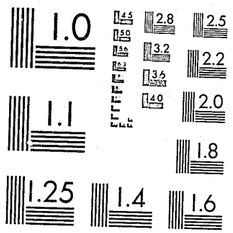

DEALING WITH DANGEROUS OFFENDERS

VOLUME II

Selected Papers

February 1983

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Section 1

SELECTIVE INCAPACITATION AND DANGEROUS OFFENDERS

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Research Perspectives on Selective Incapacitation as a Means of Crime Control

by

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I. Basic Problems of Prison Capacity

The criminal justice system of the United States is currently facing the classic tension between the public's persistent demand for more severe punishment of convicted offenders and its equal reluctance to provide additional resources to do so. The public demand for greater punishment is felt very strongly by virtually every elected official with any authority over the criminal justice system. It is reflected in the number of states that have recently considered and passed sentencing legislation that reflects more severe standards, typically in mandatory-minimum sentencing legislation or in determinate-sentencing legislation that provides for a significant increase in the average sanctions delivered.[1]

This increased public pressure comes at a time when there is little capacity within the criminal justice system to respond to their demands. The principal operational constraint is that of prison capacity. U.S. prisons are already severely overcrowded. At the end of 1981, there were about than 370,000 individuals in state and federal prisons, not counting the 150,000 in local jails. This represents one person per 700 in the general population, and is the highest incarceration rate (prisoners per capita) in recent U.S. history. The situation is particularly severe for the demographic groups that account for the largest incarceration rates - the males, the blacks, and the young. For the single largest group, black males in their twenties, one in 33 of that group is in prison on any given day.[2] This level of incarceration represents an issue of enormous political and social concern, as well as considerable cost.

This growth in prison population comes at a time when the United States has seen relatively little growth in prison capacity, and so the consequence is considerable prison overcrowding, and the resulting serious concern about the effects of that overcrowding. The overcrowding has led to conditions of confinement that are unacceptably severe and these have resulted in court interventions in 28 states directed at correcting these conditions.[3] Of comparable concern is the effect of

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[1] In Pennsylvania, for example, the legislature recently passed a mandatory-minimum sentencing bill calling for a five-year mandatory-minimum sentence for all those convicted of committing an offense with a firearm, committing a serious crime on public transportation, or committing a second serious offense (especially assault with serious injury or aggravated robbery). These mandatory-minimum sentences are probably more than twice the actual time currently being served by persons convicted of these offenses.

[2] These rates, and the racial mix in prisons generally, are explored in Blumstein, Alfred "On the Racial Disproportionality of U.S. Prison Populations," Journal of Criminal law and Criminology, Volume 73, no. 8, Fall 1982

[3] Criminal Justice Newsletter, vol. 13, no. 5, March 15, 1982, pp. 2-5.

overcrowding on prison management. Saturated prisons inevitably increase the complexity of managing the institutions, and lead to a transfer of control from the institution to the inmates, with the attendant risk of riot or other severe problems.

A major inhibition to the expansion of prison capacity is the high cost of constructing and operating prisons. The capital costs of construction vary by the design and site, but are typically in the range of $50,000-$75,000 per cell. Operating costs differ across states, by the type and amount of services provided, and by the salaries of correctional officials, but generally average about $10,000-$15,000 per inmate per year. These costs are being faced at a time when states are undergoing severe fiscal stress. This results partly from taxpayer resistance as reflected in the adoption of California's Proposition 13, Massachusetts' proposition 2½, and other tax limitation measures. It is directly reflected in the rejection in recent years of bond referenda for prison construction in New York, Michigan, and California, all in the face of widespread demands for stiffer penalties in those states. The states' fiscal problems are exacerbated further by the transfer to the states of responsibility for an increased number of social programs that had previously been funded by the Federal government, thereby putting greater pressure on the state budgets and making it even more difficult for them to provide funds for additional prison capacity.

In many states, the reluctance to create additional prison capacity is a consequence of rational planning. Much of the recent growth in prison populations is attributable to a transient effect - the shifts in the nation's age distribution as a consequence of the "post-war baby boom". This population, the cohorts born in the 15-year period 1947 to 1962, is now past the high-crime ages of 16 to 18, and so one might anticipate a reduction in crime based on this demographic shift. That reduction in crime, however, is not translated directly into a reduction in prison population, largely because the peak imprisonment ages are in the mid-twenties somewhat later than the peak crime ages. This lag occurs because, aside from the most heinous offenses, imprisonment is imposed only on those who have accumulated several convictions. Those persistent offenders who do accumulate the multiple adult convictions that warrant prison are then well into their twenties.

Thus, based on these demographic considerations alone, there should be a lag between the crime peak, which should occur in the early 1980's, and the prison-population peak, which should be about 10 years later. Based on some studies in Pennsylvania,[4] that peak in prison population, with a subsequent decline, is expected to occur in about 1990. Pennsylvania is likely to be typical of the situation elsewhere in the Northeast and Midwest, where the total population is fairly stable but aging. The Southwest, on the other hand, with its significant growth in

[4] See Alfred Blumstein, Jacqueline Cohen, and Harold Miller, "Demographically Disaggregated Projections of Prison Populations", *Journal of Criminal Justice*, vol.8, no.1, January, 1980, for these estimated effects in Pennsylvania.

population through in-migration, may not experience any such decline.

II. The Search for more Effective Crime Control

The pressure for a more aggressive response to crime and the severe constraint associated with current prison capacity leads naturally to a search for means of increasing the crime-control effectiveness of the criminal justice system. Since the principal scarce resource is prison cells, this search can involve finding means for more efficient "allocation" of those cells. Pursuing that strategy inevitably introduces some conflict between the considerations of individualizing incarceration in order to maximize an incapacitation effect and those of assuring equal, just, and uniform punishment.

If we knew absolutely nothing about the crime-committing propensity of individuals or groups, then we could do no better in terms of crime control than to pursue a "just deserts" strategy. Punishment would respond simply to the current offense, its seriousness, and the offender's culpability, perhaps as reflected in the extent of his prior record. The just-deserts principle calls for imposing punishment that is "proportional" to the offense seriousness. This principle establishes the relative ranking of offenses, and lacks only a "proportionality constant" to establish the absolute levels of punishment. The proportionality constant can be provided by imposing one more constraint, and that can be ascertained by the limit on the aggregate amount of imprisonment to be delivered. Under current crowded conditions, that constraint is the total prison capacity.

In the search for improvements to the efficiency of the just-deserts approach, one can look to certain offense types, to certain identifiable classes of individuals, or to certain behavior patterns that could provide additional predictability of subsequent behavior. If such prediction were possible and effective, then that would suggest a policy of "selective incapacitation" focused on those individuals who are predicted to be most likely to commit serious crimes in the future. In order to adhere to the constraint on prison capacity, these individuals become the prime candidates for incarceration, with a corresponding reduction in the penalties imposed on those who are predicted to be less likely to commit crimes in the future.

This issue of selective incapacitation is most often posed in terms of identifying "high-risk" individuals and imposing extra punishment on them. Such proposals have generally met with considerable objection. Predictions of future criminality have generally been of poor quality. Furthermore, as the base rates of the predicted crime decrease (as occurs, for example, when the focus is narrowed to the most serious violent crimes), even good predictions are bound to generate high false-positive rates, and the objections to punishing individuals for predicted future crimes increases severely as the fraction who would not be committing the future crimes increases. These concerns might be mitigated to some degree when the issue is posed in terms of a reduction of punishment for some low-risk groups in exchange

for an equal increase in the punishment of others in the high-risk group. To many, however, the primary concerns is with each of the inappropriate members of the predicted high-risk group (i.e., the "false positives"); no benefits to others (the predicted low-risks) are viewed as acceptable as aggregate compensation for the wrongful punishment delivered. Many others, recognizing the gross uncertainties that limit the development of a precise sentencing schedule in any event, are prepared to be more pragmatic: they are prepared to countenance some errors (which will occur under any sentencing scheme) if the predictions are sufficiently reliable and if no one receives punishment that is grossly unjust for the crime committed.

In beginning to address these policy issues involving selective incapacitation, it is important first to identify the role of incapacitation as a crime-control strategy generally, and to indicate the kinds of information needs that are associated with increasing its effectiveness.

III. Incapacitation as a Crime Control Strategy.

Incapacitation is one of the three means by which the criminal justice system controls crime. The dominant method until recently was that of rehabilitation, which sought to bring about behavior change in identified offenders subsequent to release from some form of "treatment". The dominance of this strategy is reflected in the label of "corrections" applied to the punishment arm of the criminal justice system.

The accumulation of research over the past decade into the rehabilitative effectiveness of a wide variety of criminal justice "treatments" has led to a growing disillusionment with that possibility. The dominant finding in those evaluations has been a "null effect", where no particular treatment is found to be any more (or less) effective than any other on the average, so that individuals emerge from "treatment" with no appreciable behavior change. This does not require that no individuals change in any way, since it is entirely possible that some individuals do emerge from treatment with a reduced propensity to commit crime. This could result from a combination of rehabilitative programs (e.g., learning of job skills) and the special deterrence associated with an enhanced resolve not to have to suffer similar punishment again. On the other hand, some individuals can emerge from the treatment with a <u>greater</u> propensity to commit crime. This could result from a socialization into the criminal subculture that dominates prisons. But the "null-effect" finding suggests that these two groups roughly balance each other out. In general, that result should not be very surprising. When individuals emerge from whatever limited treatment we permit the prison authorities to impose, and typically return to the same environments from which they reached prison, it is certainly reasonable that the influence of the environment will soon dominate any persisting influence of whatever "treatment" went on in prison.

The second crime-control mechanisms of the criminal justice system is that of general deterrence, where the sanction of imprisonment is viewed as a "price" of

committing crime. The underlying presumption of general deterrence is that if the "price" is increased (i.e., the certainty or severity of application of a sanction is increased), then the number of persons deterred will increase and the crime rate reduced accordingly. While there is a widespread belief that there must be some general deterrent effect, it has been particularly difficult to measure those effects. This difficulty results largely from the difficulty of separating the effects of increased sanctions in reducing crime from the simultaneous effects of increased crime rates on inhibiting the imposition of sanctions. In terms of the variables that reflect the deterrent effect, the empirical estimates of the influence of punishment "severity" (i.e., the length of sentence imposed) has consistently been smaller than the influence of imprisonment "certainty" (i.e., the probability of imprisonment for those convicted).

The third mode, which is the principal focus of this paper, is that of incapacitation. Rehabilitation is concerned with the crime averted by the offender <u>after</u> his release from treatment, and general deterrence is concerned with the symbolic effect of punishment on <u>other</u> potential offenders; the incapacitation effect refers to the crimes averted in the general society by isoltion of the identified offenders <u>during</u> their periods of incarceration. That is, if the offenders were on the outside, some of them would be committing crimes and those crimes are averted by isolating them in prison. (Of course, the crimes that are committed against the other prisoners by the offenders in prison are discounted in this context.)

Thus, it is important to recognize that any incarceration policy will have some incapacitative effect as long as any of the imprisoned individuals would have been committing crime if they were on the outside. This incapacitation effect can be characterized as a "general" incapacitation effect.

IV. General Incapacitation

Most discussion of incapacitation focuses on the general incapacitation effect which results from any incarceration policy, including any just-deserts policy. Whoever is imprisoned as a result of any incarceration policy might have been committing crimes if he were on the outside, and the crimes averted thereby are the general incapacitation effect. Any such effect is diminished by the degree to which those crimes are replaced during the period of incarceration. Crimes committed by, say, a pathological rapist are not likely to be replaced, and so the incapacitation effect is complete during his period of confinement. It is probably also the case that there is no replacement of the robberies by a street mugger. Certain crimes are the work of a criminal labor market, and those are likely to be replaced. In the case of drug sales, for example, it is likely that the incapacitation effect on a drug dealer is negligible, since his sales will be picked up either by an increase in the activity of those still out or by recruitment of an additional seller to take his place. Similarly, burglary carried out in the service of a "fence" is also likely to be replaced through

recruitment by the fence, whereas solo burglary is more likely to be incapacitated when the burglar is in prison.

Replacement could also be a problem when the offending is carried out by a group, and one member of the group is sent to prison. If the group was larger than the necessary size to carry out the criminal functions, the group reduced by one member could still continue, and if it does, there would be no incapacitative effect. If the lost member was critical to the operation of the group, then the remaining members may have to recruit a replacement, and so might still continue. On the other hand, the imprisoned individual might have been a key leader in the group, and his imprisonment could well cause the group to discontinue future activity; in that case, his imprisonment would have the effect of incapacitating the crimes of the group. We still know very little about such group offending and the effects of imprisoning one of its members, and this must be the subject of continuing research.

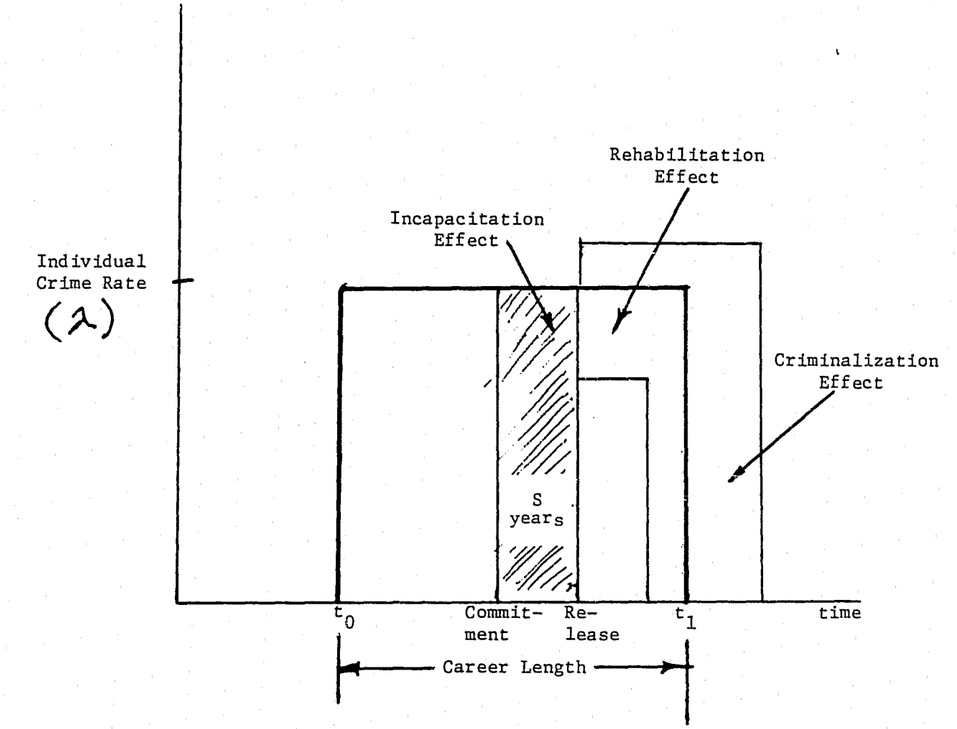
Research into general incapacitation requires considerable knowledge about the nature of criminal careers. The fundamental notion of incapacitation implies taking a slice out of an individual criminal career. Figure 1 depicts a simplified model of an individual criminal career. The propensity to commit crime begins at time t_0 and continues until some later time t_1. During that interval from t_0 to t_1, the individual is expected to commit crimes at some average rate of λ crimes per year. The graph of the individual's crime rate is thus shown as zero until he begins his criminal career at time t_0. It then rises to a value of λ, and continues at that value until he terminates the career at a time t_1, at which point the value again returns to zero. A period of imprisonment of S years during the middle of that interval could thereby avert λS crimes, and that incapacitative effect is reflected by the shaded region within Figure 1.

To the extent that there were any rehabilitative effects resulting from that imprisonment, then it would be reflected in a change in the individual's career after release. That could be either through a reduction in the value of λ subsequent to release or in a shortening of the criminal career. To the extent that the effects of incarceration are criminogenic, on the other hand, then that would show itself as a change in the career pattern, but in the opposite direction - an increase in λ or an extension of the duration of the career. These two possibilities - rehabilitation or criminalization - are also depicted on Fig. 1 after the period of imprisonment. To the extent that the literature on rehabilitation and its findings of a null effect are valid, then these two effects probably occur, but are roughly equal, and so balance each other.

V. Criminal Careers

The past decade has seen an increased focus on incapacitation, largely in reaction to the disillusionment with the rehabilitative potential, and has resulted in increased attention to the issues of criminal careers, and to estimation of the parameters

Figure 1
A Model of a Criminal Career



characterizing criminal careers.

Perhaps the most fundamental parameter characterizing the criminal career is the value of λ, the individual crime rate in terms of crimes per year per offender. During the S-year period of incarceration, the number of crimes averted is λS. Obviously, the higher the value of λ for the incarcerated population the greater the incapacitation effect of imprisonment. In view of the importance of this parameter, it is astonishing how little is known about it. It is only in the last decade that we have seen efforts to begin to develop estimates of λ for a general offender population.

A second important parameter of the criminal career is its duration or "career length", the interval $(t_1 - t_0)$ in Figure 1. While we are interested in the total length of a criminal career, a decision-maker in the criminal justice system is especially interested in the "residual career length", or the time remaining in the criminal career. Thus, the judge who imposed the sentence S on the offender depicted in Figure 1 might be interested in knowing whether the residual career length would be less than S. If it were, then the time from the end of the career until the end of the sentence would be wasted in terms of an incapacitative effect, and the incapacitation-oriented judge might then want to consider imposing a shorter sentence. Thus, the shorter the expected residual career length at the time of imprisonment, the greater the likelihood that a portion of the sentence interval, S, will extend beyond the end of the career, and that the prison capacity will be used to incarcerate someone who is no longer criminally active.

Criminal-career research is also interested in the patterns of crime-type switching over the course of the criminal career. In order to estimate the different types as well as the numbers of crimes averted through incarceration, it is important to know whether particular offenders or identifiable groups of offenders are "specialists" (i.e., engaged in only one kind of offending) or "generalists" (i.e., switch broadly across a range of offenses) and whether the seriousness of their offending increases or decreases over the course of their criminal career.

These criminal-career characteristics are directed at those who are in a criminal career. An associated question relates to the prevalence of offending. With respect to the larger general population, the question here is the number of people who ever engage in a criminal career, and the number criminally active at any given time. The question of prevalence introduces the issue of the starting and stopping of the criminal career, and the points in individual lives where these events occur.

In all the discussion of criminal careers, it should be apparent that the concept of "career" refers simply to a means of characterizing a longitudinal process. It does not require that crime be the individual's primary means of income or employment since one can have simultaneous careers of many kinds, such as an educational career, an employment career, a criminal career, a mating career,etc.

These parameters of the criminal career are all difficult to estimate. The problem would be greatly simplified if all criminals maintained careful logs of their criminal activity and submitted those logs to a central repository on a regular basis. Failing that ideal, there are two principal means by which the parameters can be estimated - self-reports and official records. In self-reports, individual offenders are asked to report on their criminal activity over a recent window period, and those reports are used to estimate the criminal- career parameters. The reports, of course, are subject to problems associated with misrepresentation, which could include efforts to suppress by some and efforts to embellish by others. Even in the absence of intentional attempts to distort, some respondents may simply have difficulty in recalling events that took place months or years earlier. The virtue of the self-reports, however, is that they measure crimes directly rather than some subsidiary event that follows from it.

The use of official records, most typically, involves arrest records associated with individual offenders. Those records note the sequence of arrests associated with each individual offender. Since only a small fraction of crimes result in arrests, then the "arrest process" reflected in those records can be viewed as a sampling of the much richer "crime process" which is of primary interest. The problem is further complicated by the fact that that "sampling" is not random, but must involve a number of biases, and the exact nature of those biases is difficult to determine precisely. One must then use information on the "sampling probability", which is probability of arrest conditional upon commission of a crime, to make inference about the underlying crime process from the recorded arrest process. Since arrest records are maintained more carefully and completely for adults than for juveniles, the use of these official records is more likely to yield satisfactory estimates of the parameters of the adult criminal career starting at age 18. Since such records are often automated, however, it is possible to generate large samples of adult criminal histories, and these large samples can be disaggregated very finely to explore interactions among a large number of variables. This degree of disaggregation is not ordinarily possible with self-reports, which require interviews with each individual offender, and the cost of these interviews limits the number that can be accumulated.

VI. "Selective" Incapacitation

The search for the individual offenders who are the best candidates for incarceration in order to maximize the incapacitation effect involves a search for the individuals with the most appropriate criminal-career parameters. In particular, one would like to identify the individuals who do have a high value of λ, who engage in the most serious offenses, and who are most likely to continue to persist in their criminal careers.

The search for the most serious offenders is particularly appealing because any estimated distribution of λ will be found to be highly skewed, with some very few

individuals displaying very high values of λ, and the bulk of the individuals having small values of λ. The skewness is especially pronounced in the self-reports,[5] and is more so in self-reports than in the official records of arrests. This difference could be anticipated to be the case because it is physically impossible for an individual to accumulate an extremely large number of arrests in a short time, simply because those who might do so would be incarcerated before the rate could get extremely high. Thus, those whose true λ is extremely high either spend a very large portion of their time in prison, or must have a very low vulnerability to arrest. The skewness in self-reports could also be exaggerated by reporting error in the self-reports, with the very high values of λ possibly being associated with those few who embellish the reports of their criminal activity most vigorously. Some of the skewness in the variation in λ also undoubtedly attributable to chance variation in statistical realizations around a true underlying λ. Despite these alternative explanations, however, it is almost certainly the case that the true underlying distribution of λ is highly skewed, but there is still some uncertainty about the degree to which that skewness is correctly reflected in self-reports.

In the face of the existence of a long right-hand tail in the distribution of λ, the task of selective incapacitation becomes one of identifying a priori the high-λ individuals who will accumulate the largest number of offenses or arrests. In fact, much of the thrust for selective incapacitation derives erroneously from retrospective observations. Much has been made, for example, of the observation in the Philadelphia cohort study (Wolfgang, et al., 1971) that 6% of the cohorts, (namely those "chronic" offenders who were found in retrospect to have experienced five or more arrests) accounted for 52% of the recorded police contacts. Since only one-third of the cohort was ever arrested, these "chronics" represent 18% of those ever arrested. Furthermore, Blumstein and Moitra (1980) have shown that the same results could be explained by a model in which all offenders with 3 or more arrests are indistinguishable in prospect and that all have the same probability of each subsequent arrest. Unless one can specify in advance the profiles of the individuals who will turn up in the right-hand tail, then the knowledge of the existence of the right-hand tail is of little predictive or policy relevance. Ideally one would like those profiles to reflect detailed patterns of behavior accompanied by insightful theory that helps to explain the relationships within the patterns and why the individuals with those patterns do end up at the high end of criminal activity. Once those patterns have been identified from retrospective analysis of criminal activity, then there has to be empirical verification of their validity in a prospective sample.

On the other hand, the kind of identification that is least satisfying is that which derives simply from finding variables which correlate well with arrest rate or

[5] See, for example, Jan Chaiken and Marcia Chaiken, *Varieties of Criminal Behavior*, Rand Report No. WD-1189-1-NIJ; 1982.

reported crime rate, or, equivalently, variables that have large regression coefficients in a simple regression equation with reported crime rate or arrest rate as the dependent variable. Thus, while there could well be differences among the "chronics", and between the chronics and those with fewer arrests, the fundamental task is one of identifying those differences in ways that can be used prospectively. There is a strong correlation among many variables that are related to criminality; where the information is to be used in deciding on individual punishment, one wants to be sure that one is invoking the relevant variables rather than spurious correlates.

The most important work on measuring individual values of λ through self-reports is that of Jan and Marcia Chaiken and of Peter Greenwood, all at the Rand Corporation. Their work is based on interviews with prisoners in California, Texas, and Michigan. Their work, as is true of all other estimates of individual values of λ, is retrospective in that their estimates have been derived from data, but not yet tested on a new sample of data. They also derive from highly selected populations. In the case of the work by Rand, for example, the data were derived primarily from state prisoners, individuals who had survived all filters to reach the last stage of the criminal justice system; it remains to be seen whether the patterns they display are also applicable to the larger group of offenders who reach conviction, and for whom a judge must decide on a sentence. It is also the case that they have been examined in only a limited number of jurisdictions, and the generalizability of the findings must still be explored. If consistent patterns are displayed in three states, however, then what would certainly be more encouraging than finding separate patterns for each state.

A review of preliminary drafts of the Rand research can certainly encourage the view that there is a good potential for identifying some fairly elaborate patterns of behavior of the most serious high-λ offenders. Development of these patterns - involving participation in robbery, assault, and drug dealing - is a major contribution of Chaiken and Chaiken. Their results are certainly encouraging and warrant increased effort to pin down more definitively the characteristics that do identify those most serious predatory offenders.

In attempting to identify these key individuals, it is critical that we compare any improvement that one might obtain with current practice. Certainly, prosecutors and judges do make some attempt to identify the most serious offenders in the cases that come before them. Any test of an improved discrimination method must be applied not to the product of those judgements, but to the raw material they face.

V. Policy Issues Involved in Selective Incapacitation

As we consider translating such findings on patterns that characterize the high-λ offenders into a policy instrument that will be used for selective incapacitation a number of interrelated policy and technical questions must be addressed. The most central policy questions relating to selective incapacitation involve the basic

philosophical and legal challenges to the legitimacy of punishing an individual for crimes he might commit in the future. Certainly, any candidate for selective incapacitation is vulnerable to punishment because he has already been convicted of an offense that warrants imprisonment; furthermore, it is reasonable to require that any punishment imposed upon him should be no more severe than the reasonable range that is normally imposed for the offense of which he was convicted. Then, the punishment imposed within those constraints might well take account of the potential risk an offender poses in the future. Most sentencing judges will acknowledge - in private if not in public - that such considerations enter their sentencing decisions.

The intensity of the concern over adjusting an individual's sentence to reflect consideration of his future crimes is particularly surprising when contrasted to the much more readily accepted principle of general deterrence. Under this principle, individuals are punished in order to avert for other people's future crimes. Certainly in contrast, the principle of incapacitation - and even selective incapacitation if the prediction can be good enough - seems not at all unreasonable.

Thus, it seems reasonable to conclude that if a very effective discrimination instrument were available, and if it were applied only to those convicted of offenses, and if the imposed punishment were no more severe than could reasonably be applied for that offense, then most of the legal and philosophical objections to selective incapacitation can be accommodated. The crucial technical question, however, relates to the potential effectiveness of the instrument.

A central question in considering that instrument, is the set of variables used to provide the discrimination. A narrow legal view holds that the only legitimate information that can legitimately be used to decide on punishment is information on the offender's prior convictions. If that restriction is maintained, then those variables will probably provide very little information that is useful for the discrimination needed to warrant selective incapacitation. Convictions are sufficiently infrequent and sufficiently loosely related to an individual's aggregate patterns of offending that their information content is relatively marginal. The common practice of invoking a wide variety of other information in pre-sentence investigation reports reflects the acceptability heretofore of such information for use in sentencing, and, by implication, the inadequacy of restricting consideration to conviction records alone.

As one expands the scope of the variables to be considered in identifying the candidates for incarceration, then the degree of objectionableness also increases. One level of extension involves various degrees of intervention by the criminal justice system short of convictions (say, arrests or indictments). The extreme of this range could extend to an inherently unacceptable variable like race, which might be introduced implicitly by using other socioeconomic- status variables (like income or

educational attainment) which are correlated with race. In these questionable variables, one is concerned about the degree to which non-remediable status variables (such as age at first arrest) are invoked as predictive variables. Even if an arrest at age 15 is highly predictive of future criminality by a 25-year-old, invoking such information, which even the best intentioned 25-year-old can do nothing about, would appear to raise some serious concern. Current unemployment, over which the individual might have more control, would thus appear to be a more reasonable variable compared to information about an event that occurred sometime in the past which can no longer be changed.

One of the fundamental concerns that pervades all decisions in the criminal justice system is the avoidance of "false positives", i.e., subjecting someone to punishment when that is not warranted in his case. This concern is reflected in the requirement for conviction of "guilty beyond a reasonable doubt," and in the principle that "better a hundred guilty men go free than one innocent man be punished." Thus, in seeking to identify the high-λ individuals, while it is important to discern how many high-λ individuals satisfy the pattern, it is particularly important to indicate also how many individuals who are not high-λ people also satisfy the pattern. To the extent that high-λ offending patterns are rare, and have a low base rate, then this false-positive rate will become undesirably large. Thus, for any patterns that are established, it is important to know the mix of low- as well as high-λ offenders that satisfy those patterns.

As the research on selective incapacitation begins to identify the patterns associated with high-λ offenders, there will be a tendency to move to the creation of a "decision machine" that takes those variables or patterns as inputs and establishes a sentence for the offender being considered that is presumably appropriate from the perspective of selective incapacitation. One must view the prospect of such a "sentencing machine" with great concern. The considerations that do and should enter into the sentencing decision are far more numerous and more complex than can be dealt with by any simple formula with its limited functional form and its vulnerability to distortion. Rather than trying to develop a sentencing formula, the research should focus on developing insights into the kinds of behavior pattern that are associated with the most serious offenders. As those patterns are identified and as the insights emerge, they should be communicated to judges and prosecutors so they can take account of them. For example, as certain variables are identified as being salient, the officials could assure that information on those variables are reliably and completely gathered. They will then be in a good position to use those variables in relation to other information they use in making their decisions.

VI. Research Issues to be Pursued

In view of the growing importance of both general and selective incapacitation as important crime-control strategies, research on individual criminal careers is

extremely important. Findings from that research represent a potential means for improving the effectiveness of the criminal justice system by increasing its incapacitative effects without sacrificing reasonable considerations of justice. The most immediate task in extending the current findings, especially those emerging from the work at Rand, requires a concerted effort to validate and test the generality of those findings. This requires making those data immediately available to other investigators who can pursue the research from the diversity of perspectives that could possibly find flaws in the existing research. A preliminary review of the Rand research suggests that much of the work does appear to be extremely careful and meticulous. A number of questions, however, could still be addressed more fully: reliability of the few reports of very high λ; the usefulness of arrest record information in predicting an individual's false positive rates under various prediction rules; and the sensitivity of the results to omission of a small number of high-leverage data points. It is likely that other investigators pursuing the same data will work much more vigorously than the original authors to push the data to their limits. The results are sufficiently important to warrant a concerted effort of re-analysis.

In addition, the research should be replicated as soon as possible, using samples from other states and focusing on individuals who are not in prison. Since convicted offenders represent the pool of candidates for selective incapacitation through imprisonment, the research should focus on that population. Such an extension would permit assessment of the degree to which the judges are already making sentencing decisions that are as good as ones that invoke information on the patterns of offending that emerged from the Rand research. Furthermore, since all of the current findings are retrospective results, it is important to undertake a number of prospective studies to test in new samples the hypotheses that emerged from the previous research.

As the results of the Rand work and related research identify improved selection criteria for candidates for incarceration, those criteria should be compared to those used in current practice. One could, for example, find among prisoners those who might be kept longer and others who might be released earlier, and one certainly should be able to anticipate an improvement in the incapacitative effect thereby. One should, however, test those criteria against all convicted persons rather than those who have already passed through the judicial filter. The estimated benefits of any improved decision rules should be compared not only against the ordinary practitioner, but against some of the best. One would want to compare the variables used by the best practitioners and test the outcomes under a decision rule that derives from the research compared to the judgements of the best practitioners. In particular, one would want to compare the performance of career-criminal units in prosecutors' offices - and especially the more successful ones - in identifying the "career criminals" who should be prime candidates for incarceration.

As decision rules emerge, attention should be directed at the decline of their

performance as the range of variables that can be used is restricted. Such restrictions should both reduce the incapacitation effect as well as increase the false-positive rate.

As one starts to identify reasonable means for obtaining the potential benefits from improved selective incapacitation, it would appear that a coordinated and continuing research, development, test, evaluation, and implementation program is warranted. In pursuing such a program, it should be clear that drastic improvement is not likely, but rather that reasonable implementation will make marginal rather than profound changes in the crime-control effectiveness of the criminal justice system.

In pursuing this program, it is important to consider the advisability of instituting a research counterpart to the Hippocratic oath, in which the researcher, even when trying to bring about some improvement, is enjoined to "do no harm."

THE 1945 AND 1958 BIRTH COHORTS: A COMPARISON OF THE PREVALENCE, INCIDENCE, AND SEVERITY OF DELINQUENT BEHAVIOR

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INTRODUCTION

A recent report prepared for the National Institute of Juvenile Justice and Delinquency Prevention emphasized that juvenile delinquency appears now to be a more pervasive and serious social problem than in the past (Weis and Sederstrom, 1981). There is growing concern that the quantity and quality of delinquent behavior has changed. From many sources it appears that youths are committing more violent crimes and are doing so with greater frequency. Recent Uniform Crime Reports (UCR) indicate that the amount of violent youth crime is increasing. When measured by the number of arrests per month, the violent crime rate for youths exceeds that of adults (Petersilia et al., 1978). In fact, Strasburg (1978) has shown that the number of violent offenses committed by juveniles tripled between 1960 and 1975. It has also been shown that delinquents are committing violent crimes at comparatively early ages (Hamparian et al., 1978).

The apparent increase of violent crime by juveniles coincides with the public perception. Public awareness and fear of being victimized have led to more concern about the efficacy of treating violent youthful offenders and to a demand for a firmer governmental response. The frequent charge is that the juvenile justice system has been inadequate to the task of preventing and controlling violent crime among juveniles. In 1980 the U.S. Congress amended the Juvenile Justice and Delinquency Prevention Act of 1974 and mandated that the "juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention to the areas of sentencing, providing necessary resources for informed dispositions, and rehabilitation" (Laurer, 1981: 28).

According to Boland and Wilson (1978) the issues of injustice and ineffectiveness are a result of the two-track system which affords special treatment to juveniles. Public attitudes toward violent and chronic delinquents are shifting from a philosophy of reform to one of retribution.

Zimring has noted that recent attempts to reform sentencing practices in juvenile courts are "efforts to lead sanctioning models away from the jurisprudence of treatment and towards concepts of making the punishment fit the crime" (1981: 884). These developments suggest that sanctions are to be determined by severity of the offense and the juvenile's offense career as a whole. Whatever direction the policy developments take, change within the juvenile justice system should be guided by accurate data on the scope and complexity of the problem of serious and chronic delinquency.

Working on the measurement of delinquency, Sellin and Wolfgang noted how students of juvenile delinquency had often observed that "a true index of delinquency or delinquents must be based on an assessment of conduct during the entire time that juveniles are subject to the law" because "indices based on annual data give no hint of the number of juveniles who become delinquents before they reach adulthood", and we suggested that a study of the delinquency history of birth cohorts could provide a test of "the relative value of preventive action programs....by investigating changes in patterns of delinquent conduct, reduction of recidivism, etc., in successive age cohorts as they progressively come under the influence of such programs" (1964: 66-67).

Cohort studies have methodological advantages in addition to their substantive potential. Hirschi and Selvin (1967), in discussing the problem of causal order—the criterion for judging the claim that one variable causes another—have suggested that a solution to the problem, at least in principle, is the longitudinal or panel study: "In an ideal version of this design, the investigator would select a sample of infants and continue[illegible]

data on them until they become adults" (1967: 53). Similarly, Farrington has remarked that longitudinal surveys are especially useful in studying the course of development, the natural history, and the prevalence of a phenomenon at different ages, how phenomena emerge, and continuities and discontinuities from earlier to later ages (1981: 7).

Despite the apparent advantages of longitudinal studies, the research literature in criminology up to 1972 was mostly characterized by reports of studies that were not longitudinal in nature and clearly not of the birth cohort design. Most studies of recidivism have been retrospective, based on selected groups of offenders—such as juveniles committed to correctional schools, or persons convicted of crimes or committed to penal institutions—whose prior history of delinquency or crime could be analyzed. Prospective studies have been much less common, that is, studies of the conduct of selected groups of offenders during a period of considerable length usually beginning at the adjudication of a person as a delinquent, his conviction of crime, or his commitment to or release from a correctional institution.

Because neither of these two types of research can arrive at more than partial information about recidivism, Sellin and Wolfgang claimed that it would be worthwhile to approach the problem in a different manner: namely, by a study of the history of the delinquency of a birth cohort—a population born in a particular year, whose conflicts with the law could be examined during a segment of the cohort's lifetime, ending with entry into adulthood. "Such an inquiry," we said, "would permit us to note the age of onset and the progression or cessation of delinquency; it would allow us to relate these phenomena to certain personal or social characteristics of the delinquents and to make appropriate comparisons with that part of the cohort that did not have official contact with the law" (1964: 67).

The decision was made to study delinquency and its absence in a cohort consisting of all boys born in 1945 and residing in Philadelphia from a date no later than their tenth birthday until at least their eighteenth. Girls were excluded, partly because of their low delinquency rates and partly because the presence of the boys in the city at the terminal age mentioned could be established from the record of their registration for military service. The fact that no large-scale study of this particular kind had been done previously in the United States gave an additional stimulus to the project. The result of the effort to analyze the first birth cohort in the United States, dealing with delinquency, was published in 1972 as Delinquency in a Birth Cohort (Wolfgang et al.).

Why a New Birth Cohort Study

In a recent report of recommendations by the Vera Institute of Justice (1976), concerned mostly with violent delinquents, references are made to cohort studies:

"The cohort format makes possible an understanding of the pattern of criminal behavior over a delinquent's entire 'career'. When done on the scale of the Philadelphia study, it also permits analysis of the relationship of delinquent behavior — and changes in delinquent behavior — to many demographic, social and other factors. An optimum research strategy would call for more such cohort studies... . One of the locations studied should be Philadelphia in order to provide a comparison with the earlier...study which could yield useful information about changes in delinquent behavior over time" (emphasis added).

