecution could not use the arresting officer or witness at trial without having first ensured that the defense had an opportunity to take their depositions. The prosecutor objected to this, however, pointing out that the arresting officer was on vacation and saying that she wanted to see if the witness had been served with the subpoena. Later she indicated that the witness had not been served and that the defense was not entitled to a certificate.

She also indicated that it was not unusual for witnesses not to show up for depositions or for them not to be served as in this case.

The public defender admitted that he did not have much of a defense in the case but that the defendant was not really a bad guy. The prosecutor said she wanted to see the juvenile record first before discussing any deal.

In another case a private defense attorney took depositions in the prosecutor's office. The witness was a truck driver who had been robbed. The robber had been standing on a street corner. When the witness stopped for a red light, the robber came over to the truck, stuck a towel-covered arm into the truck, and demanded money. The driver said he didn't have any and handed the robber his empty wallet. The robber said, "give me money or I'll blow your head off." The driver managed to find three $1 bills in his pocket and said, "that's all I've got and if you want more you'll just have to shoot." The robber told him to get the hell out of there, and the driver took off through a red light. The driver then circled back on the freeway, called the police and the robber was caught.

The defense attorney quizzed the driver carefully about the robbery and the identification. He pressed particularly hard on the identification and tried to get the driver to say that all blacks looked alike. The driver stood his ground, however, saying that he thought blacks had features that were as distinctive as whites, and that he had no doubts as to the identification of the defendant. The defense attorney then asked him to describe the defendant's distinctive features. The driver started to do this but had trouble. The prosecutor interjected that the witness had only to say what he clearly knew. If the witness couldn't say clearly, he said, the witness should say that he couldn't say.

The public defender's office generally tries to take depositions on all state witnesses, no matter how insignificant the testimony. Partly this is done because it is thought to be good practice and partly from fear that appellate courts will view the failure to do so as ineffective assistance of counsel.

The public defender's office will go out of town for depositions if necessary. In one case observed the public defender requested permission to take depositions in Pittsburgh and New Orleans. The case involved a defendant who had been arrested for raping six women, two of whom had since moved from Jacksonville. In this case the public defender had already agreed to have his client plead guilty, but only after all six women had given depositions. The prosecutor called the woman in Pennsylvania and explained that she would not be asked to participate in a trial but that he needed her deposition "to get the guy put away for a long time so he can't attack anyone else." He

said that the deposition would be taken at a local courthouse with the public defender and a local court stenographer present and gave her a rough idea of when this would happen. He apologized for stirring up all the emotional trauma again and said he would spend some time with her before the deposition so that she could get to know him first. The victim agreed to the deposition.

The state's attorney does not routinely depose all defense witnesses. Depositions are taken when the state's attorney thinks that a defense witness is lying and could be induced to change his story or when the defense witness has failed to corroborate a defendant's alibi and the state's attorney wants the testimony on the record so that the witness cannot later beef up his testimony to support the alibi.

In one case observed the state's attorney deposed three defense witnesses in his office with the public defender present. The three were the wife, sister-in-law and brother-in-law of the defendant who was accused of stealing copper tubing from a construction site about 6 p.m. one day. The defendant was attempting to use the witnesses to establish an alibi, and the state's attorney wanted a transcribed version of their testimony so that they could not change their stories later. All three testified in separate depositions that the defendant had come home at 8 p.m. on the night in question. After the three depositions had been taken, the public defender turned to the state's attorney and said, "Gosh, I'm tired of losing cases to you!"

The depositions, whether defense or state requested, are recorded by a court stenographer and are taken under oath. But the transcriptions are rarely typed up. The witnesses have a right to read the finally typed transcript if they wish, but they generally waive that right and transcriptions are often not made. If the witness chooses to read the transcript, it is only for the purpose of verifying that it is an accurate record of what was said. The witness may not later alter the testimony or the transcript except for inaccuracies. The deposition transcripts are normally not admissible at trial except for impeaching the testimony of a witness who changes his story.

Both the police and the state's attorneys grumble a lot about the time and expense involved in the deposition process, but an informal survey of a dozen or so prosecutors indicated that most preferred depositions to other widely used processes such as the preliminary hearing. One prosecutor who had experience in both Florida and Texas found the Florida procedure to be much fairer for all sides than the very restricted discovery allowed in Texas.

There were some indications that the amount of discovery used was affected to some degree by cost considerations. Prose-

cutors generally believed that the public defender cut down on discovery when the budget for court reporters became tight.

While the opportunity to take depositions gives the defense many more opportunities for discovery than are available in most jurisdictions, Florida prosecutors do not believe they are required to allow the defense access to the police reports and routinely resist discovery of these basic documents.

E. Pretrial Conferences

After depositions are completed--normally within several weeks after filing, the next stage for a felony case in Jacksonville is the pretrial conference. This is a very informal procedure which takes place in the judge's chambers. Normally a case is scheduled for a first pretrial conference three weeks after filing.

In one division observed the conferences began each morning at 8 a.m. and normally ran until 9 or 9:30. The judge sat behind his desk in a large impressive room with the six regular attorneys seated sideways to the judge on both sides of a long table in front of the desk. Everyone drank coffee and talked about the news of the day. As the morning wore on, the small talk turned more and more to business. During the discussion other attorneys and probation officers would enter and leave the room and confer with the judge or the regulars as the occasion demanded.

The basic idea of the conference is to give the attorneys a chance to bargain for a plea. The judge's role is to see that the cases are discussed, to schedule the trial or any hearings that are needed, and to give some indication of what pleas he would accept and what sentences he might give. The judges observed were fairly specific in their comments but did not do a lot of arm twisting to reach agreements.

Discussion normally begins when one of the attorneys describes a case. Often the defense will begin with a brief synopsis of the offense and any mitigating circumstances and then suggest a sentence. The state's attorney will then generally restate the facts, emphasizing points not mentioned by the defense attorney: "He was not only driving the car, but he shared in the $100 taken, so it seems to me he was as much involved as the other two were." He then makes his own suggestion for a sentence. At that point the judge may ask questions or make a sentence suggestion of his own. Occasionally the defense attorney will press the judge a bit. In one case the defense attorney kept trying to get a short jail sentence, while the state's attorney wanted a full year. The judge finally said, "six months." The defense attorney countered with a hopeful "four months?" The judge replied

firmly, "six months, take it or leave it." The defense attorney said, "I'll talk to my client." And then the next case was presented for discussion.

The discussions generally covered details of the offense, the defendant's prior record, work and family background, and occasionally how the system ought to respond to certain types of offenses. Some judges also placed strong emphasis on restitution. Some of the restitution amounts were fairly substantial. In one case two young men got drunk and caused more than $21,000 in damages to a fishing boat. Insurance covered the damages in excess of $5,000, and the judge indicated that he would expect the young men to pay this amount or more despite their lack of prior record.

Another restitution case involved a prostitution-related robbery. An engineer, who lived near the beach, also kept an in-town apartment. On one of his forays he was robbed of $120 by a prostitute and her pimp, the defendants in the robbery case. After some discussion of the facts, the judge said that he did not have any particular sympathy for the victim but that he felt the prostitute and the pimp should repay the $120. It was then agreed that the pimp would plead and be sentenced that morning, but that the prostitute would have sentencing continued for a week or two so she could raise the $60, and then be sentenced with immediate payment of restitution required, in addition to a jail sentence equal to the time already served. As the judge customarily required restitution to be paid at the time of sentencing, the discussion then turned to how the prostitute would raise the $60 which was her share. The judge said she ought to be able to earn it in an evening. The state's attorney said "not in that neighborhood--the going rate is about $10 per." The judge then agreed that she would need a week or two.

Judges frequently expressed concern about spending tax money. In one instance the state's attorney requested a second psychiatric examination after the first psychiatrist (usually considered a state's witness rather than a defense witness) diagnosed a man who had severely beaten his grandmother as psychotic. The judge tended to agree with the state's attorney that the man was "bad" and not insane, and reluctantly agreed to a second opinion. Orders for restitution generally include court costs and the courts keep careful control over unusual defense costs. Appeals to economy were not always successful, however. In a robbery case in which the defendant and another suspect committed three robberies in one evening the public defender sought to have the case dismissed, arguing that the taxpayers ought to be spared the expense of housing and feeding him since Arizona was apparently anxious to do so in another case. The state's attorney said he was willing to feed the

defendant for a few years and the judge agreed. The judge also was quite genial about allowing Arizona to "borrow" the defendant for trial on their charges as well.

Often when a case first comes up for discussion in the pretrial conference, the attorneys are not ready to go very far with it and ask that it be "passed." The judge normally then reschedules the case for a second conference several weeks later. The judge will also generally go along with a second rescheduling without too much comment. Beyond that, however, he is likely to pressure the attorneys to either settle or try the case. The prosecutor is also generally interested in an early disposition. Florida has a very strict speedy trial rule which requires that the case be tried within 90 days of arrest or dismissed with prejudice. As office policy strictly frowns on dismissals for failure to comply with this rule, prosecutors normally are anxious to move the cases.

Once a plea has been negotiated in conference, it is often taken in court on the same day.

F. Trials

There are relatively few trials in Jacksonville because the plea rate is unusually high. The trials which do occur, however, are taken seriously. Most trials, other than major homicide trials, take one day or less.

Normally juries are picked on Monday for all trials scheduled during the week. A group of jurors enters the box and is questioned by the prosecution and the defense. The attorneys then hold a bench conference with the court and the judge announces who has been excused. This method is thought to be fairer than other methods because the remaining jurors do not know who was responsible for eliminating particular individuals.

Florida uses a six-person jury with one alternate, and cases are normally tried by one prosecutor and one defense attorney.

G. Sentencing

Not surprisingly sentences in negotiated plea cases follow the lines of the agreements reached. In some instances, the judge will indicate at the pretrial conference that he wants to see the probation report before making any final commitments, and in these cases sentencing will normally be delayed to allow time for preparation of the report. In other cases the sentence is often imposed on the same day the plea is taken in court.

One sentencing option which does not exist in many states is that of "adjudication withheld." In this option the

defendant pleads guilty and the judge accepts the plea but then "withholds adjudication" so that the defendant is technically not considered to have been convicted.

As in most other jurisdictions, defendants who are convicted after a trial are generally sentenced more severely than similar defendants who plead guilty.

# Chapter Nine

## PROSECUTION IN SAN DIEGO

In San Diego there are also six principal stages of processing for felony cases: (1) charging, (2) bail setting and preliminary matters, (3) preliminary hearings, (4) pretrial conferences, (5) trial, and (6) sentencing.

### A. Organization of the District Attorney's Office

The San Diego District Attorney's Office exercises great care to charge only the most serious and winnable cases and careful attention to ensure that the cases charged result in a high rate of convictions and the maximum appropriate sentences.

The office is organized horizontally so that the attorneys who handle the case at each stage of processing are specialists in that particular stage of processing. The intake section is responsible for receiving cases from the police and deciding whether they should be filed or not. A municipal court section is responsible for preliminary motions and the preliminary hearing, and a trial section is responsible for trying cases and for most plea negotiations.

A career criminal prosecution unit is responsible for handling serious robbery offenders and other specialized units such as the consumer fraud unit handle other such matters.

The intake section is staffed with senior attorneys who have had considerable felony trial experience, the idea being that they are best able to judge the ultimate triability of the case. The trial section is also staffed with very senior attorneys. More junior attorneys enter the lineup in the misdemeanor section. This section is regarded as important, but not as critical as the other two sections.

### B. Charging

In San Diego the charging decision is made by the intake section. This consists of a chief, an assistant chief and two senior deputy district attorneys.

Once an arrest is made and the detective assigned is ready to seek charges, he brings the arrest report, the crime report, the defendant's local rap sheet, a state statistical form and any other available papers to the intake section. There he completes an intake form and brings the whole package to one of the two intake deputies, both of whom sit in a single crowded office.

Generally he hands the papers to the deputy and describes the facts briefly while the deputy reads the papers. The deputy usually questions the detective closely, going over each element of the crime and paying particular attention to problems relating to search and seizure or other matters which might affect the prosecution's ability to have evidence admitted in court.

A typical case involved an 18-year-old charged with robbery and burglary who had been arrested along with three juveniles; the group had been roaming around a neighborhood at 2:30 in the morning, trying to open the doors of houses. At one house they succeeded in getting the door open, went inside, hit the owner with a broom handle and took some money. The group then split up and ran away. One of the youths was stopped while running, and this led to the arrest of the whole group. The police then took the group back to the house they had entered, and the occupants positively identified them as the culprits. The police also took them to other houses which the group had tried to enter, but were not able to secure additional clear-cut identifications.

The charging deputy reviewed the facts in great detail, indicating that he was concerned about the validity of the initial stop of the youth who was running. He thought that if this was all right, then everything else was all right too. Was the youth stopped simply because he was running? Or did the officer have a description of the people who had broken into the house and stop the youth because he met the description? Was running at 2:30 a.m. in this neighborhood a sufficient basis for the stop?

Because he regarded the case as very serious the deputy went ahead with the charge despite his concerns. He asked the detective to find out what description the arresting officer was working with, however, and to do a follow-up report on the case. California procedure requires that defendants held in custody be charged and brought to court within 48 hours of their arrest and that the charging decision be made before defendants are brought to court. This means that the charging decision must be made much more quickly than in Florida, and this difference is readily apparent in the work of the intake section. Everything moves at a faster pace and is much more geared to immediate decisions. Suspects can of course be released and later rearrested or in some instances may be given a release on own recognizance in order to give additional time for the charging decision to be made. These are obviously not preferred procedures, however, for defendants charged with serious crimes.

Once he has reviewed the facts with the detective the deputy will either make an on-the-spot decision as to whether to file the case or not or inform the detective what additional information is needed for filing.

If the decision is to file, the deputy will sketch out standard paragraphs from a form book that should go into the complaint and get the package ready to go. If the decision is not to file, the deputy will explain his reasons to the detective and fill out a short form summarizing these reasons. In either event the deputy then will run the case by either the section chief or the assistant chief, as office policy requires their approval for each filing and refusal to file. Generally the discussion between the deputy and the detective takes 15 to 30 minutes and the review by section chief or assistant chief an additional five to 10 minutes.

The office is extremely busy on Monday, Tuesday and Friday, and less so during the middle of the week. Often detectives pile up on busy days waiting to see the charging deputies. If this becomes too bad, the chief or assistant chief will pitch in and handle some of the cases. When this happens, the decision is normally reviewed by one of the other deputies in order to get a second opinion on the case.

The standards for filing are strict. The office rejects about 30 percent of the cases submitted and has done so for about 10 years. Prior to that time most cases were filed but many of these ultimately had to be dismissed. The office follows the Uniform Crime Charging Standards developed by the California District Attorneys Association, but, as these standards are somewhat general, has its own overlay and interpretation.

Generally the charging deputy insists that solid evidence on every element of the case be in hand when he decides to charge. If a necessary item of information is missing, the deputy will invariably ask the detective to get the item before he makes his decision--even if he knows the detective and it is almost certain that the evidence can be obtained.

In one robbery case the detective verbally described the circumstances of the offense in very different terms than those presented in the written reports. After considerable discussion, the charging deputy and the detective concluded that the rookie officer who had written the report had gotten everything backwards. The deputy said he didn't feel he could charge on the basis of the information given and asked that the suspects be interviewed and a new report written reflecting the actual events. "All I have now," he said, "is what is in front

of me, which is opposite to what you [the detective] said." The detective was not eager to do more on this case, however, asking what the point was, since the victims were street people and not all that likely to follow through. The deputy's response was that the decision was up to the detective. The deputy said he could not file on the basis of what had been presented to him and that he had indicated to the detective what would be needed to go forward. Whether the detective tried to get that information or not was up to the detective.

Often in the cases reviewed the detective was not the arresting officer and had done relatively little investigation on the case himself. It is not infrequent therefore that the charging deputy wants information that the detective does not have. In one case observed a detective brought in a case involving a robbery of a liquor store. The robber had worn a ski mask but his car had been seen as he was leaving the store. A suspect in a car matching the description was apprehended within 10 minutes and brought back to the store for identification. The charging deputy noticed that one officer's report indicated that this had resulted in a positive identification, while another officer's report said that it had not. The detective said that he had not noticed that and asked to take the case back for further checking. The deputy indicated he would probably be willing to charge on the theory that the defendant had been arrested in a car like that used in the robbery shortly after the crime but that it would be helpful to have more details.

The next day the detective came back with the case. He indicated that the identification had been positive, that the defendant had been wearing a distinctive shirt at the time of the robbery and at the time of the apprehension and that the police had the shirt in evidence. The case was obviously much tighter with this information, and the charging deputy readily issued the charge.

### C. Bail and Other Preliminary Matters

Bail in felony cases in California is set initially by a schedule which bases the amount of bail on the arrest charge. The schedule is established annually by a collective determination of the judges within the county. If the arresting officer believes that the schedule amount is too low, he may contact a judge and ask that it be raised. Similarly, the defendant may contact a judge and ask that the amount be lowered or that he be released on his own recognizance. It is rare for either party to ask for a change, however, and normally the scheduled amount stands.

As previously mentioned, a defendant who has been arrested and who is still in custody must be brought before a judge within 48 hours of his arrest. At this time he is informed of

the charges against him, has counsel appointed for him if he does not already have or cannot afford counsel, and in theory receives an individual bail determination that is not based on the schedule. As a practical matter, the scheduled bail amount is normally continued at the first appearance in court, although it may be reviewed at a later time. The defendant may also enter a plea at this first appearance, if he is ready to do so. Generally he is not and this is put off to a second appearance. Normally this takes place within a day or two.

The district attorney is present at these proceedings to answer questions, assure that the proper proceedings take place, and make comments on such matters as bail. In career criminal cases a member of the career criminal unit normally appears. The office is particularly active in trying to keep the bail amount high in career criminal cases.

After a plea has been taken and pretrial release matters set, generally little happens in the case until the time of the preliminary hearing. In most cases there is no additional investigation of the facts at this stage, although subpoenas normally will be served ordering victims and witnesses to appear at the preliminary hearing. Occasionally, in preparing the case for the preliminary hearing the municipal court deputy will discover that a victim or witness has become unavailable or that some other hole has developed in the case. In this event the district attorney's office will normally ask the court to dismiss the case "in the interest of justice", and the court will do so. This kind of dismissal does not prevent the district attorney's office from filing the case again if it chooses to do so, and the court normally grants the dismissal as a matter of course.

## D. Preliminary Hearings

In California, as in many other states, a defendant is generally not forced to undergo the rigors of a trial on felony charges unless there has been a prior judicial determination that sufficient probable cause exists to warrant a trial.

The purpose of the preliminary hearing is to ensure that the prosecution has a prima facie case, not to judge the validity of the prosecution's evidence. Consequently, if the prosecution introduces evidence indicating that a witness can identify the defendant as the burglar, for example, the magistrate must find probable cause--even if he does not believe the witness.

From the defense point of view the most important current function of the preliminary hearing is to provide an opportunity to see what the prosecution's case looks like. Because

charging standards are strict, there is sufficient probable cause in almost every felony case charged for the judge to bind the defendant over to the felony court. The preliminary hearing in effect becomes a vehicle for discovery.

In San Diego the preliminary hearing is normally held within several weeks of the arrest and the first appearance in court. The district attorney normally presents enough evidence on each point in the case to establish probable cause, but withholds other evidence he may have available. If he has two or three identification witnesses, for example, he will normally present only one. Partly this is a question of economy. The prosecutor only needs one witness and that is what he presents. Partly, however, the prosecutor is also denying the defense the opportunity to see other parts of his case. This approach to preliminary hearings is called presenting a "bare bones" case.

The defense is allowed to cross-examine the witnesses presented and to put on evidence of its own if it so chooses. Generally the defense exercises its right to cross-examine but does not put on evidence. Frequently the defense strategy is to test the prosecution's case at the preliminary hearing and then negotiate a plea based on its new assessment of the case.

One hearing observed concerned a 3 a.m. robbery of a convenience grocery. The defendant, a 22-year-old white male, had come into the store with two black females, robbed the store and left. The store operator then followed the robber out to his car and wrote down the license number. The police caught a suspect within a few hours and the store operator identified the suspect as the robber. At the hearing the prosecutor put the store operator on the stand, and he identified the defendant as the person who had robbed him. Defense counsel asked many questions, trying to shake the identification but without success. The judge did not interrupt the questioning but became obviously impatient when it began to be repetitive and tiresome. After being arrested, the defendant had confessed to the police that he robbed the store. As the prosecutor did not present this evidence at the preliminary hearing, defense counsel sought to test its strength by calling the detective as a defense witness. While this was within the defense's prerogative, the judge was clearly annoyed and let defense counsel know that he regarded this as a waste of time. Defense counsel persisted but got very little information. As soon as the defense finished, the judge quickly announced that he found probable cause to hold the defendant for trial. The proceeding took about half an hour, an average length for preliminary hearings in San Diego.

Occasionally the prosecution will present a great deal of evidence at a preliminary hearing. In one preliminary hearing

observed a defendant being prosecuted by the career criminal section of the prosecutor's office had been charged with 17 separate robberies.

Normally a defendant who has committed many crimes will be charged with only a few of the more serious and provable offenses, as conviction on multiple charges often does not result in any appreciable increase in the sentence. The San Diego career criminal unit, however, has a policy of charging every offense on the theory that this makes a conviction on the maximum charges more likely. In this case the prosecution called a victim from each of the 17 crimes to testify. The first three had previously been asked to identify the suspect and proved to be very solid witnesses, despite unusually careful and skillful cross-examination by defense counsel. Later witnesses had not previously been asked to identify the defendant, and a number were not able to identify the suspect. For these witnesses the preliminary hearing was almost like a lineup. Some of the witnesses who failed to identify the defendant were very careful and honest, while others appeared simply to be saying they could not identify the suspect in order to avoid further court appearance.

Most preliminary hearings end with the judge finding that there is probable cause to bind the defendant over to the superior court for trial. Occasionally, however, the judge will find that the prosecution has not presented enough evidence. This occurs in maybe 10 percent of the cases. In one preliminary hearing observed the defendant was charged with being under the influence of heroin. The prosecutor put the arresting officer on the stand, and he described the defendant's drooping eyelids and constricted iris. The judge interrupted and asked whether a blood sample had been taken. The prosecutor said that none had been, as the technicians had been unable to find a useable vein at the time of the arrest. The prosecutor then sought to introduce pictures of the defendant's arm showing fresh track marks at the time of the arrest. After much discussion, the judge dismissed the case, indicating that there was not enough evidence to establish probable cause.

While California law provides defense counsel a number of procedural opportunities to exclude unlawful confessions or other illegally obtained evidence, normally counsel will attempt to suppress such evidence at the time of the preliminary hearing.

E. <u>Filing the Information</u>

In California once a defendant has been held to answer in a preliminary hearing, the next step is the preparation and filing of information by the district attorney. Although this

is a more formal pleading than the complaint used to initiate the case, the filing is normally a routine matter rather than another occasion to consider the merits of the case.

The information is filed in the superior court and serves to transfer the case from the municipal court. After the information is filed, the defendant is arraigned in the superior court. At this time he appears in court, is again informed of the charges against him, again asked to enter a plea and has a new determination made as to pretrial release status. Generally this is all very routine and everything largely remains the same as it was in the municipal court.

More interesting than the formal, and fairly routine steps that must be taken to begin the case in the superior court are the case conferences held inside the district attorney's office at the conclusion of the preliminary hearing. These conferences take place each Wednesday afternoon in the office library and cover the cases handled in preliminary hearings during the prior week.

Known in the office as the "turkeyshoot," these conferences highlight and analyze problems in the case and provide guidance to the trial deputy. As most cases reaching this stage are quite solid as far as proof of some guilt is concerned, the discussion is primarily about what would constitute an appropriate sentence or plea bargain. Often the discussion amounts to establishing the minimum acceptable time for the case. The discussion is fast-paced, generally covering 30-40 cases in an hour to an hour and a half. The discussion begins by flashing a short summary written by the preliminary hearing deputy on a screen. The summary includes a brief statement of the facts, a one or two line evaluation, a synopsis of the defendant's prior record, and a one or two line recommendation as to how to handle the case.

The conference is attended by division chiefs and some trial attorneys. Generally six to eight attorneys are present; all are free to participate but the older hands dominate. The discussion is cryptic and often very brief. For a serious offender the comment may often simply be "as charged, no deals." For less serious offenders the comment may be "NOLT", an office term meaning "not oppose local time" or more precisely that the office would not oppose the imposition of a jail instead of a prison sentence. The overall impression given is that of tough, hard prosecutors with a clear sense of case values.

In one conference observed there were a number of derisive comments about several cases thought to be too minor to warrant felony prosecution. The comments suggested that they should have been dealt out at the municipal court level.

In the cases in which there is some problem of convictability--generally because a witness is not too strong or there is a lingering search and seizure problem--the group will generally suggest discounting the sentence rather than dropping the case.

The discussion often focuses on legal points involved in the cases. Some of these involve charging or sentencing issues, while others involve evidentiary matters. All are discussed with a high degree of sophistication and craft. Comments are also frequently made about particular attorneys and judges. The level of knowledge about these is also generally high and some clearly have much better reputations than others. Recommendations from the conferences are recorded and passed on to the trial attorney.

## F. Trials

The San Diego District Attorney's Office takes felony trials very seriously. Such cases are assigned to highly experienced trial attorneys, who are expected and who do win a high percentage of the cases tried. Losses are regarded as a matter of concern and records are kept as to the specific reasons for each lack of success.

While the percentage of cases going to trial is somewhat greater than that in Jacksonville, the number of trials is still very small. Trials are before a 12-person jury and normally involve one prosecutor and one defense attorney. Voir dire is conducted by both the attorneys and the judge.

## G. Sentencing

California employs a determinate sentencing statute, which in theory fixes the time to be served in state prison for a particular offense within narrow limits--4, 5, or 6 years for robbery, for example. In practice, however, the system is more flexible than it first appears. A system of enhancements for prior use of an armed weapon, great bodily injury in the offense and other such matters greatly increases the potential time for many offenses and provides major bargaining chips for the prosecutor. In addition for most offenses the judge has the authority to grant probation or probation and a jail term up to one year without requiring the defendant to serve any time in state prison.

Because the prosecutor controls the charges, he controls much of what happens at sentencing. A prosecutor's agreement to "NOLT," to not oppose local time, for example, makes it much more likely that the court will impose a probation and jail sentence as opposed to state prison.

The probation role in sentencing also appears to be stronger in California than in Florida. It is customary to defer sentencing until a probation report has been completed, while this is not always true in Florida. The probation report is also likely to be more complete than that in Florida.

## H. Legal Defense Services

At the time of the study there was no public defender in San Diego. Legal defense services for indigents were provided through a system of court appointments. About a third of such appointments were made to Public Defenders, Inc., a nonprofit corporation organized some years earlier through a grant from the Ford Foundation. Other appointments were made to a number of other firms and individuals.

As a group, defense counsel in San Diego were more experienced than those in Jacksonville. They also generally took a more aggressive stance in defense of their clients, filing more motions and arguing more legal points.

## Chapter Ten

# THE ATTRITION PICTURE IN TWO CITIES

As chapter 3 demonstrates there is no simple way of counting attrition in criminal cases. The conviction totals that appear in agency statistics and studies is in fact a composite, which can be assembled in different ways. As previously noted, the most common is to use the case as the unit of analysis. In this method all the charges assembled at one time are lumped together and treated as a conviction disposition if any one charge results in a conviction.

Because the "case method" obscures the disposition of the major crime involved, this study employs an alternate method of counting. Based on the principal charge this alternate method records a conviction only if the particular robbery, burglary or felony assault under scrutiny results in a conviction. Under this method if the robbery results in a conviction for robbery or some lesser included offense, such as theft, a conviction is recorded. However, if the robbery is dropped but the defendant convicted on a wholly separate drug charge, no conviction is recorded.

The differences in the two methods of counting are shown in Table 10-1. In each instance the case method produces a higher percentage of convictions. For Jacksonville the differences are not great. For San Diego, however, the differences are substantial for robbery and burglary.

The most striking difference between the jurisdictions under any method of measurement is the high percentage of police releases in the San Diego robbery cases. Nearly 40

Table 10-1

Conviction Rates by Principal Charge and Case
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Principal Charge | Case | Principal Charge | Case |
| Robbery | 50 | 54 | 34 | 44 |
| Burglary | 70 | 73 | 53 | 58 |
| Felony assault | 50* | 50 | 46 | 49 |

*Estimate only based on available data.

Notes: (1) Data in this and later tables for burglary are limited to burglaries of buildings and do not include auto burglaries and other nontraditional kinds of burglaries except where otherwise indicated.
(2) Convictions for Jacksonville in this and later tables include adjudications withheld and pretrial intervention cases. See Table 10-2.

percent of all the San Diego robbery arrestees under the principal charge method of counting have the charges dropped by the police department without presentation to the district attorney, as shown in Table 10-2. (This percentage is nearly as great as for the case method.) Other major differences are the use of pretrial intervention and adjudication withheld as dispositions in Jacksonville but not in San Diego.

There is also an apparent difference in the amount of screening by the district attorney, but this difference is somewhat artificial due to the large number of police releases in San Diego. If these are excluded, the screening rate for robbery is 30 percent for Jacksonville and 23 percent for San Diego.

The major similarities between the two jurisdictions are a high percentage of guilty pleas and a relatively small number of trials.

Table 10-2

Dispositions of the Principal Charge
(In percent of persons arrested)

| | Robbery | | Burglary | | Felony Assault | |
|---|---|---|---|---|---|---|
| | Jacksonville | San Diego | Jacksonville | San Diego | Jacksonville | San Diego |
| Police release | - | 39 | - | 13 | - | 26 |
| DA reject | 31 | 15 | 22 | 17 | 38 | 13 |
| Dismissal | 19 | 12 | 8 | 16 | 8 | 11 |
| Not held to answer | - | 1 | - | 1 | - | - |
| Acquittal | 1 | - | .5 | .5 | 5 | 2 |
| Other non-convictions | .5 | .5 | .5 | .5 | 3 | 3 |
| Pretrial intervention | .5 | - | 7 | - | 2 | - |
| Adjudication withheld | 10 | - | 17 | - | 16 | - |
| Guilty plea | 37 | 28 | 44 | 50 | 32 | 43 |
| Convicted at trial | 2 | 6 | 2 | 3 | - | 3 |
| Total | 100 | 100 | 100 | 100 | 100 | 100 |
| Number of cases | (200) | (200) | (200) | (219) | (196) | (181) |

For many purposes it is useful to divide dispositions into two categories: attrition dispositions and conviction dispositions. There is a major problem in making this division for these two jurisdictions, however, because of the adjudication withheld and pretrial intervention dispositions in Jacksonville. Legally these cases are not convictions, but as a factual matter they are also not non-convictions.

The adjudication withheld category is perhaps the easier issue to resolve. This disposition results when the defendant has pled guilty, but the court believes that the defendant should be given a chance to make good in the community without the burden of a criminal record. The adjudication of guilty is consequently withheld and is not entered on the defendant's record if he successfully completes a crime-free period of time. As the predicate for this disposition is always a guilty plea and as the disposition is generally like some form of probation, this category is functionally similar to a conviction and is so treated in this study whenever cases are divided into convictions and non-convictions.

Pretrial intervention is a more difficult disposition to categorize because it does not require the entry of a guilty plea. Defendants who qualify have their cases dismissed if they successfully complete a crime-free period of time. Functionally in Jacksonville, this category appears to be used as a very light sentence for offenders with good records and crimes that are not too serious.

Including both these categories raises the conviction rate in Jacksonville for robbery by 11 percent and that for burglary by 24 percent, as shown in Table 10-3. Most of this difference is accounted for by the adjudication withheld cases.

Table 10-3

Conviction Combinations--Principal Charge
(In percent of persons arrested)

| | Robbery | | Burglary | | Felony Assault | |
|---|---|---|---|---|---|---|
| | Jacksonville | San Diego | Jacksonville | San Diego | Jacksonville | San Diego |
| Convictions | 39 | 34 | 46 | 53 | 32 | 46 |
| Convictions plus adjudication withheld | 49 | 34 | 63 | 53 | 48 | 46 |
| Convictions plus adjudication withheld and pretrial intervention | 50 | 34 | 70 | 53 | 50 | 46 |
| Number | (200) | (200) | (200) | (219) | (196) | (181) |

## A. Charged Cases Only

While arrest is clearly the most useful single starting place for computing attrition, other starting places are often used and may be more meaningful for particular purposes. Prosecutorial performance is often judged, for example, by analyzing dispositions in cases in which charges are actually filed. Calculated in this way, the conviction rates for robberies, burglaries and felony assaults in Jacksonville and San Diego are very similar, as shown in Table 10-4. These conviction rates are much higher than those based on arrests (Table 10-1), and can be very misleading as to overall system performance. If screening is tightened sufficiently, for example, the conviction rate for charged cases can be pushed to nearly 100 percent.

## B. Non-Convictions Due to Pleas or Convictions in Other Cases

A charge of robbery, burglary or felony assault may be the only charge against a defendant or may be one of several charges or even several cases. In instances where there is more than one charge or more than one case the possibility exists that a plea bargain may be developed in which some charges or cases are dismissed in return for a plea of guilty on other charges or cases.

This kind of dismissal is obviously different from dismissals on the merits or dismissals which reflect a decision not to prosecute. For the purpose of analyzing either attrition rates or the factors which account for attrition these dismissals should be handled in some different way. They cannot be treated as convictions because they are not and because in many jurisdictions they are generally the weaker charge or case. For some purposes they should probably be dropped from the counts. In this study they are retained so that their characteristics may be examined.