This statement concisely explains the underlying rationale of a new cohort study. Longitudinal cohort studies that collect data on maturation of

the same persons are the best if not only way to provide probabilities and prevalence statistics. Another birth cohort in Philadelphia affords a comparative basis to examine the effects of differential time on a geographically similarly situated set of subjects. Cohort changes or consistencies will be capable of being displayed in a socio-cultural setting that had a political, police and juridical background similar to the earlier cohort. Whether offense probabilities by age, race, sex, crime types, seriousness, etc. are different will be measurable within the same geographic boundaries. Another birth cohort study in another jurisdiction would be useful, to be sure, but differences from the present study would have more difficulty being explained by reasons of generational differences than by geography and demographic factors; whereas differences in a new Philadelphia cohort rest more upon real differences in offensivity. Changes, if any, in drug offenses, amounts and locations of victimization through violence, kinds and length of court and institutional sentences, can be specifically attributable to the specific cohort variations if the new cohort is located in Philadelphia.

Are crimes of violence more or less today inherent in the generational wave of a cohort born 13 years later than the World War II birth cohort of 1945? Or is the rate essentially the same and only swelled by the total volume of children produced in the cohort? Is juvenile crime more serious on the scale of gravity than it was in the earlier cohort? Is the second generation more specialized in offensivity than the parent group? Do offense careers have similar desistance rates? Is racial differentiation in juvenile justice dispositions still evident? These are only a few of the more obvious questions answerable by a birth cohort replication in the same jurisdiction.

Replications of scientific findings are common, lauded and necessary in the physical sciences; they are relatively rare, albeit still necessary, in the social sciences. They are even less common in criminology and criminal justice, which is most unfortunate. In a science closer to its nascency than most, criminology requires replications to determine or to insure reliability and validity. Researchers in this field are often more interested in trying to break new ground than to confirm an earlier travelled terrain. But when a methodology capable of generating a new set of findings important to theory and empirical application is demonstrated, it should be reiterated in order to determine whether it is possible to buttress consistency and to affirm the reality observed. Prevention of crime, social invasion of the biographies of people, deterrence and purposefully promoted change are significant modes of social intervention, especially in a democracy. They can have serious policy effects that require the best available insight based on the best available evidence. Birth cohorts, or longitudinal analyses, provide this opportunity. A replication of evidence in the same setting maximizes the validity and reliability of this kind of analysis for the benefit of science and of social policy.

Delinquency in a Birth Cohort is still the only large-scale birth cohort study in this country, based upon a generalizable population. Delinquency careers of all boys born in 1945 who lived in Philadelphia from their tenth to their eighteenth birthdays were described and parametric estimates of their offense rates and probabilities computed. Base-line cohort rates were developed for: first offense, recidivism and offense switching rates; offense severity escalation, disposition probabilities and subsequent offensive behavior.

The major objective of the 1958 birth cohort study is a full replication of the 1945 Philadelphia birth cohort study. The data collection procedures, research design and methodology of the 1945 cohort study will be applied in the present research. In general, we wish to establish the same set of parametric estimates as were developed earlier to determine the "cohort effects" on delinquent behavior of growing up in the 1960s and early 1970s compared to those activities expressed by a cohort growing up mostly in the 1950s.

The Cohort I and II data sets contain more than ample cases for fruitful comparative analyses. The Cohort I data contain: 9945 subjects (7043 whites and 2902 nonwhites); 3475 delinquents (2017 whites and 1458 nonwhites); and a total of 10,214 offenses (4458 by whites and 5756 by nonwhites). In comparison, the Cohort II study is much larger, reflects a much more even racial distribution and includes females. The 1958 data include: 28,338 subjects (6587 white males and 7224 nonwhite males; 6943 white females and 7584 nonwhite females); 6545 delinquents (1523 white males and 2984 nonwhite males; 644 white females and 1394 nonwhite females); and a total of 20,089 offenses (4306 by white males and 11,713 by nonwhite males; 1196 by white females and 2874 by nonwhite females).

Although our analysis of the 1958 birth cohort data is yet to be completed, we report below some preliminary findings relative to a few crucial dimensions of delinquent behavior.

FINDINGS

Prevalence

One of the most fundamental questions in any study of delinquency concerns the number or proportion of subjects that have had official contact with the police. Thus research must identify how prevalent the problem of delinquency is by classifying the subjects at risk at least in terms of the delinquent vs. nondelinquent dichotomy. In the 1945 birth cohort study (Cohort I) we found that 34.9 percent of the boys were recorded as being delinquent (had at least one official police contact) before reaching age eighteen (see Table 1a). Moreover, 16.2 percent of the cohort were one-time offenders while 18.7 percent were delinquent recidivists. Of the latter group 12.4 percent were nonchronic recidivists (from 2 to 4 offenses) and 6.3 percent were chronic recidivists (5 or more offenses).

The most striking findings with regard to the prevalence of delinquents involved race differences. In Cohort I, 50.2 percent of the nonwhite boys were delinquent compared to 28.6 percent of the whites. Nonwhites were not only more likely to be delinquent but were also more likely to be recidivists (32.9% vs. 12.9%) and more chronically delinquent (14.4% vs. 3.0%) than white subjects.

Table 1a shows that Cohort I delinquency involved almost 35 percent of the cohort subjects and repeat delinquency occurred among 19 percent of the cohort. Delinquency was much more prevalent among nonwhites by a factor of about 1.7 to one, recidivists were found among nonwhites by a factor of 2.6 to one, and chronic delinquency in the ratio of 4.8 to one compared to whites.

The prevalence data, reported in Table 1b, for males in the 1958 birth cohort, show a similar prevalence of delinquency to that observed in Cohort I. Overall, 32.6 percent of Cohort II males were delinquent compared to 34.9 percent in the earlier cohort. In terms of delinquency categories, Cohort II shows slightly fewer one-time offenders (13.7% vs. 16.2%), but an almost identical proportion of recidivists (18.9% vs. 18.7%). However, recidivists in Cohort II are slightly more likely to be chronic offenders (7.5% vs. 6.3%) than was the case for Cohort I.

Table 1b replicates the Cohort I finding of the impact of race. Nonwhite males have a higher prevalence of delinquents than whites overall (41.3% vs. 23.1%) and in terms of the various offender categories. The differences are most striking for the recidivist category: 26.1 percent of nonwhites compared to 11.1 percent of whites. The discrepancy is maintained when the prevalence of delinquents is divided into nonchronic (2 to 4 offenses) and chronic (5 or more offenses). But the impact of race on delinquency in Cohort II is clearly less striking than it was for Cohort I. That is, nonwhite subjects are more likely to be delinquent and more likely to be classified at higher frequencies of offenses but the gap between the races has narrowed. Generally, the proportionate difference between the races was about 21.6 percent for the 1945 cohort but is approximately 18 percent for the 1958 cohort.

Although interesting, the data reported in Tables 1a and b portray the various prevalence measures as a function of the number of cohort subjects in each subgroup as the denominator. Because these figures do not allow a breakdown of delinquents into the various levels of prevalence, it is more instructive to examine the types of delinquency status with delinquent subjects as the base of the percentages. These results are displayed in Tables 2a and b.

Cohort I offenders (Table 2a) are more likely to be one-time offenders than recidivists of either the nonchronic or chronic variety. Further, the chances are about two to one that a recidivist will be nonchronic compared to chronic. Cohort II males (Table 2b) also show a declining prevalence as the frequency of delinquency increases but these data also reflect some noteworthy differences. Compared to Cohort I, one-time Cohort II offenders have declined (46.4% vs. 41.9%) while the percentage of chronic delinquents has increased (18.0% vs. 22.9%). The proportion of nonchronic recidivists is almost identical for both cohorts (approximately 35%).

For both cohorts there is a pronounced race effect in the distribution of types of delinquency status. For Cohort I males, white delinquents are much more likely to be one-time offenders (55% vs. 34.5%) and much less likely to be classified as chronic offenders (10.4% vs. 28.6%) than nonwhite boys. When the recidivist category is viewed separately, over three quarters of the white recidivists are nonchronic compared to 56.2 percent of the nonwhites, and nonwhite chronics exceed white chronics by a factor

of twenty percent. For Cohort II males the race comparisons are similar, namely, a greater propensity of white delinquents commit only one offense and nonwhite delinquents are disproportionately responsible for five or more offenses. However, race disparity observed in Cohort I chronic recidivists has narrowed in Cohort II. That is, when recidivist delinquents are classified into nonchronic and chronic types, 43.8 percent of nonwhite recidivists were chronic compared 23.1 percent of white recidivists in Cohort I; in Cohort II nonwhites remained about the same (42%) while the share of white recidivism attributable to chronics increased to 32.7 percent.

Incidence and Seriousness

Tables 3a, b display the frequency and offense rate (i.e., number of offenses divided by number of subjects x 1000) for select crime code categories for each birth cohort. The data indicate that the Cohort II offense rate of 1159.9 is higher than that of Cohort I (1027.00) for all offenses and the rate of Cohort II (599.3) is much higher than that of Cohort I (355.6) for the group of selected serious offenses. Differences between the two birth cohorts are more pronounced for specific offenses. For example, the Cohort II offense rate is three times higher for homicide, 1.7 times higher for rape, five times higher for robbery, and 1.8 times higher for aggravated assault. The only exception occurs for the "other assualts" category for which the two cohorts have almost identical rates. Taken together, the violent offense rate for Cohort I (149.4) is three times higher than the rate for Cohort I (47.4).

Incidence data (Tables 3a, b) also indicate a pronounced race differential for each birth cohort. For both the overall and select offenses, nonwhites have much higher rates than whites. For example, in terms of the select offenses, the respective rates are 815.3 vs. 161.1 in Cohort I and 888.2 vs. 282.5 in Cohort II for nonwhites compared to whites. The race differentials are most pronounced with respect to the serious assaultive offenses. For the 1945 birth cohort, nonwhites have rates five times higher for homicide, 13 times higher for rape, 20 times higher for robbery and 11 times higher for aggravated assault. The race effect for the 1958 birth cohort

diminishes, yet the differences are still apparent (11 times for homicide, 10 times for rape, 11 times for robbery and 4 times for aggravated assault) between nonwhites and whites. In Cohort I the general violent offense rate for nonwhites (139.9) is about fifteen times higher than that for whites (9.2). However, in Cohort II nonwhites have a violent offense rate (253.3) that is but seven times that of whites (35.3). In short, nonwhites in Cohort II have become twice as violent as they were in Cohort I, but whites have become four times more violent.

Tables 4a and 4b report offenses for Cohort I and II in terms of both the UCR classification scheme and an index developed by Sellin and Wolfgang (1964). The latter scheme ignores legal labels and classifies offenses according to the presence of injury, theft, damage or the combination of these effects. An event that does not involve any of these components is scored as a nonindex event (regardless of crime code or UCR rules of classification).

UCR index offenses for Cohort I represent about 27 percent of all offenses. These index offenses may be partitioned into 10 percent violent, 7 percent robberies, 24 percent burglaries and 60 percent thefts. By comparison, the Sellin-Wolfgang system finds that almost 37 percent of the delinquencies can be classified as index owing to the presence of at least one of the scoring components. Further, the Sellin-Wolfgang system also finds a much higher proportion of violent (i.e., injury) offenses than does the UCR scheme (23% vs. 10%). For males in Cohort II, the data given in Table 4b clearly indicate that the delinquencies of this group are more serious. Compared to the 1945 cohort, UCR index offenses constitute a larger share of all offenses (39.5% vs. 27%).

Cohort II index offenses contain proportionately fewer theft offenses (38.3 vs. 60%) and about twice as many more violent and robbery offenses (33% vs. 17%). With respect to the Sellin-Wolfgang classifications, over 45 percent of Cohort II events are classified as involving injury, theft, damage or combinations of these, compared to 37 percent in Cohort I. Thus, regardless of which offense grouping one picks for comparison, the data show the more recent cohort to be more delinquent and more seriously violent than the earlier group.

For Cohort I nonwhites have a higher proportion of index offenses (31% vs. 21%) and three times the proportion of violent/robbery index events (22% vs. 7%) than whites. The 1958 cohort shows a similar race effect. Index events constitute a greater share of offenses for nonwhites (42% vs. 30%) compared to whites. The discrepancy for violent and robbery offenses is less than it was for Cohort I. Cohort II nonwhite index events are about twice as likely to involve violence compared to three times obtained in the 1945 data.

Because grouping offenses into categories only partially reflects the actual seriousness of the events, we have scored the events by weighting the components according to the system developed by Sellin and Wolfgang. By summing the weights across all components we produce a quaintitative measure of offense severity (Tables 5a and b).

One of the most striking observations about these data concerns cohort differences in the distribution of seriousness scores. Cohort I is more highly skewed to the lower end of the continuum compared to Cohort II. For example, 87 percent of Cohort I offenses fall into seriousness score categories below 300 and reflect the fact that delinquents committed primarily nonindex events. However, for Cohort II, only about 50 percent of the offenses fall

below the 300 level. At the other end of the seriousness range, less than one percent of Cohort I offenses fall at or beyond the 1000 level compared to 23 percent for Cohort II.

For Cohort I, offenses by whites are less serious than offenses by nonwhites as reflected in the fact that the proportion of whites in each of the 11 categories under score 100 is larger (with two slight exceptions) than that of nonwhites. On the other hand, the proportion of nonwhites in each of the 13 score categories of 100 and above exceed that of whites (save for one white delinquent with a score of 4400).

The seriousness of Cohort II offenses exhibits a much more even distribution by race. About 48 percent of the nonwhite events, compared to 56 percent of the white events, fall below 300 while 25 percent of the former, compared to 19 percent of the latter, fall at or beyond 1000. Clearly, race differences in offense seriousness, although evident, are much less substantial than they were in Cohort I.

Offensivity of Delinquent Subgroups

Although useful in many respects, prevalence and incidence data do not permit a precise comparison of delinquent behavior across categories of delinquency status. That is, comparing only proportions of delinquents ignores the important factor of the quantity of delinquent behavior. Similarly, relying solely on the incidence and seriousness of offenses obscures the issue of how many delinquents are responsible for violations in different groups. To remedy this problem we report in this section offense data as a function of various types of delinquency status.

Table 6a shows that in Cohort I, of 10,214 delinquent events, 8601 (84.2%) were committed by 1862 recidivists (53.6% of all the delinquents). Those who committed five or more offenses (627 or 18%), whom we have called chronic recidivists, were responsible for 5305 of all delinquent events (51.9%). Chronic offenders constitute about one-third of the recidivist subset but committed over 60 percent of offenses attributable to the subset. The problem of chronic, repeat delinquency is restricted to a small group of offenders.

For males in Cohort II this pattern appears with even more disparity between delinquent types. Recidivists are responsible for 88 percent of all offenses (Table 6b) but constitute only 58 percent of delinquents. Chronic offenders, however, have an even greater share of offenses in Cohort II. Compared to the 1945 cohort, chronic offenders born in 1958 committed 61 percent of all offenses and almost 70 percent of offenses by the recidivist subset (versus 52% and 60% in Cohort I).

We have displayed offender and offense data by race in Tables 7a and b. In Cohort I, the chronic offender effect is contingent on race: although

recidivists account for the majority of offenses for both races (75% for whites and 91% for nonwhites), white chronics account for only 34 percent of all offenses and 45 percent of offenses of the recidivist subset, compared to 65 percent and 72 percent for nonwhite chronics. Thus, the chronic offender effect in Cohort I is mostly a function of nonwhites.

Recidivists in Cohort II show a similar share of delinquent behavior among recidivists as in Cohort I for whites (81%) and nonwhites (90%). But in Cohort II the chronic offender effect is maintained for <u>both</u> races, although still more dramatic for nonwhites. Among whites, chronic offenders account for about 50 percent of all offenses and 62 percent of recidivist offenses; among nonwhites, chronic delinquents are responsible for a more appreciable share of overall delinquency (65%) and most recidivist delinquency (71%). Once again, therefore, the current cohort does not exhibit the same degree of racial difference that characterized the earlier study.

The relationship between types of delinquency status and delinquent behavior, especially the role of chronic offenders, is most evident when offenses are grouped by type of event (Tables 8a and b). For Cohort I, the chronic offender involvement in serious delinquency is very high. For example, chronics committed 63 percent of index offenses and even higher shares of serious index offenses (71% of murders, 73% of rapes, 82% of robberies and 70% of the aggravated assaults). As noted before, however, Cohort I white chronics are far less delinquent than their nonwhite counterparts, even among serious crime categories.

For Cohort II, chronic offenders are again responsible for the majority of serious crime (68% of index offenses, 61% of murders, 76% of rapes, 73% of

robberies, 65% of aggravated assaults and 66% of the Sellin-Wolfgang injury offenses). More important, the data also indicate that this finding holds for both whites and nonwhites, unlike Cohort I, in which the chronic offender effect was restricted primarily to nonwhites.

Despite being charged with more serious offenses, chronic offenders in Cohort I committed events whose seriousness scores closely resemble those of nonchronic recidivists. For example, 86 percent of offenses by chronics, compared to 88 percent of offenses by nonchronic recidivists, fall below the seriousness score mark of 300. Similarly, about 0.9 percent of the former's offenses, compared to one percent of the latter's, fall at or beyond the 1000 point. For Cohort II males, however, the chronic offender is not only more likely to be charged with serious offenses; but his events are more serious: only 46 percent of the chronics' offenses fall below 300 compared to 57 percent for nonchronic recidivists', while at or beyond the 1000 point level, 27 percent of the chronics' offenses, compared to 19 percent for nonchronics, occur.

When seriousness scores are examined by offender group and race, the previous relationships are maintained without exception. For Cohort I there are virtually no differences in the seriousness score distributions between chronic and nonchronic recidivists for both races. However, the 1958 chronic offenders are responsible for offenses which are less likely to fall at the lower end of the seriousness scale and are more likely to be classified at the highest points of the severity continuum. Unlike the 1945 males, chronic delinquency for Cohort II males is likely to be both very frequent and serious.

Recidivism

In this section we review a few of the issues surrounding the question of repeat delinquency. Specifically, we discuss the probability of recidivism generally, of select offenses, and the escalation of offense seriousness by rank order of offense. However, before discussing these data it is useful to review the parameters of the recidivism issue.

We have already noted that one-time offenders constituted the highest percentage of delinquents. For Cohort I, 46.4 percent of delinquents committed just one offense. The percentage of one-time offenders was lower among Cohort II males (41.9%). On the other hand, chronic recidivists account for just 6 percent of the entire birth cohort and 18 percent of Cohort I offenders, but 7.5 percent of Cohort II and 23 percent of male offenders in Cohort II. However, for the two groups of males, chronic offenders were responsible for the majority of delinquent acts. Chronics committed about 53 percent of Cohort I offenses but 61 percent of Cohort II offenses. This is a dramatic increase in the concentration of offensivity among the few.

We have noted that chronic recidivism is more common among nonwhites than whites. In the 1945 birth cohort, 28.6 percent of nonwhite delinquents were chronic compared to 10.4 percent of white delinquents. In Cohort II, the race discrepancy exists but is only about 11 percentage points compared to the difference of 18 in Cohort I. Regardless of these race differences, chronic recidivists represent a minority of delinquents who account for a disproportionate share of delinquent acts.

Approximately one-third of Cohort I subjects had a police contact for any offense; of these about 53 percent went on to at least a second offense and slightly fewer than two-thirds of these went on to at least a third (Table 10a). Beyond the third offense the likelihood of committing any further offense increases from about .71 to .82. These data clearly indicate that nonwhites are more likely than whites to be delinquent (50% vs. 28%) but, more important, nonwhites consistently have a higher probability of recidivating. Thus, for example, 65 percent of nonwhite delinquents go on to a second and almost 75 percent of these commit a third offense. The respective white percentages are at least 10 percent lower for these two offense numbers.

The likelihood that a Cohort I delinquent will engage in a UCR property offense is approximately equal to that of delinquency generally (.35). However, the probability of committing this type of offense more than once is much lower than recidivistic delinquency generally (.38 vs. .53). Although the probability of committing this type of offense three or more times, up to ten or more times, increases steadily, the values are considerably lower than those of overall recidivism. Nonwhites exhibit a greater probability of committing a UCR index offense involving property compared to whites (.45 vs. .27) and generally a greater likelihood at various levels of recidivism. Concerning violent index offenses, a Cohort I delinquent has a relatively small chance of engaging in this type of offense (.10). The probability of repeating this type of serious offense was low compared to recidivism generally and UCR property recidivism as well. The initial race difference of .20 for nonwhites compared to .02 for whites becomes almost negligible at the higher frequency levels.

Table 10b shows a probability distribution of overall delinquency for Cohort II males that is very similar to that observed for Cohort I. The chance that a Cohort II male will commit a delinquent act is close to that for Cohort I (.32 vs. .34), while the likelihood of two or more offenses is slightly higher in Cohort II (.58 vs. .53). From three or more offenses the probabilities between the two cohorts are approximately equal. It is also noteworthy that race differences observed for Cohort I are again narrowed in the later cohort. The initial probabilities show a greater chance of delinquency for nonwhites than for whites (.41 vs. .23) but the gap between the races, as we have repeatedly mentioned, diminishes as the frequency of delinquency increases.

Despite the overall similarity between the two cohorts, the probability of committing the select types of serious offenses differs substantially. Cohort II males exhibit a lower probability of engaging in a UCR property offense than Cohort I (.23 vs. .34) but show approximately the same tendency to continue this type of offense after the first. The tendency for nonwhites to engage in this type of offense compared to whites is virtually eliminated in Cohort II.

The two cohorts differ even more with respect to violent index offenses. Cohort II males exhibit a much greater likelihood of entering this offense dimension (.25 vs. .10) and much higher probabilities of recidivating at various levels (from .34 to .85 vs. .20 to .5). The increase in violence exhibited in Cohort II is mostly attributable to nonwhites. Almost one-third of nonwhite delinquents engage in at least one violent index offense compared to about 12 percent of white delinquents. Nonwhite offenders exhibit a much higher probability of continuing a violent career compared to whites.

The mean seriousness score for all offenses and the five Sellin-Wolfgang offense types are given in Table IIa for the first to the fifteenth offense in Cohort I. The scores do not indicate that offense severity is positively related to the number of offenses a delinquent commits. For offenses of any type, the mean seriousness scores show a small upward trend as the offense rank number increases. The increment in offense severity by offense number for nonindex and theft offenses is almost nonexistent, although seriousness scores for damage and combination offenses appear to be negatively related to the rank number. On the other hand, mean seriousness scores for injury offenses exhibit a strong upward trend for the first ten offenses. After the tenth offense, the data are somewhat mixed, but the end points show once again a strong upward trend.

By comparison, the data reported in Table IIb for Cohort II males generally exhibit an upward trend in offense severity as rank number of offenses increases. For all offenses and for nonindex offenses, scores for the higher offense rank numbers are about twice as high as those of the lower rank numbers. The range of seriousness scores is somewhat less for theft, damage and combination offenses but the upward trend is nonetheless clear. For injury offenses, the data are inconsistent across the various ranks, showing great swings upward and downward in the average seriousness of offenses.

SUMMARY

Prevalence - Our data indicate that males in the two cohorts have about the same proportion of delinquents (35% in Cohort I; 33% in Cohort II). However, the proportion of one-time offenders has declined from about 46 percent in Cohort I to 42 percent in Cohort II while the proportion of chronic recidivists in the cohorts has increased from 6 to 7.5 percent or, among all delinquents, has increased from 18 percent to about 23 percent. Concerning race differences, the data indicate that nonwhites are more likely to become delinquent and their delinquency is more likely to be recidivistic. Both cohorts show the same.

Incidence - The number and type of offenses committed show that males in Cohort II have a higher offense rate generally, especially for serious offenses like homicide, rape, robbery and aggravated assault, compared to Cohort I. As with prevalence data, the incidence of delinquency shows a more frequent involvement for nonwhites regardless of cohort. The seriousness of the offense follows the incidence of delinquency for the two cohorts but not for the race differences observed above. That is, Cohort II offenses have a higher offense severity with a distribution much more heavily concentrated at the higher level of seriousness than in Cohort I. However, unlike Cohort I, for which nonwhites exhibited much higher severity scores, the data for Cohort II show a more even distribution of offense seriousness racially.

Delinquent Groups - The distribution of offenses by types of delinquency status shows both cohort and race effects. In Cohort I, chronic offenders constituted 18 percent of delinquents but were responsible for

about 53 percent of delinquent offenses. In Cohort II, chronic offenders increased to about 22 percent of the delinquent subset but are now responsible for 61 percent of all offenses. However, the chronic offender effect in Cohort I is mostly a function of the nonwhite chronics while in Cohort II the chronic offender is associated with excessive delinquency for both races. When the seriousness of offenses is examined, little difference is found for the Cohort I data between nonchronic and chronic recidivists. But for Cohort II males, the chronic offender is not only more likely to be charged with a greater number of serious offenses; his offenses are indeed more serious.

Recidivism - Data on the probability of repeat delinquency indicate similar distributions overall but distinct differences when the type of offense is considered. Overall, males in each cohort enter delinquency in about the same proportion and show similar probabilities of recidivism: about .50 for a second offense increasing to .80 for a tenth offense. Cohort II delinquents exhibit a lower probability of engaging in a UCR property offense than offenders in Cohort I (.23 vs. .34) but show the same tendency to continue this type of offense. However, Cohort II offenders not only show a much higher probability of committing a violent offense (.25 vs. .10) but also have much higher chances of recidivating at various stages out to a tenth violent offense.

Recidivism data by race also exhibit a cohort effect. In Cohort I, nonwhites are more likely than whites to be delinquent (.50 vs. .28) and, more important, nonwhite delinquents are much more likely than whites to be recidivists. Similarly, much higher proportions of nonwhites commit

violent and property offenses; thus the problem of recidivism is greater for them compared to whites. Race disparity is really only evident for violent offenses in Cohort II. For all offenses, the probabilities of recidivism are very close for both races and the gap diminishes as the frequency level increases. Concerning UCR property offenses, there are virtually no differences between whites and nonwhites in the likelihood of continuing committing this type of offense. For violent offenses, however, the race effect is quite evident: almost one-third of nonwhite delinquents have been charged with a violent crime compared to just 12 percent of white delinquents. Further, the chances of repeating a violent offense are much higher for nonwhites.

Seriousness scores by rank order of offense also reflect a cohort effect. In Cohort I, offense severity is not related to the number of offenses a delinquent commits. From the first to the fifteenth offense there is only a slight upward trend. In Cohort II, the opposite is true: for the higher offense numbers, seriousness scores are about twice as high as those of the lower rank offense numbers. Thus, recidivism in the later cohort is associated with a higher average offense severity than was the case in the first cohort.

For all offenses, seriousness scores are about twice as high among high offense frequency as they are among low offense frequency. The mean seriousness score for the first offense (430.62) is less than half the mean score for the fifteenth offense (879.45).

A CONCLUSION

Cohort II—13 years later than Cohort I—does not have more persons with a delinquency record than Cohort I. But Cohort II, growing up in the late 60's and early 70's, committed more crimes and much more serious crimes. Both cohorts start their criminal careers as juveniles.

One policy consideration is that criminal career programs should always have access to juvenile delinquency records, at least for those delinquents who exhibit serious and violent criminality. Without juvenile records, adults at age 18 are denuded of their violent, injurious criminal history and become virginal offenders in adult court. We know that 88 percent of adult offenders had a delinquency record.

A pervasive question is whether Cohort II, a very violent criminal population of a small number of nasty, brutal offenders, is a demographic aberration. Will Cohort III, born, for example, in 1970, be as violent over their juvenile careers? We do not know. We suspect several things. The rate of violent crime by "dangerous" offenders will decrease, nationally, because of the reduction of the 15-24 age group in the population. We also suspect that, because fertility rates of nonwhites will continue to be higher than white rates, violent crime among nonwhites will not be abated until the end of this century.

If we exclude urban and racial riots, which many social observers anticipate, ordinary crimes of violence should, in the aggregate, decline. But a smaller adolescent/young adult population may still have an increase in violent crime.

Cohort II *may* be an aberrant display of violence. Cohort III *may* be less violent. We need to know. If Cohort II had had a social response that was more retributive, perhaps the effect would be reflected in lower rates of violence among Cohort III subjects. The social policy of today can affect the behavior of juveniles of tomorrow. We need not direct our policy to what the offense rate might be ten years from now. We should have a policy for the present cohorts of delinquency.

Recall that current juveniles are violent, the most violent population. They are here and now. Society should react to the present corpus of violence whatever may be the diminished or increased exhibition of criminal violence in the next generation.

Cohort II is an escalation of violent criminality, a fearful phenomenon for the general population, a surplus of cases for prosecutors and judges. Cohort II is not unusual in the small cadre of serious, chronic, violent offenders. They are simply more violent. Our social reaction to such criminality should be related to our knowledge that offenders who are young begin their violent harm early in life and should be socially controlled equally early in life.

We can adjust our societal reaction to each cohort. We should react strongly to that small cadre of violent people and react softly to non-serious offenders. Cohort III could be less violent if we had had a more stern reaction to Cohort II. Or Cohort III may, *sui generis*, be less violent.

Each birth cohort, however large, is but a life history, a single case study in the demography of time. Although these biographies march through time together biologically—at least generally so—they do not all cross the threshold from legally conforming to legally violating behaviors. And those who do have different paces: some start earlier than others and never stop; most turn back over the threshold and are not seen officially again. Now, the application of social control, of social intervention to reduce future crime, can make use of that knowledge by recognizing differential life paths and paces, by taking into account delinquent/criminal transition probabilities. A juvenile and criminal justice policy that focuses on the few at the most propitious time has the greatest likelihood of effecting change. Social intervention applied to those few need not be merely restrictive and depriving of liberty; it can also be healthful for and helpful to those who are under control.

No scheme for the control of criminal violence can have immediate and universal effect. If at all successful, it will have systemic effects rippling through a successive chain of cohorts. Thus, when and how 15-year-old violent offenders are handled in one decade can have an effect on how 15-year-olds behave in a later decade. By observing several birth cohorts we can hope to measure the socially vertical effects over time.

We are still sufficiently close to the juvenile years of Cohort II to design policy based on what we have learned in analyzing delinquent and violent careers. Preparing now for a program aimed at reducing

future violence (of one, two or three decades) is proper. A Cohort III might be less violent without a concerted policy of social control now, but inaction could be a dangerous and costly social experiment. Planning social interaction now may or may not produce a less dangerous Cohort III. If Cohort III were to be less violent we might not know whether it was due to a past policy or to a kind of generational spontaneous remission. But developing policy now, based on what we have observed, is at worst most likely to be benign and at best to be benevolent.

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TABLE 1a

Number and Percentage (of Total Cohort) of Delinquents by Frequency Category and Race

	Nonwhites		Whites		All	
	N	%	*N*	%	*N*	%
Cohort	2,902	.....	7,043	.....	9,945	.....
Delinquents	1,456	50.2	2,019	28.6	3,475	34.9
One-time offenders	503	17.3	1,110	15.7	1,613	16.2
Recidivists	953	32.9	909	12.9	1,862	18.7
Chronic	417	14.4	210	3.0	627	6.3
Non-chronic	536	18.5	699	9.9	1,235	12.4

(Source: Wolfgang, Figlio, Sellin, 1972:p.89)

TABLE 1b

NUMBER AND PERCENTAGE (OF COHORT GROUP) OF DELINQUENTS BY FREQUENCY CATEGORY AND RACE

(COHORT II MALES)

	White		Nonwhite		All	
Category	N	%	N	%	N	%
Subjects	6587	-	7224	-	13811	-
Nondelinquent	5064	76.9	4240	58.7	9304	67.4
Delinquent	1523	23.1	2984	41.3	4507	32.6
Delinquents	1523	-	2984	-	4507	-
One-time	791	12.0	1099	15.2	1890	13.7
Recidivist	732	11.1	1885	26.1	2617	18.9
Recidivists	732	-	1885	-	2617	-
Non-chronic	493	7.5	1094	15.1	1587	11.4
Chronic	239	3.6	791	10.9	1030	7.5

TABLE 2a

Number and Percentage (of Specific Delinquent Subgroup) of Offenders by Frequency Category and Race

	Nonwhites		Whites	
	N	%	*N*	%
Cohort	2,902	.....	7,043	.....
Delinquent	1,456	50.2	2,019	28.6
One-time offenders	503	34.5	1,110	55.0
Recidivists	953	65.4	909	45.1
Chronic	417	43.8	210	23.1
Non-chronic	536	56.2	699	76.9

(Source: Wolfgang, Figlio, Sellin, 1972:p.90)

TABLE 2b

NUMBER AND PERCENTAGE (OF SPECIFIC DELINQUENT GROUP) OF DELINQUENTS BY FREQUENCY CATEGORY AND RACE

(COHORT II MALES)

	White		Nonwhite		All	
Category	N	%	N	%	N	%
Delinquents	1523	-	2984	-	4507	-
One-time	791	51.9	1099	36.8	1890	41.9
Non-chronic recidivist	493	32.4	1094	36.7	1587	35.2
Chronic recidivist	239	15.7	791	26.5	1030	22.9
Recidivists	732	-	1885	-	2617	-
Non-chronic recidivist	493	67.3	1094	58.0	1587	10.6
Chronic recidivist	239	32.7	791	42.0	1030	39.4

TABLE 3a

NUMBER AND RATE OF SELECT OFFENSES BY RACE

(COHORT I)

	Non-white		White		Total	
Offense	N	Rate/ 1000	N	Rate/ 1000	N	Rate/ 1000
Homicide	14	4.8	0	0	14	1.4
Rape	38	13.1	6	.9	44	4.4
Robbery	173	59.6	20	2.8	193	19.4
Agg. Assault	181	62.4	39	5.5	220	22.1
Burglary	394	135.8	248	35.2	642	64.6
Larceny	802	276.4	387	54.9	1189	119.6
Auto Theft	187	64.4	239	33.9	426	42.8
Other Assaults	365	125.8	172	24.4	537	54.0
Arson	0	0	0	0	0	0
Weapons	212	73.1	58	8.2	270	27.1
Narcotics	0	0	1	.1	1	.1
Total	2366	815.3	1170	166.1	3536	355.6
Total of all offenses	5756	1983.5	4458	633.0	10214	1027.0

TABLE 3b

NUMBER AND RATE OF SELECT OFFENSES BY RACE

(COHORT II MALES)

	White		Nonwhite		All	
Offense	N	Rate/ 1000	N	Rate/ 1000	N	Rate/ 1000
Homicide	4	.6	52	7.2	56	4.1
Rape	9	1.4	96	13.3	105	7.6
Robbery	103	15.6	1223	169.3	1326	96.0
Agg. Assault	117	17.8	459	63.5	576	41.7
Burglary	454	68.9	1342	185.8	1796	130.0
Larceny	406	61.1	1353	187.3	1759	127.4
Auto Theft	193	29.3	472	65.3	665	48.2
Other Assaults	217	32.9	521	72.1	738	53.4
Arson	18	2.7	26	3.6	44	3.2
Weapons	77	11.7	398	55.1	475	34.4
Narcotics	263	39.9	474	65.6	737	53.4
Total of above	1861	282.5	6416	888.2	8277	599.3
Total of all offenses	4306	653.7	11713	1621.4	16019	1159.9

TABLE 4a

NUMBER OF OFFENDERS AND FREQUENCY AND MEAN NUMBER OF OFFENSES FOR SELECT OFFENSE GROUPS BY RACE

(COHORT I)

	White			Nonwhite			All		
Category	Offenders	Offenses	Mean	Offender	Offenses	Mean	Offender	Offenses	Mean
All offenses	2019	4458	2.20	1456	5756	3.95	3475	10214	2.93
UCR Index offenses	580	941	1.62	777	1787	2.29	1357	2728	2.01
UCR non-Index offenses	1850	3517	1.90	1309	3969	3.03	3159	7486	2.36
Murder, Rape, Agg. Assault	42	46	1.09	189	232	1.22	231	278	1.20
Robbery	18	20	1.11	137	173	1.26	155	193	1.24
Burglary	173	247	1.42	273	395	1.44	446	642	1.43
Larceny, Auto Theft	444	628	1.41	547	987	1.80	991	1615	1.62
Sellin-Wolfgang injury	230	262	1.13	434	616	1.41	664	878	1.32
Sellin-Wolfgang theft	459	668	1.45	550	981	1.78	1009	1649	1.63
Sellin-Wolfgang damage	223	244	1.09	214	241	1.12	437	485	1.10
Sellin-Wolfgang combination	180	229	1.27	350	572	1.63	530	801	1.51
Sellin-Wolfgang non-Index	1697	3055	1.80	1222	3346	2.74	2919	6401	2.19

TABLE 7B

NUMBER OF OFFENDERS AND FREQUENCY AND MEAN NUMBER OF OFFENSES FOR SELECT OFFENSE GROUPS BY RACE

(COHORT II MALES)

	White			Nonwhite			All		
Category	Offenders	Offenses	Mean	Offenders	Offenses	Mean	Offenders	Offenses	Mean
All offenses	1523	4306	2.82	2984	11713	3.92	4507	16019	3.55
UCR Index offenses	615	1304	2.12	1854	5023	2.70	2469	6327	2.56
UCR non-Index offenses	1324	3002	2.26	2502	6690	2.67	3826	9692	2.53
Murder, Rape, Agg. Assault	117	130	1.11	459	607	1.32	576	737	1.27
Robbery	86	103	1.19	737	1223	1.65	823	1326	1.61
Burglary, Arson	275	472	1.71	806	1368	1.69	1081	1840	1.70
Larceny, Auto Theft	381	599	1.57	1044	1825	1.74	1425	2424	1.70
Sellin-Wolfgang injury	221	268	1.21	674	970	1.43	895	1238	1.38
Sellin-Wolfgang theft	337	520	1.54	1192	2191	1.83	1529	2711	1.77
Sellin-Wolfgang damage	345	477	1.38	759	1078	1.42	1104	1555	1.40
Sellin-Wolfgang combination	254	389	1.53	806	1385	1.71	1060	1774	1.67
Sellin-Wolfgang non-Index	1225	2652	2.16	2379	6089	2.55	3604	8741	2.42

TABLE 5a

Race of Delinquents by Offense Seriousness Score

Offense Seriousness Score	Nonwhites		Whites		Total	
	N	%	*N*	%	*N*	%
1 –	1,608	27.94	1,480	33.20	3,088	30.23
2 – 18	46	.80	26	.58	72	.70
19 –	605	10.51	565	12.67	1,170	11.45
20 – 29	192	3.34	257	5.76	449	4.40
30 – 39	245	4.26	225	5.06	470	4.60
40 – 49	137	2.38	198	4.44	335	3.28
50 – 59	13	.23	18	.40	31	.30
60 – 69	124	2.15	105	2.36	229	2.24
70 – 79	76	1.32	80	1.79	156	1.53
80 – 89	45	.78	22	.49	67	.66
90 – 99	3	.05	9	.20	12	.12
100 – 199	1,046	18.17	470	10.54	1,516	14.84
200 – 299	771	13.39	566	12.69	1,337	13.09
300 – 399	384	6.67	221	4.96	605	5.92
400 – 499	234	4.07	133	2.98	367	3.59
500 – 599	34	.59	25	.56	59	.58
600 – 699	47	.82	14	.31	61	.60
700 – 799	52	.90	15	.34	67	.66
800 – 899	22	.38	3	.07	25	.24
900 – 999	7	.12	1	.02	8	.08
1000 – 1999	46	.80	20	.45	66	.65
2000 – 2999	18	.31	2	.04	20	.20
3000 – 3999	1	.02	2	.04	3	.03
4000 +	0	0	1	.02	1	.01
Total	5,756	100.00	4,458	100.00	10,214	100.00
Mean score	130.80		92.88		114.15	
Weighted rate per 1,000 cohort subjects	2594.4		587.9		1172.4	
Weighted rate per 1,000 delinquents	5163.8		2052.8		3355.2	

(Source: Wolfgang, Figlio, Sellin, 1972:p.76)

TABLE 5b

OFFENSE SERIOUSNESS SCORE BY RACE

(COHORT II MALES)

Offense Seriousness Score	Nonwhite N	Nonwhite %	White N	White %	Total N	Total %
less than 20	212	1.83	118	2.76	330	2.08
20-29	1748	15.05	335	7.83	2083	13.11
30-39	4	.03	1	.02	5	.03
40-49	-	-	-	-	-	-
50-59	3	.03	-	-	3	.02
60-69	-	-	-	-	-	-
70-79	4	.03	1	.02	5	.03
80-89	736	6.34	332	7.76	1068	6.72
90-99	2	.02	-	-	2	.01
100-199	2115	18.21	1331	31.11	3446	21.69
200-299	811	6.98	295	6.90	1106	6.96
300-399	607	5.23	273	6.38	880	5.54
400-499	426	3.67	152	3.55	578	3.64
500-599	223	1.92	95	2.22	318	2.00
600-699	430	3.70	114	2.66	544	3.42
700-799	292	2.51	103	2.41	395	2.49
800-899	440	3.79	114	2.66	554	3.49
900-999	664	5.72	192	4.49	856	5.39
1000-1999	2522	21.72	757	17.70	3279	20.63
2000-2999	212	1.83	48	1.12	260	1.64
3000-3999	73	.63	10	.23	83	.52
4000+	89	.77	7	.16	96	.60
Total	11613	100.00	4278	100.00	15891	100.00

TABLE 6a

Offenders and Offenses by Delinquent Subgroups

	Offenders N	Offenders %	Offenses N	Offenses %
Delinquents:	3,475	100.0	10,214	100.0
One-time offenders	1,613	46.4	1,613	15.8
Chronic recidivists	627	18.0	5,305	51.9
Non-chronic recidivists	1,235	35.6	3,296	32.3
Recidivists:	1,862	100.0	8,601	100.0
Chronic	627	33.7	5,305	61.7
Non-chronic	1,235	66.3	3,296	38.3

(Source: Wolfgang, Figlio, Sellin, 1972:p.89)

TABLE 6b

OFFENDERS AND OFFENSES BY
DELINQUENT SUBGROUPS

(COHORT II MALES)

	Offenders		Offenses	
Category	N	%	N	%
Delinquents:	4507	100.00	16019	100.00
one-time	1890	41.9	1890	11.8
non-chronic recidivists	1587	35.2	4358	27.2
chronic recidivists	1030	22.9	9771	61.0
Recidivists:	2617	100.00	14129	100.00
nonchronic	1587	60.6	4358	30.8
chronic	1030	39.4	9771	69.2

TABLE 7a

OFFENDER AND OFFENSES BY DELINQUENT SUBGROUPS BY RACE

(COHORT I MALES)

	WHITE				NONWHITE			
	Offenders		Offenses		Offenders		Offenses	
Category	N	%	N	%	N	%	N	%
Delinquents:	2019	100.00	4458	100.00	1456	100.00	5756	100.00
one-time	1110	54.9	1110	24.9	503	34.5	503	8.7
non-chronic recidivist	699	34.6	1817	40.7	536	36.8	1479	25.7
chronic recidivist	210	10.4	1531	34.3	417	28.6	3774	65.6
Recidivists:	909	100.00	3348	100.00	953	100.00	5253	100.00
non-chronic recidivist	699	76.9	1817	54.3	536	56.2	1479	28.1
chronic recidivist	210	23.1	1531	45.7	417	43.8	3774	71.8

TABLE 7b

OFFENDERS AND OFFENSES BY DELINQUENT SUBGROUPS BY RACE

(COHORT II MALES)

	WHITE				NONWHITE			
	Offenders		Offenses		Offenders		Offenses	
Category	N	%	N	%	N	%	N	%
Delinquents:	1523	100.00	4306	100.00	2984	100.00	11713	100.00
one-time	791	51.9	791	18.4	1099	36.8	1099	9.4
non-chronic recidivist	493	32.4	1322	30.7	1094	36.7	3036	25.9
chronic recidivist	239	15.7	2193	50.9	791	26.5	7578	64.7
Recidivists:	732	100.00	3515	100.00	1885	100.00	10614	100.00
non-chronic recidivist	493	67.4	1322	37.6	1094	58.00	3036	28.6
chronic recidivist	239	32.6	2193	62.4	791	42.00	7578	71.4

TABLE 8a

NUMBER AND PERCENTAGE OF SELECT OFFENSES FOR DELINQUENT GROUPS BY RACE

(COHORT I)

	WHITE				NONWHITE				ALL			
Offense	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total
All	1110	1817	1531	4458	503	1479	3774	5756	1613	3296	5305	10214
	24.90	40.76	34.34		8.74	25.69	65.57		15.79	32.27	51.94	
Index	145	346	450	941	119	392	1276	1787	264	738	1726	2728
	15.41	36.77	47.82		6.66	21.94	71.40		9.68	27.05	63.27	
Non-Index	965	1471	1081	3517	384	1087	2498	3969	1349	2558	3579	7486
	27.44	41.82	30.74		9.67	27.39	62.94		18.02	34.17	47.81	
Murder	0	0	0	0	1	3	10	14	1	3	10	14
	0.00	0.00	0.00		7.14	21.43	71.43		7.14	21.43	71.43	
Rape	1	2	3	6	3	6	29	38	4	8	32	44
	16.67	33.33	50.00		7.89	15.79	76.31		9.09	18.18	72.73	
Robbery	4	6	135	145	6	42	125	173	10	48	260	318
	2.76	4.14	93.10		3.47	24.28	72.25		3.14	15.09	81.76	
Aggravated Assault	6	15	19	40	12	35	133	180	18	50	152	220
	15.00	37.50	47.50		6.67	19.44	73.89		8.18	22.73	69.09	
Injury	68	130	92	290	56	190	519	765	124	320	611	1055
	23.45	44.83	31.72		7.32	24.84	67.84		11.75	30.33	57.91	

TABLE 9b

NUMBER AND PERCENTAGE OF SELECT OFFENSES FOR DELINQUENT GROUPS BY RACE

(COHORT II MALES)

	White				Nonwhite				All			
Offense	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total	One-Time	Non-Chronic Recidivist	Chronic Recidivist	Total
All	791	1322	2193	4306	1099	3036	7578	11713	1890	4358	9771	16019
	18.37	30.70	50.93		9.38	25.92	64.70		11.80	27.21	61.00	
Index	173	330	801	1304	374	115	3534	5023	547	1445	4335	6327
	13.27	25.31	61.43		7.45	22.20	70.36		8.65	22.84	68.52	
Non-Index	618	992	1392	3002	725	1921	4044	6690	1343	2913	5436	9692
	20.59	33.04	46.37		10.84	28.71	60.45		13.86	30.06	56.09	
Murder	0	2	2	4	7	13	32	52	7	15	34	56
	0.00	50.00	50.00		13.46	25.00	61.54		12.50	26.79	60.71	
Rape	1	3	5	9	5	16	75	96	6	19	80	105
	11.11	33.33	55.56		5.21	16.67	78.13		5.71	18.10	76.19	
Robbery	8	30	65	103	74	241	908	1223	82	271	973	1326
	7.77	29.13	63.11		6.05	19.71	74.24		6.18	20.44	73.38	
Agg. Assault	18	39	60	117	34	111	314	459	52	150	374	576
	15.38	33.33	51.28		7.41	24.18	68.41		9.03	26.04	64.93	
Injury	51	121	171	343	114	362	1107	1583	165	483	1278	1926
	14.87	35.28	49.85		7.20	22.87	69.93		8.57	25.08	66.36	

TABLE 9a

OFFENSE SERIOUSNESS SCORE BY OFFENDER GROUP AND RACE

COHORT I

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
1-19	616	857	598	2071	243	645	1371	2259	859	1502	1969	4330
	29.74	41.38	28.87		10.76	28.55	60.69		19.84	34.69	45.47	
	55.50	47.17	39.06	46.46	48.31	43.61	36.33	39.25	53.25	45.57	37.12	42.39
20-29	66	126	65	257	14	46	132	192	80	172	197	449
	25.68	49.03	25.29		7.29	23.96	68.75		17.82	38.31	43.88	
	5.95	6.93	4.25	5.76	2.78	3.11	3.50	3.34	4.96	5.22	3.71	4.40
30-39	41	74	110	225	15	47	183	245	56	121	293	470
	18.22	32.89	48.89		6.12	19.18	74.69		11.91	25.74	62.34	
	3.69	4.07	7.18	5.05	2.98	3.18	4.85	4.26	3.47	3.67	5.52	
40-49	56	86	56	198	13	44	80	137	69	130	136	
	28.28	43.43	28.28		9.49	32.12	58.39		20.60	38.81	40.60	
	5.05	4.73	3.66	4.44	2.58	2.97	2.12	2.38	4.28	3.94	2.56	3.28
50-59	2	6	10	18	0	1	12	13	2	7	22	31
	11.11	33.33	55.56		0.00	7.69	92.31		6.45	22.58	70.97	
	0.18	0.33	0.65	0.40	0.00	0.07	0.32	0.23	0.12	0.21	0.41	0.30
60-69	20	43	42	105	8	28	88	124	28	71	130	229
	19.05	40.95	40.00		6.45	22.58	70.97		12.23	31.00	56.77	
	1.80	2.37	2.74	2.36	1.59	1.89	2.33	2.15	1.74	2.15	2.45	2.24
70-79	29	29	22	80	4	21	51	76	33	50	73	156
	36.25	36.25	27.50		5.26	27.63	67.11		21.15	32.05	46.79	
	2.61	1.60	1.44	1.79	0.80	1.42	1.35	1.32	2.05	1.52	1.38	1.53

TABLE 9a (cont.)

COHORT I

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
80-89	1	8	13	22	0	6	39	45	1	14	52	67
	4.55	36.36	59.09		0.00	13.33	86.67		1.49	20.90	77.61	
	0.09	0.44	0.85	0.49	0.00	0.41	1.03	0.78	0.06	0.42	0.98	0.66
90-99	1	3	5	9	0	2	1	3	1	5	6	12
	11.11	33.33	55.56		0.00	66.67	33.33		8.33	41.67	50.00	
	0.09	0.17	0.33	0.20	0.00	0.14	0.03	0.05	0.06	0.15	0.11	0.12
100-199	95	202	173	470	91	238	717	1046	186	440	890	1516
	20.21	42.98	36.81		8.70	22.75	68.55		12.27	29.02	58.71	
	8.56	11.12	11.30	10.54	18.09	16.09	19.00	18.17	11.53	13.35	16.78	14.84
200-299	106	201	259	566	59	180	532	771	165	381	791	1337
	18.73	35.51	45.76		7.65	23.35	69.00		12.34	28.50	59.16	
	9.55	11.06	16.92	12.70	11.73	12.17	14.10	13.39	10.23	11.56	14.91	13.09
300-399	33	82	106	221	25	97	262	384	58	179	368	605
	14.93	37.10	47.96		6.51	25.26	68.23		9.59	29.59	60.83	
	2.97	4.51	6.92	4.96	4.97	6.56	6.94	6.67	3.60	5.43	6.94	5.92
400-499	28	57	48	133	17	68	149	234	45	125	197	367
	21.05	42.86	36.09		7.26	29.06	63.68		12.26	34.06	53.68	
	2.52	3.14	3.14	2.98	3.38	4.60	3.95	4.07	2.79	3.79	3.71	3.59
500-599	5	12	8	25	2	7	25	34	7	19	33	59
	20.00	48.00	32.00		5.88	20.59	73.53		11.86	32.20	55.93	
	0.45	0.66	0.52	0.56	0.40	0.47	0.66	0.59	0.43	0.58	0.62	0.58
600-699	1	11	2	14	2	13	32	47	3	24	34	61
	7.14	78.57	14.29		4.26	27.66	68.09		4.92	39.34	55.74	
	0.09	0.61	0.13	0.31	0.40	0.88	0.85	0.82	0.19	0.73	0.64	0.60

TABLE 9a (cont.)

COHORT I

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
700-799	6	7	2	15	6	12	34	52	12	19	36	67
	40.00	46.67	13.33		11.54	23.08	65.38		17.91	28.36	53.73	
	0.54	0.39	0.13	0.34	1.19	0.81	0.90	0.90	0.74	0.58	0.68	0.66
800-899	0	1	2	3	0	3	19	22	0	4	21	25
	0.00	33.33	66.67		0.00	13.64	86.36		0.00	16.00	84.00	
	0.00	0.06	0.13	0.07	0.00	0.20	0.50	0.38	0.00	0.12	0.40	0.24
900-999	0	0	1	1	1	0	6	7	1	0	7	8
	0.00	0.00	100.00		14.29	0.00	85.71		12.50	0.00	87.50	
	0.00	0.00	0.07	0.20	0.00	0.16	0.12	0.06	0.00	0.13	0.08	
1000-1999	4	8	8	20	2	17	27	46	6	25	35	66
	20.00	40.00	40.00		4.35	36.96	58.70		9.09	37.88	53.03	
	0.36	0.44	0.52	0.45	0.40	1.15	0.72	0.80	0.37	0.76	0.66	0.65
2000-2999	0	2	0	2	1	4	13	18	1	6	13	20
	0.00	100.00	0.00		5.56	22.22	72.22		5.00	30.00	65.00	
	0.00	0.11	0.00	0.04	0.20	0.27	0.34	0.31	0.06	0.18	0.25	0.20
3000-3999	0	1	1	2	0	0	1	1	0	1	2	3
	0.00	50.00	50.00		0.00	0.00	100.00		0.00	33.33	66.67	
	0.00	0.06	0.07	0.04	0.00	0.00	0.03	0.02	0.00	0.03	0.04	0.03
4000+	0	1	0	1	0	0	0	0	0	1	0	1
	0.00	100.00	0.00	.	-	-	-	-	0.00	100.00	0.00	
	0.00	0.06	0.00	0.02	-	-	-	-	0.00	0.03	0.00	0.01
Total	1110	1817	1531	4458	503	1479	3774	5756	1613	3296	5305	10214
	24.90	40.76	34.34	100.00	8.74	25.69	65.57	100.00	15.79	32.27	51.94	100.00

Percents given are row and column respectively.

TABLE 9b

OFFENSE SERIOUSNESS SCORE BY OFFENDER GROUP AND RACE

COHORT II MALES

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
1-19	26	43	49	118	29	64	119	212	55	107	168	330
	22.03	36.44	41.53		13.68	30.19	56.13		16.67	32.42	50.91	
	3.29	3.27	2.25	2.76	2.65	2.12	1.59	1.83	2.92	2.47	1.74	2.08
20-29	64	94	177	335	215	526	1007	1748	279	620	1184	2083
	19.10	28.06	52.84		12.30	30.09	57.61		13.39	29.76	56.84	
	8.10	7.15	8.15	7.83	19.62	17.42	13.43	15.05	14.79	14.30	12.24	13.11
30-39	0	0	1	1	0	1	3	4	0	1	4	5
	0.00	0.00	100.00		0.00	25.00	75.00		0.00	20.00	80.00	
	0.00	0.00	0.05	0.02	0.00	0.03	0.04	0.03	0.00	0.02	0.04	0.03
50-59	0	0	0	0	0	1	2	3	0	1	2	3
	-	-	-		0.00	33.33	66.67		0.00	33.33	66.67	
	-	-	-	0.00	0.00	0.03	0.03	0.03	0.00	0.02	0.02	0.02
70-79	1	0	0	1	0	0	4	4	1	0	4	5
	100.00	0.00	0.00		0.00	0.00	100.00		20.00	0.00	80.00	
	0.13	0.00	0.00	0.02	0.00	0.00	0.05	0.03	0.05	0.00	0.04	0.04
80-89	67	96	169	332	67	221	448	736	134	317	617	1068
	20.18	28.92	50.90		9.10	30.03	60.87		12.55	29.68	57.77	
	8.48	7.30	7.78	7.76	6.11	7.32	5.98	6.34	7.10	7.31	6.38	6.72
90-99	0	0	0	0	0	1	1	2	0	1	1	2
	-	-	-		0.00	50.00	50.00		0.00	50.00	50.00	
	-	-	-	0.00	0.00	0.03	0.01	0.02	0.00	0.02	0.01	0.01

TABLE 9b (cont.)

COHORT II MALES

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
100-199	324	487	520	1331	228	659	1228	2115	552	1146	1748	3446
	24.34	36.59	39.07		10.78	31.16	58.06		16.02	33.26	50.73	
	41.01	37.03	23.93	31.11	20.80	21.82	16.38	18.21	29.27	26.44	18.08	21.69
200-299	58	70	167	295	87	209	515	811	145	279	682	1106
	19.66	23.73	56.61		10.73	25.77	63.50		13.11	25.23	61.66	6.96
	7.34	5.32	7.69	6.90	7.94	6.92	6.87	6.98	7.69	6.44	7.05	6.96
300-399	51	103	119	273	71	176	360	607	122	279	479	880
	18.68	37.37	43.59		11.70	29.00	59.31		13.86	31.70	54.43	
	6.46	7.83	5.48	6.38	6.48	5.83	4.80	5.23	6.47	6.44	4.95	5.54
400-499	25	40	87	152	42	116	268	426	67	156	355	578
	16.45	26.32	57.24		9.86	27.23	62.91		11.59	26.99	61.42	
	3.16	3.04	4.00	3.55	3.83	3.84	3.57	3.67	3.55	3.60	3.67	3.64
500-599	13	26	56	95	13	60	150	223	26	86	206	318
	13.68	27.37	58.95		5.83	26.91	67.26		8.18	27.04	64.78	
	1.65	1.98	2.58	2.22	1.19	1.99	2.00	1.92	1.38	1.98	2.13	2.00
600-699	12	25	77	114	26	58	346	430	38	83	423	544
	10.53	21.93	67.54		6.05	13.49	80.47		6.99	15.26	77.76	
	1.52	1.90	3.54	2.66	2.37	1.92	4.62	3.70	2.01	1.91	4.37	3.42
700-799	11	23	69	103	32	55	205	292	43	78	274	395
	10.68	22.33	66.99		10.96	18.84	70.21		10.89	19.75	69.37	
	1.39	1.75	3.18	2.41	2.92	1.82	2.73	2.51	2.28	1.80	2.83	2.49
800-899	22	38	54	114	35	106	299	440	57	144	353	554
	19.30	33.33	47.37		7.95	24.09	67.95		10.29	25.99	63.72	
	2.78	2.89	2.49	2.66	3.19	3.51	3.99	3.79	3.02	3.32	3.65	3.49

TABLE 9b (cont.)

COHORT II MALES

Seriousness Score	WHITE Offender Group 1	2-4	5+	Total	NONWHITE Offender Group 1	2-4	5+	Total	ALL Offender Group 1	2-4	5+	Total
900-999	20	56	116	192	50	144	470	664	70	200	586	856
	10.42	29.17	60.42		7.53	21.69	70.78		8.18	23.36	68.46	
	2.53	4.26	5.34	4.49	4.56	4.77	6.27	5.72	3.71	4.61	6.06	5.39
1000-1999	85	186	486	757	174	552	1796	2522	259	738	2282	3279
	11.23	24.57	64.20		6.90	21.89	71.21		7.90	22.51	69.59	
	10.76	14.14	22.37	17.70	15.88	18.28	23.96	21.72	13.73	17.02	23.60	20.63
2000-2999	8	22	18	48	15	33	164	212	23	55	182	260
	16.67	45.83	37.50		7.08	15.57	77.36		8.85	21.15	70.00	
	1.01	1.67	0.83	1.12	1.37	1.09	2.19	1.83	1.22	1.27	1.88	1.64
3000-3999	1	4	5	10	7	10	56	73	8	14	61	83
	10.00	40.00	50.00		9.59	13.70	76.71		9.64	16.87	73.49	
	0.13	0.30	0.23	0.23	0.64	0.33	0.75	0.63	0.42	0.32	0.63	0.52
4000+	2	2	3	7	5	28	56	89	7	30	59	96
	28.57	28.57	42.86		5.62	31.46	62.92		7.29	31.25	61.46	
	0.25	0.15	0.14	0.16	0.46	0.93	0.75	0.77	0.37	0.69	0.61	0.60
Total	790	1315	2173	4278	1096	3020	7497	11613	1886	4335	9670	15891

Percents given are row and column respectively.-

TABLE 10a

PROBABILITY OF COMMITTING ONE OR MORE SELECT OFFENSES BY RACE

COHORT I

NUMBER	ANY OFFENSE*			UCR VIOLENT**			UCR PROPERTY**		
	Nonwhite	White	All	Nonwhite	White	All	Nonwhite	White	All
1+	.5017	.2866	.3494	.2074	.0292	.1038	.4526	.2724	.3479
2+	.6545	.4502	.5358	.2384	.0508	.2077	.4628	.3018	.3895
3+	.7408	.5566	.6509	.2916	.6666	.3066	.5377	.4216	.4968
4+	.7577	.6581	.7161	.2380	.5000	.2608	.6219	.5000	.5854
5+	.7794	.6306	.7223	.4000	.5000	.5000	.5000	.6000	.5255
6+	.7841	.6571	.7416	.5000		.3333	.7058	.5238	.6527
7+	.8134	.7391	.7913	.5000		.3333	.7222	.4545	.6595
8+	.8157	.6372	.7663	.5000		.3333	.6153	.8000	.6451
9+	.8156	.7384	.8014				.4375	.7500	.5000
10+	.8531	.7291	.8266				.8571	.6666	.8000

*Initial probability based on subjects as denominator.

**Initial probability based on delinquents as denominator.

TABLE 10b

PROBABILITY OF COMMITTING ONE OR MORE SELECT OFFENSES BY RACE

COHORT II MALES

NUMBER	ANY OFFENSE*			UCR VIOLENT**			UCR PROPERTY**		
	Nonwhite	White	All	Nonwhite	White	All	Nonwhite	White	All
1+	.4130	.2312	.3263	.3284	.1208	.2582	.2701	.1805	.2398
2+	.6317	.4806	.5806	.3765	.1739	.3445	.3238	.3127	.3209
3+	.7442	.6516	.7183	.5121	.2500	.4912	.4559	.5232	.4726
4+	.7320	.7064	.7253	.4867	.5000	.4873	.5210	.5333	.5243
5+	.7702	.7091	.7551	.6304	.2500	.6145	.5483	.5000	.5348
6+	.7926	.7824	.7902	.6206	.2500	.6271	.7352	.7500	.7391
7+	.7767	.7700	.7751	.5555	.2500	.5675	.7200	.5555	.6764
8+	.8131	.7708	.8034	.5000	.2500	.5238	.6666	.5555	.7391
9+	.8560	.8108	.8461	.6000	.2500	.6363	.9166	.8000	.8823
10+	.8230	.8000	.8181	.6000	-	.8571	.6666	.7500	.8000

*Initial probability based on subjects as denominator.

**Initial probability based on delinquents as denominator.

TABLE 11a

Mean Seriousness Score, First to Fifteenth Offense by Offense Type

Offense Number	All Offenses	Nonindex	Injury	Theft	Damage	Combination
1	94.3311	23.71	330.95	183.04	157.39	291.18
2	108.3156	26.44	346.07	185.37	164.96	324.68
3	111.8579	30.39	371.48	192.85	160.86	295.01
4	126.3774	33.57	438.67	189.02	164.97	316.25
5	131.1587	35.60	417.11	187.88	157.91	345.88
6	113.1047	27.28	414.61	192.21	250.00	296.54
7	146.8272	32.76	453.53	175.46	170.78	360.43
8	147.4677	37.86	560.47	176.02	200.00	294.74
9	141.7353	37.21	478.72	217.46	193.00	252.92
10	150.2412	30.91	494.72	176.25	200.00	307.14
11	120.4559	33.43	300.00	194.57	74.00	289.68
12	150.1371	44.44	392.25	200.46	184.25	498.14
13	139.9750	47.10	329.57	222.00	166.67	290.55
14	180.5775	59.73	606.70	205.00	116.00	289.64
15	166.0907	45.26	900.00	173.50	0.0	532.71

CONTINUED

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TABLE 11b

MEAN SERIOUSNESS SCORE, FIRST TO FIFTEENTH OFFENSE BY OFFENSE TYPE

COHORT II MALES

Offense Number	All Offenses	Nonindex	Injury	Theft	Damage	Combination
1	430.62	151.89	1154.04	876.67	458.59	1243.00
2	489.86	157.57	1284.37	933.91	497.11	1355.37
3	556.45	166.81	1504.51	978.14	533.13	1334.13
4	611.10	214.61	1285.65	979.05	537.75	1358.52
5	616.79	199.52	1473.44	985.63	528.95	1336.28
6	675.57	251.41	1430.25	982.80	551.53	1397.39
7	699.16	239.26	1550.53	1051.43	529.03	1369.72
8	726.79	238.29	1431.26	1002.16	580.78	1347.46
9	818.24	292.21	1782.50	1092.61	579.15	1394.40
10	760.31	285.72	1300.74	1110.81	650.69	1395.58
11	747.62	307.02	1238.36	1045.21	673.77	1607.93
12	759.16	273.64	1221.30	1143.15	659.25	1518.07
13	859.30	358.60	1728.82	1090.87	672.00	1217.59
14	744.85	309.44	1393.81	1088.52	766.00	1313.76
15	879.45	400.36	1522.86	1144.87	749.89	1489.43

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STRATEGIC PLANNING AND FOCUSED IMPRISONMENT*

Michael E. Sherman

Mark Moore has asked me to relate the Harvard Conference's general interest in dangerous offenders to my specific interest in "the prison crisis." In using the quotation marks, he emphasized what is too easily forgotten in the current debate: that so far from finding solutions in criminal justice, America often fails even to reach a consensus on the nature of the problem. This is especially true of corrections, where at least four distinct ideas compete for the credit of identifying the "critical" problem. The Conference's hypothesis--that the entire criminal justice system should concentrate more heavily on dangerous offenders--must be considered in the light of that corrections controversy.

In private sector strategic planning, the starting point is frequently an exercise known as "defining the business." By asking some fundamental questions about the goals of the corporation, and then relating those goals to its activities, greater clarity is often achieved. In particular, the frequent divergence between goals and activities may dramatize the choices and resource allocations which must be confronted to bring the two into line. Sometimes the activities can simply be adjusted; sometimes the goals must be modified or even abandoned.

Although it is hardly novel to note that the criminal justice system is unsystematic, the extent to which this is true might make a corporate strategic planner throw up his hands in despair. And that is precisely

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*This paper is adapted from Michael Sherman and Gordon Hawkins, Imprisonment in America (University of Chicago Press, 1981).

what the counterparts of the corporate strategic planner--viz., the criminal justice policymakers--have done. Unable or unwilling to ask fundamental questions, or to try to refine the theoretical and operational answers to "what business are we in?," they have allowed the components of the system to pursue their own multiple, unclear, and often inconsistent goals. The unsurprising result is a total system with which, to say the least, no one is satisfied.

If we impose on the corrections debate an order which it does not really have, the four ideas which compete for the mantle of prison crisis might appear as follows.

1. The Crisis of Too Many Prisoners. A great deal of attention in both popular and specialized media goes to the simple size of the incarcerated population. Sometimes measured in absolute numbers, sometimes in relation to the American population (an imprisonment rate of inmates per 100,000 citizens), sometimes in relation to the imprisonment rates of other countries, it reflects the view that the critical issue is the number of people who are now locked up. By the first two indicators, the current levels are unprecedentedly high; by the third, American rates top any other free world nation. The inference is that too many people are behind bars in the United States; the overuse of incarceration is what constitutes the prison crisis.

2. The Crisis of Too Few Prisoners. A competing view is that rather than too many people behind bars, the United States has too few. These critics argue that the comparisons with other times and other places are irrelevant, because America's crime rates are higher than

ever before and have been traditionally higher than those of other countries. Indeed, it is often argued further that this is a causal relation: too few people in prison weakens deterrence and in some permissive sense "causes" crime. The prison crisis lies in the fact that the prison population is too small.

3. The Composition Crisis. Here the claim is that the size of the prison population is not the issue. The crisis consists in that too often, the wrong people get locked up: too many who in some sense deserve prison go free, and too many others who do not deserve it are locked up. Of course, there are differing versions of what constitutes the critical problem in population composition; these are examined below.

4. The Crowding/Conditions Crisis. The final competitor centers on the question of the conditions in which the incarcerated offenders are held. In this view, who the courts decide to lock up is less important--or at any rate less urgent on a national scale--than the fact that crowding, violence, poor sanitation and a host of other ills often attend the imposition of an American prison sentence. The federal courts have sustained many of these charges, finding entire prison systems in some states and individual institutions in many others to be in violation of the Constitutional prohibition against cruel and unusual punishment. This is the real crisis, runs the argument, because expanding inmate populations are aggravating the tensions that flow from the crowded and inhumane conditions.

I sketch this controversy because until one decides where his priorities lie in the crisis debate, he cannot begin to assess the merits

of a reform such as that under examination by the Harvard Conference.* I can hardly claim to resolve the controversy; I shall offer my own thoughts on the four claimants and argue that the Conference's notion of focused imprisonment makes a great deal of sense as a route out of the impasse. Finally, I shall examine some political constraints on its acceptance by the general public.

Choosing a Crisis

I do not think that counting the heads of American prisoners, even if these counts are related to American history or international comparisons, will take us far toward a correctional strategy. Without being linked to some strategic goals, the numbers game becomes just that. It does, however perhaps place the burden of the argument on the defenders of current practice. If we are going to lock up an increasing fraction of our population, and if it is so terribly expensive to do so,[1] major social gains must be shown to result. And on narrow grounds of effectiveness, it is hard to make that case: gross crime rates appear largely "decoupled' from imprisonment rates. To that extent, the head counters may perform a useful gadfly role; but since standards other than effectiveness play a part, to demonstrate that the U.S. prison population is relatively large is not to prove that it is too large.

The weak link between imprisonment practice and the standard of effectiveness make equally unpersuasive the claim that the prison crisis lies in an across-the-board underuse of the incarcerative sanction.

*I have argued elsewhere against even the use of the term "crisis," because it distorts the discussion in a variety of ways. See Imprisonment in America, pp. 3-8.

Unless it can be demonstrated, or at least forcefully argued, that greater effectiveness in crime control will flow from doing more of what we do now, it seems hard to defend the pleas for its general expansion. Of course, at some point we would reach levels of incarceration that would depress the gross crime rate. But the cynic may be forgiven for fearing that before we get to levels of unfocused incarceration that make a substantial dent in the crime rate, the criminal justice budget will be second only to the defense budget.

My own view is that the critical problem in American corrections is a combination of the third and fourth candidates above. The composition of the prison population is wrong: too many people in prison who don't belong there, too many not in prison who do belong there. And in turn, this aggravates and to a considerable extent causes the conditions crisis.

I acknowledge, of course, that acceptance or rejection of a particular definition of the prison crisis is heavily determined by subjective political values. One believes or doesn't that a certain type of crime deserves incarceration; one believes or doesn't that certain minimum standards of correctional conditions must be maintained. But in a policy debate, these political values have proxies in decisions about resource allocation. The question is not only the abstract negative social value placed on a certain type of behavior, but how many dollars and opportunity costs we are willing to pay to implement that judgment. The Reagan Administration's refusal to put up money to apply its own Task Force's recommendation for federally supported construction of state prisons, and the defeat of bond issues in states such as New York and Michigan,

suggests a wide gap between political rhetoric and budgetary reality. In such a climate, the Harvard Conference's idea (whatever its other merits) carries real promise for reducing the scattershot use of incarceration and improving prison conditions without requiring unrealistic budgets.

Sketching a Correctional Strategic Plan

Any suggestion in this area must cover the three components of sentencing, construction, and programs. It is obvious that sentencing policy affects population size and that this affects perceptions of how much construction is required. Less obvious is that the purposes sought by legislatures and sentencing judges will influence the services provided--or not provided--by correctional administrators. And sometimes obscured altogether is the fact that construction policy will often affect who goes to prison. To use current jargon, capacity affects both population size and composition. The need for a policy that is sensitive to these relations is a major theme of this paper.

The contemporary sentencing problem can be related to one's impression of colonial criminal justice. Some critics have charged that prerevolutionary America lacked punishments in the middle range. Whether or not one agrees with that analysis of history, it is certainly an accurate description of America's predicament today. In large measure, imprisonment is overused because legislatures, prosecutors, and judges do not know what else to do. In particular, the lack of punishments that are not incarcerative but are still frankly punitive perpetuates by default

the dominance of the prison. Legalist* needs for retribution cannot now be met in other ways, so they have to be met by imprisonment. Thus the prison is forced to do the double duty of crime control and legalism, without any principles for striking the balance. A focus on the distinctive contribution of the prison to social order, and a practical concentration on that task, is the first step toward a rational and efficient strategy.

What is special about prison? What can it clearly do that other punishments cannot? It can confine people. It can keep them, at least while they are inside, from repeating the behavior against the general society that put them there in the first place. To go beyond this distinctive function is to enter a morass. Early critics of the prison understood this. As William Eden noted as long ago as the eighteenth century, the contribution of the penitentiary to general deterrence was always is problematic; it cannot, he maintained, "communicate the benefit of example, being in its nature secluded from the eye of the people."[2] Modern research on both deterrence and rehabilitation leaves much skepticism on the former and profound pessimism on the latter. Given the doubts about prison's effectiveness and the certainties abut its costs, a prudent strategy seems to me to ensure that the prison does what it

*The longer analysis distinguishes three images of the criminal justice system: as a direct controller of crime; as a provider of social services such as probation, parole or institutional rehabilitation; and as a response to citizens' need to believe that they live in an ordered world where law-abiding behavior is rewarded and lawbreakers are punished. The last, which suggests for example that some criminal justice measures may be valuable even if they contribute nothing to direct crime control, was dubbed "legalist."

can--immobilize criminals--and then to find other, acceptable measures for doing what it cannot.

The following analysis rests on a frankly subjective judgment about the seriousness of various types of crime. Prison is not the logical punishment for any particular offense; it can incapacitate check forgers as well as murderers. But as the most serious sanction available in almost all cases, its use can logically be concentrated on commensurately serious offenders. Moreover, it is a scarce political and economic resource, and such concentration is therefore reinforced by a decent respect for individual liberty and for the taxpayers' money. Those who do not distinguish degrees of seriousness among offenses, or who feel that some other kind of behavior is more serious than violent crime, will simply not be friendly to the plan. We should at least be clear that their disagreement is a matter of political and social values and not the result of some divination of the logic of imprisonment.

This fundamental premise can be integrated with two other principles in the following summary of the proposal. The three elements can then be expanded and defended in turn. (1) On sentencing, the dominant justifying aim of incarceration in a prison should be incapacitation. Imprisonment should be the punishment of choice, not for all offenses as it is under current practice, but primarily where it seems necessary to meet the threat of physical violence. (2) On construction, new prison space should be built primarily to replace existing facilities or to bring them up to humane and constitutional standards. In most states, the effect of construction programs, indeed the condition of funding them, should be that they do not increase current capacity. (3) On

programs, it is important that administrators maintain existing services and begin new ones that can be truly voluntary and facilitative. While there are dangers here, the alternatives are worse.

The need for a broad-gauged proposal can be demonstrated by a brief review of some other suggestions which do not go far toward a politically acceptable revision of penal strategy.

Community Corrections

At least since the 1960s, a group of critics has argued for the replacement of traditional imprisonment with much less restrictive placement. While details of this idea are often cloudy, it usually involves a group-home or other low-security facility, and a location in a residential or at least urban area rather than an isolated rural one. A review of the crimininological literature of the past fifteeen years would suggest that community corrections represents a major force in American penology. In fact, its prominence is largely rhetorical. After years of intellectual fashion for this idea, a federal survey found in 1978 that of half a million correctional inmates,only 8,000 were in community corrections. Nor was this a result of lack of space.[3] Most jurisdictions reported that they had empty community-based capacity, although that does not keep the faithful from calling for more community corrections money and arguing that they have found the solution to prison crowding.