The number of these cases in Jacksonville and San Diego robberies, burglaries, and felony assaults is relatively small,

Table 10-4

Percent Convictions--Charged Cases Only

| | Jacksonville | San Diego |
|---|---|---|
| Robbery | 71 | 71 |
| Burglary | 89 | 75 |
| Felony assault | 80 | 76 |

as indicated in Appendix Tables C-10-1, C-10-2 and C-10-3. (Appendix C is contained in the appendix volume, which is available on loan through the National Criminal Justice Reference Service.) They amount to around four percent of the robberies in both jurisdictions but over eight percent of the burglaries in San Diego.

In addition to the cases in which a principal charge of robbery, burglary, or felony assault is dismissed due to a plea to another charge or case, there are some robberies, burglaries, and felony assaults which end in guilty pleas due to plea bargains in which some case or charge not in the sample is dismissed. These cases amount to five percent of the robberies in San Diego and three percent in Jacksonville. The percentage is even smaller in the burglary cases.

If the sample cases in which the dismissal is due to a plea to some other charge or case are dropped from the counts, the conviction rate increases slightly, as indicated in Table 10-5.

## C. Charges Placed

In most instances in both jurisdictions the charge placed at arrest was robbery, burglary or felony assault. In some instances, however, the charge placed was some lesser degree of the crime involved. In all instances, as discussed in chapter 3, these arrests show up in the Uniform Crime Reports as robbery, burglary or felony assault.

In addition to the charge for the principal robbery, burglary or felony assault, the police on occasion chose to add other charges arising out of the same event. In the San Diego robberies, for example, an additional robbery charge was

Table 10-5

Effect on Conviction Rates of Dismissals Due to Other Charges or Cases

| Considering all cases | Robbery | | Burglary | |
|---|---|---|---|---|
| | Jacksonville | San Diego | Jacksonville | San Diego |
| Percent convicted | 50 | 34 | 70 | 53 |
| Percent convicted excluding dismissals of principal charge due to pleas or actions relating to other charges or cases | 51 | 35 | 71 | 58 |
| Number of sample cases affected by dismissals | 5 | 10 | 5 | 18 |
| Number of cases | (200) | (200) | (200) | (219) |

sometimes added where there was more than one robbery victim. This is legally permissible as there is technically a separate robbery for each robbery victim. Similarly, when there was an attack that was not part of the robbery, separate assault charges were sometimes added. The San Diego police placed many more of these charges for robberies than did the Jacksonville police (32 to 13), as shown in Table 10-6. The additional charges placed in San Diego were also for different crimes--robbery or assault as opposed to abduction, burglary or weapons.

The prosecutor in both jurisdictions added additional charges in about a sixth of the cases and made other changes in another sixth, as shown in Table 10-7. They also added enhancements to the basic charges in many cases. This was done over twice as frequently in San Diego as in Jacksonville.

Logically these additional charges and enhancements should increase the likelihood of conviction in much the same way that additional charges for other events increase the likelihood of convictions in the case method of counting. There is a slight tendency for this to happen in the San Diego robberies but none in the Jacksonville robberies.

Table 10-6

Type of Robbery Charge at Arrest
(In percent of persons arrested)

| Type of Robbery Charge | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| Robbery | 183 | 52 | 186 | 33 |
| Attempted robbery | 8 | - | 8 | 25 |
| Conspiracy to rob | 2 | - | 4 | (75) |
| Attempt and conspiracy | - | - | 2 | - |
| Accessory after fact | 5 | 20 | - | - |
| Attempted conspiracy to rob | 1 | (100) | - | - |
| Accessory before fact | 1 | (100) | - | - |
| Total | 200 | 50 | 200 | 34 |
| **Multiple Charge Combinations Used*** | | | | |
| Robbery, attempted robbery or conspiracy to rob | 187 | 49 | 168 | 30 |
| Multiple robberies (more than one victim) | - | - | 10 | 80 |
| Robbery and assault | - | - | 14 | 36 |
| Robbery, abduction and auto theft | 3 | (67) | - | - |
| Robbery and burglary | 3 | (67) | - | - |
| Robbery and weapons | 6 | 50 | - | - |
| Robbery and other | 1 | - | 8 | 50 |
| Total | 200 | 50 | 200 | 34 |

*This table includes only those charges directly associated with the sample robbery. It does not include charges arising out of the arrest for the robbery (e.g., resisting arrest, possession of marijuana) or charges made for other crimes which the defendant is believed to have committed.

Table 10-7

Prosecutor Action on Arrest Charges--Robbery
(In number of cases)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Files the same charge as at arrest | | 92 | | 58 |
| Adds charges | | 23 | | 16 |
| Additional robbery charges | 10 | | 3 | |
| Assault, burglary or theft | 5 | | 9 | |
| Weapons | 2 | | 1 | |
| Other | 6 | | 3 | |
| Makes change in robbery level | | 5 | | 10 |
| Accessory/attempt/conspiracy to robbery | 2 | | 1 | |
| Robbery to accessory/attempt | 3 | | 4 | |
| Multiple to single robbery | - | | 5 | |
| Changes robbery to other crime | | 11 | | 2 |
| Theft, burglary | 4 | | 2 | |
| Assault | 3 | | - | |
| Other | 4 | | - | |
| Drops some sample event arrest charges | | 6 | | 2 |
| Assault | - | | 2 | |
| Auto theft | 3 | | - | |
| Burglary | 2 | | - | |
| Weapon | 1 | | - | |
| Other changes | | 1 | | 5 |
| Not prosecuted | | 62* | | 107 |
| Total cases | | 200 | | 200 |
| Enhancements | | | | |
| Weapons | | 38 | | 48 |
| Other | | - | | 8 |
| Total | | 38 | | 56 |
| Percent of prosecution charges with enhancement | | 28% | | 60% |

*Includes one defendant placed on pretrial intervention.

# Chapter Eleven

## INDIVIDUAL CASE CHARACTERISTICS I: THE OFFENSE

Many, perhaps most, of the explanations available as to why some defendants are convicted and others are not relate to individual case characteristics. Undoubtedly the most common idea is that strong cases become convictions and weak ones do not. Seriousness of the crime, badness of the defendant, and status of the defendant and the victim are also widely thought to affect the disposition of cases, and thus are "reasons" for attrition. Generally the hypotheses available concerning individual cases group into two categories--those which emphasize the legal aspects of the case recognized by the formal system and those which emphasize the extralegal aspects of the situation such as the defendant's age, race or sex.

Most prosecutors and police officers--and many others as well--believe that evidence is the principal thing which decides criminal cases. Those who hold this view tend to believe that many guilty defendants get off free because of system defects or lack of evidence. For them the primary problem is how to get more and better evidence, particularly insofar as the guilty who now go free are concerned.

Other groups and individuals believe that the system has a consistent bias against minority group or lower class defendants or that the system as a whole operates capriciously and unfairly. For these persons a central concern is how to make the system operate more evenhandedly. Often this concern emerges in the form of a plea for controlling discretion.

Central to the concern of both groups is the question as to what influences the way cases are decided. The next several chapters examine the part of this question involving the conviction decision. Obviously this is only part of the larger concern which includes other such important decisions as sentencing. These other decisions may or may not be determined by the same considerations as those which influence the conviction decision.

Assessing the validity of these competing hypotheses is important both to evaluating the quality of justice which the criminal justice system provides and to a fuller understanding of how the system works. More knowledge about the role that individual case characteristics play in dispositions is also important to efficiency and effectiveness goals. Specifying the factors which determine outcomes can assist officials in making better decisions with the information and evidence available, as well as helping to identify the information and evidence necessary to achieve desired goals.

Prior studies have already made considerable progress in explaining the role which various factors play in determining the conviction decision. These studies suggest that the most important individual case characteristics are evidentiary--those related to strength of evidence and the availability of the victim and witness. These reasons account for virtually all the non-procedural attrition in the Brosi cross-city comparison and are important factors in a number of other studies, as indicated in chapters 19 and 20.

While it seems clear that evidence is by far the strongest determinant to show up in the studies to date, these studies have been successful in explaining only a very small part of the variance in outcomes. In the PROMIS study of burglary and robbery, for example, the factors studied were able to explain only about 10 percent of the variance. Other studies are able to explain higher percentages of the variance at particular decision points such as the preliminary hearing or trial but none has achieved a very full explanation of the whole attrition process.

This chapter explores the effects of offense characteristics on the conviction decision. Later chapters explore the effects of defendant and victim characteristics, case processing factors and evidentiary factors. After these discussions of individual case characteristics as single factors, the various characteristics are analyzed jointly in chapters 18 and 19. Because factors which appear to have strong effects when looked at in isolation may look weaker or quite different when analyzed with other factors, the multifactor analyses have greater scientific validity. While the single factor analyses must be interpreted with caution, they nonetheless provide useful insights and help to explain the multifactor results. They also provide a great deal of descriptive information that has not previously been available.

## A. Offense Subtypes

Just as different offenses often have different conviction rates many offense subtypes also have different conviction rates.

Robbery Subtypes. One common method for classifying robberies focuses on whether the attack target is a commercial establishment, an individual, a residence, or some part of the transportation system such as cabs or buses. An alternative method is to classify robberies in terms of the type of force used--armed, strongarm or pursesnatch.

When classified in either of these ways, there are major differences in conviction rates for the different types of robbery in Jacksonville but none in San Diego, as shown in Table 11-1.

Table 11-1

Type of Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Commercial | 93 | 69 | 52 | 37 |
| Personal | 91 | 30 | 123 | 33 |
| Residential | 10 | 60 | 8 | 50 |
| Transportation | 2 | (50) | 6 | 67 |
| Unclear or other | 4 | (25) | 11 | - |
| Armed | 141 | 60 | 132 | 36 |
| Strongarm | 49 | 25 | 51 | 29 |
| Pursesnatch | 6 | 33 | 6 | 67 |
| Unclear or other | 4 | (25) | 11 | - |
| Overall | 200 | 50 | 200 | 34 |

A third method of classifying robbery is that developed by McClintock and Gibson in their 1961 classic study of Robbery in London. Significant differences among robbery subtypes again appear in Jacksonville, but are absent in both San Diego and London, as shown in Table 11-2. Conviction rates for the American cities are substantially lower than those for London in 1950 and 1957. A more detailed analysis using the McClintock and Gibson classifications is shown in Appendix Table C-11-1.

Burglary Subtypes. Burglary is more difficult to classify than robbery because both law and practice differ considerably from jurisdiction to jurisdiction. Classically burglary was the breaking and entering the dwelling place of another in the nighttime, as discussed in chapter 4. In Jacksonville burglary involves all kinds of house and building break-ins plus thefts from locked cars. In San Diego burglary involves these three categories plus two others: (1) shoplifting when there was an intent to steal at the time of entry into the store, and (2) miscellaneous thefts inside buildings when there was an intent to steal upon entry into the building. An example of this

Table 11-2

Convictions by Robbery Type
(In percent of persons arrested)

| | Jacksonville | San Diego | London-1950* | London-1957* |
|---|---|---|---|---|
| Robbery of persons in charge of money or goods in employment | 68 | 39 | 91 | 80 |
| Robbery in open following sudden attack | 30 | 33 | 75 | 79 |
| Robbery on private premises | 55 | 56 | 89 | 81 |
| Robbery after brief preliminary association | 29 | 35 | 71 | 61 |
| Robbery after longer association | 43 | - | 67 | 73 |
| Total | 50 | 34 | 79 | 74 |
| Number | (200) | (200) | (266) | (387) |

*Source: F. McClintock and E. Gibson, Robbery in London 43 (1961). Includes some juvenile offenders.

latter category would be an attempt to steal luggage from a bus station storage area. Auto burglaries, shoplifting, and miscellaneous theft, while used as arrest charges, are almost never charged by the San Diego prosecutor as burglary.

The differences in conviction rates among these categories vary in Jacksonville from 65 to 81 percent and in San Diego from 27 to 80 percent, as shown in Table 11-3.

This kind of variation makes cross-jurisdictional comparisons virtually meaningless--unless the same subtypes are being used in the jurisdictions involved. If the comparisons were limited to house and building break-ins and the shoplifting cases, for example, the San Diego conviction rate would be 11 percent higher. If the shoplifting cases were omitted, the San Diego rate would be eight percent lower. The San Diego

Table 11-3

Conviction Rates for Burglary Subtypes
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| House break-ins | 209 | 65 | 139 | 50 |
| Building break-ins | 136 | 79 | 80 | 58 |
| Auto burglaries | 52 | 81 | 88 | 27 |
| Shoplifting | - | - | 69 | 80 |
| Miscellaneous theft | - | - | 8 | 50 |
| Unclear | - | - | 12 | - |
| Total | 397 | 72 | 396 | 50 |

rate thus varies from 43 to 62 percent depending upon which categories are included and which are excluded.

In addition to the differences in conviction rates among subtypes within each jurisdiction, there are also major differences between the jurisdictions. The conviction rates are generally higher for all subtypes in Jacksonville, but the difference for auto burglary is extraordinary. The Jacksonville auto burglary conviction rate is 81 percent as compared to only 27 percent in San Diego.

Because house and building break-ins are considered burglaries in all jurisdictions and are generally considered to be the more serious forms of burglary the more detailed analyses of burglary in this study are based on these categories alone.

Felony Assault Subtypes. Assault is a crime against the person involving the use or the threat of force. Felony assault is an aggravated form of assault, usually involving the use of dangerous weapons, serious injury to the victim or some particularly susceptible target such as police officers. The offense varies considerably from state to state and has patterns that are similar in many ways to homicide. Among other things, a high percentage of victims have close relationships with the offender and many cases involve some degree of victim precipitation of or participation in the violence.

As with robbery and burglary there is a considerable difference in conviction rates for the different subtypes of assault, as indicated in Table 11-4. In Jacksonville the rates vary from 35 percent convictions for assaults involving family members to 88 percent for attacks arising out of brief business relationships. In San Diego there is a similar range of difference. The conviction rate for attacks involving a personal acquaintance is 35 percent. The rate for attacks involving a brief business relationship, however, is 86 percent.

Because there is considerable literature available concerning assaults involving persons who know each other further analysis in this study will focus primarily on stranger-to--stranger assaults. A comparison of stranger-to-stranger assaults based on the classifications used in McClintock's study of assaults in London is shown in Appendix Table C-11-2.

B. Other Offense Characteristics--Robbery

Armed robberies resulted in convictions more than twice as often as strongarm robberies in Jacksonville, and a little more frequently in San Diego, as already discussed. In both jurisdictions there was a higher rate of conviction where knives or long guns were used than where the weapon was a handgun, as shown in Appendix Table C-11-3.

It might be thought that the greater the amount of force or the more aggressive the use of the weapon, the greater the likelihood of conviction. No such pattern emerges, however. For robberies the conviction rate is higher where the suspect locks up or forces the victim to the floor than where the victim is clubbed or hit or kicked or beat with fists, as shown in Appendix Table C-11-4. The results are similar even if analyzed more broadly in terms of the force applied by any suspect in the case as opposed to that applied by the suspect in the study, as indicated in Appendix Table C-11-5.

There is no consistent relationship between the amount of money taken and the conviction rate for robberies. In Jacksonville the conviction rate is lowest for the robberies involving no dollar loss and has a slight tendency to become higher as the dollar amounts increase. In San Diego, however, the picture is virtually random, as shown in Appendix Table C-11-6.

Another important offense characteristic is the number of victims and offenders. Logically convictions would seem more likely with a larger number of offenders because there are more things that can go wrong, and as Appendix Table C-11-7 indicates the conviction rates are higher for cases with two

Table 11-4

Conviction Rates by Subtypes--Felony Assault
(In percent of persons arrested)

| Attacks involving: | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| Relationships | | | | |
| Family members and close relationships | 112 | 38 | 63 | 37 |
| Previous personal acquaintances | 27 | 63 | 34 | 35 |
| On-going business relationships | 4 | (25) | 5 | 40 |
| Strangers | | | | |
| Brief business relationships | 8 | 100 | 7 | 86 |
| Brief drug relationship | 4 | - | 1 | - |
| Stranger-to-stranger | 17 | 53 | 29 | 48 |
| Other | | | | |
| Attacks on police officer | 21 | 86 | 29 | 76 |
| Attacks while fleeing a robbery or burglary (other than on police officer) | 3 | (67) | 13 | 38 |
| Overall | 196 | 50 | 181 | 46 |

offenders than for cases with only one. The conviction rates are sharply lower, however, for robberies with four or more offenders. As might be expected, the conviction rates increase as the number of victims increases.

The role of the offender is an important factor in explaining convictions in robbery cases. As indicated in Table 11-5, defendants who are thought to have played a major part in the crime are much more likely to be convicted than those thought to have played a minor part.

C. Other Offense Characteristics--Burglary

If house and building break-ins are considered alone, the likelihood of conviction is slightly higher in burglaries of commercial buildings than of residences, as shown in Table 11-6. There is virtually no difference, however, between day and night burglaries, and no consistent differences as to whether the entry was either forcible or completed. When the time of the burglary is not known, however, the likelihood of conviction is considerably lower.

More detailed analysis of the kinds of premises involved in burglaries indicates that conviction rates are highest for persons arrested for bar, restaurant and retail store burglaries and lowest for persons arrested for apartment burglaries, as shown in Appendix Table C-11-8.

Table 11-5

Active Participant--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Defendant only participant | 53 | 57 | 42 | 48 |
| Major participant | 83 | 61 | 79 | 49 |
| Minor participant | 15 | 20 | 14 | 21 |
| Lookout, getaway driver | 13 | 69 | 10 | 50 |
| Other | 14 | 36 | - | - |
| No information, role unclear | 22 | 5 | 55 | - |
| Total | 200 | 50 | 200 | 34 |

Table 11-6

Type of Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Residential | 104 | 63 | 139 | 50 |
| Commercial | 96 | 77 | 80 | 58 |
| | | | | |
| Night | 120 | 71 | 132 | 54 |
| Day | 61 | 72 | 63 | 62 |
| Unknown | 19 | 53 | 24 | 25 |
| | | | | |
| Forcible entry | 133 | 73 | 144 | 57 |
| Attempted forcible entry | 15 | 80 | 20 | 35 |
| Unlawful entry | 44 | 64 | 40 | 53 |
| Other | 3 | (33) | 6 | 50 |
| Unclear | 5 | 20 | 8 | 25 |
| Overall | 200 | 70 | 219 | 53 |

Most arrests for burglary in both jurisdictions involved entries for the purpose of theft, as shown in Table 11-7. Where the purpose of entry was to assault someone, the conviction rate generally was lower, usually because the victim was known to the defendant and was less likely to follow through with the prosecution. Suspects who advanced non-theft reasons for entering the premises were considerably more successful in escaping conviction in Jacksonville than in San Diego, as shown in Appendix Table C-11-9.

While different dollar losses result in considerably different conviction rates, there is no consistent relationship, as shown in Appendix Table C-11-10. The conviction rate where property was recovered, however, was much higher than where there was none, as shown in Appendix Table C-11-11. The highest conviction rates of all were where the getaway was not complete. In these situations the property was often found on the person of the defendant or stacked up ready to be taken.

It might be surmised that convictions would be more likely where a building is occupied at the time of the burglary and even more likely when there is some kind of confrontation.

Table 11-7

Purpose of Entry--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Theft | 166 | 71 | 195 | 55 |
| Assault | 6 | 33 | 2 | (50) |
| Other felony | 1 | (100) | 6 | 33 |
| Attempt only, purpose unclear | 8 | 50 | 1 | (100) |
| Unclear but probably not theft | 5 | 100 | 2 | 50 |
| Non-felony intended | 2 | (100) | - | - |
| Possible theft | 9 | 78 | 13 | 23 |
| No crime intended | 3 | (33) | - | - |
| Total | 200 | 70 | 219 | 53 |

These situations are not frequent but do occur in more instances than might be expected. Buildings were occupied in nearly a fifth of the burglaries and there was some kind of confrontation in over 10 percent, as shown in Appendix Table C-11-12. Neither factor, however, made convictions more likely. In fact both made conviction less likely, probably because some involved close victim-offender relationships.

The fact that an alarm was activated at the time of the crime made a conviction much more likely in both cities, as indicated in Table 11-8. This is probably because activitation of an alarm makes possession of stolen property more likely.

As was the case with robberies, defendants who were the major participants or the sole participants in the crime were much more likely to be convicted than those who were minor participants, as indicated in Table 11-9.

Also as was the case with robberies, conviction was more likely when there were two defendants than when there was only one. The existence of a large number of defendants, however, tended to reduce the conviction rate, as shown in Appendix Table C-11-13. This is probably because some of the suspects were simply around and not really part of the crime and partly because even where actually involved some of the participants are quite marginal. Most burglaries are unwitnessed and it is therefore not generally known whether the burglars are armed or not. In those few instances where burglars are known to be armed, it does not appear to make conviction any more likely.

## D. Other Characteristics--Felony Assault

Because there is particular concern about violence perpetrated by strangers and there has been considerable study of violence involving family members and acquaintances, this study

Table 11-8

Alarm Activated--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Yes | 34 | 85 | 37 | 70 |
| No | 166 | 66 | 181 | 50 |
| Unclear | - | - | 1 | - |
| Total | 200 | 70 | 219 | 53 |

Table 11-9

Active Participant--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Defendant only participant | 85 | 68 | 95 | 53 |
| Major participant | 88 | 77 | 93 | 67 |
| Minor participant | 12 | 42 | 7 | 43 |
| Lookout, getaway driver | 1 | (100) | - | - |
| Other | - | - | 1 | - |
| No information | 11 | 64 | 20 | 5 |
| No burglary | 3 | - | 3 | - |
| Total | 200 | 70 | 219 | 53 |

focused particularly on stranger-to-stranger felony assaults. Initially it appeared that there would be a large number of such cases, but as the files were examined more closely what first appeared as random violence often turned out to be due to some prior relationship.

Most stranger-to-stranger felony assault cases involved a single offender attacking a single victim on the street, on the sidewalk or in a bar. Generally the offender initiated the attack without provocation from the victim, carried some kind of weapon, and used either it or some other kind of force against the victim. About a quarter of the victims were hospitalized as a result of the attack and over two-thirds were injured in some way. (See Appendix Tables C-11-14 through C-11-19).

The highest conviction rates resulted from attacks on store or bar employees, as shown in Table 11-10. Injury to the victim was the only other characteristic with any systematic relationship to convictions, but the relationship went in different directions in the two cities. It was associated with more convictions in Jacksonville and fewer in San Diego.

Table 11-10

Type of Dispute
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Employee/customer dispute | 7 | 100 | 6 | 83 |
| Bar room fight | 6 | 33 | 3 | - |
| Other fight | - | - | 4 | (75) |
| Traffic dispute | 4 | (75) | 9 | 56 |
| Other street encounter | 5 | 40 | 8 | 38 |
| Other | 7 | 43 | 7 | 57 |
| Total | 29 | 59 | 37 | 54 |

Chapter Twelve

# INDIVIDUAL CASE CHARACTERISTICS II: DEFENDANT AND VICTIM

In addition to a unique set of offense characteristics each case also involves one or more unique suspects and one or more unique victims. This chapter explores the relationship between defendant and victim characteristics and the conviction rate.

## A. Defendant Characteristics--Robbery

The conviction rate for male offenders is considerably higher than that for female offenders, as indicated in Table 12-1. This is probably attributable to the fact that many of the female arrestees are minor participants or only loosely connected with the crime.

There is no strong relationship between the age of the defendant and the likelihood of conviction, but the highest rates of conviction in both jurisdictions are for the 18-20 year-old group. In both jurisdictions whites are somewhat more likely to be convicted than blacks. There are virtually no Hispanic defendants in Jacksonville, but in San Diego they have a considerably higher likelihood of conviction than any other racial or ethnic group.

It might be expected that a prior record would increase the likelihood of conviction. This is not the case, however, as defendants with no prior adult record had the highest rate of conviction in both jurisdictions. Those with a prior prison record had the next highest rate. A "minor" prior record is defined as at least one arrest but no convictions, while a "moderate" prior record involves at least one conviction but no jail or prison time.

Defendants with a prior robbery conviction were more likely to be convicted than those who did not have a prior robbery conviction, as shown in Table 12-2. Defendants who had a prior arrest for robbery but no conviction, however, were less likely to be convicted than those who had never been so arrested.

Defendants who were in some criminal status such as probation or parole at the time of arrest were more likely to be convicted in San Diego than those who were not. This was also true in Jacksonville but to a lesser degree. In both jurisdictions defendants who were on parole were more likely to be convicted and those on probation less.

Table 12-1

Defendant Characteristics--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Sex | Number | Percent Convicted | Number | Percent Convicted |
| Male | 183 | 52 | 183 | 34 |
| Female | 17 | 24 | 17 | 29 |
| Age | | | | |
| 18-20 years | 71 | 56 | 44 | 46 |
| 21-24 | 51 | 43 | 67 | 34 |
| 25-29 | 37 | 54 | 49 | 22 |
| 30-39 | 24 | 38 | 26 | 39 |
| 40-59 | 15 | 47 | 11 | 27 |
| 60 and older | 2 | (50) | 3 | - |
| Race | | | | |
| White | 93 | 56 | 75 | 39 |
| Black | 107 | 44 | 100 | 21 |
| Hispanic | - | - | 23 | 70 |
| Other | - | - | 2 | (50) |
| Prior Adult Record | | | | |
| None | 57 | 60 | 41 | 44 |
| Minor | 18 | 33 | 16 | 13 |
| Moderate | 44 | 41 | 31 | 36 |
| Prior jail | 32 | 41 | 59 | 29 |
| Prior prison | 48 | 56 | 44 | 39 |
| No information | 1 | (100) | 9 | 22 |
| Overall | 200 | 50 | 200 | 34 |

Table 12-2

Prior Robbery Record and Criminal Status--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Prior Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Yes, arrest only | 18 | 44 | 44 | 23 |
| Yes, conviction | 28 | 57 | 23 | 52 |
| Apparently not | 148 | 47 | 125 | 35 |
| No information | 6 | 67 | 8 | 13 |
| Total | 200 | 50 | 200 | 34 |
| Criminal Status at Arrest | | | | |
| None | 111 | 48 | 94 | 30 |
| Wanted on other charge | 2 | (-) | 3 | - |
| Charges pending | 29 | 55 | 13 | 39 |
| On probation | 23 | 39 | 56 | 34 |
| On parole | 22 | 59 | 12 | 42 |
| Combinations | 12 | 58 | 13 | 54 |
| Other (includes pretrial intervention) | 1 | (100) | 9 | 33 |
| Total | 200 | 50 | 200 | 34 |

## B. Victim Characteristics--Robbery

The majority of the robbery cases involved victims who were strangers to the defendants, as shown in Table 12-3. This was true for 72 percent of the San Diego and 64 percent of the Jacksonville cases. In Jacksonville, as in the Vera Institute study of New York City, the conviction rate is much higher for stranger-to-stranger robberies than for those involving some kind of relationship. This was not true for San Diego, however. The difference is not that the conviction rate in San Diego is particularly high for robberies involving some kind of prior relationship but that it is relatively low for stranger-to-stranger robberies. Suspects charged with robberies arising out of hitchhiking or prostitution relationships were particularly likely to escape conviction in both jurisdictions.

Table 12-3

Relationship to Victim--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Spouse, family member, ex-spouse, boy-girlfriend | 1 | (100) | 1 | (-) |
| Acquaintances, friends | 19 | 53 | - | - |
| Lives, works nearby | 2 | - | - | - |
| Business relationship | - | - | 4 | (50) |
| Hitchhiking | 17 | 29 | 6 | 33 |
| Prostitution | 9 | 22 | 6 | 17 |
| Drug dealing | - | - | 3 | (33) |
| Brief relationships | 9 | 44 | 14 | 43 |
| Stranger | 133 | 56 | 149 | 37 |
| Unclear | 6 | 17 | 8 | - |
| Other (includes no robbery) | 4 | (25) | 9 | - |
| Total | 200 | 50 | 200 | 34 |

## C. Defendant Characteristics--Burglary

The relationship between defendant characteristics and convictions in the burglary cases is somewhat different from that in the robbery cases. As in the robbery cases female defendants are convicted less frequently, and there is no strong relationship between age and likelihood of conviction, as shown in Table 12-4. Unlike the robbery cases, however, blacks have a higher conviction rate than whites in Jacksonville, and in both jurisdictions the relationship between prior record and convictions is quite different from that in the robbery cases. Defendants with no prior adult record--the group with the highest conviction rate for robberies--has one of the lower conviction rates for burglary in San Diego. On the other hand defendants with only a prior jail record--a group which ranked lower in convictions for robbery--is near the top for burglary.

The effect of a prior burglary conviction also appears to be different from the effect of a prior robbery conviction on the robbery cases. In San Diego defendants who had previously been convicted for burglary had the highest conviction rate just as their counterparts in the robbery cases, as shown in Table 12-5. In Jacksonville, however, those with a prior burglary conviction had a lower conviction rate than those who had been arrested but not convicted for burglary and those who had no prior burglary history.

Criminal status at arrest also had a different effect on burglary convictions in Jacksonville than on robbery convictions. Defendants on some criminal status were less likely to be convicted than those who were not.

## D. Victim Characteristics--Burglary

The majority of the burglary cases also involved victims who were strangers to the defendants, as shown in Table 12-6. In general, however, there are no sharp differences between the conviction rate for stranger-to-stranger burglaries and that for cases involving some kind of relationship. One category which does involve such a difference is burglaries involving an ex-spouse or an ex-girl or boy friend. In Jacksonville these cases had a conviction rate only one third of that for the other cases.

## E. Defendant Characteristics--Felony Assault

Although the Jacksonville stranger-to-stranger felony assault defendants were much younger and contained more females than the San Diego defendants, neither age nor sex appeared to be related to the conviction rate for stranger-to-stranger felony assault, as shown in Table 12-7. There were sizeable differences by race, but the two jurisdictions went in

Table 12-4

Defendant Characteristics--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Sex | Number | Percent Convicted | Number | Percent Convicted |
| Male | 182 | 74 | 205 | 53 |
| Female | 18 | 28 | 14 | 50 |
| Age | | | | |
| 18-20 years | 93 | 75 | 69 | 54 |
| 21-24 | 42 | 76 | 66 | 62 |
| 25-29 | 37 | 54 | 45 | 51 |
| 30-39 | 19 | 68 | 30 | 37 |
| 40-59 | 8 | 38 | 9 | 44 |
| 60 and older | 1 | (100) | - | - |
| Race | | | | |
| White | 113 | 67 | 85 | 51 |
| Black | 87 | 72 | 81 | 46 |
| Hispanic | - | - | 53 | 68 |
| Prior Adult Record | | | | |
| None | 52 | 75 | 49 | 51 |
| Minor | 27 | 67 | 31 | 58 |
| Moderate | 43 | 67 | 19 | 63 |
| Prior jail | 46 | 78 | 63 | 52 |
| Prior prison | 31 | 55 | 44 | 52 |
| No information | 1 | - | 13 | 38 |
| Overall | 200 | 70 | 219 | 53 |

Table 12-5

Prior Burglary Record and Criminal Status--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Prior Burglary | Number | Percent Convicted | Number | Percent Convicted |
| Yes, arrest only | 32 | 69 | 29 | 52 |
| Yes, conviction | 40 | 60 | 61 | 61 |
| Apparently not | 124 | 73 | 116 | 51 |
| No information | 4 | (50) | 13 | 38 |
| Total | 200 | 70 | 219 | 53 |
| **Criminal Status at Arrest** | | | | |
| None | 134 | 75 | 114 | 47 |
| Wanted on other charge | 2 | (50) | 1 | (100) |
| Charges pending | 23 | 74 | 24 | 67 |
| On probation | 16 | 50 | 44 | 57 |
| On parole | 9 | 56 | 13 | 62 |
| Combinations | 9 | 56 | 21 | 48 |
| Other (includes pretrial intervention) | 6 | 33 | 1 | (100) |
| Unclear | 1 | (100) | 1 | (100) |
| Total | 200 | 70 | 219 | 53 |

Table 12-6

Relationship to Victim--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Spouse, family member | 4 | (75) | 3 | (33) |
| Ex-spouse, boy-girlfriend | 12 | 25 | 4 | (75) |
| Acquaintances, friends | 11 | 64 | 8 | 75 |
| Employee | 6 | 83 | 1 | - |
| Lives, works nearby | 9 | 100 | 18 | 39 |
| Seen around neighborhood | 7 | 71 | 1 | - |
| Business relationship | 1 | - | 2 | (100) |
| Brief relationship | - | - | 2 | (100) |
| Stranger | 129 | 75 | 168 | 54 |
| Defendant claims to be friend or acquaintance | 1 | - | 3 | - |
| Other | 10 | 60 | 6 | 67 |
| Unclear | 10 | 40 | 1 | - |
| Total | 200 | 70 | 219 | 53 |

Table 12-7

Defendant Characteristics
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Sex | Number | Percent Convicted | Number | Percent Convicted |
| Male | 21 | 62 | 35 | 51 |
| Female | 8 | 50 | 2 | (100) |
| Age | | | | |
| 18-20 years | 2 | - | 8 | 75 |
| 21-24 | 4 | (50) | 14 | 57 |
| 25-29 | 7 | 71 | 7 | 29 |
| 30-39 | 8 | 63 | 1 | (100) |
| 40-59 | 7 | 57 | 6 | 50 |
| 60 and older | 1 | (100) | - | - |
| Unknown | - | - | 1 | - |
| Race | | | | |
| White | 17 | 71 | 19 | 42 |
| Black | 11 | 46 | 14 | 71 |
| Hispanic | - | - | 4 | (50) |
| Asian | 1 | - | - | - |
| Prior Adult Record | | | | |
| None | 8 | 38 | 10 | 40 |
| Minor | 3 | (67) | 7 | 57 |
| Moderate | 9 | 67 | 4 | (75) |
| Prior jail | 5 | 80 | 8 | 88 |
| Prior prison | 3 | (67) | - | - |
| No information | 1 | - | 8 | 25 |
| Overall | 29 | 59 | 37 | 54 |

different directions. In San Diego blacks had the highest likelihood of conviction, but in Jacksonville it was whites. In both jurisdictions defendants with a prior record had higher conviction rates than those without. A prior conviction for assault sharply increased the chances of conviction in Jacksonville.