Why has community corrections not been adopted, or even seriously attempted, as the solution to the prison problem? It failed in several ways. First, community corrections as currently conceived simply does not meet the crime control requirements of a large-scale criminal justice

policy. It is irrelevant to that substantial pool of serious violent offenders against whom society needs and demands substantial protection. Equally important, community corrections fails to meet the needs I have described as legalist. It concentrates so much on the interest of the inmates, and in reducing the incarcerated population, that it has become suspect from the perspective of the right and even the center of the political spectrum. In the context of the punishment-imprisonment fusion, most Americans would be suspicious of community corrections, regardless of what rhetoric accompanied it. Its proponents' excessive claims have only aggravated that suspicion. The result has been that American society has given a quite different meaning to the term "community corrections": the jail, and not the group home, has attracted most of the less-serious offenders. Traditional legalists may have captured community corrections as, in many states, they have captured sentencing reform. They have certainly made it impossible for community corrections to serve as the basis for a broader imprisonment strategy.

Reducing Sentences

A second proposal that cannot serve as the center of a solution to prison problems calls for a sweeping reduction in sentence length. Many critics, among them Eugene Doleschal of the influential National Council on Crime and Delinquency, maintain that American sentences are longer than those anywhere else in the world.[4] For this, some infer that the key to current difficulties lies simply in trimming the excess from the number of years served in American prisons.

There is a kernel of good sense in this proposal. Its authors are correct that the size of the inmate population is a product of the number of prison commmitments and the length of time they stay. This is implicitly recognized in the manipulation of time served as a safety valve, sometimes wholesale, as in California during the late 1960s. When the population gets "too large," whatever that is taken to mean, prison stays mysteriously get shorter. However, in the population boom of the mid-1970s, the variable of time served was much the lesser partner of new commitments in accounting for population increases.[5] Similarly, in the relatively slower growth rate of the later 1970s, time served did not decline substantially; the rate of hew commitments simply dropped. And finally, there is fragmentary evidence from states such as New York that time served has actually risen since the late 1970s. It seems, therefore, that manipulating sentence length, while it may be desirable from other points of view, does not hold major promise as a realistic answer to the problem of prison crowding.

The other points of view, of course, again constitute the tricky but determinative feature. The actual time served for most prison commitments--in the jargon, the median time to first release--is about two years. This means that a one-week cut in the average sentence would yield a 1 percent reduction in prison population. For a liberal who feels that the prison population is, say, double what it is should be, a one-year cut in time served would be required. That would leave one year as the average stay for all crimes. Although there is no magic length of sentence any more than there is a magic population size, I doubt that a prison sentence of one year, lying at the margin of the

traditional misdemeanor penalty, would satisfy either the legalists or the crime controllers even among today's new breed of liberals. There is far less promise in sentence length for major cuts in population size than many of the critics would have us believe.

The Dangerous Few, the Imprisonable Many, and the Privileged Others

Three other proposals that receive support in some quarters, but not much here, may be discussed under a common rubric. These proposals fail to provide the basis for a solution not so much in their fundamental suggestion as in their lack of guidelines for applying it. They may be labeled with some facetiousness but with a serious intent: finding the dangerous few, finding the imprisonable many, and finding the privileged others.

The effort to base a policy on finding the dangerous few has been led by the NCCD. In 1972, it presented a "carefully studied distinction between dangerous and non-dangerous offenders." Two types of dangerous offenders were defined: "(1) the offender who has committed a serious crime against a person and shows a behavior pattern of persistent assaultiveness based on serious mental disturbancess and (2) the offender deeply involved in organized crime." It was also said that, by using these criteria of dangerousness, "in any state no more than one hundred persons would have to be confined in a single maximum security institution."[6]

As a substantial proportion of those showing "a behavior pattern of persistent assaultiveness based on serious mental disturbances" would presumably find their way to mental hospitals, and as those "deeply

involved in organized crime" are notoriously elusive and enjoy a high degree of impunity, this NCCD policy implied a problem not in construction but in disposing of surplus cell blocks. However, by 1977 their "carefully studied distinction" had undergone a substantial transformation. Dangerousness was redefined to cover "an act of violence, actual or threatened, or a felony carried out by members of organized crime syndicates. Using this classification NCCD would imprison the dangerous offender for terms that could be extended as long as thirty years."[7] This time it is notable that no estimate of the number of persons who would have to be confined was offered. It is just as well. The combination of a much broader base and a tolerance for very long sentences would without doubt create population dimensions quite unacceptable to the NCCD. The absence of more specific offense categories and sentence lengths would create serious space and ethical problems for this superficial proposal so much favored on the left.

On the right wing of the debate, the problem of finding the imprisonable many is equally severe. I am thinking of claims that a great deal of new prison space must be built because "society clearly wants its criminal laws enforced."[8] Which laws, against which offenses, and which ones require imprisonment? Does society, that amorphous collection want its laws enforced for crime control reasons--for incapacitation, or deterrence, or both--or is this a traditional legalist argument that perpetuates the link between law enforcement and incarceration? If it is the latter, the reason that such broad sentiments cannot be the basis for a prison strategy is not that they do not make sense--that is a matter of political values--but that they provide scant guidance

about how much space is necessary, and how many commitments would result from applying them. One could imagine, under their principles, a prison population half again as large as today's; one could also imagine a population five or ten times as great.

By the privileged others, I mean those offenders who are not normally punished by incarceration even though their crimes may be quite damaging to society. In general, these are white-collared, and white-skinned, criminals. The argument made currently by some blacks but principally by white liberals is that the racial balance of the inmate population must be changed. In an odd kind of equal protection argument, Wendell Bell and others maintain that incarceration must be used against more whites and fewer blacks.[9] This, they claim, will not only solve the prison crowding problem but will produce a fairer system and restore the faith of both whites and blacks in that fairness.

This is a large and difficult subject, one that would require a separate analysis if it were to be covered completely. But a few observations can be made. First, Bell's proposal is largely indifferent to the purpose of crime control based on violence against the person. Second, it is not clear that such a course, once embarked upon and pursued with the kind of vigor that liberal ideologues recommend, would reduce the prison population at all. Indeed, it might have the opposite effect. If the traditional uses of the prison for personal and property crime were not to be replaced but merely supplemented by this new class of white offenders--of whom there are a much larger pool than of street criminals--this liberal solution might inflate the prison population by as much or more than its conservative counterpart. The attempt to

find and incarcerate the privileged others perpetuates the link between punishment and prison. This is traditional on the right but surprising and possibly self-defeating on the left.

Desert and Incapacitation as Strategic Goals

The literature of the past decade reflects a general trend toward desert as the primary justifying aim of incarceration. This trend has been driven by a well-founded skepticism about rehabilitative aspirations as guides to who should be imprisoned and how long they should stay. I share this skepticism and hold no brief for the notion of large-scale indeterminancy in sentencing, or for the ability of parole boards to assess an inmate's progress toward some chimerical goal. However, desert cannot provide the basis for a policy on whom to imprison in the first place.

The concept of desert is being asked to carry too heavy a burden. It cannot tell legislatures or sentencing judges who should go to prison and who should not. When it comes to choosing a punishment, there is nothing distinctive about imprisonment in the context of desert philosophy, any more than desert can specify the merits of whipping or probation. With the residual exception noted below, the general idea of desert provides no guidance in decisions about whether or not to imprison. For these purposes the concept is empty. Moreover, it may be "coopted," and turned against the very liberals who espouse it. Desert is already being used in some placed to justify longer sentences. The surprise expressed at this by David Greenberg and Drew Humphries[10] is itself surprising; their dismay stems from the failure to anticipate the effects,

in many jurisdictions, of differing notions not only of whether imprisonment is deserved but of how much imprisonment is deserved.

If, then, the fashionable notion of desert will not lead us to an imprisonment strategy, what will? For the vast majority of cases, the answer lies in the concept of incapacitation. Moreover, at the core of this answer lies the notion, so much criticized on the left, of the prediction of future behavior. This seems to me the only legitimate primary basis for imprisonment. Rather than try to reimport it into a defining desert philosophy, it seems far preferable to acknowledge its central place, confront its possible risks, and see whether these cannot be addressed using desert as a limiting principle to ensure the humane and just treatment of those who are incapacitated.

The recent emphasis on individual desert has led some to forget that criminal punishments are routes to social order. A condition of this order is the minimization of both the reality and the fear of random physical violence. To minimize these forces of disorder is the primary goal of the criminal justice system. In the choice of sanctions, of course, routes to order must be sought that are consistent with competing values of individual liberty and fairness. But within these limits, the system should be obliged to do what it can--to use its resources efficiently--to preserve that order. In the absence of confidence about the marginal deterrent effects of any punishments, it seems prudent and fair to all concerned to do what can be done: to make it impossible, for some limited period of time, for violent criminals to commit new offenses against the general society.

The corollary is unpopular but inescapable: the decision to incapacitate a particular offender implies a judgment about his likely future behavior. The conventional criticism of this strategy is that the agents of society may be wrong about whether this offender will "do it again." In turn, many infer that this danger--known in the jargon as the problem of the false positive prediction--bars society from imprisoning anyone on this basis.

Federal Judge Macklin Fleming entitled a book The Price of Perfect Justice.[11] I wish that I had thought of that line first, because it epitomizes my reaction to the foregoing argument. In making the false positive the measure of imprisonment policy, liberals become their own enemies. They make the best the enemy of the better. To the extent, if any, that they reduce the likelihood of a violent offender going to prison, they act against the interests of precisely the body of minority poor they have appointed themselves to defend. And they force society, which is not about to abandon the prison altogether, to search for and find in desert a potentially more sweeping justification, which may result in the incarceration of more offenders for longer periods than is currently the case.

To get the benefits of the desert contribution without paying its excessive costs, one must understand its partial character. To ask for a single justification for both dimensions of imprisonment is to ask too much. The two key decisions in the process--whether and how long--must be distinguished, and they need not have the same rationale. Indeed, the distinct justifications for the decision to put someone in prison, and later for the decision to let him out, may even come

into conflict. At that point, judgment becomes crucial, and special care for the rights of the individual offender must be taken. But this is hardly an argument for reliance on a single justification.

Even if incapacitation is accepted as the primary justification for the decision to imprison, there remains a small residual need for a supplementary use. In the Model Penal Code and elsewhere,[12] this is called the depreciation of the seriousness of the offense. For example, in Morris's witty case of the wife murderer with no plans to remarry--more seriously, in cases where incapacitation is not the justification for imprisonment because there is no fear of a repetition of the offense--it might still be necessary to imprison some small number of additional offenders. There is an obvious need for this action in cases of extremely serious crimes, and also for exemplary sentences in such instances as the most outrageous cases of tax evasion. The primary reason for such imprisonment is that people would otherwise believe that justice had not been done and that the violation of social norms had not been accorded its proper importance.

This residual justification must remain small, and even then it is subject to abuse. It makes a bow to precisely the fusion of punishment and imprisonment that I am trying to break. So long as a sizable number of citizens believe that a sizable number of offenses go unpunished unless someone is locked up, the problem of a rational imprisonment strategy will remain difficult. On the other hand, it would be unrealistic and naive to deny that this attitude will to some extent remain a feature of the American political landscape. Some narrow band must remain, at the top of the punishment scale, containing penalties that can be

invoked for large symbolic reasons. Since I oppose capital punishment in this or any other context, ritual or legalist imprisonment seems the inescapable alternative.

Incapacitation gives us a defining principle, but does not by itself tell us how many people will or should be locked up. This canot be done by abstract categories, as the analysis of the NCCD position has shown. The size of the class of offenders violent enough to be imprisoned will be influenced by the number and nature of the choices in any particular case. Moreover, these choices must be spelled out in considerably more detail than is usual in attempts to limit the use of imprisonment. The great weakness of such efforts is not that they are not based on good ideas, but that these good ideas are not taken far enough. Neither a legislator, a sentencing judge, nor a private citizen can make an intelligent choice among the abstractions of "prison" and "probation" and "work release." It is what happens in each case that determines one's preferences.

The failure of the prison's critics has been their assumption that general pronouncements about alternatives will affect practice. Many of these critics remain puzzled and angry about the failure of these alternatives to take hold on a large scale. But this failure will continue so long as skeptics are unable to determine to what extent these alternatives really meet their requirements. This is especially true concerning retributivist sentiments and demands that the seriousness of the offense not be depreciated. Only when alternatives can be specified sufficiently to satisfy this demand will fewer people have to meet it by going to prison. People around the country will differ legitimately

on the application of general principles to particular cases, making this a task for individual jurisdictions rather than for a paper on policy directions. But the homework must be done before the prison's critics will make progress.

Some Guidelines for Alternatives

Some general guidance can be offered here. A tangible relation between the nonincarcerative but still punitive sanction, and the offense it punishes, is a good place to start. This is especially true of non-violent property crimes; these represent the largest category of offenses which are imprisonable under current practice but not under my prefered strategy. Today's policies make the worst of at least three worlds. In many cases, they enhance the risk that too light a sanction will be imposed, because prison seems to the sentencing judge too severe for the particular circumstances. In other cases, they result in the imposition of a sanction which is too severe. They may of course possibly provide some symbolic satisfaction for vengeful feelings on the part of the victim. However, for example, restitution to the victim of property crimes, perhaps "with interest" for the fear and anxiety involved, is a better basis for an avowedly retributive legalist sanction. It can be backed up with the threat of incarceration if the offender does not meet his court-imposed obligation. But the shift of prison and jail from first to second or third resort is a major, salutary change. It begins with the creation and calibration of punishments with real content that lie between "nothing" and "prison."

Limitations on the offender's leisure, but short of total withdrawal of his liberty, constitute a parallel category. These might be related to, and used as punishment for, whatever the particular community defines as violations of public order and social norms, as well as for some property crimes and minor crimes against the person. The variation in these offense categories is trenendous, both over time in American history and across jurisdictions today. But they have in common the notion that the offender has done something with his free time which unacceptably disrupts the community. A proportionate withdrawal of some of that free time makes sense as a sanction. Already, in some American jurisdictions, judges are experimenting with house arrest for this purpose. Other countries, such as Sweden, are using existing incarcerative facilities. In large, dense American cities, frequent-furlough jail sentences, perhaps emphasizing evenings or weekends to minimize the interrupting of employment, may be necessary. In smaller communities or tighter neighborhoods, house arrest may be quite feasible.

Public service, not to a specific victim but to the community as a whole, may be another option. Judges in juvenile courts have always used this in specific circumstances; at the lower range of adult seriousness it has promise as well. Severe fiscal penalties paid to the public treasury may be still another alternative. But I do not want to pitch the general argument--the need for punishments with a real content short of imprisonment--on specific examples. Once the need for such a calibration is widely recognized, individual communities will be imaginative in applying their own mores to the particular circumstances of an offense. Legalism and localism go hand in hand.

One may offer some general guidance on drawing the line between new nonincarcerative sanctions and traditional ones. Who should go to prison? For whom is the distinctively incarcerative function the sensible punishment of choice? Murderers combine the two justifications of crime control and legalism; the most serious crime demands and therefore deserves the most serious sanction, a status to which we have promoted imprisonment. There may be exceptions to this rule--such as a fight issuing in an apparently accidental but marginally culpable death--but such examples will be few.

Firearm robbery represents another clear case in its most serious forms. The danger to society is sufficient to prevent early repetitions of thefts with loaded guns, and those involving physical injury or serious endangerment. Even for first adult convictions, incarceration is the appropriate sanction in the vast majority of cases. Exceptions will occur, and these can be determined only by the mitigating circumstances of the individual case. A similar line can be drawn in the amorphous category of assault. For nonrobbery assaults which do not involve firearms or injury, a showing repetitiveness or aggravating seriousness should be made before recommending imprisonment as the punishment of choice. But where these conditions are met, imprisonment even for first convictions will be justified in most cases.

The two remaining major components of today's prison population are burglary and drug offenses. These can be discussed together. Both present difficulties of generalization, since they mean different things in different jurisdictions. But both require a line drawn between professionalism and amateurism. This line may sometimes be hard to draw in

a particular case; it must be drawn nevertheless. I recommend incarceration for professionals and a bias for nonincarcerative but punitive alternatives in the case of amateurs. The legalist need must be served here, but the prison is not necessary to serve it. The careerist pattern, however, should be proved by experience and not merely attributed. Thus incarceration should be applied only to second adult convictions (except in rare cases), as distinct from loaded-gun robbery where a first adult convintion would be sufficient.

Sentence Length

The second crucial decision to be made is when to let the offender out. My prescription of a desert limit to the length of sentence is not self-defining. There is, however, a further clue in the age distribution of offenses. With the peak offense rates for imprisonable crimes concentrated in the late teens and early twenties, the first year of a prison sentence prevents far more crimes than the tenth year. This means that in crime prevention yield, an incapacitation strategy--especially in the real world of limited correctional resources--is most efficient if it concentrates on ensuring that all who qualify are locked up at least for some time. That may mean shorter average stays than some people would like. But to the extent that very long sentences are a feature of today's practice, they are very inefficient in controlling the number of offenses. Moreover, these long sentences in most cases violate the desert limit, which is an important part of meeting the demands of the revisionist legalists on the left-center of the political spectrum.

How long is long enough to maximize incapacitative gains and yet not exceed the desert limit? I suggest five years, as a maximum. This is controversial; to many on the right there is something very satisfying abut the broad option of throwing the key away, and on the left I have shown an acceptance in some quarters for time served as long as thirty years. But we need not repeat the costs in inefficient incapacitation, violations of fairness, and excessive prison populations and budgets. The satisfaction that comes from the option of throwing the key away, or even the reality of it in a small number of cases, is empty. It makes harder, not easier, the use of prison as it should be used: to limit directly the amount of crime we would otherwise have.

There must be room for exceptions to a proposed five-year limit. Neither this system nor any other will operate by remote control. In some instances time served will have to be longer, indeed span most of an offender's life, to avoid depreciating the seriousness of the offense; all of us would be offended by Charles Manson's release after only five years in prison. Anothe possible exception is the case where a diagnosis of psychosis or other mental disorder creating real and continuing physical danger has been made and repeatedly reaffirmed. These cases are subject to abuse, and every effort must be made to restrain the abuses. But the occasional public abuse, which occurs despite everyone's best efforts, is not an argument against an entire social policy. Once that is understood, and not until then, we shall have made some progress toward a rational policy on imprisonment.

Since this paper strives for policy directions rather than a detailed penal code, I resist the temptation to specify sentence lengths for

particular offenses. These are properly the task of legislators, judges, prosecutors, and other officials who can reflect regional and local mores. Nor do I attempt a forecast of the number of prisoners that would follow from the application of the general principles. This would be both presumptuous by overriding local vlues, and misleading by conveying a spurious precision. I believe, however, that these sentencing principles are consistent with a concern for the link between construction policy and population size.

Do We Need More Capacity?

By the foregoing standards of imprisonable crimes, I find a great deal more flexibility in the prison system than is generally acknowledged.[13] The standard conservative view is that the prisons are already bulging and any effort toward greater severity--which mine certainly is for some offenses--requires massive expansions in capacity. But if the threshold were moved and the priorities recommended above were accepted, the problem is by no means intractable. Of all the prison inmates in the country, only about 47 percent have been sent there for crimes against the person: homicide, arson, rape, robbery, and assault.[14] Over one-third are there for property crimes, principally burglary and auto theft. The remainder, about 20 percent, have been convicted of crimes against public order, most of which are drug offenses. A breakdown by region makes this even clearer, as shown in Table 1.

These data show that a substantial fraction of people now incarcerated would not be imprisoned under my proposed principles. If the nonviolent offenders were not imprisoned, a great deal of correctional capacity

Table 1

1978 Percentage Distribution of the State Prison Inmates by Region, by Offense Type

Region	Crimes against the Person	Crimes against Property	Crimes against Public Order
Northeast	45	37	18
North Central	52	34	14
South	44	41	15
West	48	28	24
U.S. total	47	37	16

SOURCE: Abt Associates data from "Survey of State and Federal Adult Correctional Facilities," unpublished.
NOTE: Figures rounded to nearest whole number.

would become available either for longer stays for violent offenders now incarcerated, or to lock up many violent criminals who now go free. In either case, or in any sensible combination of them, additional capacity can be provided for violent offenders without huge capital outlays. This will free construction budgets to do what they should be doing--improving conditions--by clarifying in advance that they are barred from the open-ended and irrational building programs of the past.

The place of existing capacity in a comprehensive construction strategy is analogous to the place of desert in sentencing: it cannot tell us what to do but it can tell us what not to do. Both cases provide a necessary sense of limits; both seek to prevent traditional abuses. In construction policy, the limits reflect a sensitivity to the danger that new capacity invites new populations. As a rule, the principle tells us not to exceed existing capacity. There will again be exceptions, particularly where judicial intervention and slow innovation mean new capacity must be built before old facilities are phased out. But in most jurisdictions, there is enough acceptable capacity now to apply

my suggestion for sentencing, both on who goes to prison and for how long.

There are some jurisdictions which are already using existing capacity as the principle of selection for at least who goes to prison. This is a difficult matter to assess. It does limit the use of a sanction which I regard as grossly overused. But in some of these instances, this is hardly a principled limitation. It does not address directly the question of the composition of the prison population; it merely controls its size. While over time this will surely have broad effects on composition, one can hardly have confidence that these effects will be in desired directions.

In a state such as Massachusetts or Illinois, which already concentrates heavily on incapacitation as a justifying aim, a ceiling of this kind may be desirable.[15] However, other jurisdictions which manipulate release policy according to demands of capacity and litigation may not yield such acceptable results. If they currently use the prison as a catch-all, their imprisonment policy may become even more unprincipled; this is often the effect of many efforts to limit the population size without other guiding ideals. Thus a normative policy cannot be based on purely quantitative considerations. But as desert limits sentence length, so existing capacity can and should in most cases limit the use of construction budgets. There is enough to do with the money that must be spent to improve conditions. In many instances, an insistence on this goal will yield a construction policy that reduces rather than expands capacity. A holding to the consensus standard of sixty square feet per inmate would have that effect in almost all jurisdictions.

Some Tactical Implications

The conventional wisdom is that, as a region, the South's correctional problems are worse than anywhere else in the country. This is probably true in some respects, untrue in many others. But here the important point is that the South has a larger fraction of nonviolent inmates than do the other regions. This creates a potential flexibility that others do not have; it would be possible, without excessive risks to public safety and without increasing the population or the capacity of the system, to adopt the principles I recommend. The South is commonly regarded as the most intractable region, with its prisons bulging and its administrators in litigation. But it may paradoxically be our most promising ground for major population reductions with low crime control costs.

The flexibility that already exists in the system is already being recognized in some parts of the South and elsewhere. In Alabama, for example, a federal judge imposed a population ceiling based on capacity constraints and then sought outside advice about the prospects of reclassifying the security requirements of the individual inmates.[16] The recommended downward shift would allow up to one-third of the prisoners to be moved to lower classifications, and a substantial fraction to be decarcerated altogether. In New York as well, even with its relatively greater emphasis on incapacitation, officials are using narrower definitions of dangerousness to make more inmates eligible for the lower security facilities, where most vacancies occur.

It may be objected that the forcing of reclassification by capacity constraints is a reversion to a head-counting incarceration policy rather than a principled one. I cannot agree. Once a decision has been made on grounds of incapacitation that an offender does require imprisonment, it does not follow that he must necessarily be locked up in the most restrictive and severe conditions available. Even under current practice, it is well recognized that the system overclassifies as a matter of routine. I feel, for example, that regarding burglary first imprisonments where there have been no jail-escape attempts or other aggravating circumstances, the guiding principle should be a bias for the low side of the security spectrum rather than the high side. There are risks, but they are acceptable, especially when balanced by the risks of unnecessary damage to less-serious offenders placed in excessively severe confinement. The reflexive equation of all imprisonment with the fortress megaprison is simply a variation on the fusion of punishment with prison which I am trying to erode. It is legitimate and principled to use the constraint of capacity to accelerate that erosion. Forcing a redefinition of the requirements of incapacitation is only one tactic in this overall strategy.

The link to correctional programs of my other two principles must also be indicated. Clearly, the incapacitative emphasis is consistent with the call of Morris and others for the abandonment of rehabilitation as the justifying purpose of imprisonment. Also, I support his further plea for the expansion of those programs that can be truly voluntary and facilitative. This view is generally defended on grounds of human

dignity and fundamental rights of citizenship. But it can be more directly linked to the suggested policy on sentencing.

An imprisonment policy that concentrates on incapacitation must acknowledge its roots in judgments about future behavior and the virtual certainty that some of those judgments will be wrong. I have argued that the problem of some false positives does not swamp the societal risks of a much larger number of false negatives. But this calculation imposes upon officials a heavy obligation to treat everyone incarcerated as well as possible within the limits of budgets and security. The inmates are obviously in some kind of need; otherwise they would not have committed crimes in the first place. The need may be skills, job contacts, counseling--and the list is of course much longer. On moral grounds, the attack on social services as a justification for imprisonment increases the requirements to provide human services after incarceration. Incapacitative emphasis should have the paradoxical effect of strengthening the human service role in contemporary corrections.

Thus what is often bemoaned as the end of the rehabilitative ideal can and should be the basis for a new beginning. It rests not only on general rights but also on specific obligations created by a new purpose for the institution of imprisonment. My strategy tries to liberate correctional human service by asking it to do only what it can, and by relieving it of any responsibility for public safety. If conducted in that spirit it may make some contribution to public safety as well, but that is not the reason for doing it. The goals of incapacitation and correctional programs, commonly thought to be in bitter competition, can be closely linked. Implementation of this recognition should strengthen

the institution once its primary focus is changed. The advocates of correctional rehabilitation should find this acceptable.

A specific implication shifts the focus of deciding what services to provide from the administrator or the social worker to the prisoner himself. To resist this is to remain wedded to a coercive rather than a facilitative view of correctional programs. Furthermore, resistance means that the incapacitative emphasis of the institution itself has not really been accepted. Old attitudes die hard, but officials will have to anticipate that most of the services requested will be oriented not to the inner life of the prison but to life outside it. Contact visits truly useful skills, and expanded use of work release are only examples. The catalogue will be expanded further when officials learn another lesson they may reflexively resist: prisoners must be asked what they believe would help them. Traditional resistance on the right has been accompanied, as in Milton Rector's statement that "our moral obligation is to act in accordance with our belief, not to distribute questionnaries,"[17] by an arrogance on the left. But from our perspective, correctional administrators and prison reformers should be in the business of distributing questionnaires. Moreover, these must be distributed not in the academy but in the prison yards.

A Sense of Limit

It is important not to exaggerate either the prospects for change or the benefits from the acceptance of my proposed strategy. Claiming too much will be as bad as missing the opportunity altogether. An unfounded optimism is not only unrealistic; it may be positively dangerous.

There is support for this fear in American correctional history: it is at periods of the most excessive claims that the greatest indignities have been wrought by the institutions of imprisonment.

The first risk is in claiming too much for the crime control that would result from the strategy. In recent years some analysts have made excessive estimates of the offense reductions that could flow from an incapacitative emphasis. Shinnar and Shinnar, for example, seem to suggest that if every person convicted of a violent crime were imprisoned for five years the rate of violent crimes could be reduced by as much as 80 percent.[18] But Joan Petersilia and Peter Greenwood have shown that only if every offender convicted of any adult felony, violent or not, regardless of prior record, were sentenced to a mandatory prison term of five years, might incapacitation lessen violent crime by as much as one-third. This policy incidentally would increase prison population by close to 450 percent.[19] A sentencing policy which would impose a five-year sentence for any person previously convicted of at least one adult felony would have prevented 16.0 percent of violent crimes and increased prison population by 190 percent. A sentencing policy requiring offenders to have prior convictions for violent offenses would have reduced violent crime by less than 7 percent, even with mandatory five-year sentences.

Thus Greenwood's work, admirably extended in this volume, shows that some writers who have supported the plea for an incapacitative emphasis have done the cause a disservice by claiming too much for it. There is no sweeping solution to the crime problem here, or anywhere else in the criminal justice system of a democracy. Even concerning

the effects of a plan limited to penal policy, there is simply too much we do not know. The crime reductions flowing from incapacitation may be larger than we hope for or smaller than we fear, depending upon how much additional deterrence is achieved. The offset from crimes committed by those who would be let out under our plan is another uncertainty. Offenses are not perfectly specialized; some offenders currently incarcerated for property crimes will undoubtedly commit crimes against the person if they are free to do so. No one knows how often such crime switching will occur with anything near precision. It seems fair to anticipate, however, that even if the absolute amount of crime were to increase marginally its composition might be influenced in the way I prefer. My entire proposal rests on a judgment that violent crime against the person is the most serious in our society, is the proper primary concern of the criminal justice system, and will be reduced significantly if unmeasurably by the imprisonment strategy proposed above.

Thus, without making excessive claims for crime reduction, the above plan attempts to mesh liberal and conservative concerns. For the left, it would reduce the number of people who are imprisoned, improve the conditions under which they are held, place efforts at human services in as facilitative a setting as possible, and break the cycle of self-filling facilities where this process currently exists. For the right, it would raise the probability that all convicted criminals will receive some kind of punishment, will place more types of offenders under some form of formal social control, might affect the composition of crime in ways that reduce its social corrosiveness, and responds to the legalist

call to have the law enforced. Some on each wing will feel that it does not go far enough; but that is precisely the kind of thinking that has precluded both consensus and change thus far.

Another constraint on my proposed strategy stems quite properly from the diffuse character of the criminal justice system itself. I have resisted the temptation, and so should others, to bolster our structure with efforts to mandate sentences or eliminate plea bargaining. For my purposes, such efforts are either fruitless or misguided. Judges and prosecutors will and should retain extensive discretion over when and how to apply policy guidelines. To the extent that I have not persuaded them, search-and-destroy attacks on their discretion will probably not add a great deal. In Franklin Zimring's words, messages and not mandates are contained in the proposal. This is not the place to write a new code of criminal procedure.

A third limit on both the acceptability and effectiveness of our proposal stems from the sensitive matter of race. The concentration on incapacitation of violent offenders will raise even further the already high disproportion of minority groups in the inmate population. This seems both an acceptable and desirable cost for a plan which, after all, benefits the broader minority population that is disproportionately victimized by violent crime. Beyond a general incapacitative emphasis, it will be aggravated by increased attention to the plight in specific cases of minority versus minority crimes.[20] But I recognize that, in the policymaking community which is overwhelmingly white, this implication may impose a major limit. I believe it to be misguided, but there it is.

Yet another obstacle may lie in the correctional bureaucracy. While in many jurisdictions my plan would affect the composition of the inmate population but not the size, in others it would probably reduce the absolute number of inmates. Where such reductions were substantial, one could anticipate opposition from guards' unions and even from high level bureaucrats. But surely the argument for a principled policy cannot be much weakened by this; on the contrary, to the extent that it is correct, it supports the view that inmate populations are inflated by considerations that have no place in an enlightened society. One can acknowledge the force of bureaucratic politics without making it the touchstone of a policy.

Fifth, under my proposal total correctional expenditures will increase, although imprisonment's share of the correctional budget will decline. An increase in correctional expenditure is foreordained by any program which increases the number of citizens subject to social control. However, the nature of investment in alternative forms of punitive social control differs fundamentally from expenditure on prison construction. There are no huge capital costs with long-range implications for capacity and thus for prison population. There can be flexibility in building design and utilization, and this flexibility will create opportunities to expand or contract facilities with relatively short lead times. To use a current bureaucratic cliche, there are advantages to be obtained from putting some of our institutions of punishment on a "soft money" budget. That is something we cannot do with the American megaprison.

Two other problems may be allowed to exhaust the author's candor. Under my proposal, some people who now go to jail may be forced to go to prison. This may occur, for example, in jurisdictions where violent crimes between members of minority groups are currently treated more leniently than similar interracial crimes. To the extent that this practice, ultimately racist in conception, plays a part, the flexibility in prison space may be less than it appears. However, a counterargument is equally plausible. An abandonment of both the link between punishment and incarceration, and also of the notion that the process itself is the punishment, could free a whole pool of new space now taken up by the jail. Even more than many prisons, jails would require extensive expenditure to raise facilities to adequate standards. (This is an argument for adopting a current-capacity limit on jail population as well.) But it is conceivable that my proposal can provide the basis for a broad reshaping of the entire institution of incarceration that will affect both prisons and jails.

The discussion of jails mirrors and epitomizes my position on prisons. The core of contemporary difficulties is the weight and power of the traditional American fusion of punishment and incarceration. Keep it, and relatively little progress can be made. Break it, and all sorts of possibilities appear. The notion will die hard. Its strength is reflected in the language, whose importance we have stressed throughout; Americans make the word "convict" cover both an assessment of guilt and a person locked up. But while the weight of the past is considerable, it cannot be allowed to swamp the policy choices which ultimately determine the future.

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TRADEOFFS BETWEEN PREDICTION ACCURACY AND SELECTIVE INCAPACITATION EFFECTS

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CONTENTS

INTRODUCTION

The "incapacitation effect" of a sentencing policy refers to those crimes that are prevented while offenders are incarcerated. Incapacitation theory holds that the length of an individual's criminal career is unaffected by how he is sentenced. Incarceration merely subtracts time from the total period than an offender is active. The higher the rate at which he would commit crime while he is free, the greater the incapacitative effects of any given sentence. For purposes of incapacitation analysis, the sentencing policy for any homogeneous group of offenders can be described by q,--the probability of arrest and conviction, J--the probability of incarceration given conviction, and S--the expected sentence length. The expected sentence for any one crime is the product--qJS. Increasing qJS increases the prison population and decreases crime. The amount of crime an offender will commit under a sentencing policy qJS, expressed as a fraction of the amount he would commit if he were never incarcerated is

$$\eta = \frac{1}{1 + \lambda qJS} .$$

where λ is the rate at which crimes are committed.

The principal issue in estimating incapacitation effects lies in determining the crime rates of individual offenders. This can be done by two methods; examining their arrest records or asking them directly. This analysis is based on the second method, relying on a survey which was administered to 2200 male prison and jail inmates in California,

Michigan, and Texas in 1977 (Peterson, et al, 1982.) Combined with official record data from their case folders, this survey provided detailed information on each inmate's prior criminal activity, drug use, employment, juvenile history, and contacts with the criminal justice system. A variety of reliability and validity analyses that have been performed on this data (Marquis and Ebener, 1981; Chaiken and Chaiken, 1982), checking each inmate's responses for both its internal consistency and its agreement with official record information, indicate that the responses are unbiased along important dimensions such as age, race, main conviction crime, or self-reported level of criminal activity.

In a recent study (Greenwood and Abrahamse, 1982), we developed a scale for distinguishing among offenders by their level of criminal activity. The seven binary variables that make up this additive scale are:

1. Incarcerated more than half of the two year period preceding the most recent arrest.
2. A prior conviction for the crime type that is being predicted.
3. Juvenile conviction prior to age 16.
4. Commitment to a state or federal juvenile facility.
5. Heroin or barbiturate use in the two year period preceding the current arrest.
6. Heroin or barbiturate use as a juvenile.
7. Employed less than half of the two year period preceding the current arrest (excluding time incarcerated).

This scale was used to distinguish between low-, medium-, and high-rate burglars and robbers, among offenders convicted for those crimes. Inmates convicted of more serious crimes against the person such as homicide, rape or assault, or less serious property crimes such as theft, forgery or fraud, all tended to commit robbery and burglary at much lower rates than those convicted of these crimes. In our analysis offenders who score only 0 or 1 on this scale are considered low-rate, those who score 2 or 3 are medium-rate, and those who score 4 or more are high-rate. The distribution and mean offense rates for each group, in each of the three sample states is shown in Table i-1

Table i-1

		California		Michigan		Texas	
		Robbery	Burglary	Robbery	Burglary	Robbery	Burglary
Low	N	36	37	52	25	49	70
	λ	2.2	12.6	6.1	71.6	1.4	6.0
Medium	N	58	69	72	65	49	92
	λ	11.0	87.6	11.7	34.0	5.4	20.5
High	N	84	54	26	34	19	41
	λ	30.9	156.3	20.6	101.4	7.7	51.1

For California and Texas we examined a number of alternative sentencing policies designed to increase incapacitation effects. There were considerable differences between the two states. Among California robbers we found that a selective incapacitation strategy that reduced

terms for low and medium-rate robbers, while increasing terms for high-rate robbers, could achieve a 15 percent reduction in the robbery rate with only 95 percent of the current incarceration level (population). An unselective attempt to increase incapacitation effects by increasing terms for all robbers equally requires a 25 percent increase in population to bring about the same 15 percent reduction in crime. Among burglars, the best selective policy required a 7 percent increase in prison population to bring about a 15 percent reduction in crime.

In Texas, additional incapacitation effects are much more expensive. For robbers it takes a 30 percent increase in incarceration to achieve a 10 percent reduction in crime. For burglars, a 15 percent increase in incarceration is required to achieve a 10 percent reduction in crime. This low effectiveness is due to the low rate of offending among Texas inmates.

If any jurisdiction decided to adopt some form of selective incapacitation for its sentencing policy, one of the issues it would have to address is---what characteristics of individual defendants are appropriate predictors for selective incapacitation purposes?

From a statistical viewpoint, the answer is simple: A characteristic is a valid predictor, or basis for discrimination, only if it is correlated with individual rates of offending. For instance, some state penal codes allow the court to impose a longer period of imprisonment if the defendant has served a prison term in the past. Our analysis (Greenwood and Abrahamse, 1982) found that the number of prior prison terms served by a defendant was not correlated with his rate of offending. Therefore, the number of prior prison terms served is not a

statistically valid characteristic for determining selective incapacitation policies.

From a legal or ethical viewpoint the issue is more difficult--which of the individual characteristics that are statistically correlated with offense rates will we allow the court to use in determining sentences, as a matter of public policy? If marital status or education level are associated with individual offense rates, will we allow the court to consider these factors in sentencing?

Before anyone objects to the two factors we have used as an example, marital status and education level, on the grounds that they are clearly inappropriate, we must point out that it is characteristics such as these that comprise the basis for the social history section contained in many presentence reports. If they are clearly inappropriate factors, why are they brought to the court's attention in many sentencing hearings today?

The answer, of course, is that they are considered informally, as part of the court's overall evaluation of a defendant. They are used to make intuitive judgements about a defendant's future risk to the community and his need for, or amenability to, treatment. In this context it is easier to approve of their use.

The harder question appears when we move away from rehabilitation as a primary basis for sentencing and adopt instead the objectives of punishment or incapacitation. It is much more difficult to justify longer terms for defendants who are not married or did poorly in school--factors which have no direct relationship with their criminal conduct.

In the study described earlier (Greenwood and Abrahamse, 1982) we developed a seven factor scale for identifying high-rate offenders. Two of the factors were determined from the defendant's adult criminal record--prior convictions for the crime being predicted and incarceration for more than half of the two years preceding the start of the current term. Two factors were determined from the juvenile record--conviction prior to the 16th birthday and commitment to a state juvenile facility.

The last three factors are not necessarily determined from either the adult or juvenile record, although two of them might be: (1) use of hard drugs in the two year period preceding the current commitment; (2) use of hard drugs as a juvenile, and (3) employed less than half of the preceding two years of street time. Drug use can be determined either from the arrest record or by observation or tests recorded at the time of arrest, and included in subsequent probation reports.

In the remainder of this paper we describe a sensitivity analysis designed to determine how well more restrictive sets of predictor variables identify high-rate robbers, and what the consequences are, in terms of predicted incapacitation effects, of using these more restrictive predicators. Specifically, we test two predictive scales that are subcomponents of the seven-factor-scale described previously, by applying various selective sentencing policies, based on these factors, and estimating the predicted effects on crime rates.

ALTERNATIVE PREDICTION SCALES

In this analysis we will consider the three prediction scales described in Figure 1. Scale A uses only the two factors derived from the adult record--"prior convictions for robbery" and "incarcerated more than 50 percent." The three possible levels on the scale (0,1,2) divide the sample into three predicted offense rate categories--low, medium and high.

Scale B uses the two factors from Scale A plus the two juvenile record factors--"conviction prior to the 16th birthday" and "commitment to a state juvenile facility." To get a reasonable distribution of the sample across predicted offense rate categories, we divide them as follows: 0 = low; 1,2 = medium; 3,4 = high. Scale C is the seven-factor-scale described previously.

Table 1 shows how the three different scales divide up the incarcerated population of robbers in California. Using Scale A, 57.9 percent are classified low-rate and only 10 percent are high-rate. Using scale C. 43.4 percent are high-rate.

Table 2 shows the actual average annual offense rates for offenders in the three groups on each scale. The more complex scales do a better job of sorting out high- and low-rate offenders. For instance, on the simplest scale (A), the predicted high-rate offenders have an average offense rate of 32.0 robberies per year, but only 10 percent of the population is identified as high-rate. Scale C identifies 43.4 percent of the population as high-rate, with an average offense rate of 30.8 robberies per year--almost as high. If we increase the threshold for

high-rate offenders on Scale C from 4 to 5 (number of factors required to be high-rate), the average offense rate for the high group would be raised considerably, while still retaining many more than 10 percent of the population in this category.

FACTORS

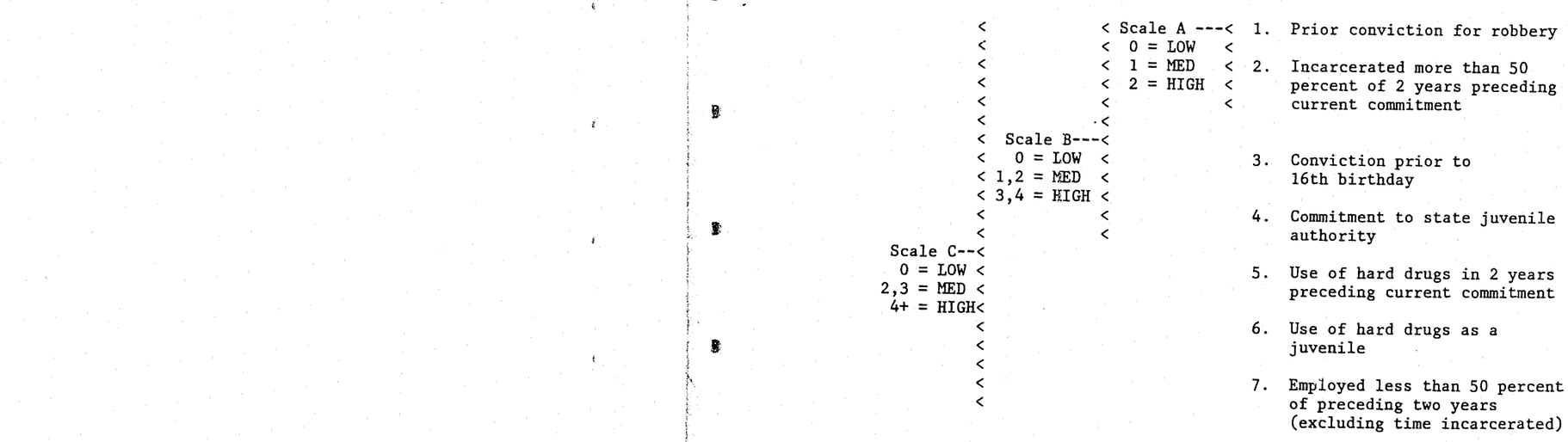


Fig. 1

Table 1

PERCENT OF INCARCERATED POPULATION

Predicted Offense Rate Category	SCALE A	B	C
Low	57.9	33.0	25.1
Medium	32.1	45.0	31.5
High	10.0	22.0	43.4
	100.0	100.0	100.0

Table 2

AVERAGE ANNUAL OFFENSE RATE (λ)

Predicted Offense Rate Category	SCALE A	B	C
Low	6.7	3.7	2.0
Medium	27.3	21.3	10.1
High	32.0	27.0	30.8

IMPACT OF ALTERNATIVE PREDICTION SCALES ON INCAPACITATION EFFECT

Selective incapacitation policies increase the average time served by high-rate offenders in order to reduce the total amount of incarceration required to achieve a given crime rate. The ultimate test of any prediction scale is the total amount of incarceration required to reduce crime to a specified level. In order to test the three prediction scales described in the previous section, we estimated the robbery rate and total incarcerated population of convicted robbers that would result from different sentencing policies that make use of these scales.

We consider three different selective sentencing policies:

1. Increase Terms For High Rate Offenders -- The predicted low and medium-rate offenders are sentenced as they are now. The proportion of high-rate offenders sentenced to jail and prison remains unchanged. The terms of high-rate offenders in prison are extended by a percentage of their current term.
2. Selective Imprisonment -- All low-rate offenders who are incarcerated are sentenced to jail for one year. All high-rate offenders who are incarcerated are sentenced to prison. The fraction of convicted offenders who are incarcerated, in all three groups, and the sentences of medium-rate offenders remain unchanged. The terms of the high-rate offenders are increased by a percentage of their current term.
3. Imprisonment for High-Rate Offenders Only -- The fraction of convicted offenders who are incarcerated remains unchanged. All predicted low and medium-rate offenders who are

incarcerated receive jail terms of one year. All high-rate offenders who are incarcerated receive prison terms, which are extended by a fixed percentage of their current terms.

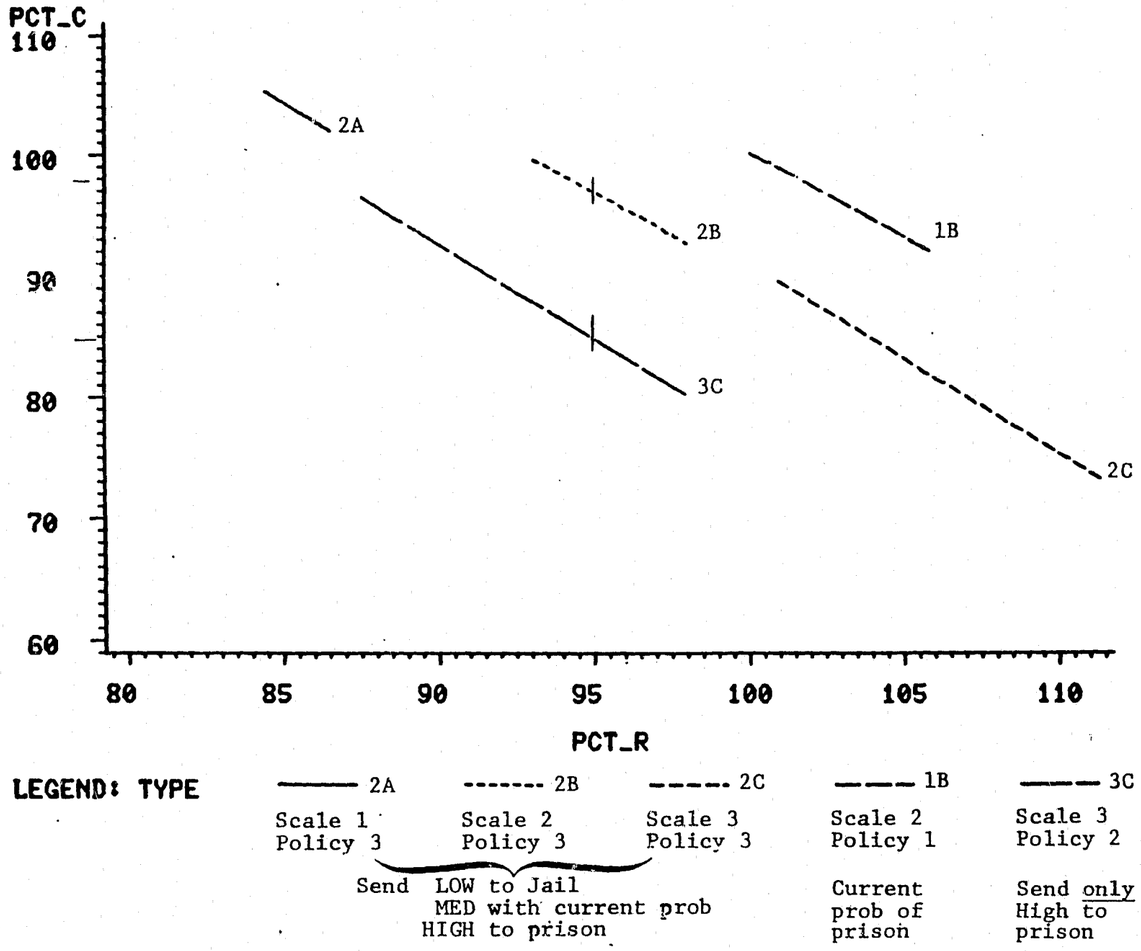
In all three policies the fraction of convicted offenders who are incarcerated in either prison or jail remains unchanged. The policies differ in who goes to prison and who goes to jail. In all three policies we consider a range of prison terms for high-rate offenders, extending from the current average terms to four times as long.

The predicted robbery rate and total incarcerated population of convicted robbers, both expressed as a percentage of their value under current policy, is plotted in Fig. 2 for some combinations of the prediction scales and selective sentencing policies described above. The plots labeled 2A, 2B, and 2C depict the results for Policy 2, Selective Imprisonment, using the three scales--A, B and C. In each case the range of the plot, from left to right, represents various prison term lengths for high-rate offenders ranging from their current length to terms four times as long.

Policy 2A results in a significant drop in the incarcerated population because of the large number of predicted low-rate offenders who are shifted to jail and the small number of high-rate offenders shifted to prison. If plot 2A were extended to the right, it appears that it would provide a greater reduction in crime, under Policy 2, than using either scales B or C. This is because the average offense rate of the high-rate offender identified by scale A is higher than that of scale B or C.

However, the right end of plot 2A already represents terms for the predicted high-rate offenders that are four times their current length,

Figure 2



LEGEND: TYPE

2A	2B	2C	1B	3C
Scale 1 Policy 3	Scale 2 Policy 3	Scale 3 Policy 3	Scale 2 Policy 1	Scale 3 Policy 2
Send LOW to Jail MED with current prob HIGH to prison			Current prob of prison	Send only High to prison

averaging 16 years. The resulting differences in terms between predicted low- and high-rate is surely too great from an equity standpoint. Furthermore, 16-year terms exceed the prediction capabilities of the model, which assumes that terms are only a fraction of the entire career length. In fact, most of the high-rate offenders would have ended their careers within the 16 year period. Scale A is not effective for selective incapacitation because it fails to identify a significant number of high-rate offenders.

Scale B can only be used for Policies 1 and 2. If we tried to use it for Policy 3, shifting all low- and medium-rate offenders to jail, we end up with crime rates higher than the current rate, even increasing the terms of high-rate offenders by a factor of 4.

Comparing plots 2B and 3C we see that at 95 percent of the current incarcerated population 3C results in a 15 percent reduction in robberies, while 2B results in only a 2 percent reduction. As we have defined these policies, 2C results in an increase over the current incarcerated population and 3B results in an increase over the current crime rate, no matter how long the terms of high-rate offenders.

Our original 7 factor scale divided the sample of incarcerated Texas robbers into 3 groups with average annual robbery rates of 1.6, 4.0 and 6.5. Forty percent were in the predicted high-rate category and 36 percent were predicted low-rate. The 2- and 4-factor prediction scales do considerably worse. First, they fail to identify many high-rate offenders. Using the same break points on each scale that we used for California, Scale A only identifies 3 percent of the sample as high-rate; Scale B only identifies 4 percent. This is too small a

number of high-rate offenders to generate stable estimates of their average offense rate. Therefore on Scales A and B we combined the predicted medium- and high-rate groups.

Using Scale A, the adult criminal record factors only, 32 percent of the sample were predicted to be high-rate and 68 percent low-rate. The average annual offense rates for these 2 groups are 6.6 and 3.0 respectively. Scale B did not work at all. The predicted high and low rate groups had virtually the same average offense rate---4.1 robberies per year. Comparing Scales A and C, it is obvious from the differences in the distribution of the sample that selective sentencing policies based on Scale C will be much more efficient than those based on Scale A. They will also be more equitable. Scale C identifies a large pool of inmates with very low offense rates (1.6 robberies per year) that are good candidates for shorter terms. Reducing their terms will not substantially increase the expected robbery rate. Scale A does not identify such a group. In order to achieve the same amount of crime reduction, the high-rate offenders identified by Scale A would have to be sentenced to much longer terms than the high-rate offenders identified by Scale C.

For instance, suppose a sentencing policy is adopted that reduces terms for medium and low-rate offenders to 36 months. Using Scale C, if terms for high-rate offenders are increased by 50 percent, there would be a 4 percent drop in crime and no increase in prison population. However, if Scale A were used to identify high-rate offenders, their terms would have to be increased by 250 percent to reach the same prison population and a 4 percent decrease in crime.

CONCLUSIONS

Incapacitation is the only means for which there is substantial empirical evidence to suggest that marginal changes in sentencing practice can affect crime rates. Selective incapacitation, an approach to sentencing which involves attempting to increase to proportion of high-rate offenders incarcerated, is a means of minimizing the number of offenders that must be incarcerated to achieve a given level of crime.

A selective incapacitation sentencing policy requires two components: (1) a prediction scale that distinguishes among offenders according to their expected rate of offending and (2) a sentencing rule which assigns shorter terms to predicted low-rate offenders and longer terms to those that are high-rate.

A prediction scale can have many components. In our example we tested scales with 2, 4, and 7 components. In a correctly constructed scale, the more components considered, the greater the differentiation between low-rate and high-rate offenders. Increasing the number of components in the prediction scale increases the effectiveness of the resulting sentencing policy in reducing either crime rates or the number of offenders incarcerated, or both.

In any jurisdiction there may be considerable debate about what characteristics should be considered as morally acceptable components of the prediction scale. Most people who will accept the concept of selective incapacitation will also accept using prediction factors derived from the characteristics of the current offense and the defendant's prior criminal record. Unfortunately, the few characteristics of the

current offense that were included in our data base did not distinguish among high- and low-rate offenders, except the charged offense. Although most offenders who commit either robbery or burglary are also likely to have committed several other types of offenses, defendants charged with robbery are much more likely to be high-rate robbers than defendants charged with other crimes. Other characteristics of the current offense that might be tested for their association with rates of offending are: type of arming, whether the offense was committed alone or with a group, or the degree of planning exhibited in the crime.

Any other defendant characteristics that might be considered as potential predictors are bound to be more controversial. Race would not be acceptable and in fact is not a useful predictor. We have used predictors based on juvenile record, drug use and employment. Each of these in turn is likely to be more controversial. In determining which factors are acceptable it must always be remembered that excluding predictors that are statistically correlated with individual offense rates, will increase the number of offenders that must be incarcerated to achieve a given level of crime.

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Section 3

BAIL/PRETRIAL DETENTION PRACTICES

93281

Promoting Accountability in Making Bail Decisions: Congressional Efforts at Bail Reform

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PROMOTING ACCOUNTABILITY IN MAKING BAIL DECISIONS: CONGRESSIONAL EFFORTS AT BAIL REFORM

I. INTRODUCTION

In order to understand and appreciate the policies underlying recent Congressional bail reform efforts, it is first important to examine Congressional attitudes toward the general subjects of criminal justice and law enforcement. Although some elected representatives still promote criminal justice reforms using the "tough" law and order rhetoric of the 1960's, a more sophisticated rationale has slowly evolved during the past few years, a rationale based on limiting the discretion of decision-makers in the system by means of greater public accountability. Political considerations are not, of course, unimportant; but it is a serious mistake to assume that proponents of relatively modest criminal justice reforms are engaging in mere political posturing.

Bail reform is only the latest in a series of criminal justice bills, undertaken primarily under the leadership of Senator Edward Kennedy, designed to bring a new degree of candor and accountability to our criminal justice system and provide some sunlight into how the system functions in practice. In addition, the bail reform effort, like the criminal sentencing reforms which preceded it, is designed to make the system fairer - for the accused, the victim and the society as well. Whether one focuses

on bail, the indeterminate sentence, the parole release function or the lack of effective procedures for the appellate review of criminal sentences, the ultimate goal of these reforms is the same - to limit discretion and force the decision-maker to be held more accountable.

Bail reform has engendered a great deal of controversy and debate, but the debate has largely been irrelevant and misguided. In commenting on Senator Kennedy's proposal (and similar proposals advanced by other members of Congress), proponents and critics alike have, unfortunately, focused on the wrong issues and ignored the type of enlightened debate that would permit evaluation of the proposal on the merits.

What exactly are the policies underlying bail and sentencing reform, as well as the ongoing effort to reform the federal criminal code? In each of these areas, an attempt has been made to bring a degree of candor and openness into the murky world of existing law, thereby reducing unfairness and hypocrisy. For example, when Senator Kennedy calls for the abolition of parole release, it is not because he wants convicted offenders to serve longer terms of imprisonment (the proposal expressly prohibits such a result as a general rule), but because he recognizes that the existing parole system is both unfair in practice and promotes public cynicism through the early release of offenders sentenced to much longer terms of imprisonment.

The victim, defendant and community are misled by existing parole practices. Judicial sentencing policies are an even better example of unbridled discretion with little accountability.

When Senator Kennedy advocates that judges candidly be required to take into account consideration of a suspect's dangerousness in making the bail release decision, he is quick to remind his critics that such a consideration is commonly considered today sub rosa, through the arbitrary use of money bail.

Of course, these and other criminal justice reforms are also designed to strengthen the hand of law enforcement personnel and are so perceived. But there is a pragmatic utility to these reforms which has largely been lost on proponents and critics alike. While proponents often talk of the reforms in terms of making society safer, and while critics focus on perceived new threats to civil liberties brought about by such proposals, Senator Kennedy concentrates his arguments on reducing the arbitrariness of existing unreviewable discretion and promoting public confidence in the system. Public perception of how the system works is viewed as an important element in promoting respect for that system. Thus, the pretrial detention proposal advocated by Senator Kennedy cannot be viewed in isolation; it is but one part of a much larger bail reform package. Public consideration

of dangerousness is coupled with bail reforms designed to limit the discretion of judges to set prohibitive money bail as a way to incarcerate offenders perceived to be dangerous.

In issue after issue, Senator Kennedy's test for evaluating the merits of a criminal justice reform proposal is the same - how does it compare with existing law? Will it make the system more accountable? Regardless of the rhetoric advanced on its behalf, what will be the impact of the proposal if enacted? Does it address law enforcement concerns? Will it make the system more just in the eyes of the public, the victim and the defendant?

II. BAIL REFORM

A. Confronting the Issue of Pretrial Detention

Senator Kennedy's bail reform proposal - found in Chapter 35 of S. 1630, "The Criminal Code Reform Act of 1981" - substantially revises the Bail Reform Act of 1966.* The new bill expressly addresses such issues as consideration of defendant dangerousness in setting nonfinancial conditions of release, the arbitrary imposition of financial conditions which often cannot be satisfied by a defendant thereby resulting in incarceration pending trial, and the need to expand the list of statutory release conditions.

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*18 U.S.C. 3146 et seq.

In addition, the proposed bill expressly permits the pretrial detention of defendants in those cases where no conditions of release will assure appearance at trial or the safety of the community or other persons. Pretrial detention, based on considerations of defendant dangerousness is, therefore, given statutory sanction. At the same time, the code provisions dramatically alter the existing use of money bail.*

The Bail Reform Act was enacted with one overriding principle in mind - in non-capital cases a person is to be ordered released pretrial under those minimal conditions reasonably required to assure presence at trial. Danger to the community and the protection of society are not to be considered as release factors under current law.

Considerable criticism has been leveled at the Bail Reform Act in the years since its enactment because of its failure to recognize the problem of crimes committed

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*The concept of permitting an assessment of defendant dangerousness in the pretrial release decision has been widely supported, and has been specifically endorsed by such diverse groups as the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the National District Attorneys Association, and the National Association of Pretrial Service Agencies. In addition, the laws of several states recognize the validity of weighing the issue of the risk a released defendant may pose to community safety. The bail provisions of the District of Columbia Code (D.C. Code §§ 23-1321 et seq.), passed by the Congress in 1970, specifically recognize that defendant dangerousness is an appropriate consideration in setting conditions of pretrial release and may also serve as a basis for pretrial detention.

by those on pretrial release.* In just the past year, both the President and the Chief Justice have urged amendment of federal bail laws to address this deficiency. In its final report, the Attorney General's Task Force on Violent Crime summarized what is increasingly becoming the prevalent assessment of the existing Bail Reform Act:

> "The primary purpose of the Act was to deemphasize the use of money bonds in the federal courts, a practice which was perceived as resulting in disproportionate and unnecessary pretrial incarceration of poor defendants, and to provide a range of alternative forms of release. These goals of the Act - cutting back on the excessive use of money bonds and providing for flexibility in setting conditions of release appropriate to the characteristics of individual defendants - are ones which are worthy of support. However, 15 years of experience with the Act have demonstrated that, in some respects, it does not provide for appropriate release decisions. Increasingly, the Act has come under criticism as too liberally allowing release and as providing too little flexibility to judges in making appropriate release decisions regarding defendants who pose serious risks of flight or danger to the community."**

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*See, e.g., H.R. Rep. No. 91-907, 91st Cong., 2d Sess. 87-104 (1970). See, also, Preventive Detention, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 91st Cong., 2d Sess. (1970); Bail Reform, Hearings before the Subcommittee on The Constitution of the Committee on the Judiciary, United States Senate, 97th Cong., 1st Sess. (September 17, and October 1, 1981).

**Final Report of the Attorney General's Task Force on Violent Crime, August 17, 1981 at 50-51.

In politics, perception is reality. This is particularly so when crime is the issue. One can debate the merits of the Task Force's conclusion; statistics are cited by both proponents and critics as to whether the existing bail system is effective as a crime control device.* But it is clear that the current constraints of the Bail Reform Act fail to grant the courts the authority to impose conditions of release geared toward assuring community safety, or the authority to deny release to those defendants who pose an especially grave risk to the safety of the community. If a court believes that a defendant poses such a danger, it faces a dilemma - either it can release the defendant pretrial despite these fears, or it can find a makeweight reason - such as risk of flight - to detain

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*Advocates of pretrial detention appear to have had the better of the argument in recent years. In a recent study of release practices in eight jurisdictions, approximately one out of every six defendants in the sample studied were rearrested during the pretrial period - one-third of these defendants were rearrested more than once, and some were rearrested as many as four times. Lazar Institute, Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact 48 (Washington, D.C. August 1981). Similar levels of pretrial criminality were reported in a study of release practices in the District of Columbia, where thirteen percent of all felony defendants released were rearrested. Among defendants released on surety bond, which under the District of Columbia Code, like the Bail Reform Act, is the form of release reserved for those defendants who are the most serious bail risks, pretrial rearrest occurred at the alarming rate of twenty-five percent. Institute for Law and Social Research, Pretrial Release and Misconduct in the District of Columbia 41 (April 1980). [INSLAW]

the defendant, usually by imposing high money bond. To some, such as Senator Kennedy, it is intolerable that the law denies judges the tools to make honest public decisions regarding the release of such defendants.*

*There is another reason which likely accounts for arbitrariness in the bail decision - the lack of any agreed upon criminal justice policy underlying bail. Just as recent research has documented that the problem of sentencing disparity can be traced, in part, to the lack of any stated policy underlying sentencing decisions, so, too, does the absence of policy statements and guidelines assure disparity in the bail release decision. Some judges set high bail as a means of imposing a form of "pretrial punishment" on defendants accused of serious crimes or subject to extensive prior records. In one study, "helping to ensure that individuals who might be dangerous to the community are not granted pretrial release," was ranked second in importance by police chiefs, fifth by sheriffs, sixth by judges and eighth by county executives and district attorneys. In contrast, public defenders ranked this goal fourteenth, or third from last. In addition to the lack of policy statements, the absence of narrow, presumptive bail guidelines results in a situation where the amount of bail depends on the attitude of the particular judge who makes the bail decision. Consistent with recent research involving sentencing patterns, it appears that each judge, in determining whether or not to grant bail and on what conditions, develops his own intuitive pattern. There are no guidelines, no norms to guide judicial discretion. The result is almost a foregone conclusion -- arbitrariness and disparity in the bail release decision.

The current debate over pretrial detention focuses primarily on three issues: first, whether pretrial detention is constitutionally permissible; second, whether a preventive detention statute that is appropriately narrow in scope, and that provides necessarily stringent safeguards to protect the rights of defendants, will be sufficiently workable, as a practical matter; and, third, whether the premise of a pretrial detention statute - that judges can predict with an acceptable degree of accuracy which defendants are likely to commit further crimes if released - is a reasonable one.

With respect to the first two questions, experience with the pretrial detention provisions of the District of Columbia Code is a useful reference.* Although this statute was enacted in 1970, it's constitutionality has been squarely addressed only recently. In United States v. Edwards,** the District of Columbia Court of Appeals en banc upheld the constitutionality of the statute. While the opinion of the court addressed a variety of constitutional issues, the decision focused on, and ultimately rejected, the two most commonly raised arguments that pretrial detention

*D.C. Code §§ 23-1321 et seq.

**No. 80-294 (D.C. App. May 8, 1981), petition for cert. filed July 8, 1981.

is unconstitutional: that the Eighth Amendment's prohibition on excessive bail impliedly guarantees an absolute right to release pending trial, and that pretrial detention is violative of the Due Process Clause of the Fifth Amendment in that it permits punishment of a defendant prior to adjudication of guilt. In its review of the Eighth Amendment issue, the court exhaustively examined both the origins of the excessive bail clause and the case law interpreting it. The court concluded that the purpose of the amendment was to limit the discretion of the judiciary in setting money bail in individual cases, and not to limit the power of Congress to deny release for certain crimes or certain offenders. With respect to the Due Process issue, the court ruled that pretrial detention is not intended to promote the traditional aims of punishment, such as retribution or deterrence, but, rather, is designed "to curtail reasonable predictable conduct, not to punish for prior acts." Thus, under the Supreme Court's decision in Bell v. Wolfish, the D.C. statute is a constitutionally permissible regulatory, rather than a penal, sanction.*

*Id. at 20-25 (slip op.). In Bell v. Wolfish, 441 U.S. 520 (1979), the Court rejected the contention of persons detained prior to trial that certain conditions of their confinement constituted punishment that was impermissible under the Fourth Amendment and violative of the presumption of innocence, two arguments frequently raised in opposition to pretrial detention. The petitioners did not attack the constitutionality of the initial decision to detain and the Court specifically reserved any determination of this issue. 441 U.S. at 534 and n. 15.

Whether a pretrial detention statute can be effectively utilized is an additional concern in assessing the practical utility of pretrial detention. The D.C. statute permits pretrial incarceration of certain designated suspects on the ground that their release would pose a danger to the community. The statute also establishes detailed procedural protections in those cases where the prosecutor desires to invoke the statute.

But the statute has proven to be largely ineffective. Two primary reasons are given for its limited utility: the procedural devices are cumbersome and the statute requires the prosecutor to surrender evidence to the defendant early in the proceedings, before the government's theory of the case may have crystalized and before a final judgment can be made as to the nature and type of evidence to be used at trial.

More importantly, prosecutors see no reason to invoke the detailed procedures of the statute when, instead, the existing bail system affords them an easier opportunity to secure the jailing of a suspect pending trial. This is accomplished under the guise of requesting high money bail as a way to protect against the likelihood of the suspect's flight. Thus, the prosecutor and courts engage in a charade by considering the nature and degree of the defendant's "dangerousness" sub rosa while publically considering only the issue of the defendant's likelihood of flight.

In this way, the prosecutor avoids having to present his evidence, meet stringent procedural prerequisites or adhere to a vigorous timetable.*

The question whether future criminality can be predicted - an assumption implicit in permitting pretrial detention based on perceived defendant dangerousness - is the most difficult issue confronting reformers. The presence of certain combinations of offense and offender characteristics, such as the nature and seriousness of the offense charged, the extent of prior arrests and convictions, and a history of drug addition, have been shown in some studies to have a strong positive relationship to predicting the probability that a defendant will commit a new offense while on release.** At the same time, it cannot be disputed - especially by those legislators who call for the elimination of parole release based on the argument that predicting future dangerousness is unfair and uncertain even as to

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*Use of high money bond to detain defendants has been cited as the reason for the infrequent use of the D.C. Code pretrial detention statute over much of its history. INSLAW study, supra, at 45.

**INSLAW study, supra. Predictions of future behavior with respect to the issue of appearance are already required in all release decisions under the Bail Reform Act, yet the INSLAW study suggests that pretrial rearrest may be susceptible to more accurate prediction than nonappearance. Furthermore, current law authorizes judges to detain defendants in capital cases and in post-conviction situations based on predictions of future misconduct. (See, e.g., 18 U.S.C. 3146). Similarly, a federal magistrate may detain a juvenile under 18 U.S.C. 5034, pending a juvenile delinquency proceeding, in order to assure the safety of others.

those offenders already convicted - that the most serious obstacle to justifying a pretrial detention statute is this problem of predicting future behavior.

The answer offered by legislators is to do an end run on the problem by focusing on current bail procedures - where such predictions are made sub rosa. Whatever the problems raised by publically providing for a procedure which requires prediction of future danger, the existing bail system makes exactly the same prediction without any accountability, all under the guise of money bail and articulated considerations of "likelihood of appearance."

A substantial minority of federal defendants have, in fact, been detained pending trial, primarily because of an inability to meet conditions of release.* This problem

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*In a study evaluating the demonstration pretrial services agencies established under 18 U.S.C. 3152, of 31, 108 federal defendants, 4766 (approximately fifteen percent) were never released. Administrative Office of the United States Courts, Fourth Report on the Speedy Trial Act, Title II, June 29, 1979 at Table III-1. See, also, United States v. Melville, 306 F. Supp. 124, 127 (SDNY 1969), where Judge Frankel noted that "the defendants now before the court have not in terms been denied all possibility of release pending trial. They are to be freed, the commissioner has held, upon the posting of bail bonds of from $100,000 to $300,000 . . . But it is apparent that in this instance, as in many others familiar to all of us, the statement of the astronomical numbers is not meant to be literally significant. It is a mildly cynical but wholly undeceptive fiction, meaning to everyone 'no bail.' There is, on the evidence adduced, no possibility that any of these defendants will achieve release by posting bond in anything like the amount which has been set."

was recently addressed by the Department of Justice:

> "That such instances of de facto detention of dangerous defendants would occur is hardly surprising . . . [C]urrent law places our judges in a desperate dilemma when faced with a clearly dangerous defendant seeking release. On the one hand, the courts may abide by the letter of the law and order the defendant released subject only to conditions that will assure his appearance at trial. On the other hand, the courts may strain the law, and impose a high money bond ostensibly for the purpose of assuring appearance, but actually to protect the public. Clearly, neither alternative is satisfactory. The first leaves the community open to continued victimization. The second, while it may assure community safety, casts doubt on the fairness of release practices."*

Certain bail reform proposals - particularly one recently advanced by the Koch administration in New York - call for an irrebuttable presumption of "risk of flight" in cases involving certain designated serious felonies. The Koch proposal is based on the seemingly logical premise that the more serious the crime, the more likely the possibility of the suspect's flight. Thus, the law would create an irrebuttable presumption that prohibits a judge from bailing a suspect charged with such a serious crime. Pretrial detention is, therefore, secured through the back door. Community safety and predictions of the suspect's dangerousness are formally ignored since the entire bail procedure is couched in traditional terms of flight and likelihood of appearance. In actuality, however, it is consideration of a suspect's predicted danger if released on bail that lies at the heart of such proposal. But this approach has at least two critical flaws: first, one can question the statistical correlation between the seriousness of the offense and the likelihood of appearance; some of the most serious offenses - for example, murder and rape - are crimes where the likelihood of flight is not at all statistically demonstrable. Second, insofar as the bill maintains the purity of a bail process that deals only in "code" words about appearance and flight, while its real purpose is to confront the problem of a suspect's dangerousness, it reinforces, indeed encourages, a continuation of the existing system, with its lack of candor and accountability.

*Bail Reform, Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Cong., 1st Sess. (September 17 and October 1, 1981) (Testimony of Jeffrey Harris, Deputy Associate Attorney General).

Providing statutory authority to conduct a hearing focusing on the issue of defendant dangerousness, and permitting an order of detention when a defendant poses such a risk to others that no form of conditional release is sufficient, allows the courts candidly to address the issue of pretrial criminality. It is also fairer to the defendant than the indirect method of achieving detention through the imposition of financial conditions beyond his reach. The defendant would be fully informed of the issue before the court, the government would be required to come forward with information to support a finding of dangerousness, and the defendant would be given an opportunity to respond directly.

B. Section 3502 of S. 1630

Subsection (a) of Section 3502 of the proposed federal criminal code [attached] provides that when a person charged with an offense is brought before the court, the judge is required to pursue one of four alternative courses of action: (1) release the person on his personal recognizance, or upon his execution of an unsecured appearance bond; (2) bail the person subject to one or more release conditions listed in the section; (3) if the arrested person is already on bail or other conditional release, order the person temporarily detained pending a hearing; or (4) order the detention of the person after a hearing pursuant to the section.

Subsection (b) requires the judge to release the person on his own recognizance, or upon execution of an unsecured appearance bond in a specified amount, unless the judge determines that such release will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community. Like the Bail Reform Act, Section 3502 of the proposed code emphasizes release on personal recognizance or unsecured appearance bond for persons who are deemed to be good pretrial release risks. However, unlike current law, in making the determination whether release under this subsection is appropriate, the judge is to consider not only whether these forms of release are adequate to assure the appearance of the defendant, but also whether they are appropriate in light of any danger the defendant may pose to others.

Subsection (c) provides that if the judge determines that release on personal recognizance or unsecured appearance bond will not reasonably assure the appearance of the person or will endanger the safety of any other person or the community, he is, nevertheless, to release the person subject to the least restrictive condition or combination of conditions set out in subsection (c)(2) that will provide such assurance.*

*Current law (18 U.S.C. 3146) sets forth five specific conditions, including a catch-all permitting imposition of "any other condition deemed reasonably necessary to assure appearance as required." (18 U.S.C. 3146(a)(5)) The additional conditions in Section 3502(c)(2) are in large measure drawn from those conditions deemed suitable for imposition of a sentence of probation, the nearest parallel.

Except for financial conditions that can be utilized only to assure appearance, any of the discretionary conditions listed in subsection (c)(2) may be imposed either to assure appearance or community safety.

A judge may not impose a financial condition of release that results in the pretrial detention of the defendant. The purpose of this provision is to preclude the sub rosa use of money bail to detain dangerous defendants under a theory of "likelihood of flight." Its application, however, does not necessarily require the release of a person who is unable to meet the financial conditions of release. Thus, for example, if a judge determines that a $50,000 bond is the only means, short of detention, of assuring the appearance of a defendant who poses a serious risk of flight, (financial conditions can only be imposed to assure appearance), and the defendant asserts that he cannot meet the bond, the judge may proceed with a formal pretrial detention hearing pursuant to section 3502(f). The defendant may subsequently be ordered detained. However, there must be a formal hearing pursuant to section 3502(f); the $50,000 bond may not be used to detain a defendant who does not have the financial wherewithal to satisfy the bond. The reasons for the judge's conclusion that detention itself is the only condition that can reasonably assure the appearance of the defendant, would be set out publically in the detention order.

Subsections (e) and (f) set forth the findings and procedures that are required for an order of detention. The standard for such an order is contained in subsection (e), which provides that the judge is to order the person detained if, after a hearing, he finds that no condition or combination of conditions of release will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. Because of the importance of the pretrial detention hearing, the facts on which the finding of dangerousness is based must be supported by clear and convincing evidence. Thus, this subsection not only codifies existing authority to detain persons who are serious flight risks but, also, creates new authority to deny release to those defendants who are likely to engage in conduct endangering the safety of the community if there is a sufficient evidentiary basis for the judge's conclusion.