## F. Victim Characteristics--Felony Assault

Because cases involving some kind of victim-offender relationship were excluded from the study, none of the victims studied knew their assailants. Most were total strangers, but a few had had some very brief business relationship such as waiting on the assailant in a store. In one instance the victim was a bouncer in a bar who was assaulted when he tried to prevent the defendants from reentering.

Table 12-8

Prior Assault Record and Criminal Status
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Prior Assault | Number | Percent Convicted | Number | Percent Convicted |
| Yes, arrest only | 4 | (50) | 1 | (100) |
| Yes, conviction | 5 | 100 | 1 | (100) |
| Apparently not | 19 | 53 | 27 | 59 |
| No information | 1 | - | 8 | 25 |
| Total | 29 | 59 | 37 | 54 |
| **Criminal Status at Arrest** | | | | |
| None | 27 | 59 | 24 | 46 |
| Charges pending | 1 | (100) | 2 | (50) |
| On probation | - | - | 4 | (100) |
| On parole | 1 | - | 2 | (100) |
| Unclear | - | - | 5 | 40 |
| Total | 29 | 59 | 37 | 54 |

Table 12-9

Relationship to Victim
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Brief business relationship | 5 | 100 | 7 | 86 |
| Brief drug dealing | 4 | - | 1 | - |
| Strangers | 17 | 53 | 25 | 52 |
| Other | 3 | (100) | 4 | (25) |
| Total | 29 | 59 | 37 | 54 |

## Chapter Thirteen

# INDIVIDUAL CASE CHARACTERISTICS III: CASE PROCESSING

The way a criminal justice system is organized impinges upon individual cases in many different ways. Some processes are so basic and so routinized that virtually all defendants go through them about the same time, and in much the same way. Arrest, the filing of a complaint and the initial appearance in court are examples of this kind of process. Other processes occur much more erratically. Only a few defendants are indicted by the grand jury and relatively few are handled through career criminal prosecution units. This chapter discusses the impact of some of these aspects of case processing on convictions.

## A. Case Filings

Some defendants are found to have been involved in a single crime, while others are involved in multiple offenses. Practices vary widely among jurisdictions as to how those involved in multiple offenses will be charged. In some jurisdictions the additional offenses will be charged; in others they will not. If charged, the additional offenses may be placed as multiple counts in a single complaint, information or indictment or as separate complaints, informations or indictments. Most robbery cases in both jurisdictions involved the filing of a single complaint, as shown in Table 13-1. In Jacksonville, however, nearly 10 percent of the filings involved multiple complaints. The conviction rate in these multiple complaint cases was marginally higher than that in the single complaint cases (75 versus 68 percent). There were no multiple complaints filed in San Diego on sample robberies, although there were numerous instances in which multiple robbery counts were filed in the same overall case.

In both jurisdictions there were a number of cases which were rejected for felony filing but later considered for filing as misdemeanors. In San Diego these cases go from the district attorney's office to the city attorney; in Jacksonville to another division of the state's attorney's office.

An even higher percentage of the burglary cases involved a single complaint, as shown in Table 13-2. Again, however, the cases involving multiple complaints had a higher conviction rate.

As in the robbery cases, the cases which were initially rejected but later filed had lower conviction rates than those which were initially filed.

Table 13-1

Number of Complaints--Robbery
(In percent of persons arrested)

| Number of Complaints | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| One | 132 | 67 | 121 | 55 |
| Two | 4 | (75) | - | - |
| Three | 3 | (100) | - | - |
| Four | 4 | (50) | - | - |
| Five | 1 | (100) | - | - |
| None | 56 | - | 79 | - |
| Total | 200 | 50 | 200 | 34 |
| **Ever Refiled?** | | | | |
| Yes | 4 | (75) | 13 | 85 |
| No | 196 | 49 | 187 | 30 |
| **Diverted?** | | | | |
| Yes | 1 | (100) | - | - |
| No | 199 | 49 | 200 | 34 |
| **Ever Rejected?** | | | | |
| Police release, never filed | NA | NA | 78 | - |
| DA reject, never filed | NA | NA | 29 | - |
| Initially rejected, but later filed | NA | NA | 32 | 6 |
| Filed initially | NA | NA | 89 | 71 |

Table 13-2

Number of Complaints--Burglary
(In percent of persons arrested)

| Number of Complaints | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| One | 144 | 84 | 155 | 75 |
| Two | 4 | (100) | - | - |
| Three | 1 | (100) | - | - |
| None | 51 | 26 | 64 | - |
| Total | 200 | 70 | 219 | 53 |
| **Ever Refiled?** | | | | |
| Yes | 1 | (100) | 1 | (100) |
| No | 199 | 69 | 218 | 53 |
| **Diverted?** | | | | |
| Yes | 14 | 100 | - | - |
| No | 186 | 67 | 219 | 53 |
| **Ever Rejected?** | | | | |
| Police release, never filed | NA | NA | 27 | - |
| DA reject, never filed | NA | NA | 37 | - |
| Initially rejected, but later filed | NA | NA | 10 | 70 |
| Filed initially | NA | NA | 144 | 76 |
| Unclear | NA | NA | 1 | - |

All the stranger-to-stranger felony assault cases except for one Jacksonville case involved single complaints.

B. Pretrial Detention

Information concerning pretrial detention is available only for the Jacksonville cases. It shows that over half the robbery defendants and about a third of the burglary defendants were never released on either bail or OR, as shown in Table 13-3.

Neither the method of release nor whether the defendant was ever released appears to have any consistent effect on convictions. Defendants who were released on OR had the lowest rate of conviction in the robbery cases but the highest in the burglary cases. Defendants who were never released on the other hand had the highest rate of conviction in the robbery cases but the lowest in the burglary cases.

For both crimes there were a few defendants who were released at some time in the proceedings and then later jailed, usually as a result of rearrests for new offenses. These defendants were in custody at the time of final disposition and had a somewhat higher likelihood of conviction than the other defendants who were released.

Several robbery defendants and over 10 percent of the burglary defendants who had been released failed to appear at some point in the proceedings. Overall these defendants had about the same conviction rate as the other released defendants. (The burglary defendants who failed to appear had a lower conviction rate, but the robbery defendants were all convicted.)

For both offenses defendants who were detained for over 30 days had a higher likelihood of conviction, and for both the conviction rate increased slightly as the length of the detention increased. While these figures tend to suggest a strong relationship between days detained and conviction, they may simply reflect the fact that most attrition in Jacksonville comes early as a result of decisions not to prosecute and that most cases which stay in the system over 30 days ultimately result in conviction. This issue is discussed further in Appendix BB.(Appendix BB is contained in the appendix volume available from the National Criminal Justice Reference Service.)

C. Preliminary Hearing

Under California law felony charges may not proceed to trial until after probable cause has been established in a preliminary hearing or the defendant indicted by a grand jury.

Table 13-3

Pretrial Detention--Jacksonville
(In percent of persons arrested)

| | Robbery | | Burglary | |
|---|---|---|---|---|
| Detention Summary | Number | Percent Convicted | Number | Percent Convicted |
| Never released | 109 | 51 | 68 | 62 |
| OR | 17 | 35 | 43 | 77 |
| Bail | 71 | 49 | 81 | 70 |
| Other | 2 | (50) | 1 | (100) |
| Unclear | 1 | (100) | 7 | 86 |
| Detention Status at Disposition | | | | |
| In jail | 118 | 53 | 73 | 64 |
| Bail or OR | 80 | 45 | 123 | 73 |
| Other | 1 | - | 3 | (33) |
| Unclear | 1 | (100) | 1 | (100) |
| Days Detained | | | | |
| 1-5 days | 47 | 36 | 89 | 58 |
| 6-10 | 17 | 35 | 25 | 60 |
| 11-30 | 40 | 23 | 36 | 64 |
| 31-50 | 18 | 56 | 21 | 81 |
| 51-100 | 30 | 70 | 14 | 93 |
| 101 and up | 45 | 78 | 15 | 93 |
| Unknown | 3 | (33) | - | - |
| Ever a Failure to Appear? | | | | |
| No | 198 | 49 | 183 | 69 |
| Yes | 2 | (100) | 17 | 77 |
| Overall | 200 | 50 | 200 | 70 |

As a practical matter virtually all charges go through the preliminary hearing procedure. In Florida on the other hand there is no requirement for a preliminary hearing or for indictment by grand jury in the ordinary felony case.

Around 30 percent of the robbery and burglary arrests in San Diego resulted in preliminary hearings. Of these only one robbery and two burglaries resulted in a finding of no probable cause, as shown in Table 13-4. Ultimately 86 percent of the robberies involving a preliminary hearing and 71 percent of the burglaries resulted in a conviction. A high percentage of those not convicted were cases in which there was a plea to another charge.

## D. Career Criminal Handling

Both Jacksonville and San Diego have special prosecutorial units designed to prosecute career criminals. The San Diego unit was one of the first in the country and is generally regarded as one of the best. It has been nationally evaluated and served as the prototype for the state career criminal program funded by the California legislature.

In Jacksonville during the study period there were two special units. One was aimed at assaultive crimes (VCD) and the other at multiple theft offenders (MOD).

Table 13-4

Preliminary Hearing--San Diego
(In percent of persons arrested)

| | Robbery | | Burglary | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| No, defendant not charged | 107 | - | 64 | - |
| No, charged as misdemeanor | 2 | (50) | 17 | 65 |
| No, defendant pled guilty to this or another charge before preliminary hearing | 21 | 76 | 69 | 78 |
| No, dismissed before preliminary hearing | 12 | - | 15 | - |
| Yes | 58 | 86 | 54 | 94 |
| Total | 200 | 34 | 219 | 53 |

Overall the special units handled about 10 percent of the robbery arrests and 20 percent of the robberies charged in San Diego, and 20 percent of the robbery arrests and 30 percent of the robberies charged in Jacksonville. In San Diego the career criminal unit had a conviction rate 11 percent higher than that for the robberies handled in the normal process. In Jacksonville the unit handling assaultive crimes had a conviction rate higher than the average, while the unit handling property offenses (MOD) had a conviction rate lower than the average, as indicated in Table 13-5.

A much smaller percentage of the burglary cases were handled in some special way. In San Diego only one case was handled by the career criminal unit, while in Jacksonville the career criminal units together handled about 15 percent of the arrests and 20 percent of the cases charged. Most of these cases were handled by the MOD unit. As with the robbery cases, the conviction rate was lower than that for the cases handled in normal fashion.

Table 13-5

Career Criminal Handling
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Major violator | 29 | 83 | 16 | 81 |
| Career criminal | 14 | 57 | - | - |
| Not handled specially | 98 | 68 | 77 | 70 |
| Not charged | 59 | - | 107 | - |
| Total | 200 | 50 | 200 | 34 |
| **Burglary** | | | | |
| Major violator | 1 | (100) | 1 | (100) |
| Career criminal | 30 | 83 | - | - |
| Not handled specially | 124 | 90 | 154 | 75 |
| Not charged | 44 | - | 64 | - |
| Total | 200 | 70 | 219 | 53 |

None of the stranger-to-stranger felony assault cases studied were handled by special prosecutorial units.

## E. Number of Court Appearances

Both on paper and in the proceedings observed the California procedure is more complex than that used in Jacksonville. There is the extra step of a preliminary hearing and the necessity of transferring many cases from the lower to the upper court, as discussed in chapter 6. The median number of court appearances for the burglary cases which went to court, however, is the same, as shown in Table 13-6.

In both jurisdictions the conviction rate increases as the number of court appearances increases. As with the number of detention days, this is because most of the attrition in both jurisdictions comes early in the process.

The number of court appearances and the relationship between court appearances and conviction is generally similar for stranger-to-stranger felony assault.

Table 13-6

Number of Court Appearances
(In percent of persons arrested)

| | Jacksonville Burglary | | San Diego Burglary | | San Diego Robbery | |
|---|---|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted | Number | Percent Convicted |
| None | 21 | - | 64 | - | 107 | - |
| 1 | 39 | 36 | 2 | - | - | - |
| 2 | 12 | 83 | 5 | 60 | 4 | - |
| 3 | 12 | 92 | 35 | 63 | 10 | 10 |
| 4 | 17 | 82 | 32 | 88 | 14 | 57 |
| 5 | 23 | 83 | 15 | 87 | 8 | 88 |
| 6-9 | 57 | 88 | 59 | 76 | 45 | 87 |
| 10-14 | 14 | 93 | 4 | (75) | 9 | 100 |
| 15-28 | 5 | 80 | - | - | - | - |
| Unknown | - | - | 3 | (67) | 3 | (100) |
| Total | 200 | 70 | 219 | 53 | 200 | 34 |

# Chapter Fourteen

## EVIDENTIARY CHARACTERISTICS I: IDENTIFICATIONS

From the legal perspective a defendant may be convicted only upon presentation by the prosecution of proof beyond a reasonable doubt that a crime occurred and that the defendant was the person who committed the crime. The fact that the defendant is a very bad person, or a very good person, is in theory irrelevant. All that matters is the evidentiary proof.

Most dispositions come not as a result of trials, however, but as a result of screening decisions, dismissals and pleas. These decisions undoubtedly reflect a number of factors but include as one important component judgments on the part of the prosecution, the defense, the defendant and possibly the judge as to what might happen if the case went to trial.

Different crimes present different kinds of prosecution problems. In some instances the problem is primarily that of characterizing the act rather than identifying who ought to be the defendant. Was the act self-defense or was it murder? In other instances the problem is that of identifying the proper suspect. The crime was clearly murder but was it this suspect who did the shooting?

Because robbery is generally a stranger-to-stranger crime in which the parties are in contact for a very limited time, the problem in robbery prosecutions (and apprehensions) is generally that of linking the suspect to the crime rather than that of characterizing the act. A key element is the quality of the identification evidence. Is there a victim or a witness who can testify that this suspect is the one who committed the robbery? Even when the defendant is initially linked to the crime through a car license number, stolen property or in some other manner, ultimately the identification evidence is often crucial.

The importance of this kind of evidence is clearly indicated in the Jacksonville and San Diego robberies. It is the most common linking factor in each city (see Table 18-1) and its presence or absence causes a sizeable difference in the conviction rate. This difference is particularly pronounced in San Diego where, as shown in Table 14-1, the conviction rate drops to 13 percent when there is no positive identification.

Burglary cases are quite different. Because these crimes are generally unwitnessed the linking evidence tends to be an apprehension at the scene, the stolen property or a statement by the suspect or a co-participant. Identification evidence is of much less importance than in the robbery cases.

Table 14-1

Effect of Identification Evidence
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Positive identification: V-W saw defendant commit crime | 93 | 65 | 89 | 56 |
| No positive identification | 107 | 36 | 111 | 15 |
| Overall | 200 | 50 | 200 | 34 |
| Burglary | | | | |
| Positive identification: V-W saw defendant commit crime | 18 | 67 | 25 | 60 |
| No positive identification | 182 | 70 | 194 | 52 |
| Overall | 200 | 70 | 219 | 53 |

Stranger-to-stranger felony assaults present a still different situation. Many arrests are made at the scene of the dispute and even in other cases some kind of identification is generally possible. Identification of the person committing the offense is consequently less often an issue and fewer identification procedures are required.

A. Identification Evidence in Robbery Cases

The most common method of identifying suspects in robbery cases in both Jacksonville and San Diego is through field identifications within one hour of the crime, as shown in Table 14-2. The second most common method is the photo lineup. In the "field identification within one hour" the suspect is either caught near the scene and returned for identification by the victim or the victim is brought to the location of the suspect. In the photo lineup five or six photos including that of the suspect are shown to the victim or witness out of the presence of the suspect.

Table 14-2

Identification Attempts--Robbery

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Identification Attempts | Number of Positive Identifications | Number of Identification Attempts | Number of Positive Identifications |
| Field ID within one hour | 91 | 70 | 84 | 75 |
| Field ID in 1-2 hours | 23 | 16 | 14 | 12 |
| Field ID in 2-3 hours | 9 | 4 | 1 | - |
| Field ID in 3-6 hours | 9 | 4 | 1 | - |
| Field ID over 6 hours | 10 | 5 | 5 | 4 |
| V-W spots after 6 hours | 13 | 8 | 6 | 5 |
| Other one-on-one ID | 14 | 8 | 2 | 1 |
| Photo lineups | 66 | 40 | 74 | 24 |
| Photo book | 12 | 5 | 2 | - |
| Live lineups | 10 | 4 | 42 | 13 |
| Other | 23 | 10 | 18 | 8 |
| Total out-of-court | 280 | 174 | 249 | 142 |
| Out-of-court ID | 280 | 174 | 249 | 142 |
| In-court ID | 8 | 3 | 62 | 42 |
| Total | 288 | 177 | 311 | 184 |

In San Diego there is considerable use of the live lineup as a method of identification in robbery cases. This method is not used very much in Jacksonville, however. Overall there were over 10 percent more out-of-court identifications attempted in Jacksonville than in San Diego, and over 15 percent more out-of-court positive identifications made. This undoubtedly explains a considerable part of the difference in conviction rates.

For suspects arrested for robbery about 60 percent of the identifications attempted in each city result in positive identifications. If identifications based on a prior relationship are also taken into account, however, the ratio of reasonably certain identifications to identification attempts is about 10 percent higher in Jacksonville than in San Diego. These results, it should be reiterated, concern identifications made as to suspects arrested. We have no information about identifications attempted on suspects not arrested.

The number of field identifications attempted appears to be about 30 percent greater in Jacksonville than in San Diego. The differences are particularly great after the first hour. In Jacksonville there are 51 attempts and 29 positive identifications after the first hour--nearly double the 21 attempts and 18 positive identifications in San Diego.

There is also a rather substantial difference in the results of photo identification attempts for robbery suspects in the two cities, as shown in Appendix Table C-14-1. In Jacksonville there are 40 positive identifications out of 66 attempts; in San Diego 24 positive identifications out of 74 attempts.

There are also considerably more identifications made as a result of prior relationships in Jacksonville than in San Diego, as shown in Table 14-3.

While the identification process is critical to successful prosecution, it is also often important for establishing the innocence of suspects. In both cities victims and witnesses were sure that a few suspects were not the robber. In most instances these were suspects who had already been arrested and who were released after the victim or witness indicated they were not the robber. In some instances the identification procedure was initiated by the defense and the prosecution was not fully persuaded.

One issue which bears further examination is the effect of legal considerations on the identification process. Currently there are four major rules which would appear to have some bearing on identifications:

Table 14-3

Total Out-of-Court Identifications--Robbery

| | Jacksonville | | | San Diego | | |
|---|---|---|---|---|---|---|
| | Field | Other | Total | Field | Other | Total |
| Positive ID made | 99 | 75 | 174 | 91 | 51 | 142 |
| V-W knew defendant | 12 | 7 | 19 | 1 | 5 | 6 |
| Tentative ID | 4 | 4 | 8 | - | 11 | 11 |
| Defendant found not the robber | 1 | 5 | 6 | 3 | - | 3 |
| Other suspect ID'd | - | 1 | 1 | - | 12 | 12 |
| V-W tried but no ID | 15 | 31 | 46 | 8 | 58 | 66 |
| V-W refused to try | - | 1 | 1 | - | - | - |
| Defendant and other person ID'd | - | - | - | - | 4 | - |
| Other | 11 | 14 | 25 | 2 | 3 | 5 |
| Total | 138 | 138 | 280 | 105 | 144 | 249 |

--Identifications must be accomplished in ways that are not so suggestive that they create a risk of misidentification. Highly suggestive identifications will be excluded from evidence.

--Identification methods which present victims and witnesses with a choice of more than one suspect are regarded as less suggestive than those which present only one suspect.

--Identification attempts which occur after the suspect has been charged in court and which involve the physical presence of the suspect require the presence of the defendant's attorney unless the suspect has waived his right to have his attorney present.

--Viewing of photographs when the suspect is not physically present do not require the presence of the suspect's attorney.

These rules have been taken by some to prohibit the use of field identification procedures and other one-on-one identification procedures except when very close in time and location

to the crime. The Model Guidelines for police departments developed by the Police Foundation, for example, authorize such identifications during the first hour after the crime and when the suspect need be moved no more than one mile from the point of detention or arrest.

While it seems clear now that these rules are not legally required, the data available suggest that there are distinct differences as to the policies followed in the two jurisdictions. In both jurisdictions field identifications are encouraged at the early stages of the process but in San Diego later field identifications are discouraged for legal reasons.

Multiple Identification Attempts. In some instances the same witness may be called upon to try to identify the suspect on more than one occasion. This often occurs when the witness is not able to identify anyone on the first attempt. At other times the police or the district attorney may wish to test the identification initially made by having it repeated or by using another method of identification.

In the cases studied there were more multiple identification attempts in San Diego than in Jacksonville (25 to 17), as shown in Appendix Table C-14-2. The majority of these attempts sought positive identifications after earlier efforts had failed. In two of the instances in Jacksonville the second identification attempt was brought about by the defense. In both instances the witness was not able to identify the suspect.

Another way in which witnesses are asked to make additional identification attempts is through in-court identifications. There were 59 of these in San Diego as compared with eight in Jacksonville, as shown in Appendix Table C-14-3. Most of these in-court identifications in San Diego were at the preliminary hearing, a procedure which is not required in Florida except for homicide cases.

Most of the in-court identifications are simply confirmations of previous out-of-court identifications. In 15 instances in San Diego, however, witnesses were put on the stand who had not previously identified the suspect. Most of these were in cases in which there were multiple robbery charges and other witnesses had already identified the suspects. About three-fourths of the witnesses called upon in this way were able to identify the suspects.

Case-Based Analysis. When a defendant is arrested and prosecuted, there may be a single identification, multiple identifications or no identifications. The previous section analyzes the results of each identification attempt rather than all the identification attempts in a particular case. In this section we analyze the influence of identifications on the case as a whole.

As indicated in Table 14-1, the conviction rate is much higher where there is a positive identification than where there is not. In most instances where there is a positive identification there is only one such identification. As might be expected, the conviction rate is higher, however, where there is a second positive identification. There are relatively few cases with a third or fourth positive identification, but these additional positive identifications do not appear to matter much in any event, as shown in Table 14-4.

Although the general effects of a positive identification appear to be much the same in the two jurisdictions, the conviction rate per identification appears to be lower in San Diego.

There are several robbery situations in which a positive identification would not appear to be essential. When police officers observe the crime itself and make an arrest on the spot, identifications are usually not attempted, and there appears to be no need for such attempts. Similarly, where the victim knows the offender identifications are sometimes not attempted.

Logically these two relationships and several others portrayed in Table 14-5 could be expected to have as powerful or nearly as powerful an influence on convictions as positive identifications. They do not do so, however, in either Jacksonville or San Diego. A previous relationship between the victim

Table 14-4

Number of Positive Identifications--Robbery
(In percent of persons arrested)

| Number of positive identifications | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| 1 | 65 | 63 | 62 | 36 |
| 2 | 25 | 76 | 24 | 63 |
| 3 | 4 | (50) | 4 | (75) |
| 4 or more | 5 | (40) | 5 | 60 |
| None | 101 | 35 | 105 | 23 |
| Total | 200 | 50 | 200 | 34 |

Table 14-5

Arrest-at-scene and Other Identification Methods--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Arrest at scene | 18 | 33 | 19 | 16 |
| Arrest near scene | 13 | 39 | 19 | 37 |
| Person who knew defendant saw robbery | 23 | 39 | 9 | 11 |
| Person who knew defendant saw defendant flee or near scene of robbery | 3 | (33) | 6 | 33 |
| Overall | 200 | 50 | 200 | 34 |

and the offender often results in a more difficult prosecution because of the victim's unwillingness to follow through with the prosecution, while arrests made at the scene are often made to prevent crime or cool the situation down rather than for prosecution. Arrests made at the scene are discussed further in chapter 22.

Another way of looking at identification evidence is in terms of the number of witnesses who can testify to particular aspects of the crime. Viewed in this way it is not surprising that the most conclusive identification evidence is that which identifies the suspect as having committed the robbery.

The availability of witnesses who can identify the defendant as fleeing the robbery, being at the scene within 15 minutes of the crime or otherwise related to the crime is helpful to the prosecution but not as helpful as identifications placing the defendant at the commission of the crime. Where there is no identification linking the suspect to the commission of the crime, however, the other kinds of identification are very important, as shown in Table 14-6.

## B. Identification Evidence in Burglary Cases

Identification evidence is much less important in burglary cases. Overall in Jacksonville there were only one-seventh as many out-of-court identification attempts and one-fifth as many identifications as in the robbery cases. And in San Diego there

Table 14-6

Number of Witnesses Who Can Place the Defendant at Various Points--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Committing robbery | Number | Percent Convicted | Number | Percent Convicted |
| 1 | 88 | 52 | 90 | 43 |
| 2 | 29 | 69 | 25 | 56 |
| 3 or more | 13 | 46 | 8 | 63 |
| Fleeing robbery | | | | |
| 1 | 2 | - | 7 | 71 |
| 2 or more | 2 | - | 10 | 50 |
| At scene within 15 minutes | | | | |
| 1 | 30 | 53 | 37 | 46 |
| 2 | 17 | 35 | 11 | 27 |
| 3 or more | 11 | 64 | 5 | - |
| Other testimony | | | | |
| 1 | 8 | 75 | 30 | 27 |
| 2 | 4 | (100) | 12 | 17 |
| 3 or more | 3 | (100) | 6 | 67 |
| None committing robbery | 70 | 39 | 77 | 12 |
| Total cases | 200 | 50 | 200 | 34 |

were only one-third as many attempts and identifications as in the robbery cases, as shown in Table 14-8. As in the robbery cases, however, most identifications are the result of a field identification within one hour of the crime and photo lineups. Live lineups are hardly used at all.

## C. Identification Evidence--Felony Assault

Identification evidence is important in stranger-to-stranger felony assault cases. As it is almost always present in the cases in which arrests are made, however, its presence or absence does not help very much in explaining the cases in which convictions do not result, as shown in Table 14-8.

Table 14-7

Identification Attempts--Burglary

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Identification Attempts | Number of Positive Identifications | Number of Identification Attempts | Number of Positive Identifications |
| Field ID within one hour | 21 | 19 | 47 | 40 |
| Field ID in 1-2 hours | 3 | 2 | - | - |
| Field ID in 2-3 hours | - | - | 2 | 2 |
| Field ID in 3-6 hours | - | - | - | - |
| Field ID over 6 hours | 8 | 3 | - | - |
| V-W spots after 6 hours | 3 | 1 | 2 | 2 |
| Other one-on-one ID | 1 | 1 | 3 | 3 |
| Photo lineups | 6 | 4 | 17 | 5 |
| Photo book | - | - | - | - |
| Live lineups | - | - | 2 | - |
| Other | - | - | 3 | 1 |
| Total out-of-court | 41 | 30 | 76 | 53 |
| Out-of-court ID | 41 | 30 | 76 | 53 |
| In-court ID | - | - | 28 | 19 |
| Total | 41 | 30 | 104 | 72 |

Table 14-8

Number of Witnesses Who Can Place Defendant at Various Points
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Committing assault | Number | Percent Convicted | Number | Percent Convicted |
| 1 | 5 | 40 | 9 | 67 |
| 2 | 8 | 75 | 9 | 67 |
| 3 or more | 10 | 75 | 15 | 47 |
| Fleeing assault | | | | |
| 1 | - | - | 6 | 50 |
| 2 or more | - | - | 3 | (67) |
| At scene within 15 minutes | | | | |
| 1 | 8 | 75 | 5 | 80 |
| 2 | 1 | (100) | 7 | 29 |
| 3 or more | 5 | 20 | 3 | (100) |
| Total cases | 29 | 59 | 37 | 54 |

# Chapter Fifteen

## EVIDENTIARY CHARACTERISTICS II: CONFESSIONS AND ADMISSIONS

A confession by the defendant stating that he committed the crime is powerful evidence, as indicated in Table 15-1. The conviction rate in robbery and burglary cases involving confessions is 40 to 180 percent greater than in the cases not involving confessions. The effect is greatest in the San Diego robberies and least for the Jacksonville burglaries.

An admission is a statement by the defendant which indicates that he was present or did something which might be taken to be part of the crime. An admission falls short, however, of indicating that the defendant did all the things necessary to be guilty of the crime. In many cases in which the defendant makes an admission he at the same time specifically denies committing the crime.

Admissions obviously have a much smaller effect on convictions than do confessions. The conviction rate for robbery cases in which there is an admission is nonetheless considerably above that for the nonconfession cases.

The effects and the dynamics of confessions in stranger-to-stranger felony assault cases are sufficiently different from those in robbery and burglary cases that they are discussed separately in section C.

### A. Differences in Rate of Confession

At least as striking as the effect of the confessions on the conviction rate is the difference between Jacksonville and San Diego in the number of confessions obtained. There are fully twice as many confessions in Jacksonville in the robbery cases as in San Diego and nearly 60 percent more in the burglary cases.

This greater number of confessions in Jacksonville appears to be due more to the number of defendants in San Diego who refuse to answer (nearly 20 percent as compared with only four percent in Jacksonville) than to the difference in the number of defendants questioned (82 percent to 78 percent), as shown for burglary in Table 15-2. Full data is not available for robbery but that which is indicates a higher rate of refusal in San Diego for this offense also.

Another possible reason for the difference in results is that questioning is handled differently in the two jurisdictions. Both the available statistical information and the

Table 15-1

Confessions and Admissions
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Confessed | ~~51~~ | 80 | 26 | 73 |
| Admitted being at scene | 55 | 33 | 45 | 36 |
| All cases | 200 | 50 | 200 | 34 |
| Nonconfession cases | 149 | 40 | 174 | 28 |
| **Burglary** | | | | |
| Confessed | 80 | 84 | 52 | 73 |
| Admitted being at scene | 21 | 57 | 17 | 47 |
| All cases | 200 | 70 | 219 | 53 |
| Nonconfession cases | 120 | 60 | 167 | 47 |
| **Felony Assault (Stranger-to-stranger)** | | | | |
| Confessed | 10 | 50 | 11 | 64 |
| Admitted being at scene | 3 | (67) | 9 | 67 |
| All cases | 29 | 59 | 37 | 54 |
| Nonconfession cases | 19 | 58 | 26 | 50 |

Table 15-2

Questioning of Defendant Summary--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Refused to answer | 8 | 50 | 39 | 54 |
| Denied knowledge or participation | 27 | 56 | 27 | 48 |
| Admits being at scene but denies participation | 15 | 60 | 14 | 43 |
| Confessed | 81 | 84 | 51 | 73 |
| Admits possession of stolen property but denies burglary | 1 | (100) | 9 | 33 |
| Other | 24 | 42 | 35 | 34 |
| Not questioned | 37 | 65 | 44 | 55 |
| Unclear | 7 | 86 | - | - |
| Total | 200 | 70 | 219 | 53 |

study observations suggest a greater emphasis on questioning by detectives in Jacksonville in the burglary cases. It is not clear whether there is a similar difference in the robbery cases.

In both jurisdictions an effort is made to have burglary suspects interrogated at an early stage by the detectives. The hours worked and the physical layout of the jail appear to make this more difficult in San Diego, however. Similarly while there is an emphasis in both jurisdictions on enforcement activities by the patrol force, this emphasis is greater in San Diego. This greater emphasis shows up in the greater proportion of patrol arrests for burglary in San Diego--80 plus percent as compared with around 70 percent for Jacksonville. This relative emphasis also shows up in the fact that about half the burglary confessions obtained in San Diego come from patrol questioning, while only a third of the Jacksonville confessions come from patrol questioning, as shown in Appendix Tables C-15-1 and C-15-2.

Although the information available is not as clear as would be desirable, the indications are that patrol questions burglary suspects in about the same proportion of cases in the two jurisdictions but that the Jacksonville detectives question more suspects.

In both jurisdictions the detectives obtain more burglary confessions per interrogation than do patrol officers, as shown in Table 15-3. The rate of confession is so much higher in Jacksonville, however, that the Jacksonville patrol officers obtain more confessions per interrogation than do the San Diego detectives.

B. Confessions Which End in Non-Convictions

While confessions are obviously extremely powerful evidence, there are a surprising number of cases in both jurisdictions in which a confession does not result in conviction. Overall nearly a fifth of the cases in which there was a confession ended in a non-conviction.

One possible explanation is that many confessions were excluded from use because of some illegality in the method of obtaining them. This is an issue which has been much debated, but which does not appear to be a serious problem in robbery and burglary cases in Jacksonville and San Diego. Altogether there was some kind of exclusion problem involving a confession or admission in less than four percent of the cases, as shown in Table 15-4 and a change in outcome in less than a third of one percent of the cases. In the 619 arrests covered by this table there were only six suppression motions and only three which were granted. None of these caused a case to be lost, but there were two cases which were rejected at charging because of legality issues. One involved a failure to give Miranda warnings and the confession in the other case arguably was the fruit of an illegal street detention.