Subsection (f) also specifies those cases in which a detention hearing is to be held and delineates the procedures applicable in such a hearing.*

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*The offenses set forth in subsection (f)(1) are a crime of violence, a Class A felony (the category of the most serious violent or dangerous offenses), or a Class B or C felony described in section 1811 (Trafficking in an Opiate) or section 1812 (Trafficking in Drugs). These offenses are essentially the same categories of offenses described in the District of Columbia Code by the terms "dangerous crime" and "crime of violence" for which a detention hearing may be held

Subsection (g) enumerates the factors that are to be considered by the judge in determining whether there are conditions of release that will reasonably assure the appearance of the person and the safety of any other person and the community. Most of the factors are drawn from the existing Bail Reform Act and include such matters as the nature and circumstances of the offense charged, the weight of the evidence against the accused, the history and characteristics of the accused, including his character, physical and mental condition, family ties, employment, length of residence in the community, community ties, criminal history, and record concerning appearances at court proceedings. Additional factors, which are relevant primarily to the issue of community safety, include not only a general consideration

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under that statute. (See D.C. Code, §§ 23-1322(a), 23-1331(3) and 23-1331(4).) The fact that the defendant is charged with an offense described in subsection (f)(1) is not, in itself, sufficient to support a detention order. However, the seriousness of the offense described in subsection (f)(1) is a sufficient basis for requiring an inquiry into whether detention may be necessary to protect the community from the danger that may be posed by a defendant charged with one of these crimes. The procedural requirements for the pretrial detention hearing are based on those of the District of Columbia statute which were held to meet constitutional due process requirements in United States v. Edwards. The person has a right to counsel, and to the appointment of counsel if he is financially unable to secure adequate representation. He is to be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. As is provided under current law (18 U.S.C. 3146(f)), the presentation and consideration of information at a detention hearing need not conform to the rules of evidence applicable in criminal trials.

of the nature and seriousness of the danger posed by the person's release, but also more specific factors, such as whether the offense charged is a crime of violence or involves a narcotic drug, whether the defendant has a history of drug or alcohol abuse, and whether he was on pretrial release, probation, or other form of conditional release at the time of his instant offense.*

Subsection (h) provides that, in issuing an order of release pursuant to subsection (b) or (c), the judge must include a written statement setting forth all the conditions of release in a clear and specific manner. He is also required to advise the person of the penalties applicable to a violation of the conditions and must inform the defendant that a warrant for his arrest will be issued immediately upon such violation. A similar provision exists in current law.**

Subsection (i) requires the court, in issuing an order of detention, to include written findings of fact and a written statement of reasons for the detention.***

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*The emphasis on drug-related factors and on prior criminal history is in accord with empirical research conducted in the District of Columbia. INSLAW, supra, at 57-59 and 61-65.

**18 U.S.C. 3146(c).

***Other provisions of S. 1630 make several additional changes in existing federal bail procedures. For example, new provisions make several revisions in 18 U.S.C. 3148, dealing with post-conviction release, and in 18 U.S.C. 3149, concerning the release of a material witness.

"§ 3502. Release or Detention of a Defendant Pending Trial

"(a) IN GENERAL.—Upon the appearance before a judge of a person charged with an offense, the judge shall issue an order that, pending trial, the person be—

"(1) released on his personal recognizance, or upon execution of an unsecured appearance bond, pursuant to the provisions of subsection (b);

"(2) released on a condition or combination of conditions pursuant to the provisions of subsection (c);

"(3) temporarily detained to permit revocation of conditional release pursuant to the provisions of subsection (d); or

"(4) detained pursuant to the provisions of subsection (e).

"(b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judge shall order the pretrial release of the person on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a federal, State, or local crime during the period of his release, unless the judge determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

"(c) RELEASE ON CONDITIONS.—If the judge determines that the release described in subsection (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, he shall order the pretrial release of the person—

"(1) subject to the condition that the person not commit a federal, State, or local crime during the period of release; and

"(2) subject to the least restrictive further condition, or combination of conditions, that he determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

"(A) remain in the custody of a designated person, who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judge that the person will appear as required and will not pose a danger to the safety of any other person or the community;

"(B) maintain employment, or, if unemployed, actively seek employment;

"(C) maintain or commence an educational program;

"(D) abide by specified restrictions on his personal associations, place of abode, or travel;

"(E) avoid all contact with the alleged victims of the crime and with potential witnesses who may testify concerning the offense;

"(F) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

"(G) comply with a specified curfew;

"(H) refrain from possessing a firearm, destructive device, or other dangerous weapon;

"(I) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

"(J) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

"(K) execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or percentage of the money as the judge may specify;

"(L) execute a bail bond with solvent sureties in such an amount as is reasonably necessary to assure the appearance of the person as required;

"(M) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

"(N) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judge may not impose a financial condition that results in the pretrial detention of the person. The judge may at any time amend his order to impose additional or different conditions of release.

"(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE.—If the judge determines that—

"(1) the person is, and was at the time the offense was committed, on—

"(A) release pending trial for a felony under federal, State, or local law;

"(B) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under federal, State, or local law; or

"(C) probation or parole for any offense under federal, State, or local law; and

"(2) the person may flee or pose a danger to any other person or the community;

he shall order the detention of the person, for a period of not more than ten days, and direct the attorney for the government to notify the appropriate court, probation, or parole official. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section.

"(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f), the judge finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community he shall order the detention of the person prior to trial. In a case described in subsection (f)(1), a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if the judge finds that—

"(1) the person has been convicted of a federal offense that is described in subsection (f)(1), or of a State or local offense that would have been an offense described in subsection (f)(1) if a circumstance giving rise to federal jurisdiction had existed;

"(2) the offense described in paragraph (1) was committed while the person was on release pending trial for a federal, State, or local offense; and

"(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1), whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judge finds that there is probable

cause to believe that the person committed a Class B or C felony described in section 1811 (Trafficking in an Opiate) or 1812 Trafficking in Drugs).

"(f) DETENTION HEARING.—The judge shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) will reasonably assure the appearance of the person as required and the safety of any other person and the community—

"(1) in a case that involves—

"(A) a crime of violence;

"(B) a Class A felony; or

"(C) a Class B or C felony described in section 1811 (Trafficking in an Opiate) or 1812 (Trafficking in Drugs); or

"(2) in any other case, upon motion of the attorney for the government or upon the judge's own motion, that involves—

"(A) a serious risk that the person will flee;

"(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

"(C) any felony committed after the person had been convicted of two or more prior offenses described in paragraph (1), or two or more State or local offenses that would have been offenses described in paragraph (1) if a circumstance giving rise to federal jurisdiction had existed.

The hearing shall be held immediately upon the person's first appearance before the judge unless the person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the government may not exceed three days. During a continuance, the person shall be detained, and the judge, on motion of the attorney for the government or on his own motion, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether he is an addict. At the hearing, the person has the right to be represented by counsel, and, if he is financially unable to obtain adequate representation, to have counsel appointed for him. The person shall be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judge uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing.

"(g) FACTORS TO BE CONSIDERED.—The judge shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

"(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

"(2) the weight of the evidence against the person;

"(3) the history and characteristics of the person, including—

"(A) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

"(B) whether, at the time of the current offense or arrest, he was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, State, or local law; and

"(4) the nature and seriousness of the danger to any other person or the community that would be posed by the person's release.

In considering the conditions of release described in subsection (c)(2)(K) or (c)(2)(L), the judge may upon his own motion, or shall upon the motion of the government, conduct an inquiry concerning the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation or the use as collateral, of property that, because of its source, would not reasonably assure the appearance of the person as required.

"(h) CONTENTS OF RELEASE ORDER.—In a release order issued pursuant to provisions of subsection (b) or (c), the judge shall—

"(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

"(2) advise the person of—

"(A) the penalties for violating a condition of release;

"(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

"(C) the provisions of section 1323 (Tampering with a Witness, Victim, or an Informant).

A failure to advise the person of the penalties applicable for failure to appear as required is not a bar or defense to a prosecution under section 1312 (Bail Jumping).

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"(i) CONTENTS OF DETENTION ORDER.—In a detention order issued pursuant to the provisions of subsection (e), the judge shall—

"(1) include written findings of fact and a written statement of the reasons for the detention;

"(2) direct that the person be committed to the custody of the Attorney General for confinement in an official detention facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

"(3) direct that the person be afforded reasonable opportunity for private consultation with his counsel; and

"(4) direct that, on order of a court of the United States or on request of an attorney for the government, the person in charge of the official detention facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judge may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judge determines such release to be necessary for preparation of the person's defense of for another compelling reason.

Room For Improvement in Pretrial Decisionmaking: The Development of Judicial Bail Guidelines in Philadelphia

by

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Room for Improvement in Pretrial Decisionmaking:
The Development of Judicial Bail Guidelines in Philadelphia

The Danger Focus and Other Problems with Bail

Critical attention is drawn to the practice of bail in the United States periodically. Most recently, bail and pretrial detention have come under scrutiny in the context of renewed concern about serious or violent crime. Proposals calling for the detention of defendants deemed "dangerous" have become increasingly common, as seen in the recommendations of the American Bar Association's Task Force on Crime (1981), the Attorney General's Task Force on Violent Crime (1981), in provisions of the proposed revision of the Federal criminal code,[1] and a constitutional amendment in Nebraska permitting the detention of alleged sex offenders.[2] The view that bail procedures have dealt ineffectively with "dangerous" defendants, however, is clearly not new. In addition to countless preventive detention proposals developed in state legislatures, the 1970s produced a constitutional amendment passed by Michigan voters in 1978[3] permitting preventive detention, standards published by the American Bar Association (1978) and by the National Association of Pretrial Services Agencies (1978), and statements by such dignitaries as Chief Justice Burger, Attorney General Bell and Mayor Koch favoring such measures. These events, of course, lagged more than a decade behind the landmark debate and legislation that resulted in enactment of a preventive detention statute in Washington, D.C., in 1970[4] and were considerably antedated by the decision of the United States Supreme Court in Carlson v. Landon[5] in 1951.

Ironically, the current focus on the preventive detention of defendants viewed as dangerous--a thrust that like mandatory sentences would add to the populations of correctional institutions--occurs at a time when jails in many jurisdictions have been devising emergency strategies for coping with

overcrowding. The fact that overcrowding crises may be attracting less legislative attention than proposals for preventive detention serves as a striking reminder of the selective focus of current discussion of bail practices. Problems with bail and pretrial detention are more complex than the present single issue focus on preventive detention-for-danger seems to imply. In fact, stubborn bail and detention-related issues have been the object of criticism, of research and of legal commentary for more than a half century.[6] Questions about the performance of the bail system in the area of crime committed by defendants on pretrial release can only be meaningfully addressed in the context of other, perhaps larger questions about bail and pretrial detention.

Briefly summarized, criticism of bail practices has focused on the following issues during the last several decades:[7]

1. Problems with judicial discretion: Traditionally, bail has been a low-visibility decision and the detention of defendants has occurred sub rosa. Shielded from examination by judicial discretion, it has eluded study and reform. Not only is bail an inexact art, but questions concerning its legitimate goals and criteria are left for the judge to decide nearly free from constraints. In recent years, statutes and rules have sought to inform bail practices but have not addressed discretion substantially.
2. Inequitable bail practices: Bail has been viewed as inequitable in a number of ways. First, because of the highly discretionary, improvisational or even chaotic nature of the decision, it is unlikely that defendants with similar characteristics are treated comparably.[8] The appropriateness of pretrial detention has often been questioned. As long ago as 1927, Beeley found that many

"dependable" or good risk defendants were detained in Chicago's Cook County Jail because of an inability to afford even small amounts of cash bail (the use of personal recognizance was nearly unheard of), while other less trustworthy (and more seriously charged) defendants had secured pretrial release by paying bondsmen. The role of financial bail in determining a defendant's custody before trial has often been criticized as inherently discriminatory (Foote, 1954; 1964; 1964b)--favoring the "haves," while reserving detention principally for the "have nots." But, bail practices have been characterized as inequitable for other reasons as well. Many studies have raised questions about a serious handicap apparently suffered by detained defendants: compared to their released counterparts, they seem to fare more poorly at the dismissal, trial and sentencing stages. (Rankin, 1964; Single, 1972; Landes, 1974; Goldkamp, 1980b).

3. Procedural impediments to the fair administration of bail: Bail procedures have been characterized as disjointed or uncoordinated, often causing delay and unnecessary stays in detention by defendants who eventually secure release (Foote, 1954; Thomas, 1976). The bondsman has been criticized for contributing to the administrative inefficiency of the bail system, as well as to the inequitable treatment of defendants at the pretrial stage (Beeley, 1927; Dill, 1972; A.B.A., 1978).
4. The effectiveness of bail practices: A common thread in the criticism of bail and pretrial jailing practices has been ineffectiveness (e.g., Pound and Frankfurter, 1922; Beeley, 1927). To operate effectively, bail practices should correctly foster the release of as many defendants as will be unlikely to abscond or commit crimes

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during the pretrial period and, by extension, cause the detention of only the highest risks. Viewed from this perspective, the job of the bail judge is predictive, to determine who among all defendants will flee or commit crimes if granted release. The current concern with crime committed by bailed defendants may be viewed as raising questions about the effectiveness of bail practices, just as concerns about defendants who abscond and about detention facilities that hold numbers of "good" risk defendants inappropriately may be viewed as effectiveness issues.

5. Due process and the presumption of innocence: Of course, the legal debate over the aims of bail and the use of pretrial detention have been longstanding. Critics have argued that bail oriented to danger concerns is unconstitutional, that the use of detention is, at the least, an affront to the due process notion of presumption of innocence and is tantamount to punishment before adjudication.[9]

The problems confronting the bail system in the United States have, in short, been substantial. Although this summary can by no means do justice to the full range of issues critically important to bail and pretrial detention, it may serve to place the current selective focus on danger in context. It is difficult to conceive of improvements in the area of reducing pretrial crime without full consideration of accompanying issues.

Contributions of Bail Reform

Although the issues have been complex and have resisted simple solutions, many were addressed by bail reform efforts over the last two decades. Sparked by pioneering studies by Foote and his students (Foote, 1954; Alexander et. al., 1958) and the innovations of the Vera Institute of Justice in New York (Ares,

Rankin and Sturz, 1963), efforts to reform of bail practices began in the early 1960s. Notable achievements in that era were highlighted in the National Bail Conference of 1964 (Freed and Wald, 1964) and the Bail Reform Act of 1966. The aims of the initial Vera ROR reform--which was widely replicated throughout the United States in subsequent years--were to foster the release of greater numbers of defendants before trial on their own recognizance (ROR) on the theory that many with good community ties (suitable risks) were detained only because they were unable to afford cash release. The Vera reform took aim at crowding in detention facilities as well as at the discriminatory economics inherent in cash bail practices. At the same time, an objective was to offer judges more and different kinds of background information on defendants at the initial bail stage based on the hypothesis that better assessment of a defendant's likelihood of flight could be made.[10] Through numerous demonstration projects, Vera-type ROR reforms attempted to persuade judges that greater use of nonfinancial bail (ROR) could occur without translating into higher rates of absconding or crimes among released defendants.

Recent evaluations of bail reform (e.g., Thomas, 1976; Lazar Institute, 1981) suggest that many milestones were achieved in important problem areas. In many jurisdictions the use of ROR has grown and the rates of detention have declined markedly. New "pretrial services" agencies were established to coordinate defendant interview and notification procedures and to summarize background information for the judges deciding bail. Additional innovations, such as deposit bail[11] and conditional release,[12] made further progress in addressing the traditional "side-effects" of the bail process in the United States.

In the area of law, the Bail Reform Act stood as a progressive model for statutory reform of bail and detention practices, buttressing the presumption of innocence and expressing a presumption favoring release before trial

for the criminally (non-capitally) accused.[13] Moreover, the Act stressed release under least drastic conditions, ranging from outright release (ROR) to part-time and full-time detention.[14] The legislation, which served as the model for similar laws in many states, addressed the aims of bail openly and specified criteria to be considered by judges in making their decisions. Protection of the community (or victims or witnesses) through bail was narrowly restricted to capital cases or cases involved convicted persons awaiting sentence or appeal.[15]

The notable accomplishments of reform notwithstanding, serious issues related to the practice of bail and the use of pretrial detention remain unresolved. In addition to special concern about crime committed by defendants released on bail (which stems from a wider public fear of crime) and about overcrowded conditions in jails tied to bail practices, questions continue to be raised about the fairness and effectiveness of bail and the pretrial detention that results. The following discussion will describe research conducted in Philadelphia during the last several years that resulted in the development of and experimentation with bail guidelines.

Research on Bail Decisionmaking in Philadelphia's Municipal Court

The Feasibility of Guidelines for Bail

The Philadelphia research conducted by the Bail Decisionmaking Project set out with one basic question: Given two decades of reform (perhaps only one in Philadelphia), could pretrial decisionmaking be substantially improved? The approach was to focus on the decisionmakers responsible for bail decisions and to view the bail and detention process from a number of issue-perspectives. Prediction of and response to defendant "danger" was clearly one of the issues that compelled investigation. To the extent that crime committed by defendants

on release is an artifact of bail decision practices, then, it was argued, efforts to address the pretrial crime problem must be premised on a firm understanding of those practices.

The project was approached in three phases: a) a descriptive phase during which bail decisions were studied as well as their consequences, b) a prescriptive phase in which alternative conceptualizations of guidelines were developed empirically, and c) an experimental phase during which the effects of decisionmaking using one of the models of guidelines were contrasted with traditional decisionmaking. Currently, the Bail Decisionmaking Project is nearing completion of the third phase.

The researchers worked with a committee of judges of Philadelphia's Municipal Court. That court is the court of limited jurisdiction for the city, handling misdemeanors (offenses with penalties of up to 5 years in prison), and having the responsibility for initial bail decisions in all cases entering the criminal process.[16] In its initial stage, the project examined bail decisions and their characteristics, as well as studied their results--the use of detention, failure-to-appear and rearrest rates among released defendants. Although the judges agreed to embark upon a descriptive study of their practices, they made no advance commitment to a second, prescriptive phase. During the second phase, once the court agreed that the project should continue, the ultimate goal was to determine whether the decision technology previously developed in parole and sentencing research by Gottfredson and Wilkins (Gottfredson, Wilkins and Hoffman, 1978) could be brought to bear effectively on bail decisionmaking.

A Note Concerning Method

The research strategy was both empirical and collaborative. It was collaborative in that researchers and judges worked together in a step-by-step

fashion, debating the results of analyses and determining directions the research should take. It was empirical because the periodic meetings between researchers and judges were fueled by specific statistical analyses of features of the bail process. This approach helped assure the meaningfulness of the findings to the principal consumers of the research, the Municipal Court judges.

Statistical analyses were based on a sample of 4,800 cases entering the judicial process at preliminary arraignment (the initial bail stage) between the summers of 1978 and 1980. The sample was stratified on the basis of charge and judge. At the time, 20 judges sat on the Municipal Court bench. In order to permit comparison between judges, each judge was represented by equal numbers of cases in six charge categories, corresponding to three misdemeanor and three felony gradings. Using this sample design, it was possible to characterize bail practices for the Municipal Court as a whole and to focus on variability among judges as well.[17] In addition to collecting elaborate background and legal data for these defendants, each case was tracked for a followup period of 120 days to learn whether, if released, a failure-to-appear was recorded or whether the defendant was arrested on a new charge. Because of this design, the sample varied somewhat from one intended to reflect the population of Philadelphia defendants overall. (Serious cases, rare in the population overall, were oversampled).

Descriptive Findings from the Feasibility Study: Bail Decisions

Earlier research and legal commentary had documented the debate over the appropriate goals of the bail decision.[18] More recent work had characterized the confusion and ambiguity of legal sources (constitutions, statutes, rules of criminal procedure, case law) when the criteria suggested for bail decisions were examined.[19] If the goals of the decision were, arguably,

assuring the appearance of defendants at court and/or minimizing the threat of crime by released defendants before trial, then study of bail decisions ought to reflect use of factors or criteria described in statutes or rules of procedure or perhaps factors found empirically to relate to absconding and pretrial crime. Perhaps not surprisingly, analysis of both the assignment of ROR and the selection of cash amounts for those not granted ROR[20] was dominated by consideration of the severity of the current charge. Community ties played a notably secondary role in the ROR decision (measured as living with a spouse or child, and employment) as well as prior records (arrests, felony convictions) and prior performance on pretrial release (prior FTAs and pending charges). In the use of cash bail, for those not granted outright ROR, charge predominated almost to the exclusion of other factors.

The conclusion was that, even in a relatively progressive bail jurisdiction,[21] charge was still the central consideration. In non-serious cases viewed by the judges as posing little risk, community ties were used to confirm the presumed ROR decision. One inference concerning the even stronger influence of criminal charge and prior record in the cash bail decision was that cash bail was reserved for those apparently viewed by judges as posing a danger to victims, witnesses or to the community. The relative assessment of "danger" in defendants was imprecise, shrouded in the "fudgy" nature of the cash bail decision.

The Judge as a Determinant of Bail

A significant finding concerned judicial variability in the assignment of ROR and cash bail. Judges varied slightly but significantly (in a statistical sense) in their use of ROR. It was clear through multivariate analysis, however, that compared to their variability in selection of cash

bail amounts, variability among judges in ROR was minor; there was relative agreement. Apparently, non-seriously charged good risks were easily "detected" by most judges and assigned ROR. Very seriously charged defendants also provoked relative agreement: they were likely to receive relatively high amounts of cash bail (although judges employed different amounts of bail in "high" cases). Most cases resembled neither "angels" nor "devils" and were not clearcut; they were charged with moderate to serious offenses and were addressed through the cash bail option. The greatest decisionmakers variability surfaced in these instances. In general, analysis of the use of case bail by the 20 judges showed substantial decisionmaker variability and relative disagreement in the selection of cash amounts for given types of defendants. Further analysis revealed that, although charge seriousness explained a substantial portion of the variance in cash decisions, beyond that knowledge of the individual judge explained a significant amount. Yet, in addition, after those factors, a great deal of variability could not be explained and might have been chiefly accounted for by chance.

Stated another way, the use of cash bail especially was to a noticeable extent idiosyncratic. Because the use of pretrial detention under the traditional system is an artifact of cash bail decisions (the higher the bail, the greater the likelihood of detention), a major inference is that detention policy--like bail policy--is partly premised on charge severity, to a certain extent on the luck-of-the-draw (the individual judge), and is partly arbitrary, a product of happenstance. If it is fair to infer further that in resorting to the cash bail option judges are responding to perceptions of (relative) defendant dangerousness, then the implications are distrubing: pretrial detention (actually the sub rosa practice of preventive detention) based on danger is a murky, partly thematic, partly random and perhaps even idiosyncratic phenomenon.

Predictive Skills of Judges

If the Municipal Court judges were struck by the disparity that characterized bail decisions (and by extension, detention), they were perhaps more taken aback at the results of analyses that contrasted their predictive skills. Diversity in the ability of judges to foster minimal rates of FTA and rearrest among released defendants was noted. Certain judges produced FTA rates below the court average, some above; the situation was similar when rearrests were examined. Yet, although variability could be noted, no one judge was markedly better than the others in both areas; and--when different rates of pretrial release were taken into account--overall, the variation between judges was not statistically significant. Simply stated, even considering the diversity of approaches that was revealed as decisionmaker variability (substantial in the use of cash bail), judges attained FTA and rearrest rates among their released defendants more or less at the base rates: 12 percent of all sample defendants failed to appear; 16 percent of all defendants were rearrested for (any variety of) crimes within 120 days. A mere 6 percent of defendants released before trial were rearrested for what might be classified as serious crimes (manufacture, delivery, sale of drugs, aggravated assault, burglary, robbery, rape, manslaughter, murder, kidnapping, etc.).

Given the fact that Municipal Court judges have had little opportunity to compare notes on bail practices or to review the results of their own decisions over time, it is not surprising to find variability in individual approaches to ROR and cash bail and in the levels of detention generated by each. Given the apparent diversity in approach, it was surprising to find so little serious difference in FTA and rearrest rates generated by individual

judges. Certainly, it was possible to single out judges, who compared to others, were especially good or bad at intuiting likely risks among the defendants passing before them. Yet, gross differences did not appear. Two contrasting inferences might be drawn: either a) judges left to improvise intuitive approaches to risk assessment (of both danger and flight) cannot hope individually to perform much better or much worse than the baseline rate(s) of failure; or b) the baseline rates of failure are so low (the phenomena of concern, flight and crime during pretrial release, are so rare) that based only on the subjective or clinical skill of individual judges there is little room left for improvement. In the feasibility study, 94 percent of released defendants[22] were not rearrested for serious crimes.[23] What measures would need to be taken to increase that to, say, 97 percent? Or, in a jurisdiction where detention facilities are crowded beyond the crisis point, how many more defendants would need to be detained to improve the success rate of defendants on release by 3 percent?

Issues Raised by the Descriptive Findings

Study of bail decisions, their character and results (detention, flight and crime on release) raised enough questions among the Municipal Court judges about the state of the "art" of bail to interest them in further investigation. Given the descriptive findings, they argreed to consider development of alternative prescriptive models that might be of value in guiding future bail decisionmaking within the Municipal Court. The following issues appeared to provoke the greatest interest:

a) Equity: The study had suggested that bail practices were sufficiently inconsistent (after the influence of charge severity has been taken into account) that similar defendants were not likely to receive comparable decisions.

b) Effectiveness: Differences in decision practices, specifically traced to the assignment of cash bail, translated into different levels of detention by judges and different rates of FTA and rearrest among defendants released by them. Although in a statistical sense a 12 percent FTA rate and a 16 percent rearrest rate among defendants released by the Municipal Court as a whole qualify as "low" base rate phenomena, the judges engaged in the research were not reassured.

c) Rationality and Visibility: Although not necessarily committed to the results of the prescriptive research stage, the judges expressed interest in a decision framework for bail that would allow them to review the outcomes of their decisions periodically and to readjust their collective approach based on what they learned--thus, evolving a more rational framework, one that elevated bail decisionmaking to a more knowable, visible process.

Guidelines Alternatives: The Status Quo, Actuarial or Hybrid Models

The project staff developed three separate guidelines models based on different ideological perspectives. The first was a "current practices" model that employed multivariate methods to devise a classification approach in two parts mirroring the manner in which the judges granted ROR and designated cash amounts. Decisions were posited by reviewing the typical decisions assigned in the past to defendants within each of the resulting groupings--in terms of bail amounts or likelihood of ROR. Although this model of bail guidelines would embody the status quo in court bail policy, it would have the advantages of enhancing equity or consistency in bail decisions, in surfacing the criteria actually employed in bail decisions, in providing reason for deviations from

the suggested decisions, and in providing an evaluative framework for future feedback relating to the performance of defendants within each class in terms of FTAs and rearrests.

A second model viewed the bail task as predictive in nature and classified defendants using an actuarial grid generated by empirical analysis of factors related to FTAs and rearrests of defendants on pretrial release. Using a simple format judges would be able to base decisions on assessments of risk. If adopted, the actuarial guidelines model would result in a radical departure from traditional decision practices--when factors reflecting "current practices" (how bail is decided) were contrasted with factors predictive of flight and crime (how bail ought to be decided if prediction is the only aim), little correspondence was detected. The potential issues associated with moving to a purely predictive decision framework were discussed by the judges and, although there was great interest in the predictive analyses, there was a reluctance to embrace a highly statistical approach.

The third guidelines model combined themes from the "current practices" and the "actuarial" models. This model, the one selected for experimentation, incorporated two dimensions--charge severity (drawn from analysis of current practices) and risk--to form a 15 category (severity) by 5 category (risk) decision grid of 75 defendant categories. The charge severity dimension was derived from multivariate analysis of the ranking of offenses by Municipal Court judges in their bail decisions. It was included in the "combined" model to temper the actuarial perspective. More specifically, it was felt that although over-reliance on charge in bail has been a highly criticized practice, charge severity could add a "relative-cost" dimension to the guidelines:

judges asserted, for example, that the possible errors associated with deciding bail for a low risk rape defendant were qualitatively different than for a high risk numbers runner. The risk dimension was offered a means for scoring defendants according to factors associated with flight and/or crime on release. Although several risk classifications were developed--based on failure to appear only, on rearrest only, on serious rearrest only--the judges expressed a preference for a scheme charting the probability of failure on pretrial release taken generally (either FTA or rearrest).[24]

Establishing Decision Ranges

Following the parallels offered by parole and sentencing guidelines (Gottfredson, Wilkins and Hoffman, 1978), a central task was to establish suggested decisions within each of the 75 defendant categories in the guidelines grid. Several kinds of data were considered in carrying out this task: First, the use of ROR and cash bail for defendants in each of the 75 charge/risk categories was summarized; as a point of departure, three presumptive decision "zones" of grid categories were posited, one in which ROR was the most common decision in the past, one in which cash bail was the most common option, and one in which either ROR or very low chas bail was common (a no-presumption, middle zone). To determine suggested cash bail amounts, interquartile ranges were calculated. Second, other data relating to the relative rates of detention, FTAs and rearrests for each defendant category were studied to modify the posited decision ranges. After discussion with the committee of judges and several revisions, a guidelines matrix was devised with suggested decisions resembling those in Figure 1.

True to the guidelines ideal, the resulting decision framework was designed to be consulted in a majority of cases. When judges disagreed with the suggested decision, they would select a decision outside of the

BAIL GUIDELINES: JUDICIAL DECISION

FIGURE 1

Date *Log #* *Name of Defendant* *Police Photo #* *Calculated by*

Guidelines Matrix

LOW ← Probability of failure → HIGH

Charge Severity (LOW ↓ HIGH)	Group I	Group II	Group III	Group IV	Group V
1	ROR	ROR	ROR	ROR	ROR
2	ROR	ROR	ROR	ROR	ROR
3	ROR	ROR	ROR	ROR	ROR–$500
4	ROR	ROR	ROR	ROR	ROR–$500
5	ROR	ROR	ROR	ROR	ROR–$1,000
6	ROR	ROR	ROR	ROR–$1,000	$100–$1,000
7	ROR	ROR	ROR	ROR–$1,000	$300–$1,000
8	ROR	ROR	ROR	ROR–$1,000	$500–$1,000
9	ROR	ROR	ROR	$500–$1,500	$500–$1,500
10	ROR	ROR	ROR–$1,500	$500–$1,500	$500–$2,000
11	ROR–$1,500	ROR–$1,500	ROR–$1,500	$500–$2,000	$500–$2,000
12	ROR–$1,500	ROR–$1,500	$500–$1,500	$800–$2,500	$800–$3,000
13	$800–$3,000	$800–$3,000	$1,000–$3,000	$1,000–$5,000	$1,500–$5,000
14	$1,000–$3,000	$1,000–$3,000	$1,000–$3,000	$1,000–$5,000	$1,500–$5,000
15	$2,000–$7,500	$2,000–$7,500	$2,000–$7,500	$2,500–$7,500	$3,000–$10,000

Guidelines Decision _____

Judicial Decision: ☐ ROR (amount) $_____ ☐ Financial

☐ IF DECISION DEPARTS FROM GUIDELINES, REASON(S):

- ☐ High probability that prosecution will be withdrawn
- ☐ High probability of conviction ☐ Low probability of conviction
- ☐ Defendant's demeanor in court room ☐ Sponsor present at hearing
- ☐ Defendant's physical or mental health ☐ Defendant's history of court appearance
- ☐ Defendant's relationship to complaining witness
- ☐ To cause guardian to be informed of defendant's arrest
- ☐ Defendant poses specific threat to witness or victim
- ☐ Presence of warrants, detainers, or wanted cards
- ☐ Other (explain): _____

Decision by _____ J.

I. CHARGE SEVERITY LEVELS:

Level	Charge Description	Statute	Grade
L-1	LOTTERIES (& includ. offenses)	18-5512	M1
L-1	Gambling (Devices & included)	18-5513	M1
L-1	Poolselling and Bookmaking	18-5514	M1
L-1	Viols. No Fault Insur. Act	40-1009-601-3	M3*
L-1	Liquor Code Violations	47-4-491-3	M3*
L-1	Cigarette Tax Act Violations	72-3169-901-8	M3*
L-1	Miscel. M3 Viols. (not $18 in code)	N/A	M3
L-2	Disorderly Conduct	18-5503	M3
L-2	DRIVING UNDER INFL. ALCOHOL/DRUGS	75-3731	M3
L-3	Resisting Arrest	18-5104	M2
L-4	Prostitution	18-5902	M3
L-4	POSS. MARIJUANA OR DANG. DRUGS	Title 35	M3*
L-5	Sim. Ass.-Mutual Fight(also M2)	18-2701	M3
L-5	Crim. Misch.->$500 <$1000 (also M2)	18-3304	M3
L-5	Crim. Tresp.-Defiant Tresp. (also F2)	18-3503	M3
L-5	Theft (also M2,1,F3)	18-3921-32	M3
L-5	Unsworn Falsification to Authorities	18-4904	M3
L-5	False Rept. to Law Enf. (also M2)	18-4906	M3
L-5	Loitering	18-5506	M3
L-5	Sale or Illegal Use of Solvents	18-7303	M3
L-5	POSS. OF SYNTHETIC/NARCOTIC DRUGS	Title 35	M3*
L-5	Duty to Stop, Motor Vehicle Accident	75-3742	M3
L-5	M3 Off's Not Incl'd (Non-Prop.)	N/A	M3
L-5	M3 Off's Not Incl'd (Property Off's)	N/A	M3
L-6	Liability For Conduct of Another	18-0306	M2
L-6	SIM. ASS.-Not Mut. Fight (also M3)	18-2701	M2
L-6	Reckless Endangerment	18-2705	M2
L-6	Propulsion of Missiles Onto Roadway	18-2707	M2
L-6	Interference With Custody of Child	18-2904	M2
L-6	Voluntary Deviate Sexual Intercourse	18-3124	M2
L-6	Indecent Assault	18-3126	M2
L-6	Indecent Exposure	18-3127	M2
L-6	Crim. Misch.-Over $1000 (also M3)	18-3304	M2
L-6	Bad Checks -- Over $200	18-4105	M2
L-6	Misuse of Credit Cards -$50-$500	18-4106	M2
L-6	Endanger Welfare of Children	18-4304	M2
L-6	False Rept. to Law Enf. (also M3)	18-4906	M2
L-6	Tamper With Witness or Informant	18-4907	M2
L-6	Obstructing Administration of Law	18-5101	M2
L-6	Escape (also F3)	18-5121	M2
L-6	Failure to Disperse	18-5502	M2
L-6	Cruelty to Animals	18-5511	M2
L-6	M2 Off's Not Incl'd (Non-Prop.)	N/A	M2
L-6	M2 Off's Not Incl'd (Prop. Off's)	N/A	M2
L-7	Crim. Tresp.-Bldgs/Occup (also M3)	18-3503	F2
L-7	THEFT (also M3,1,F3) (except $3929)	18-3921-32	M2
L-7	Retail Theft (also M1,F3)	18-3929	M2
L-8	POSSESSING INSTRUMENTS OF CRIME	18-0907	M1
L-8	Prohibited Offensive Weapons	18-0908	M1
L-8	Involuntary Manslaughter	18-2504	M1
L-8	AGGRAVATED ASSAULT (also F2)	18-2702	M1
L-8	Terroristic Threats	18-2706	M1
L-8	Corruption of Minors	18-3125	M1
L-8	Theft (also M3,2,F3) (except $3929)	18-3921-32	M1
L-8	Retail Theft (also M2,F3)	18-3929	M1
L-8	False Alarms Agencies of Pub. Safety	18-4905	M1
L-8	Incest	18-4302	M1
L-8	Promoting Prostitution	18-5902	F3
L-8	VIOLATIONS OF UNIFORM FIREARMS ACT	18-6103-17	M1
L-8	Removal/Fals. of ID-Fraud. Intent	75-7102	M1
L-8	M1 Off's Not Incl'd (Non-Prop.)	N/A	M1
L-8	M1 Off's Not Incl'd (Prop. Off's)	N/A	M1
L-9	Arson - Endangering Prop. (also F1)	18-3301	F2
L-9	Attempted Burglary	18-3502	F2
L-9	Forgery -- Money, Securities, Stamps	18-4101	F2-3
L-9	F2 Off's Not Otherwise Incl'd	N/A	F2
L-10	Risking A Catastrophe (also F1)	18-3302	F3-2
L-10	THEFT (also M3,2,1) (except $3929)	18-3921-32	F3
L-10	Retail Theft (also M2,1)	18-3929	F3
L-10	Bribery in Official/Polit. Matters	18-4701	F3
L-10	Threats/Imp. Infl. Off./Pol. Matters	18-4702	F3
L-10	Perjury	18-4902	F3
L-10	Witness or Informant Take Bribe	18-4909	F3
L-10	Tamp. Pub. Record-Int. Defr./Injure	18-4911	F3
L-10	Hind. Appren./Prosec.-F1 & F2 Off's	18-5105	F3
L-10	Escape -- Facil., Fel., etc. (also M2)	18-5121	F3
L-10	Riot	18-5501	F3
L-10	Sexual Abuse	18-6312	F3-2
L-10	SALE OF MARIJUANA OR DANGEROUS DRUGS	Title 35	F3*
L-10	MANUF./DELIV. MARIJ. OR DANG. DRUGS	Title 35	M2*
L-10	F3 Off's Not Otherwise Incl'd	N/A	F3
L-11	Manuf./Deliv. of Synthetic Drugs	Title 35	M2*
L-11	MANUF./DELIV. OF NARCOTIC DRUGS	Title 35	M1*
L-12	BURGLARY	18-3502	F1
L-13	ATTEMPTED MURDER	18-2502	F2
L-13	Voluntary Manslaughter	18-2503	F2
L-13	AGGRAVATED ASSAULT	18-2702	F2
L-13	Assault by Prisoner	18-2703	F2
L-14	Attempted Kidnapping	18-2901	F2
L-14	Attempted Rape	18-3121	F2
L-14	Statutory Rape	18-3122	F2
L-14	Att. Invol. Dev. Sexual Intercourse	18-3123	F2
L-14	Robbery (also F2,1)	18-3701	F3
L-14	Robbery (also F3,1)	18-3701	F2
L-14	Sale of Synthetic Drugs	Title 35	F3*
L-14	SALE OF NARCOTIC DRUGS	Title 35	F2*
L-15	Murder	18-2502	F1
L-15	Kidnapping	18-2901	F1
L-15	RAPE	18-3121	F1
L-15	Invol. Dev. Sexual Intercourse	18-3123	F1
L-15	Arson (also F2)	18-3301	F1
L-15	Causing A Catastropne	18-3302	F1
L-15	ROBBERY (also F3,2)	18-3701	F1
L-15	F1 Off's Not Otherwise Incl'd	N/A	F1

* *These offenses are not graded; they have been assigned equivalent grades.*

II. PROBABILITY OF FAILURE ON RELEASE:

Points: +19 to +13 — Group I; +12 to +10 — Group II; +9 — Group III; +8 to +4 — Group IV; +3 to -13 — Group V

guidelines and note reasons explaining the departure. Notation of reasons would permit later study and, where necessary, modification of the guidelines.