Table 15-3

Who Obtains Confessions in Burglary Cases?
(In number of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Patrol | Detectives | Patrol | Detectives |
| Interrogations conducted | 86 | 80 | 105 | 70 |
| Confessions obtained | 34 | 51 | 27 | 27 |
| Percentage confessed | 40 | 64 | 26 | 39 |

Table 15-4

Admissibility Problems--Confessions or Admissions
(In percent of persons arrested)

| Problem | Jacksonville Burglary Number | Jacksonville Burglary Percent Convicted | San Diego Burglary Number | San Diego Burglary Percent Convicted | San Diego Robbery Number | San Diego Robbery Percent Convicted |
|---|---|---|---|---|---|---|
| No Miranda warnings | 1 | (100) | 2 | (50) | 1 | (100) |
| No Miranda waiver | - | - | - | - | - | - |
| Competence to waive | - | - | 1 | - | - | - |
| Voluntariness issue | 1 | - | 1 | (100)* | 1 | (100) |
| Poisonous fruit | - | - | 3 | - | - | - |
| Unclear | - | - | 1 | - | 1 | - |
| Other | 1 | (100) | 1 | - | 1 | (100) |
| Total | 3 | (67) | 9 | 22 | 4 | (75) |
| **Degree of Admissibility Problem** | | | | | | |
| Suppression motion granted | - | - | 2 | - | 1 | (100) |
| Suppression motion denied | 1 | - | - | - | 2 | (100) |
| Possible problem | 1 | (100) | 5 | 40 | - | - |
| Unclear | - | - | 1 | - | 1 | - |
| Other | 1 | (100) | 1 | - | - | - |
| Total | 3 | (67) | 9 | 22 | 4 | (75) |
| **Whether Admissibility Problem Changed Outcome** | | | | | | |
| Caused rejection at charging | - | - | - | - | - | - |
| Caused dismissal or acquittal | - | - | 2 | - | - | - |
| Did not change outcome | 3 | (67) | 5 | 40 | 4 | (75) |
| Unclear | - | - | 2 | - | - | - |
| Total | 3 | (67) | 9 | 22 | 4 | (75) |
| Overall | 200 | 70 | 219 | 53 | 200 | 34 |

*Is also a Miranda warning problem.

Another explanation for some non-convictions in confession and admission cases is that the confession or admission is implausible or conflicts with other things the defendant has said. As indicated in Appendix Table C-15-3, this occurs in some but not a great number of instances.

Still another possible explanation for confessions which end in non-convictions is some inadequacy in recording confessions and statements. In order to assess this issue a comparison was made of the recording methods used in the two jurisdictions. In Jacksonville the practice is to have the confession written whenever possible. In San Diego this happens less frequently, and the confession is generally recited in the officer's report. Incriminating statements in both jurisdictions are generally recorded in the officer's report.

Logically it would seem that the written statement would be a more permanent record and that the conviction rate would be higher where this kind of record is available. This does not appear to be true in the Jacksonville cases, however. The conviction rates are quite similar for cases in which the confession is written and signed and those in which it is not.

Other possible explanations for non-convictions in confession cases include victim-witness problems and relationships with other charges and cases. These and other explanations warrant more careful study.

C. Confessions in Felony Assault Cases

In stranger-to-stranger felony assault cases the presence of a confession has a tendency to increase the likelihood of conviction. The effect is much weaker than that in robbery and burglary cases, however, as shown in Table 15-1.

The mechanics of obtaining confessions in stranger-to-stranger felony assault cases also appears to be different. The files indicated relatively few interrogations of stranger-to-stranger felony assault defendants by detectives, and fewer than 15 percent of the confessions obtained in such cases were secured by detectives, as shown in Appendix Tables C-15-4 and C-15-5.

The rate of confession in stranger-to-stranger felony assault cases is closer to that in burglaries than to that in robberies, but unlike the robbery and burglary cases there is relatively little difference between the two jurisdictions.

Only two stranger-to-stranger felony assault cases--one in each jurisdiction--involved issues concerning the admissibility of a confession or statement. In neither instance did the issue cause a change in the outcome of the case.

## Chapter Sixteen

## EVIDENTIARY CHARACTERISTICS III: OTHER EVIDENCE

There were a number of other important kinds of evidence, including statements of co-participants, evidence relating to the suspect's car, weapon and clothing, information from informants and other physical and scientific evidence.

### A. Co-Participant Statements

Many crimes do not involve co-participants and consequently do not involve the possibility that the co-participant will make a statement implicating the defendant. When a co-participant is involved and makes a statement implicating the defendant, however, there is a substantial effect on convictions, as indicated in Table 16-1.

In about half the burglary cases which involved co-participants, at least one co-participant made a statement, as shown in Appendix Table C-16-1. Because there was more than one co-participant in some cases this figure probably indicates that there was a statement from about a third of the burglary co-participants. A slightly smaller percentage of the San Diego robbery co-participants made statements.

While a few co-participants made statements indicating that the defendant was not involved in the crime, over 90 percent of the co-participants who made statements accused the defendant of committing or participating in the crime.

Legally there are a number of important limitations on the use of co-participant testimony. If co-participants are tried together, a statement by one co-participant implicating other co-participants is admissible against the maker of the statement but generally not against other co-participants. References to the other co-participants are therefore generally excised from the statement before it is introduced into evidence. If the co-participants are tried separately or if one co-participant is not tried because he or she cooperates with the prosecution, the prosecution can generally use the co-participants' evidence against the defendant in court only if the co-participant is willing to take the stand and testify against his or her former confederate. Because the law is generally suspicious of accomplice testimony there are also other restrictions such as a requirement for corroboration in some instances.

Despite these legal limitations relatively few problems concerning co-participant evidence appeared in the cases. Generally the files discussed neither the problem of admissibility

Table 16-1

Co-Participant Statements
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Co-participant statement implicated defendant | 56 | 68 | 35 | 66 |
| Co-participant testified against defendant | 10 | 90 | 1 | (100) |
| All cases | 200 | 50 | 200 | 34 |
| **Burglary** | | | | |
| Co-participant statement implicated defendant | 48 | 88 | 37 | 73 |
| Co-participant testified against defendant | 2 | (100) | - | - |
| All cases | 200 | 70 | 219 | 53 |
| **Felony Assault (Stranger-to-stranger)** | | | | |
| Co-participant statement implicated defendant | - | - | - | - |
| Co-participant testified against defendant | - | - | 5 | 60 |
| All cases | 29 | 59 | 37 | 54 |

nor the willingness of the co-participant to testify. In two San Diego burglary cases the prosecutor concluded that the co-participant evidence was not admissible, and in one San Diego robbery case the co-participant at first agreed to testify and then backed out. In all three instances the case was then dropped. Only a few co-participants were called to testify at a deposition or preliminary hearing, as shown in Table C-19-1.

It is hard to understand why so few problems and why so little overt use of this evidence appear. If co-participant evidence did not have such a strong effect on convictions, it might be thought the evidence was being treated as unimportant.

One explanation is that most cases do not go to trial but are settled by a plea. This is not a wholly satisfactory explanation, however, because defense counsel recommending the entry of guilty pleas are generally well aware of the limitations of accomplice testimony. A better explanation is that many accomplices are willing to testify if necessary and that in any event these statements add to the weight of the evidence available and convince the defendant of the inevitability of conviction.

As the rate of confessions is much higher in Jacksonville than in San Diego, it might be expected that the rate of co-participant statements would also be higher. This was the case for robbery but not for burglary or felony assault.

B. Cars as Evidence

Because cars are frequently used in the commission of crime they often play an evidentiary role in apprehension and prosecution. One important use of information about cars is as a link between the suspect and the crime. This kind of evidence is very important in robberies, as indicated in Table 16-2, but is less important in burglaries because burglaries are often not witnessed. As might be expected, evidence which links the suspect through the use of a license number is more powerful than that which links the suspect through a description of the car. This is particularly true in the robbery cases, as shown in Appendix Table C-16-3.

In about two-thirds of the situations in which car evidence provided a link to the suspect, the link was to the suspect's car or to a car to which the suspect had access. In the remaining one-third of the cases the link was to a co-participant's car, as shown in Appendix Table C-16-4. As might be expected, the impact on convictions was greater when the link was to the defendant's car.

Table 16-2

Evidence Concerning Cars
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Car license number | 16 | 88 | 29 | 52 |
| Car matched description | 20 | 50 | 16 | 50 |
| Tiremarks matched | NA | NA | NA | NA |
| Property in defendant's car at scene | NA | NA | NA | NA |
| Overall | 200 | 50 | 200 | 34 |
| **Burglary** | | | | |
| Car license number | 10 | 50 | 4 | (25) |
| Car matched description | 8 | 38 | 3 | (100) |
| Tiremarks matched | - | - | - | - |
| Property in defendant's car at scene | 3 | (100) | 3 | (33) |
| Overall | 200 | 70 | 219 | 53 |
| **Felony Assault (Stranger-to-stranger)** | | | | |
| Car license number | 6 | 50 | 3 | (33) |
| Car matched description | - | - | 3 | 67 |
| Overall | 29 | 59 | 37 | 54 |

There were a good many situations in which some kind of description of the suspect's car was obtained from a victim or witness but no linkage was ever made, as shown in Appendix Table C-16-5. Whether it would have been possible to link more cars and whether that would have produced more convictions is not known.

## C. Weapons

About half the robberies for which suspects were arrested involved weapons, as discussed in chapter 11. Weapons were recovered as evidence in only about half these cases, however, and were clearly linked to the original crime in only one or two percent, as shown in Table 16-3. Even when a weapon was clearly linked or a similar weapon was impounded; this did not appear to have an important effect on convictions.

In burglary cases weapon evidence may be used to enhance the charges in the case, but is not particularly important in proving the burglary, as shown in Appendix Table C-16-6.

In stranger-to-stranger felony assault cases weapons were often clearly linked to crime. Their presence was often an important element in classifying the assault as a felony, but they were almost never the principal method of linking the suspect to the crime.

Table 16-3

Weapons
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Weapon clearly linked | 2 | (100) | 3 | - |
| Similar weapon impounded | 57 | 54 | 46 | 24 |
| Overall | 200 | 50 | 200 | 34 |
| Felony Assault (Stranger-to-stranger) | | | | |
| Weapon clearly linked | 8 | 83 | 8 | 38 |
| Similar weapon impounded | 10 | 60 | 16 | 50 |
| Overall | 29 | 59 | 37 | 54 |

D. Property Taken

As both robbery and burglary are crimes of theft, it is not surprising that the property taken is often used as evidence against the suspect. As might be expected the impact of this kind of evidence depends to a considerable extent on the clarity of the link to the suspect or the crime, as shown in Table 16-4. The possession by the defendant of burglarized property when arrested appears to be a particularly powerful factor in bringing about convictions.

In about two-thirds of the cases in which property of some kind is recovered, it is recovered from the defendant, rather than from a co-suspect or a third party, as shown in Appendix Table C-16-7. When the property is linkable, however, the evidentiary effect appears to be similar.

Property identified through the use of a serial number, an engraved identification or by the victim was associated with a greater likelihood of conviction than property linked by a description alone, as shown in Appendix Table C-16-8.

E. Burglary Tools

Burglary tools include both sophisticated implements, such as blow torches and master key sets, and such common instruments as screw drivers, pliers and crow bars. There were almost no instances in the study in which suspects were arrested in possession of highly sophisticated tools. Quite a few burglary suspects were arrested in possession of the more ordinary kind of burglary tools, however.

Generally such arrests were more likely to produce a conviction than arrests in which such tools were not impounded, as shown in Appendix Table C-16-9. As many of the arrests in these cases were at or near the scene of the burglary, however, it is unclear how much the possession of the burglary tools contributed to the convictions.

F. Clothing

Another method of matching the suspect to the crime is through the use of the defendant's clothing. This kind of evidence was available in 10-15 percent of the robbery cases, as shown in Table 16-5. When available, it is in a sense a specialized kind of identification evidence and generally had the effect of increasing the likelihood of conviction.

This kind of evidence sometimes involved distinctive clothing and sometimes did not, as indicated in Appendix Table C-16-10. It is relatively unimportant in burglary cases.

Table 16-4

Property
(In percent of persons arrested)

| Robbery | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| Clearly linkable property recovered | 14 | 50 | 26 | 58 |
| Probably linkable property recovered | 31 | 68 | 16 | 56 |
| Similar denominations | 31 | 52 | 22 | 55 |
| Property in D's car at scene | NA | NA | NA | NA |
| Property in D's possession when arrested near scene | NA | NA | NA | NA |
| Property in D's possession when arrested later | NA | NA | NA | NA |
| Property previously in D's possession | NA | NA | NA | NA |
| Possibly stolen property in D's possession | NA | NA | NA | NA |
| **Burglary** | | | | |
| Clearly linkable property recovered | NA | NA | NA | NA |
| Probably linkable property recovered | NA | NA | NA | NA |
| Similar denominations | NA | NA | NA | NA |
| Property in D's car at scene | 3 | (100) | 3 | (33) |
| Property in D's possession when arrested near scene | 35 | 80 | 30 | 86 |
| Property in D's possession when arrested later | 24 | 67 | 30 | 57 |
| Property previously in D's possession | 12 | 75 | 25 | 56 |
| Possibly stolen property in D's possession | 1 | (100) | - | - |

Table 16-5

Clothing Matched?
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Clothing matched | 17 | 71 | 29 | 45 |
| Overall | 200 | 50 | 200 | 34 |
| Burglary | | | | |
| Clothing matched (other than shoeprints) | 4 | (100) | 8 | 38 |
| Overall | 200 | 70 | 219 | 53 |
| Felony Assault (Stranger-to-stranger) | | | | |
| Clothing matched | - | - | 3 | (33) |
| Overall | 27 | 59 | 37 | 54 |

## G. Fingerprints and Other Scientific Evidence

Matching fingerprints were not often obtained in robbery or burglary cases, but were highly important evidence in the cases in which they were obtained. They were considerably more important in the burglary cases, as shown in Table 16-6.

There were a number of instances in which good prints were made but matched to someone other than the defendant or the defendant's colleagues, as shown in Appendix Table C-16-11. Surprisingly, however, this did not always result in the defendant's release.

It was somewhat hard to tell from the reports available, but there were a fair number of instances in which it appeared that fingerprint evidence might have been available but was not sought.

Other evidence susceptible to scientific analysis, such as paint chips and bloodstains, was collected in some other cases. The emphasis on this kind of evidence was greater in San Diego,

Table 16-6

Fingerprints
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Fingerprints matched | 2 | (50) | 1 | - |
| Overall | 200 | 50 | 200 | 34 |
| Burglary | | | | |
| Fingerprints matched | 4 | (100) | 4 | (100) |
| Overall | 200 | 70 | 219 | 53 |
| Felony Assault (Stranger-to-stranger) | | | | |
| Fingerprints matched | - | - | 1 | - |
| Overall | 29 | 59 | 37 | 54 |

as shown in Appendix Table C-16-12. While the scientific analysis of this kind of evidence was not always completed, its presence increased the likelihood of conviction.

H. Other Evidence

In addition to the property taken in the crime, the clothing worn by the defendant, burglary tools, fingerprints and evidence relating to cars, there is a considerable potential for other physical evidence. Examples of this kind of evidence would include shoeprints and photographs taken of the crime scene.

This additional kind of physical evidence was present in more than 20 percent of the burglary cases, but in a smaller percentage of the robbery cases. More evidence of this kind appears to have been collected in San Diego and the effect of the evidence appears to have been greater there. There is also a greater amount of other non-physical evidence in San Diego.

## Chapter Seventeen

# EVIDENTIARY CHARACTERISTICS IV: VICTIM-WITNESS PROBLEMS

One problem which the prosecution faces in many cases is the availability and willingness of crime victims and witnesses to assist in the prosecution. The victim's willingness and ability to assist is particularly crucial as it is difficult to get a conviction without the victim's participation. In many cases this is because the victim is the most important or one of the most important witnesses. Even in cases in which the victim's evidence is not particularly important, however, the victim's participation is generally essential as juries and other decision-makers tend to downgrade cases if the victim is not interested enough to follow through.

The degree to which problems concerning victim-witness willingness or ability to assist hamper the prosecution effort is indicated in Table 17-1. This shows that cases with victim-witness problems have substantially lower conviction rates for robbery, burglary and felony assault in both cities than cases which do not. The effect of victim-witness problems was particularly dramatic in Jacksonville. Cases there with victim-witness problems had a conviction rate only one-third of that for cases with no problems.

## A. Victim-Witness Problems in Robbery Cases

Victim-witness problems can be viewed from a number of different perspectives. One is the impact that the problems have on the case or charge as a whole. Another perspective is from the point of view of the victims or witnesses involved. Viewed from this last perspective there were nearly 50 percent more victim-witness problems in San Diego than in Jacksonville robbery cases. Overall there was some kind of problem with one of every three robbery victims and witnesses in San Diego, as shown in Table 17-2. By far the most frequent problem in each city was that of witness credibility. Victim-witness unwillingness to assist in the prosecution had a much more damaging effect on the prosecution of robbery cases, however. The most striking difference between the two cities was in the third category--victim-witness availability. There were three times as many problems of this kind in San Diego as in Jacksonville.

The most important reasons for victim-witness unavailability in robbery cases are out-of-town residence, military duties and cannot be located, as indicated in Table 17-3. San Diego had many more problems than Jacksonville in each of these categories. The difference in the impact of military activities is surprising as both Jacksonville and San Diego have important military installations.

Table 17-1

Victim-Witness Problems
(In percent of persons arrested)

| Robbery | Jacksonville Number | Jacksonville Percent Convicted | San Diego Number | San Diego Percent Convicted |
|---|---|---|---|---|
| V-W problem | 71 | 21 | 112 | 29 |
| No problem | 129 | 65 | 88 | 40 |
| Total robbery | 200 | 50 | 200 | 34 |
| **Burglary** | | | | |
| V-W problem | 29 | 28 | 27 | 37 |
| No problem | 171 | 75 | 192 | 55 |
| Total burglary | 200 | 70 | 219 | 53 |
| **Felony Assault (Stranger-to-stranger)** | | | | |
| V-W problem | 19 | 58 | 21 | 33 |
| No problem | 10 | 60 | 18 | 72 |
| Total assault | 29 | 59 | 37 | 54 |

Table 17-2

Victim-Witness Problems--Robbery

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Availability | 23 | 1 | 78 | 29 |
| Credibility | 100 | 25 | 124 | 60 |
| Unwillingness | 33 | 3 | 27 | 1 |
| Total number of problems | 156 | 29 | 229 | 90 |
| Total number of victims and witnesses with problems | 95 | | 137 | |
| Total number of victims and witnesses | 364 | | 383 | |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events ending in conviction.

Table 17-3

Reason for Victim-Witness Unavailability--Robbery

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Military transfer | - | - | 16 | 6 |
| Military duties | 3 | 1 | 12 | 5 |
| V-W is out-of-town resident | 6 | - | 27 | 10 |
| Can't be located | 9 | - | 18 | 6 |
| Other | 3 | - | 4 | 2 |
| Unclear | 2 | - | 1 | - |
| Total | 23 | 1 | 78 | 29 |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events ending in conviction.

The problem of availability tended to be a general problem of availability in both jurisdictions rather than problems specific to some particular phase of the proceedings. When the availability problem did relate to a specific proceeding, its effect was greatly reduced, particularly in San Diego, as shown in Appendix Table C-17-1.

The response to victim-witness unavailability in the two jurisdictions differed considerably. In Jacksonville some effort was made to do something in almost every case, as shown in Appendix Table C-17-2. Most frequently an investigator tried to find the victim-witness or a letter was sent asking the victim-witness to contact the prosecutor's office. These efforts were rarely successful, however, and appear to have had little impact on the conviction rate. Success in these efforts is generally regarded as difficult in Jacksonville. As a consequence, while super efforts will occasionally be made in cases that are regarded as important, in many instances the efforts undertaken are perfunctory.

In San Diego the problem is handled differently. In about half the cases no attempt is made to do anything. In the cases

in which something is tried, however, success is more likely. In the 43 instances in which something was done the victim or witness became available in 21. This includes eight cases in which the prosecution was able to rely on a transcript from the preliminary hearing.

A second significant victim-witness problem is that of unwillingness to assist in the prosecution. Like unavailability this is usually a general problem, as shown in Appendix Table C-17-3, rather than a problem of unwillingness to assist with some particular phase of the prosecution. Usually also the police or the prosecution learn of this unwillingness verbally or through written communication rather than when the victim or witness fails to show up for some proceeding. In Jacksonville letters are often mailed to victims or witnesses who are thought to be iffy. This procedure helps to document the unwillingness to assist but does not alter the underlying situation. In San Diego this kind of communication is almost always verbal.

The most common response in both jurisdictions to victim-witness unwillingness to assist in the prosecution is to do nothing, as shown in Appendix Table C-17-4. In a few cases there will be an effort to subpoena the victim or to attempt to persuade the victim to proceed. Generally, however, prosecutors and police officers feel that this kind of action is neither possible nor worthwhile. In part this represents a judgment that there is no reason for society to take action if the victim does not feel wronged enough to follow through with the prosecution. The decision not to proceed is also a practical judgment, however, based on a belief that this kind of victim is likely to drop out at some later stage if not now and that a hesitant victim may not be all that good a witness in any event. If this victim is not willing to proceed, the police and prosecution tend to feel that there are plenty of others who are.

The attitude that nothing can be done to change victim-witness unwillingness to participate is at least partially justified by the results in cases where genuine efforts to do something are tried. The results in these cases indicate that there are very few cases in which a victim having once indicated an unwillingness to assist later decides to do so.

The unavailability of victims and witnesses and their unwillingness to assist in the prosecution is highly damaging to the prosecution of robbery cases, as indicated in Appendix Table C-17-5.

In both jurisdictions a small number of victims and witnesses indicated that they had been threatened. Generally this led to the victim or witness being unwilling to go forward with the prosecution, as shown in Table 17-4.

Table 17-4

Victim Threatened?--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Yes | 3 | 33 | 7 | 14 |
| Apparently not | 194 | 50 | 189 | 35 |
| Unclear | 3 | (33) | 4 | - |

A third kind of victim-witness problem is that of credibility. Was the victim or witness in a position or condition to see and understand what happened? Did the victim or witness have some reason for not telling the truth about what happened? Is the victim or witness the kind of person who should be believed? Was the victim or witness himself or herself engaged in criminal activity at the time of the alleged crime? All these factors have some bearing on whether a jury or other decision-makers will ultimately credit the victim's or witness' story.

In both jurisdictions there are many problems of this kind in robbery cases, as shown in Table 17-5. In both jurisdictions many of these problems had to do with victims or witnesses who had been drinking or who had been seeking sex or drugs. In general the effect of credibility problems was not as great as that of availability or unwillingness-to-assist problems.

Most of the problems in robbery cases concerned victims rather than witnesses, as shown in Appendix Table C-17-6. The evidence involved was generally very important, most frequently an identification of the suspect. In a number of cases the problem concerned a victim or witness who both saw the robbery and was able to identify the suspect by name and address. In all about a fourth of the problems in Jacksonville concerned victims and witnesses who knew the suspect. This was a much less frequent occurrence in San Diego.

Ultimately there were 34 appearances in court by problem victims and witnesses in San Diego but only seven in Jacksonville, as shown in Appendix Table C-17-7. It should be remembered, however, that the number of appearances required in Jacksonville is much lower than that in San Diego.

Case-Based Analysis. The preceding sections have viewed the effect of victim-witness problems from the perspective of the victim or witness. If the problem is analyzed from the

Table 17-5

Victim-Witness Credibility Problems--Robbery

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Garbled story | 5 | 1 | 8 | 5 |
| Mentally deficient | - | - | 2 | 1 |
| Low IQ | - | - | 1 | 1 |
| Had been drinking | 11 | 4 | 2 | - |
| Alcoholic | 8 | 1 | 6 | 3 |
| Drug addict | 1 | - | 3 | - |
| Possibly seeking drugs | 3 | 1 | 9 | 5 |
| High on drugs | 1 | - | - | - |
| Seeking sex | 11 | 3 | 5 | 1 |
| Possibly false crime report | 9 | 1 | 14 | 3 |
| Prostitute or pimp | 1 | - | 3 | 1 |
| Homosexual | 2 | - | 9 | 3 |
| Criminal record | 5 | - | 10 | 2 |
| Language problem--interpreter needed | 1 | - | 13 | 12 |
| Bad eyesight or hearing | 4 | 1 | 1 | 1 |
| Other physical disability | 1 | - | 1 | 1 |
| Bad health | 1 | - | 1 | 1 |
| Age too young | 1 | - | 1 | 1 |
| Other | 35 | 13 | 35 | 19 |
| Total credibility problems | 100 | 25 | 124 | 60 |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events ending in conviction.

perspective of the impact on the robbery case or charge, the problem looks very similar to that already given, as shown in Appendix Table C-17-8.

## B. Victim-Witness Problems in Burglary Cases

The number of victims and witnesses in burglary cases for which there are problems is less than half that in robbery cases, as indicated in Tables 17-2 and 17-6. The effect on the cases in which the problem occurs, however, is quite similar, and overall it seems likely that the smaller number of problems contributes substantially to the higher conviction rate for burglary offenses. Victim-witness credibility appears again to be the most common but least serious problem, and unwillingness to assist in the prosecution the most serious problem. The effects of victim-witness problems appear again to be substantially greater in Jacksonville.

One reason for the lower number of availability problems in burglary cases is that fewer victims are in the military and

Table 17-6

Victim-Witness Problems--Burglary

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Availability | 8 | 3 | 17 | 10 |
| Credibility | 30 | 7 | 20 | 14 |
| Unwillingness | 19 | 2 | 8 | - |
| Total number of problems | 57 | 12 | 45 | 24 |
| Total number of victims and witnesses with problems | 45 | - | 38 | - |
| Total number of victims and witnesses | 444 | - | 457 | - |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events ending in conviction.

subject to transfer or other problems, as can be seen by comparing Tables 17-3 and 17-7.

As in the robbery cases, the problem is usually a general problem of availability rather than one limited to a specific proceeding, as shown in Appendix Table C-17-1. The actions taken and the likelihood of success are also, as shown in Appendix Tables C-17-2 and C-17-9, generally similar to the robbery cases.

Fewer victims and witnesses are unwilling to assist the prosecution in burglary cases than in robbery cases. This is particularly true in San Diego, as shown in Appendix Tables C-17-3 and C-17-10. As in the robbery cases, not a great deal is done to try to persuade the victims and witnesses to assist in the prosecution, and as shown in Appendix Table C-17-11, there is only limited success in those cases in which an effort is made.

Overall, as shown in Appendix Table C-17-5, the effect of unavailability and unwillingness to assist in the burglary cases is considerably less than in the robbery cases.

Table 17-7

Reason for Victim-Witness Unavailability--Burglary

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Military transfer or duties | - | - | - | - |
| V-W is out-of-town resident | 1 | - | 2 | 2 |
| Can't be located | 7 | 3 | 6 | 4 |
| Other | - | - | 8 | 4 |
| Unclear | - | - | 1 | - |
| Total | 8 | 3 | 17 | 10 |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events to conviction.

While the number of burglary victims threatened was greater than the number of robbery victims threatened in Jacksonville, the number of burglary victims threatened in San Diego was fewer, as shown in Tables 17-4 and 17-8.

The dramatic difference between the character of the burglary victims and witnesses and those in the robbery cases is shown in Tables 17-5 and 17-9 concerning credibility problems. Drugs, sex and alcohol hardly show up at all as problems in the burglary cases, and overall there is only one-third the number of credibility problems.

The number of court appearances by problem victims and witnesses in burglary cases was much smaller for San Diego than for the robbery cases--in keeping with the smaller number of problem victims and witnesses in burglary cases. The number of formal appearances in Jacksonville, however, as shown in Appendix Table C-17-7, did not differ much from the robbery cases.

Most of the problem victims and witnesses were, as in the robbery cases, victims rather than witnesses. The ratio of victims to witnesses was smaller, however, as shown in Appendix Tables C-17-6 and C-17-12. The kind of evidence provided was also substantially different.

Case Perspective. As with the robbery cases, the picture appeared about the same when viewed from the perspective of the case or charge rather than the perspective of the victim, as shown in Appendix Table C-17-13.

## C. Victim-Witness Problems in Felony Assault Cases

The number of victims and witnesses with problems in stranger-to-stranger felony assault cases is not known. The number of cases in which there is at least one victim or

Table 17-8

Victim Threatened?--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Yes | 5 | 80 | 4 | (75) |
| Apparently not | 195 | 69 | 215 | 53 |
| Unclear | - | - | - | - |

Table 17-9

Victim-Witness Credibility Problems--Burglary

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* | Number of Victims and Witnesses With Problem | Number of V-W Problems Ending in Conviction* |
| Garbled story | - | - | - | - |
| Mentally deficient | - | - | - | - |
| Low IQ | - | - | - | - |
| Had been drinking | 2 | 2 | - | - |
| Alcoholic | 1 | 1 | - | - |
| Drug addict | - | - | - | - |
| Possibly seeking drugs | - | - | - | - |
| High on drugs | - | - | - | - |
| Seeking sex | - | - | - | - |
| Possibly false crime report | 8 | - | - | - |
| Prostitute or pimp | 1 | 1 | - | - |
| Homosexual | - | - | 2 | 2 |
| Criminal record | 7 | 1 | 4 | 3 |
| Language problem--interpreter needed | - | - | 1 | 1 |
| Bad eyesight or hearing | - | - | 4 | 2 |
| Other physical disability | - | - | - | - |
| Bad health | - | - | - | - |
| Age too young | 2 | - | 2 | - |
| Other | 9 | 2 | 7 | 5 |
| Total credibility problems | 30 | 7 | 20 | 13 |

*As the base for this figure is the victim or witness rather than the sample event or the case, the ratio of convictions to problems is not the same as the percentage of sample events ending in conviction.

witness problem is indicated in Tables 17-1 and 17-10. As with robbery and burglary cases the effect of a victim-witness problem is to reduce the likelihood of conviction, particularly in San Diego. By far the greatest effect is that produced by the victim's unwillingness to assist in the prosecution.

Table 17-10

Victim-Witness Problems
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Availability problems | 5 | 80 | 7 | 86 |
| Unwillingness problems | 5 | - | 2 | - |
| Availability and unwillingness | - | - | 4 | - |
| Credibility | 1 | (100) | 2 | (50) |
| Availability and credibility | 3 | (100) | - | - |
| Unwillingness and credibility | 2 | (50) | 2 | - |
| Availability, unwillingness and credibility | 3 | (67) | 1 | - |
| Total cases with problems | 19 | 58 | 18 | 39 |
| Total cases | 29 | 59 | 37 | 54 |
| Availability--total | 11 | 82 | 12 | 50 |
| Unwillingness--total | 10 | 30 | 9 | - |
| Credibility--total | 9 | 67 | 5 | 20 |

## Chapter Eighteen

## LINKING FACTORS

Each type of crime--robbery, burglary, homicide--tends to involve different evidentiary patterns. Whatever the type of crime, however, the likelihood of conviction is increased as the amount and quality of the evidence available is increased. One method of analyzing the totality of the evidence is through multivariate statistical analysis as discussed in chapter 19. In this chapter the analysis is based on a simpler approach.

### A. Robbery

Robbery is defined as the taking of property from the person of another by means of force or fear. While there are occasionally problems about whether there has been a taking of property or whether there has been force or fear, typically the major problem of proof is to prove the connection between the defendant and the crime. Since most robbery offenders are strangers to their victims, the typical way of linking defendants to the crime is by having the victim or the witnesses identify the offender. A variety of other linking methods are possible, however.

The linking factors which most appear to influence convictions in both Jacksonville and San Diego are a positive identification by someone who saw the offender commit the crime, a confession by the defendant or a statement by a co-defendant implicating the defendant, as shown in Table 18-1.

Surprisingly arrest at scene, which originally was thought to be highly likely to produce convictions because the witness is generally a police officer, turns out to be strongly related to non-convictions. In San Diego similar weapon impounded, admitted being at scene and other linking factors also appear to be related to non-convictions.

Just as there is a positive side to the evidence from the point of view of the prosecution there is often also a negative side. The witness who made the positive identification may die or move to Berlin; the confession may be inadmissible because the Miranda warnings were not given; or the witness may lack credibility because she has also identified three other persons as the robber. The extent to which these evidentiary weaknesses appear are indicated in Table 18-2.

Virtually all the more important evidentiary weaknesses in robbery cases concern the victim--unavailable victim, uncooperative victim, victim credibility problem and a victim-witness who saw the suspect but is unable to make an identification.

Table 18-1

Linking Factors--Robbery
(In number and percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Arrest at scene | 18 | 33 | 19 | 16 |
| Arrest at scene, no break | 4 | (75) | 11 | 27 |
| Arrest near scene, minimum break in observation | 9 | 22 | 8 | 50 |
| Person who knew D: | | | | |
| -saw crime | 23 | 39 | 9 | 11 |
| -saw D flee or within 60 minutes | 3 | (33) | 6 | 33 |
| Positive ID by person who: | | | | |
| -saw crime | 93 | 65 | 89 | 56 |
| -saw D flee or within 60 minutes | 18 | 61 | 21 | 48 |
| Tentative ID | 4 | (25) | 11 | 36 |
| Car license number linked | 16 | 88 | 29 | 52 |
| Car matched description | 20 | 50 | 16 | 50 |
| Clothing matched | 17 | 71 | 29 | 45 |
| Fingerprints matched | 2 | (50) | 1 | - |
| Weapon clearly linked | 2 | (100) | 3 | - |
| Similar weapon impounded | 57 | 54 | 46 | 24 |
| Clearly linkable property recovered | 14 | 50 | 26 | 58 |
| Probably linkable property recovered | 31 | 68 | 16 | 56 |
| Similar denominations recovered | 31 | 52 | 22 | 55 |
| Informant implicated D | 31 | 52 | 9 | 78 |
| Confession | 51 | 80 | 26 | 73 |
| D admitted being at scene | 55 | 33 | 45 | 36 |
| Co-D testified against D | 10 | 90 | 1 | (100) |
| Co-D statement implicated D | 56 | 68 | 35 | 66 |
| MO similar | - | - | 1 | - |
| Other linking factors | 48 | 58 | 63 | 41 |
| Total cases | 200 | 50 | 200 | 34 |
| Total linking factors | 613 | - | 542 | - |

Table 18-2

Evidentiary Weaknesses--Robbery
(In number and percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Illegally seized evidence | - | - | 2 | (50) |
| Improper confession | - | - | - | - |
| Unavailable victim | 18 | - | 57 | 32 |
| Unavailable witness | 3 | - | 6 | 67 |
| Uncooperative victim | 27 | 7 | 22 | 9 |
| Uncooperative witness | 2 | - | 2 | - |
| Credibility--victim | 51 | 26 | 58 | 41 |
| Credibility--witness | 4 | (25) | 5 | 80 |
| Suspect description did not match defendant | 1 | - | - | - |
| Victim-witness saw suspect but can't ID | 14 | 7 | 20 | - |
| Weak or questionable ID | 3 | - | 14 | 50 |
| Possibly insane | 3 | - | 2 | (50) |
| Possibly under influence of alcohol/drugs | 15 | 60 | 14 | 79 |
| Not clearly a participant | 31 | 29 | 10 | 30 |
| Other | 26 | 19 | 53 | 13 |
| Total cases | 200 | 50 | 200 | 34 |
| Total weaknesses (excluding influence of alcohol/drugs) | 198 | - | 265 | - |

In addition to weaknesses in the prosecution's casi the defense may benefit from exculpatory evidence, that is, evidence which tends to indicate that the defendant did not commit the crime. Examples of this kind of evidence for robberies include alibis, witnesses to support the defendant's story or exculpatory statements by co-defendants. For Jacksonville and San Diego robberies this kind of evidence does not appear to be particularly important, as indicated in Table 18-3.

An alternate way of looking at the case from the defendant's point of view is in terms of defenses or theories which might help the defendant, such as insanity, self-defense, or

Table 18-3

Exculpatory Evidence--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Alibi--relative or friend | 11 | 73 | 6 | 50 |
| Alibi--third party | 2 | - | 4 | - |
| Victim says D not suspect | 5 | 40 | 1 | - |
| Witness says D not suspect | 1 | - | - | - |
| Victim ID'd another person | - | - | 2 | (100) |
| Victim-witness ID's conflict | 2 | - | 1 | - |
| Victim supports D's story | 5 | - | 2 | - |
| Witness supports D's story | - | - | 1 | (100) |
| Self-defense | - | - | - | - |
| Exculpatory statement by co-D | 12 | 17 | 2 | - |
| Other | 1 | (100) | 2 | - |
| Total cases | 200 | 50 | 200 | 34 |
| Total with exculpatory evidence | 39 | - | 19 | - |

that the defendant was not present at the scene of the crime. In Jacksonville and San Diego robberies this kind of claim is made to some extent but does not appear to have great success, as indicated in Table 18-4.

## B. Burglary

The major proof problem in burglary as in robbery cases tends to be that of linking the offender to the crime rather than that of proving that a crime has occurred. Because burglary is a crime of stealth, however, in which the victim usually never sees the offender, visual identifications play a smaller role than in robbery cases. The linking factors for burglary are consequently somewhat different than those for robbery.

The strongest linking factors, as shown in Table 18-5, are arrest of the defendant in the target premises or near the scene of the crime, possession by the defendant at the time of arrest of property taken in the burglary, property stacked up inside the premises or near an exit at the time of arrest, possession of burglary tools at the time of arrest, a confession or a statement by a co-participant implicating the defendant.

Table 18-4

Possible Defenses--Robbery
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Self-defense | - | - | 1 | - |
| Defense of other | - | - | - | - |
| Insanity | 2 | - | 3 | (100) |
| Unconsciousness | - | - | 1 | - |
| Not present at scene | 37 | 49 | 41 | 37 |
| Present but not involved | 53 | 36 | 45 | 36 |
| Under influence | 3 | (100) | 8 | 100 |
| Other | 7 | 57 | 12 | 42 |
| Total cases | 200 | 50 | 200 | 34 |
| Total defenses | 102 | - | 111 | - |

Table 18-5

Linking Factors--Burglary
(In number and percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Arrest in/near premises | 94 | 82 | 95 | 67 |
| Person who knew D placed D in/near premises within 1 hour | 33 | 67 | 16 | 50 |
| Positive ID places D: | | | | |
| -in premises or at entry | 18 | 67 | 25 | 60 |
| -nearby with stolen property within 1 hour | - | - | 6 | 83 |
| -nearby without stolen property within 1 hour | 6 | 33 | 7 | 14 |
| Tentative ID | 5 | 20 | 2 | (50) |
| Car license number linked | 10 | 50 | 4 | (25) |
| Car matched description | 8 | 38 | 3 | (100) |
| Tiremarks or shoeprints matched | 4 | (75) | 4 | (100) |
| Clothing matched | 4 | (100) | 8 | 38 |
| Photos taken at scene | 38 | 82 | 28 | 71 |
| Burglary tools impounded | 34 | 79 | 45 | 76 |
| Fingerprints matched | 4 | (100) | 4 | (100) |
| D had stolen property: | | | | |
| -when arrested near scene | 24 | 67 | 30 | 86 |
| -when arrested later | 35 | 80 | 30 | 57 |
| Intent clear, property stacked up inside premises | 21 | 100 | 16 | 81 |
| Property in D's car at scene | 3 | (100) | 3 | (33) |
| Stolen property previously in D's possession | 12 | 75 | 25 | 56 |
| Informant implicated D | 23 | 65 | 5 | 60 |
| D confessed: to burglary | 80 | 84 | 52 | 73 |
| -to possession | 3 | (100) | 9 | 44 |
| D admitted: being at scene | 21 | 57 | 17 | 47 |
| -possession | - | - | 6 | 50 |
| MO similar | - | - | - | - |
| Co-D statement implicated D | 50 | 88 | 37 | 73 |
| Other linking factors | 51 | 75 | 59 | 41 |
| Total cases | 200 | 70 | 219 | 53 |
| Total linking factors | 581 | - | 536 | - |
| Adjusted linking factors | 581 | - | 489 | - |

As in the robbery cases the principal weaknesses involve an unavailable or uncooperative victim, as indicated in Table 18-6. One possible evidentiary weakness--the possible influence of alcohol or drugs--appears to be related more to convictions than to non-convictions.

Exculpatory evidence plays an even smaller role in burglaries than the already small role it played in robbery cases, as shown in Table 18-7. Similarly there are relatively few defenses asserted in the burglary cases, as indicated in Table 18-8.

## C. Felony Assault

Battery involves the intentional hitting, and assault the intentional placing in fear, of another person. Felony assault is a statutory version of these offenses involving some form of aggravation such as use of a dangerous weapon or serious injury to the victim.

The proof problems in stranger-to-stranger felony assault are harder to type than those in robbery and burglary. In many instances the arrest is made at the scene of the assault. In these cases there may be an issue as to what happened but generally none as to who committed the assaultive acts. In other cases the offender has left the scene and must be identified in some way. Even in these cases identification tends to be less difficult than in robbery and burglary cases because the offender was seen at the time of the offense and the interaction between the victim and the offender tends to be more personal and of longer duration than in robbery cases.

The most common linking factors in the stranger-to-stranger felony assault cases are a positive identification by someone who saw the crime, arrest at the scene, impounding of a weapon similar to that used in the crime or a confession, as shown in Table 18-9. These linking factors are important because there is no case without them. Their presence does not distinguish the conviction from the non-conviction cases, however, as it does with robbery and burglary.

The principal weaknesses are an unavailable or an uncooperative victim, as shown in Table 18-10. There is virtually no exculpatory evidence, as shown in Table 18-11. The principal defenses are self-defense and present at scene but not involved, as shown in Table 18-12. The presence of a defense seems to have a greater effect on the Jacksonville than on the San Diego cases.

## D. Cumulative Impact

One crude method of assessing the cumulative impact of the evidence and the evidentiary weaknesses is to add up the

Table 18-6

Evidentiary Weaknesses--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Illegally seized evidence | - | - | 4 | - |
| Improper confession | - | - | 2 | - |
| Unavailable victim | 5 | - | 3 | - |
| Unavailable witness | 2 | (100) | 5 | 80 |
| Uncooperative victim | 17 | 12 | 9 | 11 |
| Uncooperative witness | 1 | - | - | - |
| Credibility--victim | 9 | 33 | 7 | 71 |
| Credibility--witness | 4 | (25) | 5 | 60 |
| Suspect description did not match defendant | - | - | - | - |
| V-W saw suspect but can't ID | 8 | 75 | 11 | 27 |
| Not placed going in, out or inside premises | 52 | 64 | 71 | 39 |
| Weak or questionable ID | - | - | 4 | - |
| Possibly insane | 3 | (67) | 1 | (100) |
| Possibly under influence of alcohol/drugs | 17 | 88 | 10 | 80 |
| Evidence all circumstantial | 6 | 67 | 29 | 34 |
| Not clearly a participant | 11 | 36 | 6 | - |
| Other | 27 | 41 | 31 | 19 |
| Total cases | 200 | 70 | 219 | 53 |
| Total weaknesses (excluding influence of alcohol/drugs) | 152 | - | 198 | - |
| Adjusted weaknesses | 152 | - | 181 | - |

Table 18-7

Exculpatory Evidence--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Alibi--relative or friend | 2 | (100) | 2 | - |
| Alibi--third party | - | - | 1 | - |
| Victim says D not suspect | - | - | 1 | - |
| Witness says D not suspect | - | - | 2 | - |
| Victim ID'd another person | - | - | - | - |
| Witness ID'd another person | 1 | - | - | - |
| Victim-witness ID's conflict | - | - | 1 | (100) |
| Victim supports D's story | 2 | - | - | - |
| Witness supports D's story | 2 | (50) | - | - |
| Self-defense | - | - | - | - |
| Exculpatory statement by co-D | 2 | - | - | - |
| Other | - | - | 5 | 20 |
| Total cases | 200 | 70 | 219 | 53 |
| Total exculpatory evidence | 9 | 33 | 13 | - |
| Adjusted exculpatory evidence | 9 | 33 | 12 | - |

Table 18-8

Possible Defenses--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Self-defense | - | - | - | - |
| Defense of other | - | - | - | - |
| Insanity | 5 | 80 | - | - |
| Unconsciousness | - | - | - | - |
| Not present at scene | 18 | 50 | 31 | 32 |
| Present but not involved | 26 | 65 | 54 | 54 |
| Under influence | 5 | 80 | 6 | 67 |
| Other | 24 | 71 | 8 | 63 |
| Total cases | 200 | 70 | 219 | 53 |
| Total defenses | 78 | 65 | 99 | - |
| Adjusted defenses | 78 | 65 | 90 | - |

Table 18-9

Linking Factors Present
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Arrest at scene | 10 | 63 | 9 | 56 |
| Arrest near scene: | | | | |
| -no break in observation | 1 | (100) | 6 | 50 |
| -minimum break | 6 | 50 | 6 | 17 |
| Person who knew D: | | | | |
| -saw crime | - | - | 5 | 80 |
| -saw D flee or nearby within 10-60 minutes | - | - | 2 | (100) |
| Positive ID by person who: | | | | |
| -saw crime | 13 | 54 | 17 | 59 |
| -saw D flee or nearby within 10-60 minutes | 2 | (50) | 2 | (50) |
| Tentative ID by person who saw crime or saw D flee or nearby within 10-60 minutes | - | - | - | - |
| Car license number linked | 6 | 50 | 3 | (33) |
| Car matched description | - | - | 3 | (67) |
| Clothing matched | - | - | 3 | (33) |
| Fingerprints matched | - | - | 1 | - |
| Weapon clearly linked | 8 | 88 | 8 | 38 |
| Similar weapon impounded | 10 | 60 | 16 | 50 |
| Informant implicated D | - | - | - | - |
| Confessed | 10 | 50 | 11 | 64 |
| Admitted being at scene | 3 | (67) | 9 | 67 |
| MO similar | 1 | (100) | - | - |
| Co-D testified against D | - | - | - | - |
| Co-D statement implicated D | - | - | 5 | 60 |
| Photos of injuries | - | - | 3 | (100) |
| Other | 11 | 27 | 4 | (75) |
| Total cases | 29 | 59 | 37 | 54 |
| Total linking factors | 81 | - | 113 | - |
| Adjusted linking factors | 81 | - | 89 | - |

Table 18-10

Evidentiary Weaknesses
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Illegally seized evidence | - | - | - | - |
| Improper confession | - | - | - | - |
| Unavailable victim | 6 | 100 | 11 | 46 |
| Unavailable witness | 4 | (50) | 5 | 80 |
| Uncooperative victim | 10 | 30 | 9 | - |
| Uncooperative witness | - | - | 1 | (100) |
| Credibility--victim | 5 | 80 | 2 | (50) |
| Credibility--witness | 2 | (50) | - | - |
| Suspect description did not match defendant | - | - | - | - |
| V-W saw suspect but can't ID | - | - | - | - |
| Weak or questionable ID | - | - | - | - |
| Possibly insane | 3 | - | 1 | - |
| Possibly under influence of alcohol/drugs | 8 | 63 | 11 | 73 |
| Not clearly a participant | - | - | 1 | - |
| Other | 7 | 71 | 4 | (50) |
| Total cases | 29 | 59 | 37 | 54 |
| Total weaknesses (excluding influence of alcohol/drugs) | 37 | - | 34 | - |
| Adjusted weaknesses | 37 | - | 27 | - |

Table 18-11

Exculpatory Evidence
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Alibi--relative or friend | - | - | - | - |
| Alibi--third party | - | - | - | - |
| Victim says D not suspect | - | - | - | - |
| Witness says D not suspect | - | - | - | - |
| Victim ID'd another person | - | - | - | - |
| Witness ID'd another person | - | - | 1 | - |
| Victim-witness ID's conflict | - | - | 2 | - |
| Victims supports D's story | - | - | - | - |
| Witness supports D's story | 1 | - | - | - |
| Self-defense | 1 | - | - | - |
| Exculpatory statement by co-D | 2 | (50) | - | - |
| Other | - | - | - | - |
| Total cases | 29 | 59 | 37 | 54 |
| Total exculpatory evidence | 4 | - | 3 | - |
| Adjusted exculpatory evidence | 4 | - | 2 | - |

Table 18-12

Possible Defenses
Felony Assault--Stranger-to-Stranger
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| Self-defense | 6 | 50 | 11 | 73 |
| Defense of other | - | - | 1 | (100) |
| Insanity | 1 | - | 1 | - |
| Unconsciousness | - | - | - | - |
| Not present at scene | - | - | - | - |
| Present but not involved | 6 | 33 | 4 | (50) |
| Under influence | - | - | - | - |
| Other | 2 | (50) | 1 | - |
| Total cases | 29 | 59 | 37 | 54 |
| Total defenses | 15 | - | 18 | - |
| Adjusted defenses | 15 | - | 14 | - |

linking factors and subtract the evidentiary weaknesses and compare the results. This method is extremely crude in that it assumes that each linking factor and each weakness has exactly the same weight whereas both common sense and the data already presented indicate that some factors are more important than others. This technique is nonetheless useful as a way of beginning to understand the ways in which evidence works together.

Using this kind of technique it can readily be seen from Table 18-13 that the San Diego robbery and burglary cases have fewer linking factors and more evidentiary weaknesses than do the Jacksonville cases. Moreover, these differences fairly closely approximate the difference in conviction rates for the two jurisdictions. This strongly suggests that the difference in conviction rates is explained by the difference in the amount of evidence in the cases involved.

As in many other aspects of the study the felony assault cases perform differently. On the average the San Diego cases have more linking factors and fewer weaknesses. The conviction rate is similar for the two cities, however.

More sophisticated methods of making this kind of analysis are available but time and resources did not permit them to be used in this study.

Table 18-13

Effects of Evidence

| Robbery | Jacksonville | San Diego |
|---|---|---|
| Linking factors | 613 | 542 |
| Evidentiary weaknesses | -198 | -265 |
| Evidence score | 415 | 277 |
| Evidence score difference | +138 | |
| Percentage difference in evidence scores | + 50% | |
| Conviction rate | 50% | 34% |
| Conviction rate difference | + 16 | |
| Percentage difference in conviction rates | + 47% | |
| **Burglary** | | |
| Linking factors | 581 | 489 |
| Evidentiary weaknesses | 152 | 181 |
| Evidence score | 429 | 308 |
| Evidence score difference | 121 | |
| Percentage difference in evidence scores | + 39% | |
| Conviction rate | 70% | 53% |
| Conviction rate difference | + 17 | |
| Percentage difference in conviction rates | + 32% | |
| **Felony Assault (Stranger-to-stranger)** | | |
| Linking factors | 81 | 89 |
| Evidentiary weaknesses | 37 | 27 |
| Evidence score | 44 | 62 |
| Evidence score difference | | + 18 |
| Percentage difference in evidence scores | | + 41% |
| Conviction rate | 59% | 54 |
| Conviction rate difference | + 5 | |
| Percentage difference in conviction rates | + 9% | |

## Chapter Nineteen

## MULTIVARIATE ANALYSIS

While it is possible to learn a great deal from studying the effects of individual factors on convictions, it is scientifically more accurate to determine how these factors work in conjunction with each other. Factors which appear to have strong effects when looked at in isolation may in fact always occur with some other factor and thus have no independent effect. Conversely, factors which appear to be weaker may occur more or less independently and thus have greater effects than are apparent.

One method of analyzing the collective effect of the factors is through a tabulation of the factors linking suspects to the crime. An alternative method is that of multivariate statistical analysis.

### A. Previous Multivariate Efforts to Explain the Conviction Decision

While there have been a great number of efforts to explain the conviction decision from the point of view of a single factor or even several factors, there have been relatively few studies examining more than one factor and an even smaller number which have included evidence among the factors analyzed. Because we conclude both from our own work and that of others that evidence is a crucial factor we limit our comments here to studies that have analyzed multiple factors bearing on the conviction decision and that have included evidence or strength of case as one of the factors analyzed.

One of the earliest studies which examined the effects of both evidence and a variety of other factors was Eisenstein and Jacob's study of Baltimore, Chicago and Detroit trial courts.[1] Published in 1977 this study examined the effects of original offense, prior record, type of counsel, race, pretrial release, identification of courtroom workgroups and evidence at several different decision points. The characteristics of the cases studied, including the kinds of evidence information available, are shown in Appendix Table C-19-1.

This study found that except for the Detroit trial cases evidence was a very unimportant factor and that, as shown in Appendix Table C-19-2, the identity of the courtroom workgroup was by far the most influential factor in determining decisions in individual cases.

A 1978 study by Nardulli using Chicago data and the same general approach as that used by Eisenstein and Jacob analyzed the Chicago data in greater detail.[2] Using somewhat different

variables Nardulli performed regression analyses for three different decisions: (1) motions to dismiss in the general felony preliminary hearing court, (2) motions to dismiss in the drug preliminary hearing court and (3) the decision to go to trial. He found the strength of the state's case to be important only in the general felony preliminary hearing, as shown in Appendix Table C-19-3. It was unimportant for the drug court preliminary hearing and the decision to go to trial and was not even included in the guilty plea analysis.

These results were very different from another 1977 study authored by Forst, Lucianovic and Cox for the Institute for Law and Social Research. Using data from the Washington D.C. prosecutor management information system (PROMIS) this study and several follow-up studies strongly suggested that evidence was the key variable.[3] As to robbery cases the study reported:

> the number of convictions per 100 robbery arrests was 60 percent higher when tangible evidence was recovered than when it was not, and it was more than 40 percent higher when the MPD secured at least two lay witnesses....[4]

As to violent crimes other than robbery the study said:

> As in robbery cases, we find that conviction tends to be substantially more likely when tangible evidence is recovered and when at least two witnesses are cited on the police reports brought to the prosecutor.[5]

While non-legal factors were not extensively examined, more detailed follow-up analyses further highlighted the role of evidence, as shown in Appendix Tables C-19-4 and C-19-5.

A more recent study, which also strongly emphasizes the role of evidence, is a 1979 analysis by Hagan and Myers.[6] Using a sample of 980 Indianapolis felony defendants this study analyzed five different kinds of factors: (1) evidentiary strength, (2) victim credibility and culpability, (3) defendant credibility and dangerousness, (4) racial composition, and (5) legal seriousness. The effect of these factors was measured both on the decision to "fully prosecute" and on the decision to "proceed to trial."

The evidence factors included were testimonial evidence of eyewitnesses entailing identification of the defendant; confessions of the defendant and accomplices made prior to a plea bargain; real or demonstrative evidence, such as recovered weapons or stolen property; testimonial evidence of experts such as physicians, polygraph examiners and ballistics experts; and the amount of nonexpert testimonial evidence such as statements by the victim and other witnesses. The analysis also included the number of witnesses listed on the information or indictment.

The analysis showed the evidence items to be the most important factors both in the decision to go to trial and to fully prosecute. The analysis also showed that some factors such as race which had appeared to be unimportant when evidence was not considered became important when evidence was considered, as shown in Appendix Tables C-19-6 and C-19-7.

Summary of Work to Date. The studies to date represent important efforts to evaluate the role of evidence in the disposition decision in conjunction with other factors involved in the disposition decision. The sharp contrast in conclusions reached is due in large part to the fact that most are not really analyzing the same things. The evidence items used differ from study to study, and some studies such as those by Eisenstein and Jacob and Nardulli are analyzing particular decision points rather than the whole disposition process.

As a group the explanatory power of the studies to date is weak. The PROMIS data explains only about 10 percent of the disposition decision and the Myers and Hagan data less than 20 percent. Eisenstein and Jacob and Nardulli explain considerably higher proportions of some decisions but about the same for the others. The highest explanations are Eisenstein and Jacob's for the Baltimore preliminary hearing (80 percent) and strictly speaking concern the decision to send the case to the trial court (or the grand jury) rather than the decision to convict.[7] The cases sent forward therefore include some which ultimately wind up as non-convictions and the cases disposed of at the preliminary hearing include some which are convictions. In addition as most cases are sent on to the trial court the results could be due simply to a disparity in attitudes by judges concerning the screening function of the preliminary hearing.

## B. Study Results

This study set out to explore the effects of evidence much more fully than has been done to date. It has consequently examined a large number of evidence and non-evidence factors, many of which have already been described. In addition to the analyses of single factors already discussed, the joint effects of the factors were examined using multiple regression techniques for robberies for both cities and burglaries for San Diego. Time and resources did not permit as full an analysis of this kind as would have been desirable but were sufficient to indicate the promise of the approach.

For each category the first task was to analyze the 300-plus evidence and non-evidence factors included in the overall study in order to select the 90-100 factors that had

the greatest impact on the conviction decision. These 90-100 factors were then analyzed using multiple regression techniques described more fully in Appendix B.

Three major findings emerged from this analysis:

--The factors studied are highly predictive of the conviction decision.

--The factors which are the most predictive for Jacksonville are quite different from those which are most predictive for San Diego.

--Evidence is the most important factor in producing convictions.

San Diego Robbery. The most important finding of the analysis for the San Diego robberies is the high level of explanation achieved. Well over 65 percent of the variance in case outcomes is explained by the factors analyzed, as shown in Table 19-1. The most important factors are evidence factors, and the most important evidence factor is identification evidence.

The relative importance of the factors in the regression analysis is shown by the numbers in the first column (beta weights). A larger number indicates that the factor is more important and a smaller number that it is less important. More precisely, each number indicates the change in the likelihood of conviction which the factor would produce all by itself if all other factors in the cases remained the same. If a co-participant made a statement incriminating the defendant, for example, the .28 in the first column means that the likelihood of conviction is increased by .28 or 28 percent.

The last column indicates how much of the variation in case outcome can be explained by the independent variables acting together. Since a forward stepwise regression solution was used, the variables which entered the equation first show the largest increases; had the first two variables been entered last, for example, their contribution would have been considerably smaller.

Jacksonville Robbery. The level of explanation achieved for the Jacksonville robberies is only slightly below that for the San Diego robberies (63 versus 69 percent). The factors which emerge as important, however, are quite different, as might have been expected from the preceding chapters. The most important factors are those having to do with victim-witness problems, as shown in Table 19-2. This factor explained 18 percent of the variance in disposition decisions by itself. The

Table 19-1

Best Predictors of Conviction--San Diego Robbery Cases
Forward Stepwise Regression

| Variable | Beta | Standard Error | Cumulative $R^2$ |
|---|---|---|---|
| Someone saw D do robbery | .29 | .08 | .19 |
| Unconfirmed ID | -.19 | .07 | .29 |
| Dismissed due to plea in other case | .16 | .09 | .36 |
| Number adult co-D's charged | .19 | .04 | .42 |
| Witness saw D flee | .19 | .03 | .47 |
| D only or major actor | .19 | .05 | .50 |
| Plea due to dismissal in other case | -.30 | .11 | .52 |
| Evidence excluded | .14 | .09 | .55 |
| D confessed to other robbery | .19 | .07 | .57 |
| Witness credibility problem | .12 | .13 | .59 |
| D possibly under influence | .13 | .08 | .61 |
| Arrest near scene | -.15 | .10 | .62 |
| Number witnesses who saw D commit robbery | .18 | .03 | .63 |
| Personal robbery | -.12 | .05 | .65 |
| Similar weapon impounded | -.13 | .05 | .66 |
| Property recovered | .11 | .04 | .67 |
| D confessed to this robbery | -.10 | .14 | .68 |
| Uncooperative victim | -.11 | .07 | .68 |
| Co-D implicated D | .28 | .11 | .70 |
| Victim-witness knew D | .11 | .11 | .70 |
| Weapon clearly linked | -.12 | .18 | .71 |
| Race black | -.10 | .04 | .72 |
| Co-D made exculpatory statement | -.17 | .10 | .72 |

$F_{23,176} = 19.9$

Adjusted $R^2 = .69$

Number of cases = 200

Note: All variables are significant at the .05 level or below.

Table 19-2

Best Predictors of Conviction--Jacksonville Robbery Cases
Forward Stepwise Regression

| Variable | Beta | Standard Error | Cumulative $R^2$ |
|---|---|---|---|
| Victim-witness problems | -.16 | .07 | .18 |
| D only or major actor | .22 | .05 | .29 |
| Number of detention days | .26 | .00 | .34 |
| D confessed to robbery | .22 | .06 | .40 |
| Unavailable victim | -.26 | .09 | .45 |
| Uncooperative victim | -.21 | .08 | .48 |
| D possibly insane at event | -.18 | .18 | .51 |
| Number of witnesses | .14 | .03 | .54 |
| Victim-witness saw suspect | -.17 | .09 | .56 |
| Dismissed due to plea in other case | -.15 | .13 | .58 |
| Arrest near scene | -.16 | .11 | .60 |
| Co-D implicated D | .10 | .05 | .62 |
| Other evidence problem | -.11 | .07 | .63 |
| Similar weapon impounded | -.13 | .05 | .64 |
| Police saw D commit robbery | .11 | .09 | .65 |
| Co-D testified against D | .12 | .11 | .66 |
| Car linked by license number | .09 | .08 | .67 |

$F_{17,182} = 21.3$

Adjusted $R^2 = .63$

Number of cases = 200

Note: All variables are significant at the .05 level or below.

fact that there was an unavailable victim or an uncooperative victim added an additional 8 percent to the explanation, bringing the total for victim-witness problems to 26 percent. Surprisingly, identification evidence did not show up as particularly important.

Jacksonville Burglary. A regression analysis was also completed for the Jacksonville burglary cases. The level of explanation achieved (.52) was below that for the robbery cases but still quite high as compared with earlier studies. The most important explanatory factors were whether the victim was uncooperative and whether there was a confession, as shown in Table 19-3. The factors were by no means identical with those in the Jacksonville robberies but were more similar than might have been expected from the analysis of linking factors.

## C. Combined Effects of Evidence and Other Factors

In order to obtain a more coherent picture of the impact of the different kinds of factors, the San Diego robbery variables were divided into four groups for further analysis: (1) evidence factors (60 variables), (2) offense factors (13 variables), (3) processing factors (13 variables), and (4) non-legal factors (5 variables), as shown in Appendix Table C-19-8. Each group was then entered into the analysis at various stages, including the first position. Each was thus given the opportunity to explain as much of the conviction decision as it could. When given the opportunity to enter the analysis first, the evidence group alone explained over 52 percent of the decision, as shown in Table 19-4. The only other group which came close was the offense group which explained 35 percent.

The evidence group also performed much more strongly when brought into the analysis at later stages. Even after all three other groups had been given an opportunity to have their maximum effect, it increased the level of explanation by 16 percent. The other groups when analyzed in this fashion raised the level of explanation by only two or three percent.

## D. Effects of Different Kinds of Evidence

In order to analyze the effects of the different kinds of evidence the evidence group was further subdivided into 11 sub-groups: (1) identification evidence, (2) confessions and interrogations, (3) victim-witness problems, (4) co-participants, (5) car, (6) property, (7) weapon, (8) clothing, (9) exclusions, (10) other evidence, and (11) evidence scales.

Time and resources did not permit a full analysis using these subgroups. Some limited analysis was performed, however,

Table 19-3

Forward Stepwise Regression of Case Outcome on Predictive Factors--Jacksonville Burglaries

| Variable | Beta | Standard Error | Cumulative $R^2$ |
|---|---|---|---|
| Uncooperative victim | -.28 | .09 | .15 |
| D confessed to this crime | .26 | .01 | .21 |
| Days in detention | .31 | .00 | .25 |
| D confessed-series case | -.24 | .15 | .29 |
| Other placed D at point of entry | .19 | .14 | .33 |
| Detained | -.21 | .06 | .36 |
| Arrest in premises | .14 | .05 | .40 |
| Sex male | .19 | .08 | .42 |
| Victim supports D's version | -.15 | .23 | .45 |
| Prior burglary offense | -.14 | .05 | .47 |
| Witness places D with stolen property | .15 | .02 | .48 |
| Security guard placed D nearby | -.16 | .23 | .50 |
| Co-defendant not clearly a participant | -.14 | .11 | .51 |
| Traffic stop | -.13 | .19 | .53 |
| Informant implicated D | -.11 | .08 | .54 |
| Attorney public defender | .13 | .05 | .55 |
| Total codefendants | .10 | .03 | .56 |

$F_{17,182} = 13.7$

Adjusted $R^2 = .52$

Number of cases = 219

Note: All variables are significant at the .05 level or below.

Table 19-4

Effects of Major Factors on Convictions

(Unadjusted $R^2$)

| | As First Factor | After Controls for Other Three Factors* |
|---|---|---|
| Offense characteristics | .35 | .02 |
| Non-legal | .13 | .02 |
| Processing | .15 | .03 |
| Evidence | .52 | .16 |
| Total variance explained | .62 | .62 |

*Squared semi-partial correlations.

which indicated that identification evidence was the most important single group for the San Diego robberies, accounting for 38 percent of the conviction decision by itself.

Tasks Remaining. The analysis to date is sufficient to indicate something of the potential of a detailed evidentiary approach to the problem of non-convictions. The analysis is highly incomplete, however, and much remains to be done before the approach can achieve its maximum utility for either operational or research purposes. The variables must be further refined and statistical problems such as collinearity thoroughly explored. Work to date strongly suggests that the predictive power of the equations can be further improved and the number of variables required for prediction decreased. Further analysis and replication of the findings for other offenses and other jurisdictions is necessary, however, before the true potential of the approach can be determined.

## E. Some Implications

In a slightly different context Malcolm Feeley has recently decried "the lack of predictive power" of the variables conventionally used in criminal justice research and suggested that "the ways in which the questions have been formulated may be inadequate" and incomplete.[8]

The analysis in this chapter indicates in very clear terms that one of the reasons previous research has had such low

predictive power insofar as convictions are concerned is that it has not devoted much consideration to the role of evidence. Many studies have not considered evidence at all, and those which have have generally used a limited number of evidence items.

The analysis here indicates that evidence is by far the most important determinant of dispositions. It also indicates that the kinds of evidence which are important differ by offense--eyewitness evidence for robbery and a more complicated package for burglary.

The implications for research are obvious: more attention to evidence, not only in analyzing disposition decisions but also in such other research areas as plea bargaining and sentencing. (The effects can be expected to be great in plea bargaining and much less in sentencing.)

The implications for operating agencies are not so obvious. Convictability scales like the solubility scales now being used in prioritizing cases for investigation in some police departments might be of some value to prosecutors, and possibly could help to alert police officers to the need for greater amounts of evidence for conviction and the kinds of evidence which are important. The fact that highly skilled prosecutors and investigators already know these things does not detract from their potential usefulness because of high turnover rates and the need for assisting new personnel. The real utility for field operations is likely to come from the next generation of research. As it becomes possible to identify the evidence items which are most important to particular offenses, it should become possible to develop better strategies for obtaining and preserving the needed kinds of evidence.