The second phase of the research concluded with the development of judicial guidelines for bail. Guidelines were viewed as "feasible" in the sense that the decisionmakers themselves participated in a collaborative research process that resulted in the development and refinement of a prescriptive decision framework for future bail decisions. In many respects, the results of this phase of the research were remarkable: the judges had been informed quite sincerely, that the process could be terminated at any stage. Conceivably, they could have considered the results of the descriptive stage and decided then that bail practices were operating about as well as could be expected. Because of the continued interest of the Municipal Court, it was agreed to move further into actual use and testing of bail guidelines. (This third phase of the research was jointly sponsored by the National Institute of Corrections and the National Institute of Justice.)

The Guidelines Experiment

Because of a concern that other innovations in criminal justice (and in bail) have proceeded to the implementation stage without appropriate empirical testing, it was agreed by the researchers, funders and the Municipal Court alike to design implementation as an experiment. The ultimate design of the second phase adopted a "pre-post," quasi-experimental approach. The aims of the second phase of the research were to examine the effects on bail and detention practices of guidelines. It was felt that mere comparison of results of the feasibility study with results of the subsequent study of guidelines in use (a single "pre-post" design) would be insufficient to isolate the effects of guidelines. Changes in bail between the dates of the two samples

could be accounted for by other phenomena--such as court intervention in the overcrowded Philadelphia detention facilities.[25]

Thus, in addition to the "pre-post" design, the quasi-experimental approach was adopted. Ideally, this would have involved randomization of defendants to guidelines and normal bail decision modes. Because of the logistical impossibility of this procedure, randomization of judges was employed as an alternative strategy (in effect, to randomize the use of guidelines among defendants). In short, 8 judges were randomly selected to use guidelines and 8 were selected to set bail in their normal fashion.[26] Decisions and their results (detention, FTA, rearrest) were studied for each group. Once a sufficient number of decisions were produced for all judges[27] and the performance of released defendants was charted, analysis of the performance of decisions produced under the guidelines approach were contrasted with decisions produced in the traditional fashion.

Should the results of the experimental stage (which employed a "first-draft" version of bail guidelines) be viewed as promising, a further aim of the research would be to make recommendations concerning possible modifications in the guidelines to improve their utility in a future full-scale implementation by the court. On the other hand, analysis of the experimental data could also demonstrate that guidelines-type bail decisions were less desirable than those produced in the traditional fashion.

Preliminary Findings: The Promise of Bail Guidelines

The third phase of the research, analysis of the guidelines experiment in Philadelphia, is presently nearing completion. Though very preliminary, a number of findings are beginning to emerge. These will be briefly summarized before the pretrial crime or "danger" issue is addressed more specifically.

1. The Utility of Guidelines - A major question relates to the practicality of the guidelines approach: Although academically the guidelines appear to offer a neat framework, will judges actually use them and, if so, will the guidelines serve their practical needs? The experience of the last year seems to indicate that guidelines are practiceable. Initial results suggest that judges may have made decisions within the suggested ranges roughly 75 percent of the time. In the other instances, reasons were freely noted for the most part. Study of problems associated with the use of guidelines during the first year should serve to improve the functioning of the guidelines decision process, if its desirability is eventually agreed upon.

2. Equitable Decisions: It has been difficult to analyze the equity of bail decisions formerly, chiefly because of the debate over the proper goals of bail and the criteria by which judges should be guided. Thus, to determine in an equal-protection sense whether similarly situated defendants are treated similarly was nearly impossible; it depended on definitions for which little consensus existed. In one sense, the development of guidelines established a framework through which the issue of equity could begin to be addressed--using definitions and criteria explicitly agreed upon by the appropriate officials. Because this debate was held and the guidelines were implemented, it became possible to study the equity of bail decisions--whether similar defendants were treated comparably--in a purposeful fashion. To the extent that guidelines were followed, equitable treatment of defendants at bail was enhanced. Analysis contrasting the consistency of guidelines decisions with those produced in the traditional fashion will shed further light on this question

3. Visibility/Rationality: The fact that judges can use a guidelines framework that is the result of empirical research as well as policy debate suggests that the normally murky bail process can move several steps further into the light. The basis of decisionmaking, though not cast in concrete, can be known and debated. The appropriateness of the guidelines can be gauged through study of exceptions taken (and the reasons given) as well as by the rates of detention, FTA and rearrest within specified categories of defendants. The system does seem, therefore, to offer a more visible approach and one that is designed to respond rationally to the nature of the bail decision.

4. Effectiveness: For bail practices to be effective, they should result in the maximum use of pretrial release and minimum use of pretrial detention possible while at the same time assuring that defendants rarely fail to attend court proceedings and/or become rearrested for crimes committed during the pretrial period. If the Philadelphia judges had adopted the purely actuarial model for testing, a major test of the effectiveness of guidelines would be to improve the rates of FTA and pretrial crime noticeably over what is achieved by traditional (control) bail practices. Because the risk dimension was counterbalanced by the severity dimension in the design, this cannot be viewed as a clearcut test.[28] Depending on how comfortable judges have been during the last year in relying on risk information, some improvement in predictive effectiveness could result from use of guidelines. At the least, FTA rates and rearrest rates should not be worse than under "control" judges. Preliminary analysis appears to show that FTA and rearrest rates where at least no higher under

guidelines (though rearrest rates may have been very slightly lower). The analysis in this area is still quite tentative and discussions with judges seems to indicate that, although the risk classification serving as one guidelines dimension ranks prospective failures among defendants groups well,[29] judges may not have fully understood its potention usefulness.

Improvement of Bail Practices Using Guidelines

Problems associated with American bail practices have been complex, defying simple or single issue approaches. Briefly characterized, the bail stage has experienced controversy in the definition of its goals and this has translated into confusion or outright abuse in actual practice. The criteria relied on in pursuit of the goals (principally charge and prior record) have been criticized on theoretical and empirical grounds: their relationship to the goals of the bail decision have been called into question. Worse, perhaps, is the fact that legal sources (such as statutes, constitutions, rules of procedure and case law) in many states have little to say on the subject--although in some instances uselessly long lists of suggested bail criteria are provided (Goldkamp, 1979).

Bail decisions in practice have been characterized as inconsistent, discriminatory, inequitable and, even idiosyncratic. As this research has shown, this is partly unavoidable even in a progressive jurisdiction given the nature of the task. By implication, the use of pretrial detention that results is in part thematic but is greatly improvisational as well. Detention policy is, thus, sub rosa, apparently unplanned and, largely ad hoc. The allocation of pretrial release can be similarly understood. Rates of absconding and pretrial crime are partly artifacts of implicit bail decision policy and partly happenstance--depending on the collective predictive abilities of judges. Rates of crime committed by released defendants may be low, however, mostly because

they are by their nature unlikely to occur, not because judges have fine-tuned their selectivety and have become skilled at spotting dangerous defendants. Most defendants simply will not abscond or find themselves rearrested for new crimes. In jurisdictions where failure rates appear to be admirably low, it is unlikely to be the result of the pursuit of a known policy. As one Philadelphia judge commented during this research, "bail is a seat-of-the-pants decision."

Does the guidelines approach offer promise for improving the performance of the bail task? If the dilemmas of bail are viewed together, the response to this query is cautiously affirmative. A major hypothesis underlying the development and experimentation with bail guidelines is that the guidelines approach offers a broad-based vehicle by which the practice and results of bail may be notably improved. Apparently, progress can be achieved through guidelines on a number of fronts: 1) the controversy concerning the goals of bail can be addressed openly (the Philadelphia judges incorporated a risk dimension predictive of risk of flight as well as of risk of crime after study and lengthy debate); 2) the criteria for evaluating defendants can be articulated and built into a simple decision framework that is, remarkably for bail, explicit (it is thus possible to debate criteria or to take exception to the guidelines for specific reasons); 3) the consequences of bail decisions can be examined (judges can learn how often defendants within given categories are released or detained, and, when released, how well they perform); 4) the guidelines can be changed to accomodate lessons from empirical study or objections based on policy concerns. In these respects, guidelines could represent a substantial advance in the art of bail. Results of preliminary empirical analysis and observation of their use over the last year suggests that these advantages can, in fact, be derived.

More specifically, can guidelines improve the ability of judges to discern defendants likely to be dangerous? Although it has been argued above that progress in bail must be grounded in the understanding of a nexus of difficult issues and not merely on the basis of a single issue, the answer to this question could be "yes, eventually." The guidelines model explored in the Philadelphia experiment was not designed exclusively as an aid to prediction generally or to prediction of dangerous defendants in particular, although the judges desired to have actuarial data incorporated. Rather they were designed as a multi-purpose tool. Yet, included is a means for assessing and addressing the problem of pretrial crime or defendant danger.

It may not be misguided to characterize traditional bail practices as largely motivated by the hidden agenda of danger. More correctly, judges may easily isolate the "angels" among defendants and perhaps as well the obvious "devils." But, in general, when decisions involve defendants other than the best risks, judges worry about potential dangerousness. Resort to cash bail may be a sign that the danger agenda is being weighed by the judge. The approach taken by judges to guard against release of dangerous defendants is, upon examination, quite like that taken by legislatures attempting to formulate preventive detention legislation: they think in terms of the seriousness of the alleged offense. Legislatures in statutes and judges in their personal policies may simplistically view certain offenses (and prior offenses) as worthy of a high bail or detention response.

The guidelines framework allows for consideration of the danger issue (should the judges agree that it is an appropriate bail concern) from within a reasonable framework. In a first version of guidelines, a goal would be to produce feedback in specific categories relating to rearrest of defendants[30] on release. Thus, an evolutionary or step-by-step tuning approach can be

effected to address the problem of pretrial crime. Specific categories may be isolated for possible alternative bail approaches where it is felt that crime on release is a problem.

A Tool for Jail Overcrowding?

The guidelines approach may offer major progress as a conceptual framework for the evaluation of the practice of bail by permitting open consideration of the goals, criteria and consequences of bail practices. It may also provide a useful framework for assessment of jail overcrowding in jurisdictions where overcrowding is ostensibly linked to bail practices. If part of the difficulty in proposing population reduction strategies stems from the need to know who "should" be in jail and who should not be, keys to such a diagnosis may lie in bail guidelines. Certainly, it is hard to gauge the extent to which overcrowding is due to inappropriate detention if the goals and criteria guiding bail are uncertain or debatable. Although guidelines do not provide a definitive answer to these questions, they do reflect the results of policy debate by judges in one jurisdiction (who after all are responsible for the bail and detention decision).

If that group of judges has determined that risk and charge severity are dimensions on which bail practices should be grounded, then it may make sense to employ these concerns as a framework by which to evaluate the appropriateness of detention. If many nonseriously charged, low risk defendants are found for whom ROR would have been the presumed decision under guidelines, then it could be argued that this group of defendants should be released expeditiously. If, on the other hand, it is learned that most detainees fall into very high severity and very poor risk categories with the guidelines scheme, other conclusions about overcrowding may be drawn.

Questions Facing the Use of Bail Guidelines

Viewing guidelines as a decision aid likely to enhance the equitable treatment of defendants, increase the effectiveness of bail practices and to make bail more visible and, arguably at least, more rational may not be an unreasonable position to take. In all of these areas, preliminary analyses suggest, the promise may be great. Yet, serious questions will need to be addressed as implementation continues in Philadelphia. Several are briefly summarized by way of conclusion:

1. The perils of prediction: Guidelines were not designed to be a system of preventive detention. Unlike practices in Canada where the custody decision is made directly, detention in the United States results indirectly from the bail decision. The focus of guidelines, thus, has been on the decision. To the extent that a predictive thrust has been added to the decision framework under the respectability of empirical research, however, great care must be taken to monitor and consider the errors known to be likely under predictive schemes.
2. Guidelines is a "rationale man" model: What has traditionally been a highly subjective judicial task will now be treated as eminently rational under guidelines. The debate over goals, the articulation of decision criteria and the concept of feedback and ongoing modification of the guidelines appeals to the "rational man" model of decision-making behavior. Care should be taken to determine the extent to which this approach is unrealistic in human terms or perceived as technocratic. Guidelines, it should be agreed, were never intended to bring back the days of the "bail schedule."

3. Pretrial crime and FTAs: Monitoring the occurrence of misconduct by defendants on pretrial release may be accomplished in a more systematic fashion under guidelines. Yet, the overall approach has been based on concern for several critical issues. Caution will be required when major adjustments to guidelines are considered that are based on single-issue concerns, such as danger.
4. Jail populations: Guidelines may provide a useful framework for the assessment of overcrowding in detention facilities. On the other hand, poorly designed or inappropriately transformed guidelines may add to rather than subtract from jail problems.
5. Safeguards: Because of their implications for detention--that is, faced by any system continuing the use of cash bail--establishment of corrective safeguards ought to be examined, such as expedited processing of defendants who are detained and hearings to review the status and appropriateness of those in detention.

In short, many lessons by now have been learned about the unintended consequences of criminal justice reforms. The experimental approach to the guidelines research was designed to surface the most obvious problems. Yet, further use of guidelines may generate "side-effects" in becoming routine that have not been foreseen. Only careful ongoing observation and evaluation can help reduce the prospects of such unplanned developments.

Notes

[1]See the proposed Criminal Code Reform Act of 1981, S.1630 and also S.1554 which proposes specific preventive detention measures.

[2]Neb. Const. Art. I §9 (1978). Many other examples of recent changes in state bail laws could have been cited as well.

[3]Mich. Const. Art. I §15 (1978).

[4]D.C. Code §§23: 1321-1332.

[5]342 U.S. 524 (1952).

[6]See, for example, Pound and Frankfurter (1922), Beeley (1927), Foote (1954; 1965a; 1965b), Freed and Wald (1964), Goldfarb (1967).

[7]See Chapter 1 of the report of the Bail Decisionmaking Project (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981) and Goldkamp (1980a) for a more detailed discussion of these issues. The discussion presented here is necessarily short and, therefore, inadequate to convey the full complexity of the difficult issues that have been raised in the last decades concerning bail and pretrial detention in the United States.

[8]For a discussion of equal protection issues raised by bail and detention practices and of disparity in bail decisionmaking, see Goldkamp (1979).

[9]See, for example, Foote (1965a); Harvard Law Review (1966); Fabricant (1969); Tribe (1970); Borman (1970); Ervin (1971).

[10]An assumption of the Vera reform approach was that use of defendants' community ties would provide a more appropriate criterion in assessing defendent risk that the traditional judicial practice that relied almost exclusively on the seriousness of the charged offense and, to a lesser extent, the prior record of convictions (see Freed and Wald, 1964; Schaffer, 1970). Research attempting to discern correlates of FTA and rearrest has not generally supported the assumption that community ties serve as more powerful predictors than the traditional bail criteria (Goldkamp, 1979).

[11]In deposit bail jurisdictions, a percentum of the cash bail amount is deposited with the court (rather than with a bondsman) to be refunded to the defendant upon attendance at all required proceedings. See Thomas (1976); NAPSA (1978).

[12]Conditional release was devised to foster the release of higher risk defendants, those not awarded ROR outright, on the basis of presenting a plan--such as drug treatment, vocational training, education or other probation-like conditions--to persuade the judge that with added constraints given defendants could be returned to the community before trial (Thomas, 1976; NAPSA, 1978).

[13]See specifically, 18 U.S.C.A. 3146(a). See generally, 18 U.S.C.A. 3146-3152. For a discussion of the Act, see Goldkamp (1979).

[14]18 U.S.C.A. 3147.

[15]18 U.S.C.A. 3148.

[16]See the forthcoming report for a description of criminal justice procedures at the study site (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981).

[17]For a detailed description of the method, see the report (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981).

[18]See the recurring debate over preventive detention for example, Mitchell (1969), Hess (1971), and Ervin (1971), Foote (1965a), Tribe (1970).

[19]See Goldkamp (1979) for a review of criteria for bail decisions contained in state statutes.

[20]For the purpose of analysis, the bail decision was viewed as a bifurcated process. In the first step, the judge considers the appropriateness of of ROR (yes or no). If ROR is not awarded, the record decision stage is the selection of an amount of cash bail. See the report (Goldkamp, Gottfredson and Mitchell-Herzfeld, (1981) and Goldkamp (1979) for discussion of this analytic approach.

[21]As noted in the report, Philadelphia was selected partly because it represented pretrial practices at perhaps their best, not their worst. The rationale for studying a reformed jurisdiction was so that an up-to-date assessment of issues that continued to beset bail practices could occur, rather than rediscovery of the early lessons of bail reform.

[22]Approximately, 76 percent of the 4,800 defendant samples were released within 24 hours of the initial bail decision. As many as 90 percent, however, eventually secured release.

[23]"Serious" crimes were defined here as manufacture, sale, delivery of drugs, aggravated assault, burglary, rape, robbery, mansalughter, murder and kidnapping. See the report for a more detailed discussion.

[24]See the discussion of the development of the "combined" guidelines model in the report (Goldkamp etal., 1981).

[25]In fact, an overcrowding suit, Jackson v. Hendrick (Philadelphia Court of Common Pleas, No. 2347 (1971)), has been active in Philadelphia for a decade. Among the consent decrees produced by that suit were population reduction measures focusing on bail.

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POTENTIAL VALUE OF INCREASED SELECTIVITY IN PRETRIAL DETENTION DECISIONS

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POTENTIAL VALUE OF INCREASED SELECTIVITY IN PRETRIAL DETENTION DECISIONS

One of the issues under consideration by the Project on Public Danger, Dangerous Offenders and the Criminal Justice System is whether public danger could be reduced significantly through changes in current pretrial release ("bail") practices. To assist in analysis of this issue, this paper addresses four questions:

- How significant is crime committed by people who are out on bail in the overall crime problem of a city?
- What criteria are now being used in making pretrial release decisions?
- What are the characteristics of persons detained until trial, as compared with those of defendants released before trial?
- How much would crime on bail be likely to decrease (and jail populations to increase) if the current standards for pretrial release became more stringent?

Unless otherwise stated, the data used to consider these questions were developed as part of a National Evaluation of Pretrial Release. A major component of this study, funded by the National Institute of Justice, analyzed release practices and outcomes (e.g., release, failure-to-appear and pretrial arrest rates) in eight jurisdictions located throughout the country.[1] In each site a random sample of all defendants arrested over approximately a one-year time period (roughly calendar year 1977) was selected for study. Existing records were used to obtain information covering the period from arrest to final case disposition and sentencing.

How Significant Is "Crime on Bail" in the Overall Crime Problem of a City?

A precise estimate of the significance of crime on bail in the overall crime problem of a city cannot be derived, becouse no one knows who committed the crimes not cleared by arrests. Although a rough estimate of the importance of crime on bail can be developed from data on arrests, jurisdictions often do not record or compile information concerning whether defendants had pending cases at the time of arrest. Thus, even estimates based on arrests are available for only a few sites. Table 1 summarizes this information.

As shown in Table 1, the highest percentage of defendants with pending cases at arrest was found in Washington, D.C., where 14.1% of the defendants arraigned in 1974 had a pending case. The percentage for defendants charged with felonies was higher, at 17.3%. For the remaining five sites, estimates were below 10% for three of them (Tucson, Arizona; Miami, Florida; and Philadelphia, Pennsylvania). Estimates for the other two sites were 13.9% for San Jose, California, and 11.3% for Louisville, Kentucky, both considered underestimates.

Thus, based on the very limited and poor information available, it appears that "crime on bail" accounts for no more than 10% to 15% of all crime (as measured by arrests) in most major urban areas. There is, as one might expect in a large and diverse country, considerable variation across sites.[2] It is unlikely, however, based on available evidence, that crime on bail accounts for less than 7% of all crime in any major city. Thus, 7% can be considered a lower bound, with most sites likely to fall in the 10%-15% range. An upper bound of 20% of all crime is probably a reasonable estimate of the maximum extent of crime on bail in a major city.

TABLE 1. Estimates of the Percentage of Defendants With Pending Cases When Arrested

Site	Sample	Percentage of Defendants With Pending Cases When Arrested
Washington, D.C.	442 defendants randomly selected from 1977 arrests	11.5%[a]
Washington, D.C.	Defendants arraigned in D.C. Superior Court in 1974:	
	Felony charges (n=4631)	17.3%[b]
	Misdemeanor charges (n=6249)	11.7%[b]
	All charges (n=10,880)	14.1%[b]
Tucson, Arizona	409 defendants, randomly selected from 1977 arrests	7.3%[a]
Tucson, Arizona	2,610 felony defendants interviewed by pretrial release program, Oct. 1974-May 1975	9.2%[c]
San Jose, California	370 defendants, randomly selected from arrests from Dec. 1977 to May 1978	13.9%[a]
Louisville, Kentucky	435 defendants, randomly selected from 1977 arrests	11.3%[a]
Miami, Florida	427 defendants, randomly selected from felony arrests from Jan.-June 1978	5.6%[a]
Philadelphia, Pennsylvania	Approximately 3600 defendants selected to be representative of about 8300 defendants appearing at preliminary arraignment in August-November 1975.	7.6%[d]

[a]Data from National Evaluation of Pretrial Release; the percentage shown probably understates the true percentage of defendants with pending cases when arrested, because of inaccuracies in the data sources used for this information.

[b]Jeffrey A. Roth and Paul B. Wice, "Pretrial Release and Misconduct in the District of Columbia," a publication of the Institute for Law and Social Research (INSLAW), Washington, D.C., April 1980.

[c]Annual Report for the Correctional Volunteer Center, Pima County Superior Court, 1975-1976.

[d]John S. Goldkamp, Bail Decisionmaking and the Role of Pretrial Detention in American Justice, Research Report Draft, Utilization of Criminal Justice Statistics Project, Criminal Justice Research Center, Albany, N.Y., 1977.

What can be concluded from these data? First, the data available for considering this question are quite poor; thus the findings must be considered suggestive, rather than definitive. Second, the extent of crime on bail seems to be much less than is popularly assumed. Media accounts often suggest that crime on bail is a predominant contributor to crime as a whole. Existing data, though poor, consistently suggest otherwise.[3]

What Criteria Are Now Being Used in Making Pretrial Release Decisions?

Pretrial release decisions may be made at several points after arrest. For example:

- The arresting officer may release the defendant in the field or at the stationhouse after booking. Such "citation" releases are usually made only for defendants charged with relatively minor crimes.
- In jurisdictions that have bond schedules, a defendant may be released at any time after booking by posting (or, more commonly, arranging for a bondsman to post) the amount of the bond shown for the offense charged.
- Defendants who are not released through these mechanisms are usually brought before a judge or other court magistrate (e.g., bail commissioner) within a few hours for a determination of release conditions. In many major cities this is the primary means by which release conditions are set. Often, judges are assisted in making release decisions by pretrial release programs, which typically interview defendants, verify the information provided, prepare reports on individual defendants for the court and in many cases make release recommendations.

Although a defendant can be released at different processing points and through the actions of various persons, the decisions with the greatest overall impact are those made by pretrial release programs and judges. These are considered below.

Most pretrial release programs assess defendants in terms of two broad types of factors: community ties and prior criminal justice system involvement. Depending on the program, this assessment occurs objectively (usually through use of a point system), subjectively (with much interviewer discretion), or through a combination of objective and subjective approaches[4]. Table 2 presents the results of a survey, conducted by The Pretrial Services Resource Center, of 117 programs' criteria used to assess defendants: As shown, the most frequently used criteria are residence (i.e., local address, length of time in community and length of time at current address), employment/education/training status, and prior convictions; more than five-sixths of all programs used each of these criteria. Other common criteria, used by more than half the programs, are living arrangements (with whom), number of prior arrests, number of prior convictions for felonies and ownership of property in the community.

Although programs use many of the same criteria to assess defendants, the weighting (either explicit or implicit) of these factors varies considerably across programs. For example, prior convictions can deduct a maximum of 67% of the total points needed for an own recognizance release recommendation in Baltimore, Maryland, while the comparable figure for San Jose, California, is 20%. Appendix A provides the point systems used in four sites included in the National Evaluation of Pretrial Release, along with a brief comparative analysis of those point systems.

Aside from rating defendants they interview, programs affect the pretrial release process through their decisions about which defendants to interview. Many programs exclude a variety of defendants from eligibility for program interviews. As indicated in Table 3, the most common type of

TABLE 2.

Criteria Included in Interviews by
Programs as Part of Assessment of Defendant
(Based on Responses from 117 Programs)

Criteria	No. of Programs	Percentage of Programs
Community Ties		
Local address	111	94.9%
Length of time in community	108	92.3%
Length of time at current address	99	84.6%
Living arrangements (with whom)	87	74.4%
Employment/education/training status	107	91.5%
Ownership of property in community	59	50.4%
Possession of telephone	31	26.5%
Someone expected to accompany defendant at arraignment	23	19.6%
Prior Record		
Prior arrests	78	66.7%
Prior convictions (any type)	101	86.3%
Prior convictions (felony only)	66	56.4%
Prior failure to appear	7	6.0%
Other		
Income level or public assistance status	50	42.7%
Excess use of drugs/alcohol	9	7.7%
Miscellaneous	7	6.0%

Source: Donald E. Pryor, Program Practices: Release, forthcoming publication of the Pretrial Services Resource Center, Washington, D.C.

TABLE 3

Reasons for Programs Automatically Excluding
Pretrial Defendants from Being Interviewed
(Based on Responses from 119 Programs)

Type of Exclusions	No. of Programs	Percentage of Programs
Charge		
All misdemeanors	10	8.4%
All misdemeanors plus other specific charges	1	0.8%
All felonies	2	1.7%
All felonies plus other specific charges	2	1.7%
Miscellaneous specific charges *	44	37.0%
Prior Record		
Warrant/detainer from another jurisdiction	38	31.9%
Outstanding warrant from same jurisdiction	16	13.4%
On probation, parole or pretrial release	11	9.2%
Prior record of failure to appear	6	5.0%
Prior record of rearrest on release	3	2.5%
Prior arrest or conviction record	6	5.0%
Community Ties		
No local address	6	5.0%
Other		
Suspected mental/emotional problems	2	1.7%
Miscellaneous	6	5.0%
Program interviews, only upon request, after initial release decision, etc.	7	5.9%

* Includes 23 programs which by policy do not interview defendants charged with capital offenses and combinations of violent felonies; 10 which exclude fugitives and those with FTA-related charges; five which exclude those with drug-dealing and other drug-related charges; nine which exclude those charged with probation or parole violations; 14 which do not interview those charged with minor misdemeanors, traffic and other violations, etc.; five which exclude those charged with prostitution; and 13 which exclude those charged with a variety of other offenses.

Source: Donald E. Pryor, Program Practices: Release, forthcoming publication of the Pretrial Services Resource Center, Washington, D.C.

exclusion is based on charge. Half of all programs exclude some defendants because of ineligible charges. In addition, 45% of the programs exclude defendants because of outstanding warrants or detainers. Other exclusions are not as widespread. This is shown by the fact that the next most common exclusion—of persons on probation, parole or pretrial release—is found in 9% of the programs.

Although pretrial release programs may influence release decisions, the decisions themselves are usually made by judges. These decisions are governed, of course, by the applicable laws in the jurisdiction. In this regard, it is important to remember that, for most defendants in most places, the legal basis of release decisions is whether the person will appear for court, not whether the person might pose a danger to the community, if released.

Table 4 compares the characteristics of defendants for whom judges set financial release conditions (i.e., bail) with the characteristics of defendants for whom judges set nonfinancial release conditions (i.e., own recognizance release, third party custody, supervised release or similar conditions not involving money) for six major cities included in the National Evaluation of Pretrial Release. The comparisons shown cover prior record (in terms of arrests, convictions, failure to appear for court, and pending cases), current case characteristics (charge and use of weapons), community ties (residence, family ties and employment status) and demographic information. Appendix B provides the detailed data from which the summary information in Table 4 was compiled.

As shown in Table 4, there were statistically significant differences (at the .05 level) between the two groups in all six sites for three characteristics:

TABLE 4. Comparison of Defendants for Whom Judges Set Financial Versus Nonfinancial Release Conditions, Six Sites

Characteristic	When compared with Defendants for Whom Judges Set Nonfinancial Release Conditions, Defendants with Financial Release Conditions Set in the Following Sites Disproportionately Have/Are:					
	Baltimore	Washington, DC	Louisville	Tucson	San Jose	Miami (felonies only)
I. Prior Record						
A. Number of prior arrests	More*	More*	More*	More*	More*	More*
B. Number of prior convictions	More*	More*	More*	More*	More*	Fewer*
C. Prior failures to appear	More*	More*	More*	More	More	N.D.**
D. Current involvement with CJS (i.e., on pretrial release, probation or parole)	More*	More*	More*	N.D.**	More*	N.D.**
II. Current Case						
A. Charged with:	Robbery* Burglary* Aggravated assault* Prostitution*	Robbery* Aggravated assault* Larceny*	Robbery Burglary Fraud DWI	Robbery* Aggravated assault* Simple assault* Larceny* Fraud*	Robbery* Burglary* Aggravated assault* Simple assault* Larceny* Prostitution* Drugs*	Robbery* Fraud* Drugs*
B. Used Weapons:	More*	More	More	More	More*	Fewer
III. Community Ties						
A. Residence						
1. Local residents	Fewer*	Fewer*	Fewer*	Fewer*	Fewer	Fewer*
2. Years of local residence	Fewer*	More	Fewer*	Fewer*	Fewer	More
3. Months at present address	Fewer	More	Fewer*	Fewer*	Fewer	More
B. Family Ties						
1. Married	Fewer*	Fewer*	Fewer	Fewer	Fewer*	Fewer
2. Support their families	Fewer*	Fewer*	Fewer*	Fewer	Fewer*	N.D.**
3. Live with spouses	Fewer	Fewer	N.D.**	Fewer*	Fewer*	Fewer
4. Number of dependents	N.A.	Fewer	Fewer*	Fewer*	Fewer	Fewer
C. Employed	Fewer*	Fewer*	Fewer*	Fewer	Fewer*	Fewer*
IV. Demographic Characteristics						
A. Age	Younger	Younger	Older*	Older	Younger*	Older
B. Ethnicity	Black	Black	White	Black or White (Not Hispanic)	Black*	Black
C. Sex	Male	Male	Male	Male	Female	Male

*Statistically significant at the .05 level.
**No difference.

- number of prior arrests, with the financial conditions group having more;

- number of prior convictions, with the financial conditions group having more in five sites and fewer in Miami (where only felony cases were analyzed); and

- months at present address, with the financial conditions group having fewer months of residence at their current addresses.

Two characteristics were significant in five sites:

- charge, with the financial conditions group on the whole more likely to have been charged with robbery, aggravated assault or larceny; and

- years of local residence, with the financial conditions group having fewer.

The characteristics significant in four sites were:

- current involvement with the criminal justice system, with the financial conditions group more likely to have been on pretrial release, probation or parole when arrested;

- residence status, with fewer of the financial conditions group being local residents;

- number of dependents, with the financial conditions group having fewer; and

- age at arrest, with the financial conditions group older in three sites and younger in one.

Thus, the characteristics that distinguished the financial from the non-financial release conditions group in four or more sites were of three broad types:

- prior record, where three of the four indicators were significant in at least four cities;

- charge, which was important in five jurisdictions; and

- residence, where all three indicators were significant in at least four sites.5/

What Are The Characteristics of Detained Versus Released Defendants?

When judges set bonds, they do not know with certainty whether defendants will be released or detained. Although defendants on the average are more likely to be detained as bond amounts increase, there are many instances where individual defendants secure release on very high bonds and other situations where persons remain jailed because of inability to make seemingly low bonds. Thus, the determination of who will be detained depends on a variety of factors, including the amount of the bonds set by judges, the financial situations of the defendants and their families, and bondsmen's assessments of the relative risks and rewards of posting the defendants' bonds. The net effect of these factors in six sites is shown in Table 5, which compares the characteristics of defendants released before trial (or, more accurately, before case disposition) with those of persons detained the entire pretrial period. Appendix C provides the detailed data upon which Table 5 is based.

As indicated in Table 5, three characteristics were statistically significant (at the .05 level) in all sites:

- number of prior arrests, with detained defendants having more;

- number of prior convictions, with detained defendants having more; and

- charge, with detained defendants more likely on the whole to have been charged with robbery, burglary and larceny.

Two characteristics were important in all sites except one:

- residence status, with fewer of the detained defendants being local residents; and

- employment, with fewer of the detained defendants being employed.

TABLE 5. Comparison of Detained and Released Defendants, Six Sites

Characteristic	When Compared with Released Defendants, Detained Defendants in the Following Sites Disproportionately Have/Are:					
	Baltimore	Washington	Louisville	Tucson	San Jose	Miami (felonies only)
I. Prior Record						
A. Number of prior arrests	More*	More*	N.A.	More*	More*	More*
B. Number of prior convictions	More*	More*	More*	More*	More*	More*
C. Prior failures to appear	More*	More*	More	More	More*	More*
D. Current involvement with CJS (i.e. on pretrial release, probation or parole)	More*	More*	N.D.**	More	More*	More
II. Current Case						
A. Charged with:	Robbery* Burglary* DWI*	Robbery* Burglary* Larceny*	Other (especially drunkenness)*	Robbery* Prostitution*	Robbery* Burglary* Aggravated assault* Simple assault* Larceny* Drugs*	Robbery* Burglary* Larceny*
B. Used weapons	More	More*	Fewer*	More	More*	N.D.**
III. Community Ties						
A. Residence						
1. Local residents	Fewer*	Fewer*	Fewer*	Fewer*	Fewer	Fewer
2. Years of local residence	Fewer*	Fewer*	Fewer*	Fewer*	Fewer	Fewer*
3. Months at present address	Fewer*	Fewer*	Fewer*	Fewer*	Fewer*	Fewer*
B. Family Ties						
1. Married	Fewer*	Fewer	More	Fewer	Fewer*	More*
2. Support their families	Fewer	Fewer*	More	Fewer	Fewer*	More
3. Live with spouses	Fewer*	Fewer	N.D.**	Fewer	Fewer*	More*
4. Number of dependents	Fewer	Fewer*	Fewer*	Fewer*	Fewer	Fewer*
C. Employed	Fewer*	Fewer	N.D.**	Fewer	Fewer*	N.D.**
IV. Demographic Characteristics						
A. Age	Younger	Older*	Older*	Older*	Younger*	Older
B. Ethnicity	Black*	N.D.**	N.D.**	Hispanic	Black	Hispanic or White*
C. Sex	Male	Male	N.D.**	Female	Female	Female

*Statistically significant at the .05 level.
**No difference.

Additionally, two characteristics were significant in four sites:

- prior failure to appear, with more of the detained defendants having failed to appear for court in the past; and
- family support, with fewer of the detained defendants supporting their families.

Thus, the most consistently important characteristics for distinguishing released from detained defendants were:

- prior record, with three of the four indicators significant in at least four sites; and
- charge, which was important in all sites.

Three of the eight community ties indicators were also important in four or more sites: local residence status, employment situation and family support. However, communities ties measures as a group were not as consistently important as prior record indicators and charge.[6]

Tables 6 and 7 present detailed information on prior record and charge. As shown in Table 6, in most sites detained defendants had approximately twice as many prior arrests and two to three times as many prior convictions as released defendants (these ratios were lower only in Baltimore). The proportion of detained defendants with a prior failure to appear (FTA) was approximately two to three times that for released defendants in the four sites where prior FTA was statistically significant; and the proportion of detained defendants on pretrial release, probation or parole when arrested was approximately double that for released defendants in the three sites where that characteristic was important.

The data by charge in Table 7 must be considered suggestive, rather than conclusive, because of the relatively small numbers of defendants for many charges. Nevertheless, the data suggest that in most sites, defendants

TABLE 6. Prior Records of Detained and Released Defendants, Six Sites

Characteristic	Baltimore		Washington, DC		Louisville		Tucson		San Jose		Miami (felonies only)	
	Det. (n=73)	Rel. (n=476)	Det. (n=54)	Rel. (n=388)	Det. (n=86)	Rel. (n=346)	Det. (n=111)	Rel. (n=294)	Det. (n=49)	Rel. (n=288)	Det. (n=68)	Rel. (n=358)
Number of prior arrests	9.5*	5.7*	4.6*	2.0*	N.A.	N.A.	8.9*	3.7*	8.4*	3.9*	7.8*	4.2*
Number of prior convictions	3.9*	2.7*	2.6*	0.9*	5.9*	1.8*	5.4*	1.6*	3.7*	1.9*	3.6*	1.8*
Percentage with prior failure to appear	25%*	14%*	42%*	13%*	45%	37%	30%	24%	42%*	14%*	36%*	17%*
Percentage on pretrial release, probation or parole when arrested	34%*	19%*	70%*	25%*	14%	16%	21%	18%	50%*	25%*	25%	17%

*Differences between groups were statistically significant at the .05 level.