Victim-witness problems appear to be a particular problem for robbery cases in Jacksonville in this study, for example. Even though the total number of such problems is low, the percentage drain-off is high. This could simply be an indication that evidence factors vary from city to city. It could indicate, however, that Jacksonville is comparatively less successful in dealing with these problems than other locations. This would be our guess based on our observations and the fact that identification information appears to be the key element in robbery cases in several jurisdictions in addition to San Diego. Jacksonville on the other hand may have developed better approaches to the identification problem than other jurisdictions, although the data available is not enough to establish this fully.

## Chapter Twenty

## REASONS FOR NON-CONVICTIONS I

One way of analyzing why some arrests end in convictions and others in non-convictions is the kind of statistical analysis discussed in the last several chapters. In this kind of "objective" analysis the researcher examines case files or other available information and records the presence or absence of various factors, including evidentiary factors, which might influence the case outcome. Another way of analyzing the problem is to study the reasons prosecutors, police and others involved in the system give for attrition.

### A. Reasons Analysis

Reasons analysis is a research tool that seeks explanations of people's behavior by asking them "why" they thought or acted as they did. Investigators have used this technique during the past several decades in a wide variety of research problems, ranging from advertising effectiveness and consumer behavior to traffic accidents, highway safety, and jury decisions.[1] Recently, researchers have begun to explore the applicability of reasons analysis for understanding attrition in criminal justice.[2]

When decision-makers talk about why non-conviction dispositions occur, they do not ordinarily discuss the sorts of factors that researchers have long regarded as important determinants of case outcomes (*e.g.*, the defendant's race, financial resources, age, and so on). Instead, officials typically point to circumstances that, in their view, have been responsible for preventing particular cases from reaching conviction. Unlike the seemingly objective factors emphasized by most researchers, the matters to which officials refer when asked to explain felony dismissals are *judgments* or *interpretations*--inferences they make about evidence that was somehow insufficient, witnesses who were somehow problematic, interests of justice somehow served, and so on through various "reasons" for non-conviction dispositions. This natural vocabulary of explanatory possibilities offers a potentially valuable source of insight into the phenomenon of attrition.

The use of reasons in connection with attrition is not exactly new. The first use came not for purposes of description or research, however, but for purposes of achieving increased control over prosecutorial action.

In the 1920's the authors of the Cleveland Crime Survey pointed to the prosecutor's virtually unlimited discretionary power to decide whether or not to file on cases as a critical

juncture in the criminal process.[3] It was not the fact of discretion that concerned them, but the unregulated and unmonitored fashion in which it occurred; records were not kept and "all the motives or reasons for the decision...[were] recorded, if at all, only in the mind or private papers of the assistant."[4] To counter this haphazard procedure the authors recommended that prosecutors be provided with forms to record their reasons for decisions not to proceed with particular cases. This recommendation was consistent with their advocacy of systematization and professionalization of criminal justice by implementing a rigorous system of recordkeeping.

Following publicity generated by several studies of criminal courts describing "bargain days" in prosecutors' offices during which large numbers of cases were dropped to ease court workloads, the New York State legislature attempted to curtail the practice in 1936 by adopting a law requiring prosecuting attorneys to give written explanations for outcomes in all cases that were reduced or dismissed. Several years later the results of this effort were evaluated.[5] One major conclusion was that the reasons given were often meaningless short-hand phrases written to meet the requirement in an effortless way:

> Most Prosecuting Attorneys appear to be content with the formulae: "punishment is sufficient";..."a second offender"; and so forth....It is evident that the simplest procedure for overworked Prosecuting Attorneys is to have a group of stock responses that can be listed for specific cases.[6]

More recently there has been a renewal of interest in the reasons for prosecutorial actions. In part this is the result of increased research scrutiny of all phases of criminal justice case processing. In part it is also the result of improved technology. The trend toward an aggressive "management consciousness" in criminal justice has led to installation of computerized management information systems in increasing numbers of jurisdictions.[7] Many items of information in these systems involve standard questions about defendant, case, and case-processing characteristics. The systems also have the capability of including information relating to "reasons" for non-conviction dispositions and many have done so. The best known of these systems is PROMIS (Prosecutor's Management Information System), an automated, on-line system which has been heavily promoted by the federal government. This system has recently been introduced into a number of prosecutor's offices around the country.

B. Previous Research

Greenwood et al. (1973). The first important recent analysis of the reasons for attrition appears in a Rand study of prosecutorial decision-making in Los Angeles.[8]

The Rand investigators analyzed reasons for four different kinds of actions: (1) reasons for rejecting felony filings for burglary and drug cases, (2) reasons for termination of superior court prosecutions prior to the preliminary hearing for a group of five offenses (possession of dangerous drugs, burglary, marijuana possession, auto theft and robbery), (3) reasons for termination for the same offenses at the preliminary hearing, and (4) reasons for burglary rejections at filing by branch office.

This analysis was based on reasons recorded by the prosecutors for their actions. The analysis of rejections at filing covered both outright rejections and referrals for consideration for misdemeanor prosecution or resubmittal for felony prosecution. With respect to outright rejections the analysis indicated different patterns for burglary and possession of dangerous drugs, the two offenses analyzed most closely. While the major reason for termination for both was insufficient evidence connecting the suspect and the crime, there was no agreement on the next most important reasons. For possession of dangerous drugs the next most important reasons were trivial quantity of drug and illegal search and seizure problems, two reasons which are not important at all in burglary prosecutions. For burglary the next most important reasons were doubt as to whether some element of crime was present ("corpus problems") and victim problems of some kind. The reasons for terminations prior to and at preliminary hearings varied somewhat from those for rejecting charges at filing but followed generally similar lines.

Vera Institute (1977). The Rand Project was commissioned as a management study and dealt with reasons for decisions to "terminate" or "reject" cases as one of a number of concerns. The Vera Institute of Justice[9] study of felony disposition practices in New York City was undertaken for a very different purpose. It came in response to police criticism of the judiciary for what was seen as unduly high rates of non-conviction in New York City courts. This made the question of "why" attrition occurs one of the central issues for research. The investigators conducted separate analyses of decision-making for five offenses: felony assault (plus rape, murder, and attempted murder), robbery, burglary, grand larceny, and gun possession. Based on data from records and from interviews of police officers, prosecutors, judges and defense attorneys, this study contains unusually rich descriptions of contingencies that prosecution and court officials meet in different kinds of cases.

It indicates that the two principal reasons for non-conviction and for reduction of charges given by judges, prosecutors and defense attorneys are "the prior relationship

of the defendant and the victim and the defendant's criminal history"[10] and that the "most frequently cited reason for dismissal in prior relationship cases was lack of cooperation by the complainant."[11] The study found prior relationships to exist in over half of all felony arrests involving victims:

> In crimes of interpersonal violence, where one might expect to find a high incidence of personal relationships, the overall rate was 56%, ranging from a high of 83% for rape to a low of 36% for robbery. Perhaps more surprising is that 35% of burglary and larceny cases also involved prior relationships between victims and defendants.[12]

The study concludes that the "fundamental cause of high rates of deterioration in felony arrests as they proceed through court lies in the nature of the cases themselves."[13] "Often," the report says:

> the facts prove insufficient to sustain the original felony charges. Equally important, however, the incidents that give rise to arrest are frequently not the kind that the court system is able to deal with satisfactorily. At the root of much of the crime brought to court is anger--simple or complicated anger between two or more people who know each other. Expression of anger results in the commission of technical felonies, yet defense attorneys, judges and prosecutors recognize that in many cases conviction and prison sentences are inappropriate responses. High rates of dismissal or charge reduction appear to be a reflection of the system's effort to carry out the <u>intent</u> of the law--as judges and other participants perceive it--though not necessarily the letter of the law.

The conceptualization of "reasons" in this study is different from that used in the Rand study, involving a looser, more impressionistic approach. For this reason and because different offenses were studied the conclusions from this study are not directly comparable to those of the Rand study.

<u>Forst et al. (1977)</u>. An INSLAW study of court processing of felony arrests in the District of Columbia[14] integrates the principal themes from the Rand and Vera studies. Summarizing the results of an analysis of PROMIS "reasons" data, the authors conclude that two main categories of reasons account for most prosecutorial decisions to reject (<u>i</u>.<u>e</u>. refuse to file) felony arrests for crimes of robbery, other violent crimes, nonviolent property crimes, victimless crimes, and "other" crimes. They state that "in the vast majority of all arrests rejected at the initial screening stage, the prosecutor specified either a witness problem (such as failure to appear, refusal or reluctance to testify, and lack of credibility) or a

problem connected with nontestimonial evidence (such as unavailable or insufficient scientific or physical evidence)".[15] Although the distribution of reasons for post-filing dismissals (nolle prosequi actions) shows greater variation, the authors emphasize the importance of "witness problems" as reasons for attrition at this stage of criminal proceedings as well.[16]

Brosi (1979). The most recent published research on reasons for non-conviction dispositions is found in Brosi's[17] description of felony case processing in thirteen jurisdictions.

Using PROMIS "reasons" data from some of the jurisdictions, Brosi creates distributions of reasons for rejections of felony cases at screening and post-filing dismissals among total court caseloads. She also creates distributions for selected offenses in certain jurisdictions.

Her general conclusions are similar to those of Forst, Lucianovic and Cox: evidence-related insufficiencies and problems with witnesses are the major reasons for attrition.[18] Striking differences appear, however, from city to city. For instance, the frequency of "evidence problems" as reasons for non-filing decisions ranges from 17 percent in Cobb County, Georgia (Atlanta suburb) to 56 percent in Salt Lake City. "Witness problems" are cited as reasons for non-filing decisions in 6 percent of the Los Angeles cases and 63 percent of Cobb County cases rejected at screening. "Lacks prosecutive merit" is the reason for 3 percent of the non-filing decisions in New Orleans and 22 percent in the District of Columbia.[19] Brosi suggests explanations for some of these differences, but not for most.

C. Standardized Computer-Based Reasons

The studies of reasons for attrition to date have taught us a great deal about the problem of attrition. Their pioneering efforts have shown us that much of the public debate about attrition--particularly that about such things as the exclusionary rule--has been very wide of the mark. These studies have pointed the way toward investigation of other matters, suggesting that much attrition is understandable and that evidence and victim problems are important contributing factors.

The studies to date and the work done in the course of this study also suggest a number of methodological problems in analyzing the reasons for attrition. These problems are of particular concern in studies using standardized computer-based reasons, but exist in any analysis of reasons. If the purpose of the analysis is only to provide a broad overview of the reasons for attrition, these problems are not critical. If the

purpose is to provide a more detailed prescription for action or to compare the reasons across jurisdictions, however, these problems are highly important. Among the more important problems are issues concerning accuracy, uniformity, conceptualization, and organizational bias.

In order to better understand the problem of recording reasons in mass statistical systems two analyses were performed in this study. One involved comparative observations of the methods used to record reasons for OBTS (Offender-Based Transaction Statistics) in five California counties. The second analysis involved the four jurisdictions observed closely in the principal study--Jacksonville, San Diego, Oakland and Fort Worth. These analyses indicated significant problems of accuracy, uniformity and conceptualization.

Accuracy. The simplest problem is that of accuracy. This is particularly a problem in studies or analyses based on automated information systems or large scale statistical data collection. The problem is that someone must record the reason for the action undertaken and then forward those reasons for the aggregate tabulations. Strong hints that there were problems in this process were indicated in the PROMIS data used by INSLAW in its study of what happens after arrest. In this data prosecutors gave reasons for virtually all cases dismissed before filing (99 percent) but for only two-thirds of cases (68 percent) dismissed after filing. The authors speculate that this difference reflects "greater control being exercised over attorneys in filling out forms and documents at the initial screening stage than at subsequent stages."[20] Several jurisdictions observed in this study also had a sizeable number of uncompleted forms.

Even more dramatic evidence of the problems of producing mass computerized data appeared in the survey of five California counties. In each county the method for recording reasons was somewhat different. In one large county reasons were recorded by secretaries, who received the case file after some action in the case. In this county the secretaries recorded the reasons based on the understanding of the case which they got from reading the file. When quizzed as to how they knew which reason to record, they indicated that when in doubt they always used reason a.[21] One of those recording the reasons also asked the interviewer about the meaning of one of the reasons.

In another of the nine jurisdictions observed the reasons for attrition were recorded by the attorney responsible for making the decision. There was a breakdown, however, in the clerical system for computerizing the reasons recorded. In this jurisdiction the clerks responsible for putting the information into the computer used an erroneous set of numerical codes for

doing so. This error dramatically changed the meaning of the information and rendered the results totally useless. These errors had been taking place for at least a year and a half and possibly longer at the time of the observations.

Uniformity. Different individuals have different ways of thinking about problems. Any system that is dependent upon a large number of individuals completing a form is subject to the possibility that identical actions or thoughts will be described in different ways. This possibility is magnified when the choices available are somewhat abstract and there is no training or cross-checking. Because of the great differences in practice, procedure and terminology, the possibilities for lack of uniformity in categorization go up geometrically in comparisons between jurisdictions.

Conceptualization. "Reasons" as a concept is tied to the idea of causation and shares all the problems and ambiguities that have long been understood to exist in the identification of causes. While no purpose would be served by attempting to review all of these here, it is important to recognize the problem of multiple causation ("reasons"). In some instances system actors readily identify one central reason for their actions; in a large number of cases, however, they mention several reasons of similar strength. As most mass statistical systems are geared to recording only one reason, how should the recorder choose when there are multiple reasons? Current systems basically leave this up to the person completing the form, rather than attempting some categorical instruction. This may well be the best solution, but obviously leaves a lot of room for apparent differences where none actually exist.

A more complicated conceptualization problem is that of antecedent causes. If the key to a case is an out-of-town victim who is willing to come back to testify but only if the state pays expenses and the prosecutor makes a judgment that the state cannot afford to pay for such a minor case, should this be recorded as due to "unavailable victim", "not worth the expense", "too low a budget for the prosecutor," or "Proposition 13 because it reduced the tax roles from which monies might be appropriated." Existing systems and research properly utilize only the most immediate "reasons," but obviously there is room for both ambiguity and further analysis.

Organizational Bias. Systems for collecting information concerning the reasons for attrition have come into being in recent years in order to assist in managing and understanding the criminal justice system and particular criminal justice agencies. To the extent that these statistics are used for management purposes, and particularly for management purposes at the operational level, organizational theory suggests the possibility that the reasons given by system actors may become distorted because some reasons will be more acceptable

explanations for actions than others. Lots of examples of this kind of behavior exist, including falsification of police records as to the amount of crime, and widescale business manipulation of accounting rules to show more favorable profit margins.

It was anticipated consequently that some decision-makers might hesitate to give the "true" reasons for decisions to drop cases in order to avoid criticizing other agencies or officials or because of some organizational bias for or against particular precoded reasons. No such lack of candor was found, however. The reasons stated generally accorded with information obtained from files, interviews and observations. The "real" reasons as indicated in the files, interviews and observations did not always line up closely with the precoded reasons, but this was due more to the way the precoded systems were conceptualized than to evasion by those completing the forms. In general attorneys and first-level supervisors regarded the reasons forms as a chore and were uninterested in either their completion or their results.

Utility of Computer-Based Reasons. Despite its drawbacks in most instances observed the mass-produced reasons data now being obtained appeared to have value for internal management purposes. It also has some value for cross-jurisdictional comparisons. At best, however, it paints with a very broad brush and at worst it may be misleading. As further system improvement depends more upon precise, detailed analyses than on vague, general treatments, this kind of reasons data must be improved considerably before it can be relied on as a principal analytical tool.

## D. Reasons in Jacksonville and San Diego

For research purposes one way of overcoming some of the problems of computerized data bases is for the study team to develop its own reasons based on the information in the case file.

Robbery. The major differences in the amount of attrition for robbery in the two jurisdictions are accompanied by major differences in the reasons for attrition. A fifth of the attrition in Jacksonville robbery cases is attributable to police determinations that the person arrested is innocent. This reason is relatively unimportant in San Diego, however, as shown in Table 20-1. Arrests in which the principal evidence is from confidential informants who cannot be disclosed are also a much more important reason for attrition in Jacksonville than in San Diego. Conversely, arrests or charges based on suspicion, lack of corpus for the crime or weak or no identification are major reasons for attrition in San Diego but not in Jacksonville.

Table 20-1

Reasons for Non-Convictions--Robbery
(In number of non-convictions)

| Reasons | Jacksonville | San Diego |
|---|---|---|
| Crime problems | | |
| No corpus (force/theft elements missing) | 1 | 14 |
| Defendant believed innocent | 22 | 6 |
| Suspicion arrest or charge, defendant never linked | - | 19 |
| Evidence problems | | |
| No identification | 1 | 7 |
| Weak identification | - | 11 |
| Conflicting testimony | 1 | - |
| Defendant's role or participation unclear | 5 | 3 |
| Confidential informant, no other evidence | 11 | - |
| Victim problems | | |
| Unwilling to prosecute | 24 | 15 |
| Can't be located or unavailable | 12 | 22 |
| Credibility problem | 7 | 9 |
| Legal problems | | |
| Defendant insane | 2 | 1 |
| Speedy trial problem | 1 | - |
| Illegal search or seizure | - | - |
| Other cases or charges | | |
| Pled guilty to other case or charge | 7 | 10 |
| Agreed to testify against co-defendant | 3 | - |
| Other | | |
| Reason unclear or unknown | 4 | 16 |
| Total non-convictions | 101 | 133 |
| Total cases | (200) | (200) |

Burglary. The reasons for attrition in burglary cases are less precise and considerably different from those in the robbery cases. Twenty percent of the attrition for both jurisdictions is attributable to pleas or actions concerning other cases and charges and is to that extent not really attrition. For those cases that do involve real terminations the major reasons in San Diego are insufficient evidence to convict and suspicion arrests; in Jacksonville the major reason is victim problems, as shown in Table 20-2.

Felony Assaults. By far the most important reasons for attrition in the stranger-to-stranger felony assault cases was unwillingness of the victim to prosecute, as shown in Table 20-3. The dynamics of stranger-to-stranger felony assault appear to be much more like those of assaults between family members and acquaintances than those of robbery or burglary cases. Possible insanity of the defendant also shows up as a minor reason for attrition for stranger-to-stranger felony assault.

Table 20-2

Reasons for Non-Convictions--Burglary
(In number of non-convictions)

| Reasons | Jacksonville | San Diego |
|---|---|---|
| Crime problems | | |
| No corpus | 3 | 1 |
| Defendant believed innocent | 3 | 3 |
| Suspicion arrest or charge, defendant never linked | - | 11 |
| Evidence problems | | |
| Insufficient evidence to convict | 7 | 20 |
| Defendant's role or participation unclear | 5 | 1 |
| Intent unprovable | 2 | 3 |
| Victim problems | | |
| Unwilling to prosecute | 9 | 6 |
| Can't be located or unavailable | 6 | 3 |
| Credibility problem | 5 | 2 |
| Prior relationship makes conviction unlikely | 3 | - |
| Legal problems | | |
| Defendant insane | 1 | - |
| Illegal search or seizure | - | 9 |
| Other cases or charges | | |
| Pled guilty to other case or charge | 5 | 19 |
| Other charges filed, extradited out-of-state | 7 | 2 |
| Agreed to testify against co-defendant | 2 | 1 |
| Other | | |
| Bureaucratic snafu | - | 1 |
| Conviction unlikely--seeking food for children | 1 | - |
| Venue | 1 | - |
| Reason unclear or unknown | 1 | 21 |
| Total non-convictions | 61 | 103 |
| Total cases | (200) | (219) |

Table 20-3

Reasons for Non-Conviction
Felony Assaults--Stranger-to-Stranger
(In number of non-convictions)

| Reasons | Jacksonville | San Diego |
|---|---|---|
| Crime problems | | |
| Suspicion arrest or charge | - | - |
| Evidence problems | | |
| Defendant's role or participation unclear | 1 | - |
| Malicious intent unprovable | - | 1 |
| Victim problems | | |
| Unwilling to prosecute | 5 | 8 |
| Can't be located or unavailable | 3 | 2 |
| Legal problems | | |
| Defendant insane | 2 | 1 |
| Other cases or charges | | |
| Pled guilty to other case or charge | - | 1 |
| Other | | |
| Reason unclear or unknown | 1 | 4 |
| Total non-convictions | 12 | 17 |
| Total cases | (29) | (37) |

## Chapter Twenty-One

## REASONS FOR NON-CONVICTIONS II

Prior research has taught us a great deal about the reasons for attrition. The most extensive analyses have been based on precoded forms that provide little contextual information, however, and the one study with a great deal of contextual information focused almost exclusively on problems generated by victim-offender relationships.

This chapter presents an analysis of reasons for non-conviction dispositions of felony arrests in Jacksonville. The data are drawn from interviews with police and prosecutors about decisions in a small sample of cases involving arrests but not convictions for the offenses of robbery (N=24) and burglary (N=29). The purpose of these interviews was to gain an understanding of the dynamics of attrition rather than to produce statistical information. We were interested in a number of questions: (1) the kinds of problems involved, (2) the amount of information lost in case processing, (3) the extent to which police and prosecutors saw the case the same way and (4) the extent to which the cases were salvageable.

### A. Reasons for Dropping the Cases

(1) Innocence of the Suspect. In four instances robbery cases were dropped because later investigation indicated that the suspect was innocent. In all four of these cases the problem was one of mistaken or uncertain identity. In all four cases both the police and the prosecutor went to some pains to be sure that they had the right person, and when they found that they did not, they dropped the case. One typical case involved the following facts:

> A white female clerk at a convenience store was robbed by a black male in his 20's. A female customer thought she recognized the robber as a high school classmate and supplied the police with a picture from her high school annual. The store clerk then picked this picture out of a photo spread she was shown by the police, and a suspect was arrested. The suspect denied the robbery. Later both witnesses were shown a picture of the person arrested. Both said he was not the robber, and the detective recommended that the case be dropped.

While not an everyday occurrence, this kind of case happens with some regularity and often evokes special care both from the police and the prosecutor. When asked about these cases, detectives described other cases in which they had made similar special efforts to check out a suspect's story. Often a

suspect who claims to be innocent will be offered an opportunity to take a polygraph examination, and generally the police and prosecutor will abide by the outcome. Two of the four suspects released as innocent passed such examinations. In two of the cases there were also strong alibi witnesses, and in one of these cases the prosecutor personally went out and interviewed the witnesses. In all four cases the police and the prosecutor were agreed that the suspect arrested was not the robber. There were no burglary cases studied in which the suspect was later determined to be innocent.

(2) Fringe Criminality. Another group of cases involved suspects who do not fit cleanly into the criminal law. In two there clearly was a crime, but the suspects were only marginally involved. In two other cases the suspects clearly had bad intentions but had not yet proceeded far enough to allow an easy prosecution. In the final two cases acts had clearly happened but it was not clear how criminal they were.

One of the marginal participant cases involved an 18-year-old female, her boyfriend and another male friend:

> A patrol officer observed a car parked behind a record store at night. Upon approaching the car he saw an 18-year-old female in the driver's seat and a somewhat older male in the passenger seat. He also saw speakers and turntables in the back seat and that the store had been broken into. The male passenger said, "We didn't break in; our friend did." The female behind the wheel said nothing. A second male was then found inside the store, and all three were arrested and charged with burglary and grand theft. The case against the female was later nol prossed by the state's attorney.

In this case the woman had apparently attempted to talk her boyfriend and his friend out of the burglary, but they had decided to commit it anyway. The prosecutor thought the woman was technically guilty as an accomplice, but dropped the case for "equitable reasons." The woman was only 18, was willing to be a witness against the two males, and was essentially the dumb girlfriend rather than the bad guy. While the prosecutor's judgment that the woman was technically guilty seems open to question, his decision to release her settled the issue without a fight.

One bad intention case involved a suspect who had been spotted on the roof of a commercial building at night and then arrested crouching in a corner of the roof. Charged by the prosecutor with attempted burglary, the suspect skipped bail. When he was arrested six months later in Chicago, the prosecutor dropped the case rather than spend the money to extra-

dite. The principal consideration was the marginal character of the case. The prosecutor said that all he had was a guy crouching in the corner and then skipping bail. He thought he might have made out an attempted burglary if the civilian witness who first spotted the suspect had been able to identify him but the police had not gotten the witness' name.

The other bad intention case was one of the most interesting of those studied:

> Plainclothes detectives spotted two young black males lurking about a wino half asleep on a park bench. Sitting down beside the wino, the suspects several times tried to lift open his coat, presumably to get his money. Each time the wino raised up and shifted his position and the suspects had to begin again. After a few minutes a little old lady walked by and the suspects immediately began to follow her. Their plan apparently was to wait until she got to an area where she would be all by herself. The park was adjacent to an older part of town, however, and many people were out on their porches. After four blocks the suspects spotted the detectives, who were driving through alleyways and otherwise desparately trying to keep up with the action without tipping off the suspects. When the suspects pulled back from the crime, the detectives arrested and interrogated them. The suspects confessed that they had planned to rob the wino and the little old lady. The detectives couldn't believe they had gotten a confession and were laughing and joking about this when they came to discuss the case with the prosecutor. Ultimately, however, the prosecutor concluded that he could not make a case and no charges were filed.

The prosecutor saw two possible crimes, one involving the wino and the other the little old lady. He dropped the case involving the wino primarily because he thought the suspects had abandoned the crime. He was also concerned about the credibility of the wino victim, another black male who had a prior shoplifting record and who was physically bigger than the suspects.

He dropped the case involving the little old lady because the detectives had not been able to get her name, and without her testimony he was afraid he could not get the confession admitted into evidence. (Under Florida law the confession was not admissible until the prosecution had first independently proved that a crime was committed. As the arrest charge here was conspiracy to rob, the prosecutor was not sure he could prove the conspiracy without use of the confession.)

The basic problem in this case was that the suspects had spotted the detectives before they had a chance to rob the little old lady. The officers knew the arrest was marginal but

were not about to let the suspects off scot free. Both they and the prosecutor felt that the arrest had served a useful purpose. Photos and fingerprints had been obtained on the suspects and might be useful in future cases, the suspects had to spend a couple of days in jail; and the arrest provided two "cleared by arrest" statistics.

While the statistics might not be important in other parts of the office, the detective explained that in robbery "everything is statistics." This meant that if a detective knew an arrest was going nowhere, for example, he could tell the suspect that he would get him off if the suspect would help him with another case sometime. Even if the case had some promise but was later dropped by the prosecutor, he could still rush over to the jail before word came down through the channels and tell the suspect that he had gotten the case dropped and that the suspect owed him one. Tactics of this kind were thought to pay off in information about other cases. "The game," he said, "is to catch as many as you can."

Two clear attempts to break into homes were also considered marginal crimes. In one a 25-year-old male attempted to enter a woman's residence at 2:30 a.m. The victim and a friend scared him away after he had removed a screen from a rear window. Although no prints were found, the victim recognized the suspect, and he was arrested a month later. The prosecutor dropped the case because "there was no evidence of a crime."

In another case a male suspect, who was high on drugs, entered a woman's yard and tried to open the door to her house. Before any major problem developed the suspect's uncle, who lived next door, arrived and took the suspect away. The prosecutor sought to force the suspect into a drug program. When the suspect was found guilty on drug charges in another case and agreed to go into such a program, the prosecutor dropped the charges. He also doubted that he could prove burglary because there was no evidence as to what the suspect intended if he had gotten into the house.

In all six of the fringe criminality cases the police happened upon criminally-oriented activity and took the actions they thought necessary to stop the crimes and freeze the situation. Not surprisingly they picked up everyone who was involved in any way and left until later the problems of identifying who was sufficiently involved to be charged and whether the action was criminal enough to warrant prosecution.

(3) Victim Problems. In all the other 40 cases studied the suspect was thought to be clearly guilty of a crime, but there was some problem with the case. In many of these cases the victim was involved in some kind of illicit activity and was

therefore reluctant to have too much to do with the police or the prosecution. In other instances there was a prior relationship between the victim and the offender which caused the victim to refuse to prosecute or which led the parties to resolve the matter between themselves. While there were both robbery and burglary cases in each of these categories, the robbery cases tended to be quite different from the burglary cases.

Culpable Victims. In about half the robbery cases the victim had been involved in some illegal or at least questionable activity. Typical was the following:

> Three young white males picked up a hitchhiking sailor, took him to a wooded area and attacked him with a knife. The sailor spotted a passing patrolman and yelled for help. The patrolman found a knife on the ground and a small bag of marijuana. The victim first said the knife was stolen from him, but later denied that it was his. The victim refused to prosecute, and the prosecutor decided not to file charges.

The prosecutor gave three reasons for dropping the case: (1) the victim refused to prosecute, (2) the defendants said that the victim had started the fight by pulling the knife, and (3) the defendants had no local record. He thought that prosecution would have been difficult even if the victim was willing to cooperate and that it was impossible without that cooperation. He thought that the knife probably belonged to the victim and surmised that the fight may have been about drugs and money.

In another case the victim was a 30-year-old white homosexual, who picked up and propositioned a 22-year-old black hitchhiker, and was then robbed by the hitchhiker. The victim lived in Indianapolis and refused to come back to prosecute the case because it was likely that his homosexuality would come out at the trial. The prosecutor was anxious to put the suspect away because "people who prey on homosexuals are vicious and dangerous," but was unable to persuade the victim to return.

A third case involved an old drunk who had often called the police to complain about being robbed. In this case he called the police to report being robbed by a male and a female. The officer who responded took him home but thought the offense should be unfounded and did not complete an offense report. A week later the victim called again to say he knew who the female was, and she was arrested. After interviewing the victim, the follow-up detective concluded that the suspect was guilty of a crime but was concerned about the victim's drinking. The prosecutor then asked the victim to come in to the office to discuss the case. When the victim failed to do

so, the prosecutor dropped the case. He saw the crime as a one-on-one robbery in which the suspect did not have much of a record and the victim lacked credibility because of his drinking. He said that when the suspect is someone he "really wants", he will work with the victim much more, and mentioned one case in which he had arranged to put the victim up at the YMCA for three months and helped the victim find a job. He indicated that it was not possible to do this in every case, however, and that this case did not warrant that kind of treatment.

Some burglary cases involve victims who are themselves involved in some kind of illegal or questionable activity:

> A 27-year-old white male reported the loss of a welding set in a burglary; the defendant was traced through a neighbor's description of his car and turned out to be a 25-year-old male known to the defendant. The defendant admitted entering the victim's house to take the welding set but said that it was one that he had originally stolen from his employer and that the victim had knowingly bought it from a fence. The charges against the defendant were nol prossed as part of a plea bargain in another case on condition that the defendant assist in setting up a buy to nail the fence and the victim.
>
> A young white male and a young white female were observed breaking into a motel room by a local pastor who obtained their car license number. The victim, a married out-of-town male who lost $200, asked that the case be dropped. He was renting the room with the "young lady," and it was she who had brought the male defendant into the room.

The first case indicates how complicated these transactions can get. According to the prosecutor everyone in the case--the defendant, the victim, and the fence--was "dirty"; the only question was who was the dirtiest. The police and the prosecutor decided that the fence and the victim were the dirtiest, and set out to use the charge against the defendant to try to get the others. Despite a belief that the burglary "technically stinks" because of doubts about whether an entry to take back stolen property provides the intent necessary to constitute burglary, the prosecutor "loaded up" the defendant in order to force his cooperation. When the defendant welched on his agreement to set up further sales of stolen goods, it was more feasible to give him a stiffer sentence on the other charges pending against him than to refile the burglary charge.

Inability to Assist. In other robbery cases involving victim problems the difficulty was not the culpability or reluctance of the victim, but the victim's inability to assist in the case. In one:

A middle-aged white male was knocked to the ground by a male black. The assailant's female associate then went through the victim's pants, was observed by a witness, and arrested a block away from the crime. The male assailant was never caught. The badly hurt victim was in critical condition for a time, in intensive care for several weeks and the hospital for a month. Ultimately he had memory loss and was of little aid in prosecuting the case. The witness, an older wino, was well known to the beat officer but never seen again. The beat officer was told the next day by persons who refused to testify that he had arrested the right person, but the prosecutor had nothing to base a case on and no charges were filed.

The beat officer knew both the suspect and the witness. The suspect was a prostitute who refused to say anything when interrogated. The officer indicated that he had continued to look for the witness but without success. Even though the witness had no local record, he thought it possible that the witness had a record somewhere else and had become alarmed about exposing this. The beat officer indicated that this case was typical of the problems often faced by a patrolman. He mentioned a more recent case in which he had seen a robbery in progress near the bus station, had told the victim to stay right where he was, had then caught the suspect and gotten a confession. When he went back to find the victim, however, he could not locate the victim, and the case eventually had to be dropped.

Burglary Cases. Thirteen burglary cases involved some kind of relationship between the victim and the suspect. Five involved former spouses or boyfriend-girlfriend situations:

A 40-year-old black female saw her former husband attempting to enter her house through a rear window. She told him to leave or she'd call the police. He did but she called the police anyway, saying that she feared violence if he got into the house. Arrested next door, he admitted trying to get in. The wife later signed an affidavit asking that the case be dropped. It said that she did not want to hurt her ex-husband any more and just wanted him to leave her alone. She said that the defendant was "an alcoholic" and that he "needs help with his drinking problem." No charges were filed in the case.

A boyfriend, on probation for cutting his girlfriend, tried three times to get into her house. He did not get in, and no charges were filed.

Two young women got into an argument over a mutual boyfriend. Girlfriend number one beat up girlfriend number

two. Girlfriend number two and a friend went to girlfriend number one's house to get even. A fight ensued, and the two who were out for revenge were arrested for burglary. No charges were filed by the prosecutor.

The neighbors saw a man breaking windows to get into an apartment. They called the police, who arrested the man. The victim then signed an affidavit asking that the case be dropped. She said that the man who broke in was her boyfriend, that he was drunk and that she only wanted the police to "get him out of here." No charges were filed.

These cases are more like domestic violence than burglary cases. As in domestic violence cases, the question immediately asked is whether the victim will follow through: Every prosecutor and police investigator has had a zillion cases in which the complainant has initially come in all charged up to prosecute and then made up with the defendant later, and there is something of an assumption that this will happen in any new case of this kind. Their first step therefore is to make sure that the victim is willing to go all the way. Often the victim will be tested by being asked to come in and talk with the prosecutor. If the victim chooses not to proceed, he or she will be asked to sign an affidavit indicating that he will not assist with prosecution of the case.

Like domestic violence cases these cases also present difficult problems in evaluating their seriousness. Several prosecutors indicated that they did not view their particular case as being especially serious. "This case isn't as bad as the misdemeanor assaults down the hall" was a typical comment. Generally the prosecutor and the police were agreed on their assessments. In one of these cases, however, there was a sharp difference in perceptions.

In the second case discussed above the prosecutor dropped the charges because he thought no harm had been done and that no jury would ever convict. The detective in the case had a much greater sense of urgency, however. He thought the fight was an on-going thing and that something needed to be done to prevent further violence. The former boyfriend was already on probation for cutting the woman, the woman had moved to escape from him, he had learned her new address by following her home from work, and was making threatening phone calls to her.

Prosecutors in these cases often were concerned about whether the intent necessary for burglary was present. Several prosecutors mentioned this as a problem, generally with the comment that "there may be a trespass here, but I can't prove burglary."

In other burglary cases the victim was primarily trying to use the criminal justice system as a way of getting his property back:

> Defendant broke into the victim's apartment through a rear window. The victim walked in and caught the defendant in the act. The defendant, whom the victim knew, ran out of the apartment. The victim found a $15 watch missing and was initially anxious to prosecute. The defendant was not apprehended until a year later, however, and by then the victim had no interest in prosecuting. Subsequently, the prosecutor nol prossed the case when the defendant pled guilty to another crime.

The detective in the case believed that the victim was attempting to use the police as a collection agency and to harrass the defendant. He thought this was a proper method of redress but said that many in the department were offended by such motives. The prosecutor thought the victim's antagonism and uncooperativeness were because he had a prior manslaughter conviction of his own. Without the victim's help, however, the case could not be proved.

> The victim was a 30-year-old black male, who lived in a flophouse. He reported loss of a television set, and another tenant said that he had seen the defendant, a third tenant, taking the set and then attempting to sell it at a neighborhood bar. The follow-up investigator was unable to locate the victim but did find the witness, who changed his story. The prosecutor then tried to locate the victim himself, first with letters and then by a personal visit. After failing at this, he decided not to file charges.

The patrol officer indicated that the victim initially wanted to prosecute. By the time the follow-up detective had gotten involved several days later, however, the defendant apparently had given $30 to the victim and everybody involved--victim, defendant, and witness--all wanted to forget the case. The prosecutor ultimately agreed with this disposition. He thought the case was not worth salvaging even if it could have been. The television set was all banged up and worth $95 at most.

Other burglary cases involved other kinds of relationships. In one the defendant, who had just gotten out of prison, broke into his aunt's house and stole a stereo set. She signed an affidavit saying she did not want to prosecute:

> I do want to help keep him home and out of trouble, and try to help him go straight. I do not want to prosecute

him because the property was recovered undamaged and he has been in so much trouble, and I feel he does want to be helped but he doesn't know how.

In another case the defendant was a friend of the victim's adopted son. The son, who was about 20-years-old, had been kicked out of his parent's house and was himself arrested for burglarizing the parent's house. The defendant admitted accompanying the son but denied going into the house. He also claimed that he thought the son had permission to go into the house. The police found clothing from the parent's house in the defendant's apartment. The prosecutor initially filed charges because the son said the defendant had participated in the crime. When the son changed his story, however, he dropped the charges.

(3) Co-defendants. In five cases--two robberies and three burglaries--the suspect was arrested in part because another defendant said he or she was involved. As one of the prosecutors explained, this kind of accusation is a common way for suspects to try to get a break from the police or the prosecution, especially if the suspect is an experienced offender.

Because the reliability of this kind of evidence is questionable the law imposes several kinds of restrictions on its use. Thus while confessions are normally admissible whether a defendant takes the stand or not, this kind of confession is not admissible against a co-defendant unless the suspect making the statement takes the stand and is available for cross-examination by the co-defendant. As a practical matter, this generally means that the confession is unavailable if the defendants are tried together. And even if they are tried separately, the suspect must take the stand. Moreover, even if the suspect does take the stand and repeat the statement, most states will not allow a conviction based solely on the statement to stand. Generally they require some form of corroboration to insure against phony statements.

The problems with this kind of evidence are well illustrated by these cases. While there was originally some additional evidence against most of the suspects arrested, by the time of disposition the statement of the co-defendant was the only evidence remaining in three of the cases and was crucial to the prosecution in all five cases. Just to make matters more difficult in three of the five cases the suspects who initially implicated their co-defendants changed their story and later said that their colleague was not involved. The prosecutors generally viewed this kind of evidence as sufficient for an arrest but wanted more to carry the case further.

(4) Confidential Informants. Four robbery cases involved arrests based on information given by confidential informants. In each of these cases the informant told the police that the defendant was the one who committed the robbery but was unwilling to testify in the case. Generally in cases like this the police attempt to develop other information linking the defendant to the robbery. When they were unable to do so in these particular cases, they made the arrests anyway, often after having checked with the prosecutor who told them to go ahead. Their reasoning was that the victims might be able to identify the suspects, that the suspects might confess to the crime, or at a minimum that the suspects would know they had been spotted and would have to spend several days in jail. We did not get any sense as to how frequently these tactics work, but clearly they sometimes do. In one case studied a burglar, who had been arrested on the basis of information from a confidential informant, confessed to the crime. The burglary was eventually nol prossed because the defendant was sentenced to 10 years in another case, but the tactic had nonetheless proved successful. Generally in these cases the police do not tell the prosecutor the identity of the informant.

(5) Miscellaneous Provability Problems. Four burglary cases involved a variety of other provability problems. In one property taken in several burglaries some time earlier was found in a house jointly occupied by the suspect and his girl-friend. The suspect had a long record, and neither the prosecutor nor the police had any doubt as to his guilt. Because of the joint occupancy and the time elapsed since the burglaries, however, the prosecutor did not believe he could make either a burglary or a possession of stolen property charge stick. He regarded the issue as close but had another better case and decided to proceed on that.

In another case a burglary was witnessed by two kids, one eight and the other nine-years-old. A passing patrol officer was flagged down and a suspect quickly apprehended. The suspect denied involvement in the crime but the children were firm in their identifications. The prosecutor declined to file charges because he thought it was doubtful that a jury would convict. His view was colored by an earlier case in which he thought he had a "lock" because of a clear identification by a child but in which the jury brought back a not guilty verdict.

The prosecutor saw this as a borderline case. If the suspect had had a record, he might have filed on it despite his concerns about the witnesses. The suspect declined to enter a diversion program, however, a highly favorable disposition that suspects normally jump at--leading the prosecutor to think that the suspect might be innocent. The prosecutor was also impressed with the fact that the defendant was a 23-year-old

black male who had grown up in the city with no record. He thought this indicated a pretty straight person.

Another case involved good police work which came to naught. Police officers stopped the suspect for a traffic violation. One of the officers then noticed that the car license was one wanted for a burglary several days earlier, and that the driver matched the suspect's description. The suspect was consequently arrested. His photo along with others was shown to the witnesses, who identified someone else. The suspect's fingerprints were also found not to match those taken at the scene of the burglary. The police and the prosecutor were still convinced that the suspect was guilty but could see no way to salvage the case.

The fourth case was similar in some respects. Five days prior to a burglary of her house the victim had found the suspect and two others behind her house. They said they were looking for something. She was suspicious, however, and took down their car license number. She reported this to the police after the burglary, and the suspect was stopped and arrested. At that time the suspect asked if it would help if he got the property back or found out who did it. The police and the prosecutor thought the suspect was guilty, but the prosecutor did not believe he could prove the case and declined to file charges.

(6) Other Good Case or Charges. Five or six cases were dropped because of other charges pending against the suspect. In some instances charges in the present case were filed and then dropped later and in other instances they were simply never filed. Generally the stronger or more provable charges were the ones filed and finally acted on. Almost universally the prosecutors saw no point to proceeding further on the charges dropped. Generally they got the sentence they wanted, and the dropped charges were taken into account to the extent the prosecutors felt that was necessary.

## B. Information Loss and Perception Differences

In addition to learning more about the reasons why some arrests end in non-conviction we sought to examine the extent to which the police and the prosecutor viewed cases differently and to see whether there was any systematic loss of information in processing the cases.

(1) Information Loss. There was considerable evidence of information loss in the handling of cases. In one burglary case the detective had done an extensive supplemental report that was not in the prosecutor's files. When asked about this, the detective indicated that supplemental reports were not

automatically sent to the prosecutor. Rather he said the procedure was for the prosecutor's office to pick up the supplemental report from the police. He said that this procedure often broke down and that supplemental reports were not picked up. He said that he was often called by the prosecutor's office about information that was in a supplemental report and that even in serious cases the prosecutor sometimes went to deposition or even close to trial without having the supplemental report. The detective indicated that he had mentioned this problem to supervisors in both offices but that the problem persisted.

In another burglary case there was information loss of another kind. The defendant was a former boyfriend of the victim. Before their breakup he had given her $25 to pay a parking ticket. After the breakup he received a notice for failure to pay. He then broke into her house, took her stereo set and left a note saying, "give me $25 or receipt for parking ticket." The prosecutor dropped the case because there was no sign of forced entry, and the victim had not responded either to a phone call or a letter. The patrol officer who handled the case had a very different view of it. In not very polite terms he indicated that the entry definitely was forced and said that the reason the prosecutor had not been able to locate the victim was that the victim had moved. He said he had told the prosecutor this at the time of the initial report but that apparently no note had been taken of it. He also said that he had seen the victim a year later and that she was still interested in prosecuting the case.

In another case the prosecutor dropped robbery charges against a woman and a man who had started a bar fight and then taken property from one of those knocked down in the fight. There were many difficulties in proceeding with this case. The prosecutor said that one of the many factors involved in dropping the case was the suspect's lack of a prior record. The patrol officer, who did not know of this reasoning, said that the duo had used this scam on a number of prior occasions.

There were also a number of cases in which some information was lost in transferring the case from the patrol officer who made the arrest to the detective who conducted the follow-up investigation. Often the detective conducts the follow-up investigation without talking directly to the patrol officer. He has the patrol officer's written report, and after talking with the victim and the suspect may feel no need to talk to the patrol officer. It is difficult to get everything down in the written report, however, and the patrol officer will sometimes have important information not included in the report. In addition patrol officers sometimes get later information that is of value. Much of this of course is passed on to

the detectives or the prosecutor, but instances were observed in which it was not.

Only a third of the police officers interviewed knew the outcome of the cases in which they had made an arrest or an investigation, although a few had guessed at the results. Generally also if the prosecution had developed additional information, this had not been shared with the police. In one case, for example, the prosecutor learned that the victim, who decided to drop the case, was related to the suspect. This played an important part in dropping the case but neither this information nor the disposition in the case was discussed or passed on to the police.

(2) Differences in Case Perception. While the relationship between the police department and the prosecutor was generally good, the arresting officer or the investigator disagreed with dropping the case about a third of the time in which he had enough information to make a judgment. The detectives had considerable knowledge of the attorneys and tended to focus their negative comments on particular prosecutors, saying "he's one of those who's just looking for an excuse not to file" or "they only file sure things over there."

## C. Salvageability

One of the major concerns about arrests which end in non-convictions is whether guilty suspects who could be convicted are going free. Evaluating the extent to which the non-conviction cases could or should be salvaged is no easy task, however. It is not always possible to tell whether the suspect is guilty or not. And even if the suspect appears clearly guilty, it is always difficult to know what would have happened if the investigation or prosecution had been done differently. It is also difficult to know what tradeoffs would have been necessary to investigate and prosecute cases differently. Much can be done to strengthen a case if the resources are available, but great resources are obviously not available for every case. This leaves the question as to whether a relatively minor case in which a conviction could be obtained with the expenditure of great effort should be considered salvageable or not.

The police and the prosecutors both agreed that 80 percent or more of the suspects whose cases were dropped were guilty. With the exception of cases which were dropped because of other cases or charges, however, the prosecutors interviewed did not think the possibilities of salvaging the non-conviction cases were very high. The police officers interviewed agreed with this assessment in the majority of the cases but disagreed in a quarter or more. In most instances they agreed that the cases had been investigated as thoroughly as possible but disagreed with the judgment to drop the case. In a few they believed that further investigation would not have been useful.

In order to assess the issue of salvageability further the study team reviewed the cases in light of the information developed in the interviews. Six conclusions emerged from this analysis:

--Most suspects who are arrested but not convicted are believed by police and prosecutors to be guilty.

--Many cases involving this kind of suspect could be salvaged by earlier police investigation, greater investigative effort to solidify cases, and more risk taking by prosecutors.

--Still other cases could possibly be salvaged, but the rate of conviction for these cases would be markedly lower than that for cases which are now actively prosecuted.

--Some of these lower probability cases are essentially order maintenance situations and should probably continue to be handled as at present.

--Many robbery and burglary cases that end without convictions have victims who are drunks, transients or others who frequent downtown skid row or nightlife areas. Few satisfactory techniques now exist for obtaining reliable witnesses and evidence in these cases.

--Better police and prosecutorial procedures might improve convictability in these downtown cases to some extent, but good results probably require greater use of police decoys, old-clothes units and other apprehension techniques that make use of police officers as witnesses. Tactics for such units must be carefully devised and controlled to avoid entrapment problems and the temptation to get involved in administering street justice.

Obviously there are many situations in which no attempt should be made to salvage cases--when later information shows or suggests that the suspect is innocent, for example, or when it appears that prosecution in another case would be more appropriate or more efficient.

Some cases almost surely could have been salvaged without further investigation or any major new investment of resources. One was the case in which the patrol officer knew the address of the victim but the attorney did not and wrongfully assumed that she did not want to prosecute.

The case in which two suspects stalked a wino on a park bench and a little old lady leaving the park was probably also salvageable. While the case certainly would have been cleaner if the robbery had been consummated and if the little old lady could have been located, the observations of the officers were sufficient themselves to establish the corpus of the crime and render the confession admissible. In fact the study team was informed by another attorney in the prosecutor's office of a similar case in which he had secured a conviction. A number of other cases also appeared salvageable, although at seriousness levels considerably less than those originally thought involved--trespass instead of burglary, for example.

Many other cases had some possibilities. Had the prosecution been pressed in these cases, some additional convictions could probably have been obtained without great expenditure of resources. Some of the cases in which the police officer disagreed with the prosecutor's judgment fall into this category, as well as some other cases. Without additional investigative efforts, however, the rate of conviction for these cases would likely have been far lower than that for the cases that were actively prosecuted.

The major problem with many of these cases was the availability or willingness of the victim to prosecute. In many considerable effort was made to try to locate or secure the cooperation of the victim and the witnesses. Generally these efforts did not come early in the process, however, and in many instances both the police and the prosecutor appear largely to have assumed that cooperation would not be forthcoming. Earlier and greater efforts to secure cooperation and to gather other relevant evidence would likely pay off in a greater number of convictions.

While it would probably be possible to secure more convictions in the domestic violence cases, it is unclear how much effort these cases warrant. We do not know very much about the utility of prosecution even in assault cases of this kind. Arrest on the other hand often clearly does serve a useful purpose. It cools many of these situations down, and seems very similar to what James Q. Wilson has called order maintenance in non-arrest situations.[1]

It seems obvious that much more research--both theoretical and operational--needs to be done with these cases. No one now knows what to do with them. Police and prosecutors now go through the motions of prosecuting them, knowing full well that the case will probably be dropped and resenting their involvement in such messy matters. Many feel used and some lecture the complainants about the evils of involving the system if they are not going to follow through.

Many robbery and some burglary cases that ended without conviction involved drunks, transients, and other habitues of the downtown area. Securing the cooperation of victims and witnesses was particularly difficult in these cases. Victims often gave non-existent addresses and sometimes ludicrous ones such as "the county jail." It is not surprising therefore that many could subsequently not be located. Every police officer and prosecutor interviewed was familiar with the situation and recognized the problem. No general tactic or strategy had been worked out to deal with the situation, however, and each case essentially started the same frustrating process all over again. In exceptional cases the victim or witness might be brought to the police station until necessary information could be obtained, and in even rarer cases more stable lodging might even be arranged during the time needed for prosecution. Simple things like verifying the name and address of the victim, however, were not routinely done. Most officers and prosecutors viewed their job more as one of assessing whether the victim or witness would show up rather than facilitating this or encouraging them to do so.

While it seems likely that better police and prosecutorial tactics could secure better results, the gains are likely to be limited. There is only so much that can be done to persuade society's dropouts to help in their own defense. Other strategies are possible, however. One would be to abandon efforts to deal with this problem and leave the field to the robbers and burglars. This is morally indefensible and politically risky, however, and few jurisdictions are likely to try it. A more acceptable strategy, and one that might work much better than the present policy, would be to use police decoys and other procedures which generate police officers as witnesses rather than drunks and transients. Observation of dangerous areas from rooftops or other hidden places is another possibility. Developing methods for prosecuting cases when the victim is not present is another method which might be tried. Prosecutors generally take it as a truism that they cannot successfully prosecute a robbery case if they cannot produce the victim--even if they have other good witnesses. The few prosecutors who have tried such cases, however, report a reasonably good success rate.

## Chapter Twenty-Two

## ARREST POLICY

One major difference between Jacksonville and San Diego is the arrest policy followed by the two jurisdictions. This difference in policy has major implications both for understanding the meaning of conviction-attrition rates and for improving enforcement policies.

It has long been evident that apprehension and conviction rates for offenses such as prostitution, drunkenness, drugs, gambling and vice generally depend a great deal upon enforcement policies. It has been commonly assumed, however, that enforcement policies for hard core crimes such as robbery, burglary and felony assault were more uniform. This study shows that enforcement policies for these crimes also differ. The differences observed are not differences in the degree of concern about serious crimes but in the methods used to combat them. Each method has its own strengths and weaknesses and each jurisdiction could clearly learn much from the other.

The differences in arrest policy described in this chapter are easy to spot in reading crime reports or talking with officers about what they do. They are much harder to describe or to show in a report of this kind. It is particularly hard to describe the differences in behavioral terms, that is, to pick out objective factors which gave a clear understanding of the differences. We found little guidance on this issue in prior research and have therefore attempted to develop our own methods and approach.

### A. Differences in Arrest Policy

The most straightforward way to describe the differences in arrest policy in Jacksonville and San Diego is to say that the evidentiary standard for arrest and charge is considerably higher in Jacksonville.

In Jacksonville the study staff found some kind of clear cause to arrest in over 98 percent of the cases. In San Diego on the other hand there was no clear cause to arrest in about 15 percent of the robbery cases, as shown in Table 22-1. Probable cause was found to be likely in nearly half of these cases, but questionable in the remainder.

There was also some question about probable cause to arrest in nearly 10 percent of the San Diego burglary cases. About half of these cases were regarded as having likely probable cause and the remainder questionable probable cause. Only one of the stranger-to-stranger felony assault cases presented this kind of problem. Generally in these cases there was clear probable cause to arrest.

Table 22-1

Probable Cause to Arrest
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Arrest warrant | - | - | 6 | 100 |
| Officer witnessed robbery in progress | 11 | 46 | 9 | 22 |
| Citizen witnessed robbery in progress | 9 | 33 | 18 | 28 |
| Officer witnessed other crime in progress | - | - | 5 | - |
| Other clear probable cause | 177 | 50 | 132 | 41 |
| Likely probable cause | 3 | (67) | 12 | - |
| Questionable probable cause | - | - | 18 | - |
| Total | 200 | 50 | 200 | 34 |
| Burglary | | | | |
| Arrest warrant | 5 | 60 | 5 | 80 |
| Possession type crime | - | - | 1 | - |
| Officer witnessed burglary in progress | 53 | 87 | 64 | 70 |
| Citizen witnessed burglary in progress | 23 | 57 | 11 | 64 |
| Officer witnessed other crime in progress | 1 | (100) | 2 | - |
| Other clear probable cause | 115 | 66 | 116 | 52 |
| Likely probable cause | 3 | - | 11 | - |
| Questionable probable cause | - | - | 9 | - |
| Total | 200 | 70 | 219 | 53 |
| Felony Assault (Stranger-to-stranger) | | | | |
| Arrest warrant | - | - | - | - |
| Officer witnessed assault in progress | 1 | (100) | 4 | (25) |
| Citizen witnessed assault in progress | 10 | 70 | 11 | 73 |
| Other clear probable cause | 18 | 50 | 21 | 52 |
| Questionable probable cause | - | - | 1 | - |
| Total | 29 | 59 | 37 | 54 |

In addition to the cases in which there was no clear probable cause to arrest, there were a number of cases in which there clearly was cause to arrest for some offense but no clear probable cause to charge robbery, burglary or felony assault. Together with the cases in which there was no clear cause to arrest these cases totaled nearly a quarter of the robbery cases in San Diego and about 15 percent of the burglary cases, as shown in Table 22-2. In Jacksonville there are very few of these cases. There are also very few felony assault cases of this kind in either city.

Taking these tables together it would appear that there are two situations which occur fairly frequently in San Diego but rarely if at all in Jacksonville:

(1) An arrest for a robbery or burglary on something less than clear probable cause and,

(2) The placing of a robbery or burglary charge with less than clear probable cause on a defendant who has been validly arrested on some other charge.

These two situations differ considerably both legally and operationally. In the first situation a defendant who would not otherwise be arrested is brought under detention and into the criminal justice system. In the second a defendant who is already under detention is given additional charges. This second situation may result in greater ultimate penalties or in a greater amount of pretrial detention but is obviously quite different from putting a free person in jail.

Legally if there is no probable cause for arrest, the arrest is illegal and evidence obtained because of the illegality may be subject to exclusion. If a defendant is already under a valid arrest, however, there is no requirement of probable cause in order to place additional charges. Ultimately of course a suspect cannot be found guilty of the additional charges without some determination of their validity, but there is no illegality and therefore no adverse effects on the evidence available for placing the charges.

## B. Circumstances Involved in Arrests

An alternate way of describing the difference in arrest policy in the two jurisdictions is to describe the circumstances under which arrests are made.

In robbery cases about a third of the arrests in both jurisdictions are made at or near the scene of the crime. There the similarities end, however. About half the Jacksonville robberies but only one-fourth the San Diego robberies are later

Table 22-2

Probable Cause to Charge
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| **Robbery** | | | | |
| Arrest warrant | - | - | 6 | 100 |
| Officer witnessed robbery in progress | 11 | 46 | 8 | 25 |
| Citizen witnessed robbery in progress | 9 | 33 | 18 | 28 |
| Other clear probable cause | 177 | 50 | 122 | 44 |
| Likely probable cause | 3 | (67) | 10 | - |
| Questionable probable cause | - | - | 36 | - |
| Total | 200 | 50 | 200 | 34 |
| **Burglary** | | | | |
| Arrest warrant | 4 | (75) | 4 | (75) |
| Officer witnessed burglary in progress | 53 | 87 | 62 | 73 |
| Citizen witnessed burglary in progress | 23 | 57 | 11 | 64 |
| Other clear probable cause | 117 | 66 | 115 | 53 |
| Likely probable cause | 3 | - | 14 | - |
| Questionable probable cause | - | - | 13 | - |
| Total | 200 | 70 | 219 | 53 |
| **Felony Assault (Stranger-to-stranger)** | | | | |
| Arrest warrant | - | - | - | - |
| Officer witnessed assault in progress | 1 | (100) | 4 | (25) |
| Citizen witnessed assault in progress | 10 | 70 | 11 | 73 |
| Other clear probable cause | 18 | 50 | 21 | 52 |
| Questionable probable cause | - | - | 1 | - |
| Total | 29 | 59 | 37 | 54 |

arrests for specific offenders known by name or address. Nearly a quarter of the San Diego cases but hardly any of the Jacksonville cases are later street stops which lead to arrest for the robbery or later arrests for another crime to which robbery charges are added.

The consequences of these differences in the kinds of arrests and charges made can easily be seen in Table 22-3. The conviction rate for on-scene or near on-scene arrests is relatively similar in the two jurisdictions. Similarly the conviction rate for the later arrest of a specific offender known by name or address. Later arrest for another crime or later street stop, two categories which are relatively unique to San Diego, however, produce almost no convictions. Only the later arrest based on a victim spotting the suspect shows a significant difference in the conviction rate. In Jacksonville the conviction rate for this category is near the average for all robberies, while in San Diego it is very low.

The picture for burglary is much the same as that for robbery. About half the arrests in both jurisdictions are on-scene or near on-scene. In Jacksonville three-fourths of the remainder but only half those in San Diego are later arrests of specific offenders known by name or address. About 10 percent of the San Diego cases but few of the Jacksonville cases are later street stops which lead to an arrest for the sample burglary.

As in the robbery cases, the conviction rates for the on-scene and near on-scene arrests are similar. The conviction rates for later arrests of specific offenders are also similar. The conviction rate for the San Diego categories not duplicated in Jacksonville, however, is quite low, as is the San Diego rate for later arrests based on a victim or witness spotting the suspect.

Most stranger-to-stranger felony assault arrests are made at or near the scene of the offense in both jurisdictions, as shown in Appendix Table C-22-1. Even for this offense, however, there are more later arrests in San Diego. The conviction rates are similar in each city.

A more detailed breakout of the way in which burglary arrests are made further illustrates the difference between the two cities. In San Diego there are more arrests near the premises, more based on possession of stolen property, more based on pawned property and more which are simply later, as shown in Table 22-4. In Jacksonville on the other hand there are considerably more arrests following investigation. Again the conviction rate in the two cities is relatively similar for the same kind of arrest situation.

Table 22-3

Arrest Relationship to Principal Charge
(In number and percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| Robbery | Number | Percent Convicted | Number | Percent Convicted |
| Arrest on-scene or nearby | 71 | 47 | 79 | 41 |
| Later arrest of suspect identified by name or address | 95 | 53 | 51 | 59 |
| Later arrest based on victim or witness spotting robber | 22 | 46 | 9 | - |
| Later arrest for other crime to which charges for this robbery are added | 4 | (50) | 20 | 5 |
| Later street stop leading to arrest for this robbery | 1 | (100) | 24 | 13 |
| Other | 7 | 43 | 17 | 6 |
| Total | 200 | 50 | 200 | 34 |
| Burglary | | | | |
| Arrest on-scene or nearby | 100 | 80 | 117 | 67 |
| Later arrest of suspect identified by name or address | 81 | 57 | 53 | 51 |
| Later arrest based on victim or witness spotting burglar | 8 | 88 | 4 | - |
| Later arrest for other crime to which charges for this burglary are added | 1 | (100) | 6 | - |
| Later street stop leading to arrest for this burglary | 3 | (100) | 22 | 14 |
| Other | 7 | 14 | 17 | 47 |
| Total | 200 | 70 | 219 | 53 |

Table 22-4

Circumstances of Apprehension--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| In premises | 45 | 84 | 45 | 71 |
| Entering | 7 | 86 | 6 | 67 |
| Exiting | 1 | (100) | 4 | (50) |
| Close proximity | 15 | 73 | 23 | 78 |
| Hot pursuit from premises | 8 | 88 | 8 | 88 |
| Hot pursuit from point of entry | 2 | (100) | 2 | (50) |
| Nearby within 1 hour | 13 | 62 | 27 | 48 |
| Later based on possession of stolen property | 1 | (100) | 14 | 21 |
| Later based on pawned property | - | - | 8 | 63 |
| Later--car license | 2 | (100) | 3 | (67) |
| Later--after disposing of stolen property | 1 | (100) | 2 | - |
| Later--V-W spotted on street | 4 | (75) | 2 | - |
| Later--other | 20 | 65 | 30 | 30 |
| Following investigation | 78 | 55 | 42 | 48 |
| Unclear | 3 | (67) | 3 | - |
| Total | 200 | 70 | 219 | 53 |

One very common situation in San Diego involves the suspect who is found to be in possession of property stolen in a burglary. Even though such persons may ultimately be punished for only one of these offenses, in San Diego it is quite common for both to be charged. This was the case in nearly a quarter of the study cases, as shown in Table 22-5.

In Jacksonville on the other hand defendants may legally be charged and convicted of both offenses. Few burglary arrests of this kind are made, however. It is not clear from the cases studied whether this means that few suspects are found to be in possession of property stolen in a burglary or whether the arrests for this kind of situation are generally labeled as possession of stolen property by the police.

Table 22-5

Relationship of Burglary Charge
To Possession of Stolen Property Charges--Burglary
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted |
| No possession of stolen property charges | 193 | 68 | 170 | 52 |
| Arrest is primarily based on possession of stolen property | 1 | (100) | 21 | 43 |
| Both charges based on something more than possession of stolen property | 5 | 100 | 26 | 69 |
| Unclear or unrelated | 1 | (100) | 2 | - |
| Total | 200 | 70 | 219 | 53 |

About half the San Diego cases involving both burglary and possession of stolen property charges are based primarily on possession of stolen property and about half are based on other evidence.

Still another way of analyzing arrest policies in the two jurisdictions is in the extent to which a specific crime was known at the time the arrest was made. In the Jacksonville burglaries a specific crime was known in every instance but one, and in that instance the officer's instinct turned out to be correct, as shown in Table 22-6. In San Diego there are many more instances in which no specific robbery or burglary had been identified at the time of arrest. As already discussed, some of these are cases in which the arrest is made for another crime and the robbery or burglary charge added. In other instances, however, the arrest was for the robbery or burglary. Arrests for stranger-to-stranger felony assault were always for a specific crime known at the time of the arrest.

In Jacksonville only about an eighth of the arrests for burglary arise out of street stops of any kind. In San Diego the total is nearly twice as high, as indicated in Table 22-7. While the number of arrests from street stops for the principal charge itself is similar, the number charged with burglary as the result of stops for other crimes is five or six times as great in San Diego.

Table 22-6

Specific Crime Known at Arrest?
(In percent of persons arrested)

| Specific Crime Known? | Burglary: Jacksonville Number | Burglary: Jacksonville Percent Convicted | Burglary: San Diego Number | Burglary: San Diego Percent Convicted | Robbery: San Diego Number | Robbery: San Diego Percent Convicted |
|---|---|---|---|---|---|---|
| Yes | 199 | 69 | 196 | 57 | 172 | 39 |
| No, but there were particular suspicions | 1 | (100) | 9 | 11 | 4 | - |
| No, general suspicions only | - | - | 7 | - | 2 | - |
| Vague suspicions | - | - | 5 | - | 12 | - |
| Other | - | - | 2 | - | 6 | - |
| Unclear | - | - | - | - | 4 | - |

While full data is not available for robbery cases, the number of arrests arising out of street stops appears to be much higher than for the burglary cases. The proportion of arrests arising out of street stops is even lower for stranger-to-stranger felony assaults.

Warrants are not much used for arrests for any of the offenses studied, as shown in Appendix Table C-22-2.

C. Differences in Police Release Policies

One immediate and obvious difference between Jacksonville and San Diego is the number of police release cases. There are no police releases in Jacksonville, while a full 39 percent of all robbery arrestees, 13 percent of all burglary arrestees and 29 percent of assault arrestees are released by the police in San Diego, as indicated in Table 22-8.

Even in California where the law explicitly allows the use of police release for suspects for whom there are insufficient grounds for filing a complaint, and where most police departments use the procedure to some degree, the extent of release by the San Diego department is unusual, as shown in Table 22-9.

The mere fact that a police department chooses to release suspects on its own, however, while another does not or does so to a lesser degree is of course not an indication of a difference in who gets arrested or on what evidence. Differences in such rates are one possible starting place, however, in examining such issues.

Table 22-7

Type of Street Stop
(In percent of persons arrested)

| | Jacksonville Burglary | | San Diego Burglary | | San Diego Robbery | |
|---|---|---|---|---|---|---|
| | Number | Percent Convicted | Number | Percent Convicted | Number | Percent Convicted |
| No street stop involved | 176 | 69 | 163 | 63 | 117 | 37 |
| Street stop for principal charge | | | | | | |
| -on-scene or nearby within 30 minutes | 17 | 71 | 20 | 40 | 31 | 52 |
| -30 minutes to 6 hours | 1 | - | 4 | - | 19 | 42 |
| -6 to 24 hours | 1 | (100) | - | - | 1 | - |
| -24 hours or more | - | - | 3 | - | 5 | - |
| Street stop for other crime | | | | | | |
| -on-scene or nearby within 30 minutes of sample event (coincidental happening) | - | - | 9 | 67 | 1 | - |
| -30 minutes to 6 hours of sample event | 2 | (100) | 2 | - | 7 | - |
| -6 to 24 hours | - | - | - | - | 1 | - |
| -24 hours or more | 1 | - | 16 | - | 15 | - |
| Unclear | 2 | (100) | 2 | - | 3 | - |
| Total | 200 | 70 | 219 | 53 | 200 | 34 |

Table 22-8

Police Releases
(In percent of persons arrested)

| | Jacksonville | | San Diego | |
|---|---|---|---|---|
| | Number | Percent | Number | Percent |
| Robbery | NA | NA | 78 | 39 |
| Burglary | NA | NA | 27 | 12 |
| Felony assault | NA | NA | 47 | 26 |

Note: There are no police releases for any offenses in Jacksonville.

Table 22-9

Police Releases--Statewide and Selected California Counties, 1979[a]
(In percent of persons arrested)

| | All Felonies | Robbery | Burglary | Felony Assault |
|---|---|---|---|---|
| San Diego PD[b] | NA | 39 | 12 | 29 |
| San Diego County | 16 | 29 | 10 | 20 |
| Statewide | 11 | 19 | 10 | 11 |
| Alameda County | 1 | 5 | 1 | 1 |
| Fresno County | 5 | 6 | 3 | 3 |
| Los Angeles County | 17 | 27 | 18 | 18 |
| San Francisco County | * | - | - | - |
| Santa Clara County | 23 | 29 | 16 | 32 |
| Yolo County | 1 | - | 1 | - |

[a] Source: California Bureau of Criminal Statistics, Criminal Justice Profiles--1979.

[b] Data based on study samples.

* Less than 1 percent.

## Chapter Twenty-Three

## THEORIES OF ATTRITION

While there has been relatively little systematic study of case attrition in the past, virtually everyone--from the moral majority and the most recent political speakers to the cop on the beat--has a clear idea as to the cause of non-convictions. Some of the many reasons advanced are that attrition is due to:

--Delay in the trial of cases.

--Soft-hearted judges.

--The decisions of the Supreme Court of the United States under Chief Justice Warren.

--Too heavy a workload for prosecutors or for police.

--Too much plea bargaining.

--Lack of adequate resources.

These theories have at least one thing in common. They all assume that convictions (or non-convictions) are determined by something other than the guilt or innocence of the defendant. Most are based on a tacit assumption that some guilty defendants are being released and imply or suggest that something could or should be done about the cause or reason for attrition.

From the defense side there are also complaints--too many defendants are being convicted who ought not to be. Some of the reasons advanced for this problem are:

--Too much plea bargaining.

--Too heavy a workload for defense counsel.

--Discrimination against racial and ethnic minorities and lower class defendants.

--Lack of competence and training for defense counsel.

--Systematic biases which adversely affect defendants not granted pretrial release.

These theories and others which might be stated fall into four general groups:

--Theories based on the guilt or innocence of the defendant as indicated by the evidence in the case.

--Theories based on individual characteristics of the case which are not related to the guilt or innocence of the defendant.

--Theories based on the organization, structure and policies of the criminal justice agencies and system in the community.

--Theories based on the larger political and social character of the community.

Most of this report has concerned the first two of these groups. It seems obvious, however, that all four are important and that larger organizational and political issues have a significant bearing on what happens in individual cases. Standards of proof among other things are ultimately geared to community standards as reflected in the actions of juries, and we have frequently been told, for example, that juries in one part of the county would not convict on a particular kind of case but that juries from other parts of the county would.

It was not possible in the course of this study to analyze all the many theories of attrition that have been brought forward. We have attempted to analyze some of the more important theories, however, and these analyses are included in the appendix volume. The analyses are based on the literature rather than the jurisdictions studied. The conclusions are generally supported, however, by our observations and analyses in the jurisdictions studied. A brief summary of the analyses is given in the paragraphs which follow.

## A. The "Sociological" Hypothesis

One important theory often advanced to account for differences in the outcome of cases is the effect of extralegal characteristics such as race or class. The available studies, including this study, suggest that these factors have relatively little impact in contemporary criminal justice. While studies often show that members of one race are convicted more often than members of another--that in a particular locality, for example, blacks are more often convicted than whites or that whites are more often convicted than Hispanics--when these extralegal factors are considered along with other factors, such as nature of the offense, evidence, and prior record, the effects of race or class normally disappear. In general the more sophisticated the prior studies have been, the smaller the effects they have been willing to ascribe to extralegal attributes. The question is by no means settled, however, and future studies may find greater effects. One area which has not been extensively probed are the indirect effects of race, class and other extralegal characteristics. Thus, while it seems reasonably clear that decision-makers do not currently convict

defendants more readily simply because of their race or class, it is possible that race or class influence other factors such as the acquisition of a criminal record or the believability of important witnesses, which do bear on convictions.

## B. Pretrial Detention and Delay

Two widely accepted explanations of attrition are that pretrial detention causes defendants to be convicted and that pretrial delay, by wearing out witnesses and causing the loss of evidence, allows defendants to escape conviction. It is also widely assumed that detained defendants have a strong incentive to plead guilty quickly and released defendants a strong incentive to delay.

Both of these theories emerged from early empirical studies which took few or no other factors into account. Later studies, which take more factors into account, are more equivocal.

Despite the obvious connection between pretrial detention and pretrial delay, virtually no studies have analyzed their joint effects on convictions. According to the theories, these effects could be expected to neutralize each other in some instances and reinforce each other in others, as shown in Figure 23-1.

Because the prior studies have not analyzed these factors together it is not possible to indicate whether the relationships suggested in the figure exist or not. The one study which has investigated these relationships together clearly indicates that the two concepts are linked but is not comprehensive enough to answer the many questions involved.[1] Until the joint effects have been studied more thoroughly neither pretrial detention nor pretrial delay can be taken by itself to provide an important explanation of attrition.

## C. Plea Bargaining

There are at least two major theories about the effects of plea bargaining on attrition. One is that it causes attrition

Figure 23-1

Effects of Pretrial Detention and Delay on Convictions

| | No Delay | Delay |
|---|---|---|
| No detention | Increase-Decrease | Decrease-Decrease |
| Detention | Increase-Increase | Decrease-Increase |

and the other is that it causes convictions. While there is a great deal of rhetoric, the only major study found which discusses the theory that plea bargaining causes attrition is the evaluation of the Alaska ban on plea bargaining.[2] This evaluation supports the theory and concludes that the elimination of plea bargaining decreased attrition. This result holds, however, only if convictions are defined as prison sentences. If convictions are defined in a more normal way, the study shows that the elimination of plea bargaining brought about a small increase in the percentage of defendants not convicted.

The theory that plea bargaining increases convictions is much better supported. Not only is there a widespread belief among prosecutors, defense lawyers, judges and researchers that sentencing concessions to defendants who plead guilty lead to a greater number of convictions than a system in which no such concessions are made, but several major studies have concluded that plea bargaining accounts for around a third of all convictions.[3] There are serious methodological flaws in these estimates, however. One makes the unwarranted assumption that if plea bargained cases went to trial, they would have the same percentage of acquittals as the cases now tried. The other assumes that the kinds of criminal offenses prosecuted in the 91 federal district courts are similar, a proposition that is difficult to square with the data available.[4]

While the principle has not been well demonstrated statistically, it seems likely that plea bargaining does increase conviction rates for felonies slightly and that the amount of the increase is related to the magnitude of the sentencing concessions made. The increase in convictions insofar as misdemeanors and minor offenses is concerned may well be greater. Many defendants charged with these offenses serve no additional time if they plead guilty and thus have a powerful incentive to plead. Because most jurisdictions already rely heavily on plea bargaining for processing cases it seems doubtful that conviction rates could be further increased through greater use of plea bargaining without serious erosion of criminal sanctions.

D. System Resources

Common sense says that there is a relationship between system resources and caseloads and the attrition rate. Too many cases means that some get slighted and that convictions suffer. The studies available are equivocal, however--showing only slight effects on police performance as measured by arrests or clearances and limited or no effects on prosecutorial performance as measured by convictions. These findings are similar to those in other fields such as education, welfare, and probation, indicating that reduced workload has a negligible effect on performance.

What are policymakers to conclude about these findings? Can more money help control crime? Can the conviction rate be increased by more police, prosecutors or resources?

The studies available give us little guidance on these questions. They suggest caution about expecting too much from increased resources but are far too limited to indicate that increased resources cannot help.

One reason the studies to date are so equivocal may be that most agencies could manage existing resources better. If this is true, additional resources are likely to result in better performance only if coupled with improvements in management or changes in the pattern of expenditure.

E. System Organization

It seems axiomatic that good organization should result in better performance. Very little is known, however, about the effects of organization on convictions and the information available mostly indicates what does not work.

While there are many reasons to believe that police performance is the key to a greater number of convictions, the police are organized more to make apprehensions and to maintain order than to produce convictions. Officers understand what is necessary for an arrest but often are quite unclear about what is necessary for a conviction. The police priorities are not necessarily wrong. Apprehensions and order maintenance are important functions. If more convictions is an important goal, however, police priorities may need to be altered.

Prosecutors on the other hand are organized to produce convictions and have in recent years tried a number of innovative measures designed to produce more convictions, including career criminal and victim-witness programs. Research to date indicates that these new programs have had some effects on sentences but no major effect on convictions in most jurisdictions. These findings may be too pessimistic, however. The research has been difficult, and the findings are far from conclusive. What seems likely, however, is that the limited effects are due largely to the fact that in many offices the weaker cases are screened out and never filed, and that the cases which survive this process do not require a great deal of extra attention in order to obtain convictions.

## Chapter Twenty-Four

## SUMMARY AND IMPLICATIONS

The purpose of this study has been to improve our understanding of case attrition and to render it a more useful tool for analyzing system performance and fighting crime.

The study makes two kinds of findings: those which help to understand what attrition is and how it should be measured and those that suggest ways to improve the criminal justice system itself. Major findings concerning the meaning of attrition are that:

--The single most important factor in determining whether a jurisdiction will have a high or a low attrition rate is the arrest policy followed in the jurisdiction.

--The single most important factor in determining whether a prosecutor's office will have a high or low conviction rate is the policy that the office follows with respect to screening and filing cases.

--A high prosecutorial conviction rate may be a sign of excellent prosecutorial performance or a sign of overly conservative charging policies. The best test is not the rate itself but the kind of charges not filed.

--A high attrition rate may be a sign of lax performance by either the police or the prosecutor, illegal or highly aggressive police work, or a very careful police command and control system which keeps unusually detailed records of police arrest activity. Again the best test is not the rate itself but the kind of marginal arrests or charges made.

While conclusions based on two jurisdictions cannot be taken as conclusive, study findings strongly suggest that attrition can be reduced in many jurisdictions. These findings emphasize the role of evidence:

--The factors which most strongly affect whether a given arrest will become a conviction or not are those relating to evidence.

--Whether an arrest will become a conviction or not is usually determined very early in the process.

--Most suspects who are arrested but not convicted are thought by police and prosecutors to be guilty.

--Many cases of this kind are dropped for evidentiary reasons but could and probably ought to be salvaged.

--Salvageability of these cases depends on earlier police investigation, greater investigative effort to solidify cases, and more risk taking by prosecutors.

--The amount of evidence available in a particular locality differs considerably from that available in other localities.

--The effect of a particular piece of evidence also appears to differ considerably from location to location.

--There are significant differences among offenses in both rates of conviction and factors associated with conviction.

--It is possible to predict with a high degree of statistical accuracy which arrests will end in conviction and which will not.

--Individual defendant characteristics such as age, race, and prior record do not appear to be consistently related to the likelihood of conviction in the jurisdictions studied.

--The exclusion of evidence by the courts because of illegality is a minor factor in reducing the number of convictions.

--Prior research suggesting that up to one-third of all convictions are attributable to plea bargaining is not well supported.

## A. Implications for Police Administrators

The most important implication of this study for police administrators is that the police need to devote much more attention to the problems of convictions. Convictions depend upon evidence and evidence is largely produced by the police.

Because convictions require more evidence than arrests and the police are geared more to produce arrests than convictions, police do not now obtain all the evidence that could be gathered. Prosecutors could theoretically pick up the slack, but are not organized to do so. As a practical matter therefore, if the evidentiary gap between the standard of probable cause needed to arrest and that of beyond a reasonable doubt needed to convict is to be filled, it must be filled by the police.

Many steps will be necessary to accomplish this goal. Seven that are particularly important are:

(1) Police investigators and police officers should receive much more specific training concerning the requirements for conviction. Such training should be offense-specific. Because police agencies currently emphasize apprehensions and clearances much more than convictions, there is often a serious lack of knowledge about the practical requirements for achieving a conviction. Assignment of officers to the prosecutor's office for temporary duty or for short periods of observation in the charging office might be one practical way of providing this kind of training.

(2) There should be specific feedback to the police officers involved concerning each case disposition. Brief written reasons should be given for non-conviction dispositions and suggestions made for improvement in future cases. Weaknesses and suggestions for improvement should also be pointed out in conviction cases.

(3) Police administrators should insist on some regular method of two-way communication at the working level with prosecutors concerning the handling of cases. Ideally there should be periodic meetings between working-level police supervisors and working-level prosecutorial supervisors. These meetings should be held at least quarterly and should include discussions of particularly troublesome or especially "good" cases. The purpose of these meetings should be to increase understanding as to why actions were taken and how performance on each side might be improved. Special attention should be paid to developing policies and procedures that simplify police tasks while still producing needed evidence. The present practice in some prosecutor's offices which makes it possible for police officers or police supervisors to protest specific decisions with which they are unhappy is a useful one, but there is also a need for more direct and more regular communication.

(4) Police attention to issues related to convictions will be increased if attrition-type data are regularly collected, compiled, distributed, and reviewed. These compilations should not replace performance indicators concerning apprehensions but should be given much more departmental emphasis than now is the case.

(5) Much more attention needs to be given to the kinds of evidence produced by particular apprehension strategies and techniques and the effect these different kinds of evidence have on convictions. Many robbery victims, for example, are downtown transients who often are unavailable or unwilling to prosecute. It would certainly be possible to address this problem through improved victim-witness programs. (We talked to one prosecutor who arranged several weeks lodging for a transient victim in a particularly important case.) Presumably

it would also be possible to address this problem through greater investigative resources, employed in this instance to locate the victim at the appropriate time. A better strategy, however, would appear to be to increase the number of apprehensions made through the use of old-clothes-type decoy operations. When apprehensions are made in this way, the principal witness is a police officer and convictions are more likely.

(6) The fact that the amount of evidence such as identifications and confessions in a case varies considerably from jurisdiction to jurisdiction suggests that much more experimentation needs to be undertaken to discover the best techniques for obtaining the various kinds of evidence. While some of the variance may be due to differences in the communities involved, it seems likely that some is also due to the use of superior techniques on the part of particular agencies.

(7) Police administrators should give serious consideration to shifting investigative resources from the solution of crimes--where these resources are relatively inefficient--to building cases against suspects already arrested, where the payoff might be greater. In many departments small amounts of additional case building might increase conviction rates for crimes such as robbery, burglary and felony assault by 10 percent or more.

## B. Implications for Prosecutors

There are three major implications of this study for prosecutors:

(1) The first implication is that it is very much in the prosecutor's interest to improve police efforts to gather evidence and build strong cases. This can be facilitated if the prosecutor takes the initiative in providing much more feedback concerning the problems and outcomes of cases and by creating regular methods for two-way communication concerning cases at the working level.

(2) The second implication is that prosecutors should pay much more attention to cases at an early stage. Many offices already emphasize this by their manner of screening and by procedures followed by their career criminal prosecution units. Even greater emphasis, however, is warranted.

(3) The third implication is that prosecutors should monitor cases not filed as well as those which are. A high conviction rate is a good indication of office efficiency, but it could also indicate that the office is achieving less than it might in crime control by something like "creaming" or "skimming." An annual audit of a sample of cases not filed would help to indicate whether good prosecutorial opportunities are being missed.

## C. Implications for Research

This project was based primarily on a study of two jurisdictions. One important question therefore is the generalizability of the results obtained. Are the jurisdictions studied typical or would other factors appear in other jurisdictions? While analysis of the information available and observations in other jurisdictions suggest that the most basic study findings are generalizable, it is also clear that some American criminal justice systems differ considerably from the two examined, and it would be surprising if further research did not disclose some important differences. Analysis of other jurisdictions and other offenses is consequently a major task for future research.

Other important implications for research are:

--There needs to be much more research into the questions relating to arrest policy. The types of arrest policy and consequences of different kinds of policies need to be spelled out in much greater detail.

--Much more attention also needs to be paid to evidence and the consequences of evidence. It is apparent that the kinds of evidence generally obtainable in crimes varies enormously. The differences are not well delineated, however. Spelling out the kinds of evidence needed for specific offenses would not only make future research in this area much more sophisticated but would also assist greatly in training police officers and prosecutors.

--The fact that different jurisdictions produce different quantities of evidence and that particular kinds of evidence appear to have considerably different weights needs to be explored intensively. Is the difference simply the communities involved or is it the product of particular police or prosecutorial techniques?

--The predictability factors associated with convictions need to be explored in much greater detail. If those found hold up on closer examination, they have considerable potential as a method for sensitizing police officers to the requirements for conviction and improving police decision-making. They could, for example, be used in much the same way that solvability factors are now being used in the apprehension process.

--Studies which compare jurisdictions in terms of overall rates of conviction are likely to be misleading if they fail to consider differences in proportions of different offenses handled by each jurisdiction. More accurate conclusions may require offense-specific analyses of conviction rates across jurisdictions.

--The study findings with respect to the effect on convictions of pretrial detention and delay strongly suggest that these factors work together rather than separately and that both have been widely misunderstood. These findings indicate a need for more research in this area.

Some other implications are perhaps not so obvious:

--An important part of the deterrence literature is based on arrest data. If these data are not comparable, as appears to be possible, the findings may be questioned.

--Neither the plea bargaining nor the sentencing literature devotes much attention to evidence. Our findings suggest that evidence is an important component of plea bargaining, and it may influence sentencing as well.

--The case method of counting may overstate the amount of charge reduction and the effects of plea bargaining.

## D. Implications for Statistics

Reliable, comparable statistical information is essential to public understanding of the crime problem. By providing a benchmark and knowledge of other jurisdictions and systems, such information is also essential to the improvement of justice system performance.

A good deal of past attention has been paid to the problems of counting important crimes. The system for counting crimes known to the police, even if imperfect, is fairly well developed. Victim surveys promise to develop other accurate indicators of crime.

Much less attention has been paid to the statistical issues involved in defining and counting arrests. As a consequence, these figures are much less comparable than has been assumed.

Much the same problem exists with prosecutorial and court statistics. Not only are these often not comparable from jurisdiction to jurisdiction, but they also often cannot be connected with arrest or other figures within the same system.

There are six major recommendations concerning statistics:

(1) There is a need for a new and better convention on the counting of arrests for statistical purposes. The Uniform Crime Reports system is adequate as a starting point but needs to be refined and its definitions brought into line with existing practice.

(2) There needs to be a renewed effort to develop offender based tracking systems which can tie together the work of the police, prosecutor and courts. With the exception of one or two states and a few local systems it is extremely difficult to determine what happens to arrestees even for the most serious crimes. No commercial enterprise involving a product or service of such significance or cost would be so cavalier.

(3) There is also need for greater comparability in counting cases and dispositions. Better definitions are needed to ensure that counts refer to the same procedures and that misdemeanor dispositions for felony charges are not ignored.

(4) Much more thought also needs to be devoted to the question of the proper unit of count. The case method commonly in use overestimates convictions and gives an impression that there is considerably more charge reduction than is the case.

(5) There needs to be much more concern about the accuracy and comparability of data from computerized information systems. Even systems like PROMIS which have a common parentage produce data much less comparable than has been supposed.

(6) Information as to the reasons for case dispositions and other decisions is a useful addition to present statistical systems. If this is to be accurate and complete, however, much more attention needs to be given to the categories employed and the methods used for collecting this kind of information.

## E. Implications for Public Understanding: The Media and the Political Process

There are two important implications of this study for public understanding of the criminal justice system. These implications relate primarily to the way criminal justice issues are presented in the press and in political debate:

--The first implication concerns the use of statistics concerning convictions in political races for prosecutorial office. From the previous analysis it should be obvious that a high conviction rate is not a clear indicator of excellent or even adequate performance. The media and the public should therefore refuse to accept conviction rates at face value and should insist on more detailed information concerning prosecutorial performance.

--The second implication concerns the media and political discussion of attrition rates themselves. Periodically in almost every locality the media or political participants "discover" the fact that not everyone arrested is convicted. Sometimes this discovery engenders a highly

useful discussion and debate about the operation of the local criminal justice system with lots of information and viewpoints. At other times, however, this discovery triggers a setpiece in American theatre. Someone claims to be shocked about this "awful state of affairs" and identifies an appropriate culprit who is then burned at the stake of public opinion. The implication of this study is that this second kind of approach is an exercise in political or media demagogery rather than an attempt at serious public discussion.

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4. All figures were computed from cases heard at the preliminary hearing.

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APPENDIX A

Table A-1

Robbery Sample

| | Jacksonville | San Diego |
|---|---|---|
| Cases selected from booking logs as robbery arrests[1] | 213 | 219 |
| Coded | 200 | 200 |
| Not coded | | |
| Turned over to another jurisdiction or another law enforcement agency | 4 | 7 |
| Defendant failed to appear, case off-calendar | 1 | 2 |
| Defendant was wanted on a robbery charge for which he had previously been arrested or was wanted for probation violation for prior robbery conviction | 5 | 3 |
| Robbery was really a grand theft[2] | - | 2 |
| Remanded to juvenile court[3] | - | 1 |
| Expunged, file not available | 1 | - |
| File not available for other reason | 2 | 4 |

[1]Cases in which robbery was the most serious charge.

[2]Defendant and victim were in collusion and staged a phony robbery from store in which "victim/clerk" worked.

[3]Defendant lied about age at arrest and was really a juvenile.

Table A-2

Burglary Sample

| | Jacksonville | San Diego |
|---|---|---|
| Cases selected from booking logs as burglary arrests[1] | 418 | 398 |
| Long forms coded[2] | 200 | 219 |
| Short forms coded[3] | 197 | 162 |
| Not coded | | |
| Turned over to another jurisdiction or another law enforcement agency | 6 | 6 |
| Defendant failed to appear, case off-calender | - | 3 |
| Defendant was wanted on a burglary charge for which he had previously been arrested or was wanted for probation violation for prior burglary conviction | 8 | 5 |
| Remanded to juvenile court[4] | 1 | - |
| Expunged, file not available | 3 | - |
| File not available for other reason | 3 | 3 |

[1]Cases in which burglary was the most serious charge.

[2]Extended coding was done for commercial and residential building burglaries.

[3]Short-form coding was done for auto burglaries, burglaries which were primarily shoplifting and miscellaneous thefts.

[4]Defendant lied about age at arrest and was really a juvenile.

Table A-3

Felony Assault Sample

| | Jacksonville | San Diego |
|---|---|---|
| Cases selected from booking logs as felony assault arrests[1] | 205 | 200 |
| Long forms coded[2] | 29 | 37 |
| Short forms coded[3] | 167 | 144 |
| Not coded | | |
| Turned over to another jurisdiction or another law enforcement agency | 1 | 2 |
| Defendant was wanted on an assault charge for which he had previously been arrested or was wanted for probation violation for prior assault conviction | 1 | 4 |
| Victim died so charges were changed to homicide | 1 | 1 |
| Failed to appear | 1 | 4 |
| Off calendar | 1 | |
| Expunged, file not available | 2 | 0 |
| File not available for other reason | 2 | 8 |

[1]Cases in which felony assault was the most serious charge.

[2]Extended coding was done for stranger-to-stranger assaults.

[3]Short-form coding was done for assaults in which the participants had any kind of prior relationship of 24-hours' duration or more.

## Appendix B

## METHODOLOGY FOR THE REGRESSION ANALYSIS

### A. Variables for Inclusion

The data set contained more than 300 relevant items which in theory could have been used in the regression analysis. Our choice of a final list of between 95 and a hundred for robberies and about 70 for burglary was based on both theoretical and statistical criteria.

The first step was to examine the bivariate relationship of evidentiary, extralegal, processing and offense information to case outcome for all items in the data set. For many of these the simple criteria for inclusion was a significant bivariate relationship. Given the exploratory nature of the study a .10 level of significance was used. All extralegal attributes were included even if not significant. We felt this was imperative, since even through a bivariate relationship was not significant, it could become significant after other variables were controlled for. Given the importance placed upon extralegal attributes in past research, this approach appeared necessary.

Past research, our own thinking and a desire to compare jurisdictions and offenses led us to include some items which in a statistical sense were not significant.

### B. Treatment of Missing Information

Our general approach for handling missing data was to recode it in such a way that the original, bivariate relationship was lowered, making for a conservative assumption and model of conviction. Variables which had a large amount of missing information were excluded. For some cases some assumptions could be made about the missing data, and again these were conservatively made. We were very aware of the fact that a listwise deletion of cases would have made our sample size drop considerably, since missing information was distributed more-or-less randomly in the data set. If this treatment of missing data did anything to the analysis, it likely lowered our ability to explain case outcome and increased measurement error slightly among the independent variables.

We were, of course, constrained in this analysis to largely categorical independent variables and some continuous variables. For continuous independent variables tests of linearity were performed; if the test was not significant, the data were dummy coded and used in the analysis if relevant and if an alternative method of coding the data was meaningful and reasonable.

C. <u>Method of Analysis</u>

After defining the variables to be used in the multivariate analysis choices had to be made about the specific method to analyze the data and the form of the analysis within constraints of time, resources, available computer programs, the state of the methodological art and past research methods. The general problem to be resolved was to identify a method for predicting a binary dependent variable, case outcome, using more than 100 independent variables and sample sizes of 200 each in Jacksonville and San Diego robberies and Jacksonville burglaries. Due in large part to the timing of the data collection analyses were perforce conducted separately by jurisdiction and offense.

The primary method of analysis chosen was regression analysis. Other more powerful and/or appropriate techniques, such as PROBIT, LOGIT and ECTA, were too expensive, unfamiliar to most audiences or were not considered appropriate in the time available time because of unknown characteristics of the data set. Regression analysis was deemed appropriate as an exploratory method of analysis. Under some not-so-restrictive conditions its results are similar to those found with alternative techniques (Goodman, 1975).

Regression analysis assumes that the probability of a dependent variable is a linear or straight line function of a variable or variables: a positive linear relationship exists, for example, where income increases with each additional year of education; an example of a negative linear relationship is the diminution of crime as age increases. Nonlinear relationships may also be specified, but most sociological relationships can be described in linear form (Blalock, 1980).

In its basic form the regression equation takes the form Y = a + bX + e where "Y" is the dependent variable, "a" is the constant or intercept, "b" the regression coefficient, and "e" the error term. The constant "a" is the point at which the regression line crosses the Y axis on the two dimensional plane and represents the predicted value of Y (Y) when the b coefficient is 0. The b coefficient describes how much of a change is predicted in Y with a one unit increase or decrease in b. The error term is the residual variation, i.e., the squared difference between the actual and predicted (Y) scores. These errors or residuals are a result of measurement error of Y and causes of Y which are not in the equation.

The assumption of regression analysis using ordinary least squares estimates of the best fitting regression line is that the expected value of the error term is 0 and that it will be approximately normally distributed. The critical assumption is

that the error term is not correlated with the independent variable. Regression analysis also assumes that the Y's are normally distributed for each fixed X and that the standard deviations of the Y's are equal regardless of the value of X. This property of equal variances is referred to as homoscedasticity.

The Pearson correlation coefficient, r, describes the strength and direction of the linear relationship between Y and X. It has a value ranging from +1 to -1. When the b coefficient is standardized, the resulting figure is called a beta weight or path coefficient. It represents the amount of change produced in the dependent variable by a standardized change in the independent variable. Of course more than one variable may be included in the regression, called multiple regression. In this case the beta weight refers to the change in the dependent variable produced by an independent variable while controlling for other independent variables. Moreover, the multiple correlation coefficient squared, $R^2$, indicates the proportion of variance explained or accounted for by the joint contribution of two or more independent variables. $R^2$ ranges from 0 (no linear variation explained) to 1 (perfect linear relationship).

There are a variety of ways to structure the regression equation. With a given dependent variable and a list of independent variables, there are four basic methods: (1) all possible regressions; (2) backward elimination; (3) forward selection; and (4) stepwise. The all possible procedure regresses the dependent variable on all possible combinations of the independent variables; the number of regressions possible is 2 K-1, where K equals the number of independent variables. A choice is then made of the best fitting and most parsimonious regression.

The second is the backward elimination procedure, which first solves the regression for K variables and then removes independent variables, one at a time, if they do not meet a pre-established criteria, such as a significant multiple partial F-test. The forward (stepwise) selection procedure enters variables into the equation one at a time, selecting for inclusion the variable with the highest partial F statistic (after the first variable not in the model is tested for significance at a level specified by the investigator). When no further variables can be included in the model, it is terminated.

The stepwise regression procedure is an improved version of forward stepwise regression, which allows for the removal of variables in the forward model if they become insignificant at any step. As with the forward model variables are entered into the equation if their partial F-value is significant. The process continues until no variables can be entered or removed.

The present analysis relies on a forward stepwise approach, which has exploratory advantages. It was also the most accessible and least expensive of the four approaches.

In this study the binary dependent variable is case outcome (0 = no conviction, 1 = conviction). Case outcome was regressed on the independent variables using as a criteria for inclusion partial F-value of 3.8 after the first variable was entered. When no further variables would be entered, the process terminated.

D. Limitations of the Analysis To Date

Thus far our analysis has been exploratory. It has been confined to the use of a forward stepwise regression approach with a dichotomous dependent variable and largely categorical independent variables. The particular order in which independent variables have entered into the equation overall or within classes of variables has been purely statistical, determined by the largest multiple partial correlation in the list of independent variables. No allowance has been made for first or higher level interaction effects, and no attempts have been made to compare predictions of case outcome by offense, either across or within jurisdictions. Nor have attempts been made to build more parsimonious models. We are painfully aware that we have only touched the surface of the potential in the data set.

The next paragraphs discuss these limitations of the analysis to date, we well as some of the methods available for extending the analysis.

E. OLS Estimates

OLS (ordinary least squares) estimates are inefficient but not unbiased when the mean of the dependent variable varies greatly from .50. The net effect of great variations from .50 is heteroscedasticity or correlated error terms. Ordinarily the problem is not too serious unless the mean of the dependent variable is less than .20 and greater than .80. However, even here a two-stage estimation procedure is desirable to develop generalized least squares (GLS) estimates. Even in this case, however, findings will be highly inefficient where there are problems with collinearity or multicollinearity.

As such the analysis to date is wanting in many respects.

(1) With small samples and a large number of intercorrelated variables, the likelihood of prediction bias and correlations due to random "noise" increases greatly. At a bare minimum our analysis requires that the samples be split in two, analysis performed on

one half of the data set and the patterns found there tested on the second half of the data. Although we do not believe that the analysis as presently done is incorrect, it is unclear whether the observed relationships will hold up under these constraints or through the use of alternative statistical techniques. This is particularly true for the data sets in which the dependent variable has a probability which varies greatly from .50. In these cases the likelihood of heteroscedasticity and inefficient parameter estimates increases greatly. Although a generalized least squares approach could be used to make the analysis more respectable, there are other, more appealing approaches available for examining the data which do not simply assume, as ordinary least squares estimators do, that the probability of falling in a category is a linear function of the independent variables. Log linear methods such as LOGIT or ECTA generally assume that the log of the odds of being in a category are a linear function of the independent variables. For skewed outcomes in the data set use of these approaches will confirm and/or improve our identification and specification of relevant variables predictive of case outcomes as well as interaction effects, which to this point have been totally ignored.

(2) The regression analysis to date, while promising, is not parsimonious. This reflects the stage of the data analysis process we find ourselves. With additional time and attention we should be able to reduce the number of variables in equations while retaining similar $R^2$'s. This "model building" procedure should also make the beta weights more interpretable to the practitioner and result in more efficient estimates.

(3) One of the most serious omissions of the analysis to date is cross-jurisdictional comparisons of the determinants of case dispositions. Simple comparisons of bivariate relationships across jurisdictions is of course important and necessary for a more general understanding of differences in rates of attrition. But the primary advantage of multivariate comparisons would be to show the <u>relative</u> importance of evidentiary, extralegal, offense and processing information on outcome while controlling for all of the variables simultaneously for the two jurisdictions.

There are two basic methods of approaching this question. One is to merge the data sets for Jacksonville and San Diego, by offense, for items on which we have similar information. The resulting regression

would then incorporate the two separate regression equations within a single model but allow for different intercepts and slopes for the two jurisdictions. Interaction terms would thus be specified and the differences between the jurisdictions would be reflected in interaction effects. Assuming parallel slopes, analysis of covariance would be performed. Merging the cases would also increase our sample size, which would in turn allow use of ECTA, which is cheap and readily available, to specify all possible interaction terms where appropriate.

The second method would treat the two jurisdictions separately by fitting two regression equations. Appropriate two-sample t-tests or large sample z-tests could easily be made. This method would be especially appropriate if assumptions of variance homogeneity are not met and if the differences in available data are great in a substantive or statistical sense. Our suspicion is that there will be differences by offense as to which approach is appropriate but that both methods may be appropriate to some degree. For a given offense we foresee no immediate problems in merging the files for the two jurisdictions.

(4) A final omission of the analysis to date is the neglect of predictors of decisions at the different levels in the attrition process, including police release, refusal to file and convictions both within and between jurisdictions and by offense. Although evidentiary items may be extremely important at the point of conviction, it is unclear how important they are at the point of police release and refusal to file. It may be that extralegal or other factors are differentially important depending upon the stage of attrition.



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