TABLE 7. Charges for Detained and Released Defendants, Six Sites

Note: Differences between groups were statistically significant at the .05 level in each site.

	Baltimore, Maryland				Washington, DC				Louisville, Kentucky			
	Detained		Released		Detained		Released		Detained		Released	
Charge	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Robbery	7	9.6%	8	1.7%	10	19.6%	23	6.0%	0	0.0%	6	1.7%
Burglary	7	9.6%	12	2.6%	9	17.6%	34	8.8%	3	3.6%	17	4.9%
Aggravated assault	4	5.5%	29	6.2%	3	5.9%	25	6.5%	0	0.0%	16	4.7%
Simple assault	5	6.8%	61	13.1%	1	2.0%	17	4.4%	5	6.0%	63	18.3%
Larceny, theft	10	13.7%	66	14.2%	14	27.5%	51	13.2%	3	3.6%	48	14.0%
Fraud, forgery	2	2.7%	21	4.5%	0	0.0%	18	4.7%	0	0.0%	12	3.5%
Drug possession, distribution	2	2.7%	58	12.4%	1	2.0%	36	9.3%	0	0.0%	27	7.8%
Prostitution	0	0.0%	6	1.3%	4	7.8%	38	9.8%	1	1.2%	17	4.9%
Driving while intoxicated	4	5.5%	19	4.1%	0	0.0%	78	20.2%	2	2.4%	19	5.5%
Other	32	43.8%	186	39.9%	9	17.6%	66	17.1%	70	83.3%	119	34.6%
TOTAL	73	100.0%	466	100.0%	51	100.0%	386	100.0%	84	100.0%	344	100.0%

(Continued)

TABLE 7. Charges for Detained and Released Defendants, Six Sites

Note: Differences between groups were statistically significant at the .05 level in each site.

Charge	Tucson, Arizona				San Jose, California				Miami, Florida (felonies only)			
	Detained		Released		Detained		Released		Detained		Released	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Robbery	4	4.1%	2	0.7%	2	4.7%	3	1.1%	19	27.9%	10	2.8%
Burglary	4	4.1%	21	7.6%	5	11.6%	13	4.6%	14	20.6%	48	13.6%
Aggravated assault	4	4.1%	15	5.5%	1	2.3%	5	1.8%	4	5.9%	39	11.1%
Simple assault	3	3.1%	11	4.0%	3	7.0%	6	2.1%	3	4.4%	34	9.7%
Larceny, theft	12	12.4%	40	14.5%	13	30.2%	17	6.1%	11	16.2%	48	13.6%
Fraud, forgery	2	2.1%	6	2.2%	1	2.3%	10	3.6%	1	1.5%	10	2.8%
Drug possession, distribution	7	7.2%	46	16.7%	5	11.6%	18	6.4%	6	8.8%	112	31.8%
Prostitution	1	1.0%	2	0.7%	0	0.0%	4	1.4%	0	0.0%	0	0.0%
Driving while intoxicated	11	11.3%	69	25.1%	3	7.0%	170	60.7%	0	0.0%	0	0.0%
Other	49	50.5%	63	22.9%	10	23.3%	34	12.1%	10	14.7%	51	14.5%
TOTAL	97	100.0%	275	100.0%	43	100.0%	280	100.0%	68	100.0%	352	100.0%

charged with certain offenses—particularly robbery and burglary—were more likely to be detained until trial than were other persons.

Although the information presented above provides insight about the net result of the release/detention system, it is important to remember that this comprises only a limited analysis of that system. Many defendants who eventually secure release are detained before then, sometimes for substantial time periods. In addition, some of the defendants detained until trial were jailed for relatively short time periods. Thus, a complete analysis of the release/detention system as a whole would have to consider the full extent of detention that occurs and the time periods involved, rather than merely the net results before trial.

How Much Would Crime on Bail Be Likely To Decrease If Release Standards Became More Stringent?

The extent to which crime on bail might decrease if release standards became more stringent depends in part on the accuracy with which defendants who are likely to commit such crimes can be identified when release decisions are made. The findings to date, based on "prediction" studies that tried to isolate characteristics that would distinguish persons rearrested during the pretrial period from other defendants, are not very promising.[7] In general, past studies were not notably more successful than random chance in predicting pretrial arrests. This was largely due to the "low base rate" for pretrial arrests, that is, pretrial arrests were relatively infrequent in the defendant groups studied. Additionally, those arrests were scattered among defendants with diverse characteristics. Consequently, no set of variables could be identified that would—with reasonable accuracy—isolate defendants likely to be rearrested pretrial. As a result,

the "best" predictions developed in past analyses would have led, if they had been applied to the defendant groups studied, to the detention of more nonrecidivists than recidivists.

Because prediction studies have not been particularly successful, an estimate of the likely reduction in crime on bail from more stringent release standards must begin with expectations based on random chance. In the National Evaluation of Pretrial Release, crime on bail averaged 16% for eight sites. Thus, for each 100 defendants released, 16 could be expected to be rearrested before trial—or, conversely, for each additional 100 defendants detained, the pretrial rearrests of 16 persons could be expected to be averted. Because defendants rearrested pretrial were rearrested an average of 1.4 times each, the detention of an additional 100 defendants could be expected to result in a decrease of 22 (16 x 1.4) pretrial arrests.

A further illustration of the likely difficulty of trying to reduce crime on bail through more stringent release standards is provided by assuming that one could predict twice as accurately as random chance. Thus, rather than preventing 22 pretrial arrests by 16 defendants, the detention of 100 additional persons would avoid 45 pretrial arrests by 32 defendants. Even under this highly optimistic assumption about predictive accuracy, one is still detaining more than twice as many nonrecidivists (68 out of 100) as recidivists (32 out of 100).

Thus, based on available evidence, it is likely that more stringent release standards would cause substantial increases in detention, with its attendant costs for both the criminal justice system and defendants, while achieving only much more modest decreases in pretrial arrests. Moreover,

one must remember that pretrial arrests include all arrests for all charges. In the National Evaluation of Pretrial Release, for example, only about 20 percent of the pretrial arrests were for robbery, burglary and aggravated assault (the most common "dangerous" crimes). Furthermore, pretrial arrests themselves are only a small percentage of all arrests, as discussed earlier in this paper. Consequently, if one is interested in reducing arrests for "dangerous" crimes, the implementation of more stringent release standards is likely to be a highly inefficient means of achieving that end.

Even if one is interested only in reducing pretrial arrests, the extent to which this can be accomplished without incurring large increases in detention seems quite limited, based on past prediction efforts. Can prediction be improved? Probably not, if the approaches of past studies are simply applied to other sites. But possibly so, if different methods are used. Two approaches merit consideration. First, rather than trying to predict pretrial arrests for all arrested defendants, one might study groups with higher "base rates." For example, predictions might be more successful if limited to defendants having extensive prior records who were on probation, parole or pretrial release when arrested. Second, part of the difficulty of predicting pretrial arrests successfully may be due to the fact that the length of the pretrial period varies considerably. Consequently, efforts to predict rearrest over a given time period might be more successful than prediction attempts limited to the pretrial period alone.

A final point that should be made concerning the relationship between release standards and crime on bail is that available evidence strongly suggests that release standards could become less stringent without sharply

increasing the existing pretrial arrest rates. Although one might assume that, as release rates climb, an increasingly arrest-prone group of defendants is released, such does not seem to be the case. The finding of the National Evaluation of Pretrial Release illustrate this point. One component of that study implemented experimental tests of pretrial release program impact in four sites. In three of those jurisdictions the experimental group processed by the program had higher release rates than the control group.[8] Despite higher release rates, the experimental groups in those sites had pretrial arrest rates (and, incidentally, failure-to-appear rates) that were no different from those of the control group. Thus, the increased rates of release did not result in freeing groups of defendants who were more arrest-prone than persons freed when release rates were lower (though the absolute number of pretrial arrests did, of course, increase).

Additionally, in the eight-site analysis of the National Evaluation of Pretrial Release, no relationship was found between rates of release and rates of pretrial arrest for the individual sites studied. The jurisdictions with the highest release rates did not have the highest rates of of pretrial arrest. Nor did the sites with the lowest release rates consistently have the lowest pretrial arrest rates. Thus, it is highly likely that release rates could be increased in many sites without increasing the current rates of pretrial arrest.

Footnotes

1. For more information on this study, see Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Report, Series B, Number 2, a publication of the National Institute of Justice (Washington, D.C.: U.S. Government Printing Office, October 1981).

2. This variation may be partly due to the fact that "crime on bail" occurs over different time periods in different sites, because the length of the pretrial period varies across jurisdictions.

3. Indeed, existing data suggest that "crime on probation and parole" is a more important contributor to total crime than is "crime on bail". This is perhaps not surprising, given that the length of time a person is on probation or parole substantially exceeds the pretrial time period. What is surprising, however, is the seemingly disproportionate public concern over crime on bail.

4. A 1979 survey of about 100 programs found 18% using totally objective systems; 41%, completely subjective methods; and 41%, mixed approaches. Donald E. Pryor and D. Alan Henry, Pretrial Issues, "Pretrial Practices: A Preliminary Look at the Data," (Washington, D.C.: Pretrial Services Resource Center, April 1980), p. 17.

5. Multivariate analysis of the relative importance of these various characteristics was not conducted for the individual sites. A multivariate analysis for eight sites found the most important of these characteristics to be charge, current involvement with the criminal justice system when arrested, and whether the defendant was a local resident.

6. Multivariate analysis of the relative importance of these various characteristics was not conducted for individual sites. A multivariate analysis for eight sites found the most important of these characteristics to be charge and current involvement with the criminal justice system when arrested.

7. See Arthur R. Angel, et al., "Preventive Detention: An Empirical Analysis," Harvard Civil Rights-Civil Liberties Law Review, Volume 6 (1971); J.W. Locke, et al., Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study, National Bureau of Standards Technical Note 535 (Washington, D.C.: U.S. Government Printing Office, 1970); Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia (Washington, D.C.: Institute for Law and Social Research, April 1980); and Pretrial Release: A National Evaluation of Practices and Outcomes, op. cit.

8. There was no difference in release rates between the two groups in the fourth site.

APPENDIX A

EXAMPLES OF POINT SYSTEMS

- Baltimore, Maryland
- Washington, D.C.
- Jefferson County (Louisville), Kentucky
- Santa Clara County (San Jose), California
- Comparative Analysis of Four Point Systems

BALTIMORE, MARYLAND

To be recommended for [illegible] needs
1 A verified address AND
2 A minimum of 6 verified points from the following

Ver		
	4	RESIDENCE in Baltimore Area Present address 5 years or more
	3	Present address 2 years OR Present and Prior 3 years
	2	Present address 6 months OR Present and Prior 1 year
	1	Present address 4 months OR Present and Prior 6 months.
		TIME in BALTIMORE Area
	1	5 years or more (continuous)
		FAMILY TIES in Baltimore Area
	3	Lives with Parent, Spouse or Guardian
	2	Lives with Other Relative
	1	Lives with Non-family Person
		EMPLOYMENT OR SUBSTITUTES
	4	Present full-time job 3 years, where employer will take back
	3	Present full-time job 1 year or more OR Present and Prior full-time jobs 2 years OR Intermittent work with same company or union 3 years.
	2	Present full-time job 6 months or more OR Present and Prior full-time jobs 1 year OR Part-time job 1 year or more OR Full-time student 6 months or more OR Receiving Social Services, SSI, Social Security, Pension, or VA Disability Benefits 6 months or more OR Laid off during last 4 months from full-time job where employed at least 1 year
	1	Current full-time job OR Part-time job 3 months or more OR Full-time student OR Part-time student 3 months or more OR Receiving or receiving Workmen's Compensation OR Laid off during last 4 months OR Firm commitment to start work within next 2 weeks. (Cannot be awarded unless fully explained in comments.) OR Regular Family Support or Substantial Savings.
		OTHER FACTORS (Cannot be awarded unless fully explained in comments.)
1	1	Poor Health, Over 50 years old, or Pregnant
1	1	Extenuating Responsibilities (e.g. children, household, civic or church duties, etc.)
		DRUG OR ALCOHOL PROBLEM
-2	-2	Knowledge of drug addiction and/or alcoholism (Rebuttable with treatment condition)
		FTA, ESCAPE, OR PAROLE PROBATION VIOLATION
-2	-2	Conviction of FTA, Escape, or Parole/Probation Violation
-4	-4	2 or more Convictions of FTA, Escape, Parole/Probation Violation, or Combination thereof
		PRIOR RECORD
		Negative points are assessed on the basis of the total number of offense points achieved. The units are as follows: 8 points - each Felony Conviction 2 Units - each Misdemeanor conviction (within last 7 years) 1 Unit - each Misdemeanor conviction (over 7 years ago)
0	0	0 1 2
-1	-1	3 4 5 6 7 8
-2	-2	9 10 11 12 13 14
-3	-3	15 16 17 18 19 20
-4	-4	21 or more

RECOMMENDATION CRITERIA FOR THE CITATION RELEASE PROGRAM (Washington, D.C.)

NOTE: The following people cannot be recommended even though they may have the required number of points.

1. Any person who is charged with a felony.[1]
2. Any person who is a juvenile (unless he or she is between the ages of 16 years and 18 years and is charged with a traffic offense.[2]
3. Any person who has ever been convicted of escape from jail.[3]
4. Any person who has willfully failed to appear while on bond (BRA conviction) or who has a pending charge of willfully failing to appear while on bond (pending BRA).
5. Any person who has an outstanding attachment, warrant or detainer against him.
6. Any person who is presently under the influence of narcotics or alcohol to the degree that an intelligent interview cannot be conducted.

To be recommended an arrestee needs:

1. A verified Washington area address where he or she can be reached.[4]
   AND
2. A total of four (4) verified points from the following:

POINTS	
	TIME IN WASHINGTON AREA
1	5 years or more.[5]
	RESIDENCE (In Washington area; NOT on and off)[6]
3	Present address 1 year OR present and prior addresses 1 1/2 years.
2	Present address 6 months OR present and prior addresses 1 year.
1	Present address 4 months OR present and prior addresses 6 months.
	*Add 1 extra point if the arrestee is buying his home
	*Add 1 extra point if the arrestee has a verified operable telephone listed in his own name.
	FAMILY TIES[7]
4	Lives with family AND has contact with other family member(s).
3	Lives with family.
2	Lives with non-family friend whom he gives as a reference AND has contact with family member(s).
1	Lives with non-family friend whom he gives as a reference OR lives alone and has contact with family member(s).
	EMPLOYMENT OR SUBSTITUTES[8]
4	Present job 1 year where employer will take back OR homemaker with children in elementary school.
3	Present job 1 year or more OR homemaker with children.
2	Present job 3 months OR present and prior jobs 6 months or full-time student other than secondary school student.
1	(a) Present job; OR (b) Unemployed 3 months or less with 9 months or more single job from which not fired for disciplinary reasons; OR (c) Receiving unemployment compensation, welfare, pension, disability, alimony, etc.; OR (d) Full-time secondary student; OR (e) In poor health (under a doctor's care, physically impaired, etc.)
	DEDUCTIONS[9]
-5	On Bond on pending felony charge OR on probation or parole for a felony.
-2	On Bond on pending misdemeanor charge OR on probation or parole for a misdemeanor; OR knowledge of present drug use or alcoholism.
-1	Prior negligent no show while on Bond; OR knowledge of past drug use.

PRIOR CONVICTIONS

NOTE: Use the chart below for single offenses and for combination of offenses.

Code: One adult felony = 7 units
One adult misdemeanor = 2 units

Circle total record units

Units	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	19	20	21
Points	0			-1				2							3						4

RECOMMENDATION CRITERIA FOR TRAFFIC CASES (other than DWI, Negligent Homicides, Hit and Run)

POINTS	
4	Present Address 1 month (No Deductions)

TRAFFIC CASES (DWI, Negligent Homicide, Leaving the Scene of an Accident, Hit and Run)

- Complete Interview and Regular Point Tabulation
  (Only Deduction: -2 for Probation, Parole or Bond on misdemeanor or felony)

JEFFERSON COUNTY (LOUISVILLE), KENTUCKY

To be eligible for a recommendation for release on personal recognizance a defendant needs:

1. A verified area address within the Commonwealth where he or she can be reached. "Area" is defined as either a judicial district where the court having jurisdiction of the charge presides or within fifty miles of the place of arrest, whichever area is greater, and

2. A total of eight verified points from the following:

	Criteria
	Circle only one number for each category of criteria except "miscellaneous."
	Residence
5	Has been a resident of the area for more than one year.
3	Has been a resident of the area for less than one year but more than three months.
	Personal Ties
4	Lives with spouse, children, parents, and/or guardian.
3	Lives with other relative whom individual gives as a reference.
2	Lives with non-related roommates.
1	Lives alone.
	Economic Ties
5	Has held present job for more than one year OR is a full-time student.
3	Has held present job for less than one year but more than three months.
3	Is dependent on spouse, parents, other relatives, or legal guardian.
2	Is dependent on unemployment, disability, retirement, or welfare compensation.
1	Has held present job for less than three months.
	Miscellaneous
3	Owns property in the area.
1	Has a telephone.
1	Expects someone at arraignment.
	Previous Criminal Record (-)
3	No convictions on record (excluding traffic violations) in last two years.
	(a) Total Positive Points
	Previous Criminal Record (-)
- 3	AWOL on record (current military personnel only).
- 5	Felony conviction in last two years, without FTA's.
- 5	FTA on traffic citation in last two years.
-10	FTA on misdemeanor charge in last five years.
-15	FTA on felony charge at any time.
	(b) Total Negative Points
	Total Pretrial Release Points (a minus b)

A person who (1) is charged with or convicted of escape from custody,
(2) has any outstanding bench warrant issued, or
(3) has any detainer or holder filed
is ineligible for a favorable recommendation.

(Circle one) ELIGIBLE INELIGIBLE

SANTA CLARA COUNTY (SAN JOSE), CALIFORNIA

DISTRIBUTION OF RELEASE CRITERIA ON POINT BASIS

RESIDENCE POINTS	STANDARD
3	Present residence 1 year or more
2	Present residence 6 months or present and prior residence 1 year
1	Present residence 4 months or present and prior residence 6 months
1	5 years or more in the Bay Area

FAMILY TIES POINTS	STANDARD
3	Lives with family and weekly contact with other family members
2	Lives with family or weekly contact with other family members
1	Lives with non-family

EMPLOYMENT POINTS	STANDARD
3	Present job 1 year or more or full-time student
2	Present job 4 months or present and prior job 6 months
1	Presently employed or receiving financial assistance

DISCRETIONARY POINTS	STANDARD
1	Pregnant, old age, medical problems, etc.

PRIOR RECORD POINTS	STANDARD
2	No convictions
1	1 misdemeanor conviction
0	2 misdemeanor convictions or 1 felony conviction
-1	3 or more misdemeanor convictions or 2 or more felony convictions

COMPARATIVE ANALYSIS OF FOUR POINT SYSTEMS

ITEM	POINT RANGE				AS A PERCENTAGE OF TOTAL POINTS NEEDED FOR OR RECOMMENDATION			
	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA
Positive Points:								
Residence	0 to 5	0 to 3	1 to 5	0 to 3	0 to 83%	0 to 75%	13% to 63%	0 to 60%
Family Ties	0 to 3	0 to 4	0 to 4	0 to 3	0 to 50%	0 to 100%	0 to 50%	0 to 60%
Employment or Substitutes	0 to 4	0 to 4	0 to 5	0 to 3	0 to 67%	0 to 100%	0 to 63%	0 to 60%
Subtotal, Community Ties	0 to 12	0 to 11	1 to 14	0 to 9	0 to 200%	0 to 275%	13% to 176%	0 to 180%
Other Positive Points (see details below)	0 to 2	0 to 2[a]	0 to 8	0 to 3	0 to 33%	0 to 50%	0 to 100%	0 to 60%
Subtotal, Positive Points	0 to 14	0 to 11[a]	1 to 22	0 to 12	0 to 233%	0 to 325%	13% to 276%	0 to 240%
Negative Points:								
Prior Convictions	-4 to 0	-4 to 0	-5 to 0	-1 to 0	-67% to 0	-100% to 0	-63% to 0	-20% to 0
Other Negative Points (see details below)	-6 to 0	-8 to 0	-33 to 0	0	-100% to 0	-200% to 0	-413% to 0	0
Subtotal, Negative Points	-10 to 0	-12 to 0	-38 to 0	-1 to 0	-167% to 0	-300% to 0	-476% to 0	-20% to 0
TOTAL POINT RANGE	-10 to 14	-12 to 11	-37 to 22	-1 to 12	-167% to +233%	-300% to +325%	-463% to +276%	-20% to +240%
Points Needed for OR Recommendation	6	4	8	5	100%	100%	100%	100%

(CONTINUED)

COMPARATIVE ANALYSIS OF FOUR POINT SYSTEMS (CONTINUED)

ITEM	POINT RANGE				AS A PERCENTAGE OF TOTAL POINTS NEEDED FOR OR RECOMMENDATION			
	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA
Analysis of "Other Positive Points": Homeowner	0	0 to 1	0 to 3	0	0	0 to 25%	0 to 38%	0
Telephone	0	0 to 1	0 to 1	0	0	0 to 25%	0 to 13%	0
Health or Age Considerations	0 to 1	0	0	0 to 1	0 to 17%	0	0	0 to 20%
Prior Conviction Record	0	0	0 to 3	0 to 2	0	0	0 to 38%	0 to 40%
Special Responsibilities (e.g., children)	0 to 1	0	0	0	0 to 17%	0	0	0
Someone Expected at Arraignment	0	0	0 to 1	0	0	0	0 to 13%	0
Analysis of "Other Negative Points": Prior Failure to Appear	-4 to 0	-1 to 0	-30 to 0	0	-67% to 0	-25% to 0	-375% to 0	0
Drug Use	-2 to 0	-2 to 0	0	0	-33% to 0	-50% to 0	0	0
Prior Violation of Probation or Parole	-4 to 0	0	0	0	-67% to 0	0	0	0
Prior Escape	-4 to 0	0	0	0	-67% to 0	0	0	0
Currently Awaiting Trial	0	-5 to 0	0	0	0	-125% to 0	0	0
Currently on Probation or Parole	0	-5 to 0	0	0	0	-125% to 0	0	0
AWOL Record (Current Military Personnel Only)	0	0	-3 to 0	0	0	0	-38% to 0	0

[a] The 2 points in the "other" category are awarded only if they are needed for the defendant to reach the 4 point total required for an OR recommendation.

APPENDIX B

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Note: These data are from six sites included in the Nat onal Evaluation of Pretrial Release. For more information about that study, see Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Report, Series B, Number 2, a publication of the National Institute of Justice (Washington, D.C.: U. S. Government Printing Office, October 1981).

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Baltimore, MD

CHARACTERISTIC	Financial Release Conditions (n = 162)		Nonfinancial Release Conditions (n = 381)		Total Defendants (n = 543)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
* A. Number of prior arrests						
Mean number of prior arrests	7.3		3.3		4.5	
* B. Number of prior convictions						
Mean number of prior convictions	2.4		1.2		1.6	
* C. Prior Failure To Appear						
Yes	41	66.1%	21	33.9%	62	100.0%
No	96	28.9%	236	71.1%	332	100.0%
Total	137	34.8%	257	65.2%	394	100.0%
* D. CJS Status at Time of Arrest						
No involvement with CJS	102	24.6%	312	75.4%	414	100.0%
On pretrial release	3	42.9%	4	57.1%	7	100.0%
On probation	33	44.0%	42	56.0%	75	100.0%
On parole	15	68.2%	7	31.8%	22	100.0%
Total	153	29.5%	365	70.5%	518	100.0%

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Baltimore, MD

CHARACTERISTIC	Financial Release Conditions (n = 162)		Nonfinancial Release Conditions (n = 381)		Total Defendants (n = 543)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
* A. Charge						
Robbery	12	85.7%	2	14.3%	14	100.0%
Burglary	12	66.7%	6	33.3%	18	100.0%
Aggravated assault	19	57.6%	14	42.4%	33	100.0%
Simple assault	12	18.2%	54	81.8%	66	100.0%
Larceny, theft	26	34.7%	49	65.3%	75	100.0%
Fraud, forgery	4	17.4%	19	82.6%	23	100.0%
Drug possession, distribution	13	21.7%	47	78.3%	60	100.0%
Prostitution	3	50.0%	3	50.0%	6	100.0%
Driving while intoxicated	2	9.5%	19	90.5%	21	100.0%
Other	58	26.9%	158	73.1%	216	100.0%
Total	161	30.3%	371	69.7%	532	100.0%
* B. Use of Weapons						
Yes	37	57.8%	27	42.2%	64	100.0%
No	122	25.7%	353	74.3%	475	100.0%
Total	159	29.5%	380	70.5%	539	100.0%
III. Community Ties						
A. Residence						
* 1. Local Resident						
Yes	143	27.4%	378	72.6%	521	100.0%
No	8	88.9%	1	11.1%	9	100.0%
Total	151	28.5%	379	71.5%	530	100.0%
* 2. Years of Local Residence Mean number of years	20.3		23.4		22.5	
* 3. Months at present address Mean number of months	61.5		75.8		71.6	

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Baltimore, MD

CHARACTERISTIC	Financial Release Conditions (n = 162)		Nonfinancial Release Conditions (n = 381)		Total Defendants (n = 543)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
* 1. Marital Status						
Married	17	17.3%	81	82.7%	98	100.0%
Separated, divorced, widowed	44	31.4%	96	68.6%	140	100.0%
Single	96	32.2%	202	67.8%	298	100.0%
Total	157	29.3%	379	70.7%	536	100.0%
2. Supports Family						
Yes	56	27.6%	147	72.4%	203	100.0%
No	100	30.6%	227	69.4%	327	100.0%
Total	156	29.4%	374	70.6%	530	100.0%
* 3. Living Arrangement						
With parent	55	29.3%	133	70.7%	188	100.0%
With spouse	14	15.2%	78	84.8%	92	100.0%
With other relative	31	29.8%	73	70.2%	104	100.0%
With unrelated person	34	39.1%	53	60.9%	87	100.0%
Alone	18	31.6%	39	68.4%	57	100.0%
Total	152	28.8%	376	71.2%	528	100.0%
4. Number of Dependents						
Mean number of dependents	0.7		1.2		1.0	
* C. Employment Status						
Employed	62	23.3%	204	76.7%	266	100.0%
Unemployed	95	35.2%	175	64.8%	270	100.0%
Total	157	29.3%	379	70.7%	536	100.0%

*Statistically significant at the .05 level

— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Baltimore, MD

CHARACTERISTIC	Financial Release Conditions (n = 162)		Nonfinancial Release Conditions (n = 381)		Total Defendants (n = 543)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest Mean number of years	28.9		29.6		29.4	
* B. Ethnicity						
Black	125	33.8%	245	66.2%	370	100.0%
Hispanic) White	37	21.9%	132	78.1%	169	100.0%
Total	162	30.1%	377	69.9%	539	100.0%
C. Sex						
Male	137	30.7%	309	69.3%	446	100.0%
Female	25	26.6%	69	73.4%	94	100.0%
Total	162	30.3%	378	70.0%	540	100.0%

*Statistically significant at the .05 level

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Washington, D.C.

CHARACTERISTIC	Financial Release Conditions (n = 108)		Nonfinancial Release Conditions (n = 194)		Total Defendants (n = 302)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
* A. Number of prior arrests						
Mean number of prior arrests	3.7		2.8		3.1	
* B. Number of prior convictions						
Mean number of prior convictions	1.9		1.3		1.5	
* C. Prior Failure To Appear						
Yes	15	62.5%	9	37.5%	24	100.0%
No	33	34.7%	62	65.3%	95	100.0%
Total	48	40.3%	71	59.7%	119	100.0%
* D. CJS Status at Time of Arrest						
No involvement with CJS	26	22.6%	89	77.4%	115	100.0%
On pretrial release	9	52.9%	8	47.1%	17	100.0%
On probation	16	61.5%	10	38.5%	26	100.0%
On parole	12	44.4%	15	55.6%	27	100.0%
Total	63	34.1%	122	65.9%	185	100.0%

*Statistically significant at the .05 level.
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Washington, D.C.

CHARACTERISTIC	Financial Release Conditions (n = 108)		Nonfinancial Release Conditions (n = 194)		Total Defendants (n = 302)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
* A. Charge						
Robbery	15	46.9%	17	53.1%	32	100.0%
Burglary	12	31.6%	26	68.4%	38	100.0%
Aggravated assault	11	39.3%	17	60.7%	28	100.0%
Simple assault	3	21.4%	11	78.6%	14	100.0%
Larceny, theft	18	38.3%	29	61.7%	47	100.0%
Fraud, forgery	1	6.7%	14	93.3%	15	100.0%
Drug possession, distribution	3	13.6%	19	86.4	22	100.0%
Prostitution	8	27.6%	21	72.4%	29	100.0%
Driving while intoxicated	5	27.8%	13	72.2%	18	100.0%
Other	30	54.5%	25	45.5%	55	100.0%
Total	106	35.6%	192	64.4%	298	100.0%
B. Use of Weapons						
Yes	16	45.7%	19	54.3%	35	100.0%
No	31	33.0%	63	67.0%	94	100.0%
Total	47	36.4%	82	63.6%	129	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	98	33.9%	191	66.1%	289	100.0%
No	7	70.0%	3	30.0%	10	100.0%
Total	105	35.1%	194	64.9%	299	100.0%
*2. Years of Local Residence Mean number of years	14.3		19.3		17.5	
*3. Months at present address Mean number of months	46.8		66.3		59.4	

*Statistically significant at the .05 level.
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Washington, D.C.

CHARACTERISTIC	Financial Release Conditions (n = 108)		Nonfinancial Release Conditions (n = 194)		Total Defendants (n = 302)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	10	20.8%	38	79.2%	48	100.0%
Separated, divorced, widowed	17	30.4%	39	69.6%	56	100.0%
Single	58	35.8%	104	64.2%	162	100.0%
Total	85	32.0%	181	68.0%	265	100.0%
*2. Supports Family						
Yes	9	15.8%	48	84.2%	57	100.0%
No	54	36.5%	94	63.5%	148	100.0%
Total	63	30.7%	142	69.3%	205	100.0%
3. Living Arrangement						
With parent	25	28.4%	63	71.6%	88	100.0%
With spouse	10	20.8%	38	79.2%	48	100.0%
With other relative	15	36.6%	26	63.4%	41	100.0%
With unrelated person	17	33.3%	34	66.7%	51	100.0%
Alone	9	34.6%	17	65.4%	26	100.0%
Total	76	29.9%	178	70.1%	254	100.0%
*4. Number of Dependents						
Mean number of dependents	0.3		0.5		0.3	
C. Employment Status						
Employed	35	29.2%	85	70.8%	120	100.0%
Unemployed	52	33.8%	102	66.2%	154	100.0%
Total	87	31.8%	187	68.2%	274	100.0%

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Washington, D.C.

CHARACTERISTIC	Financial Release Conditions (n = 108)		Nonfinancial Release Conditions (n = 194)		Total Defendants (n = 302)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
*A. Age at Arrest Mean number of years	30.2		28.5		29.1	
B. Ethnicity						
Black	72	32.7%	148	67.3%	220	100.0%
Hispanic, White	8	33.3%	16	66.7%	24	100.0%
Total	80	32.8%	164	67.3%	244	100.0%
C. Sex						
Male	95	37.5%	158	62.5%	253	100.0%
Female	13	26.5%	36	73.5%	49	100.0%
Total	108	35.8%	194	64.2%	302	100.0%

*Statistically significant at the .05 level

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Louisville, KY

CHARACTERISTIC	Financial Release Conditions (n = 216)		Nonfinancial Release Conditions (n = 152)		Total Defendants (n = 368)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
* A. Number of prior arrests						
Mean number of prior arrests	7.4		3.5		5.8	
* B. Number of prior convictions						
Mean number of prior convictions	2.6		1.3		2.0	
* C. Prior Failure To Appear						
Yes	85	87.6%	12	12.4%	97	100.0%
No	73	48.3%	78	51.7%	151	100.0%
Total	158	63.7%	90	36.3%	248	100.0%
* D. CJS Status at Time of Arrest						
No involvement with CJS	163	54.7%	135	45.3%	298	100.0%
On pretrial release	31	77.5%	9	22.5%	40	100.0%
On probation	9	81.8%	2	18.2%	11	100.0%
On parole	5	83.3%	1	16.7%	6	100.0%
Total	208	58.6%	147	41.4%	355	100.0%

* Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Louisville, KY

CHARACTERISTIC	Financial Release Conditions (n = 216)		Nonfinancial Release Conditions (n = 152)		Total Defendants (n = 368)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
A. Charge						
Robbery	6	100.0%	0	0.0%	6	100.0%
Burglary	13	68.4%	6	31.6%	19	100.0%
Aggravated assault	8	50.0%	8	50.0%	16	100.0%
Simple assault	37	56.1%	29	43.9%	66	100.0%
Larceny, theft	29	56.9%	22	43.1%	51	100.0%
Fraud, forgery	8	66.7%	4	33.3%	12	100.0%
Drug possession, distribution	12	44.4%	15	55.6%	27	100.0%
Prostitution	10	55.6%	8	44.4%	18	100.0%
Driving while intoxicated	13	65.0%	7	35.0%	20	100.0%
Other	77	59.7%	52	40.3%	129	100.0%
Total	213	58.5%	151	41.5%	364	100.0%
B. Use of Weapons						
Yes	25	59.5%	17	40.5%	42	100.0%
No	191	58.6%	135	41.4%	326	100.0%
Total	216	58.7%	152	41.3%	368	100.0%
III. Community Ties						
A. Residence						
* 1. Local Resident						
Yes	182	54.7%	151	45.3%	333	100.0%
No	10	100.0%	0	0.0%	10	100.0%
Total	192	56.0%	151	44.0%	343	100.0%
* 2. Years of Local Residence Mean number of years	14.0		21.9		17.2	
* 3. Months at present address Mean number of months	34.9		51.7		41.9	

* Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Louisville, KY

CHARACTERISTIC	Financial Release Conditions (n = 216)		Nonfinancial Release Conditions (n = 152)		Total Defendants (n = 368)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	42	52.5%	38	47.5%	80	100.0%
Separated, divorced, widowed	37	52.1%	34	47.9%	71	100.0%
Single	65	46.8%	74	53.2%	139	100.0%
Total	144	49.7%	146	50.3%	290	100.0%
2. Supports Family						
Yes	73	52.1%	67	47.9%	140	100.0%
No	69	46.6%	79	53.4%	148	100.0%
Total	142	49.3%	146	50.7%	288	100.0%
3. Living Arrangement						
With parent	49	49.5%	50	50.5%	99	100.0%
With spouse	36	49.3%	37	50.7%	73	100.0%
With other relative	15	38.5%	24	61.5%	39	100.0%
With unrelated person	19	44.2%	24	55.8%	43	100.0%
Alone	24	68.6%	11	31.4%	35	100.0%
Total	143	49.5%	146	50.5%	289	100.0%
* 4. Number of Dependents						
Mean number of dependents	0.8		1.3		1.0	
C. Employment Status						
Employed	119	57.2%	89	42.8%	208	100.0%
Unemployed	84	57.9%	61	42.1%	145	100.0%
Total	203	57.5%	150	42.5%	353	100.0%

* Statistically significant at the .05 level

— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Louisville, KY

CHARACTERISTIC	Financial Release Conditions (n = 216)		Nonfinancial Release Conditions (n = 152)		Total Defendants (n = 368)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
* A. Age at Arrest Mean number of years	30.4		28.8		29.8	
B. Ethnicity						
Black	85	58.2%	61	41.8%	146	100.0%
Hispanic) White)	129	58.6%	91	41.4%	220	100.0%
Total	214	58.5%	152	41.5%	366	100.0%
C. Sex						
Male	178	58.4%	127	41.6%	305	100.0%
Female	35	58.3%	25	41.7%	60	100.0%
Total	213	58.4%	152	41.6%	365	100.0%

*Statistically significant at the .05 level

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Tucson, Arizona

CHARACTERISTIC	Financial Release Conditions (n = 181)		Nonfinancial Release Conditions (n = 216)		Total Defendants (n = 397)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
* A. Number of prior arrests						
Mean number of prior arrests	6.4		3.9		5.0	
* B. Number of prior convictions						
Mean number of prior convictions	3.7		1.7		2.6	
C. Prior Failure To Appear						
Yes	35	45.5%	42	54.5%	77	100.0%
No	95	43.0%	126	57.0%	221	100.0%
Total	130	43.6%	168	56.4%	298	100.0%
D. CJS Status at Time of Arrest						
No involvement with CJS	129	44.5%	161	55.5%	290	100.0%
On pretrial release	13	48.1%	14	51.9%	27	100.0%
On probation	10	40.0%	15	60.0%	25	100.0%
On parole	5	38.5%	8	61.5%	13	100.0%
Total	157	44.2%	198	55.8%	355	100.0%

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Tucson, Arizona

CHARACTERISTIC	Financial Release Conditions (n = 181)		Nonfinancial Release Conditions (n = 216)		Total Defendants (n = 397)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
* A. Charge						
Robbery	5	83.3%	1	16.7%	6	100.0%
Burglary	9	36.0%	16	64.0%	25	100.0%
Aggravated assault	9	47.4%	10	52.6%	19	100.0%
Simple assault	7	50.0%	7	50.0%	14	100.0%
Larceny, theft	24	46.2%	28	53.8%	52	100.0%
Fraud, forgery	4	57.1%	3	42.9%	7	100.0%
Drug possession, distribution	14	27.5%	37	72.5%	51	100.0%
Prostitution	1	33.3%	2	67.7%	3	100.0%
Driving while intoxicated	27	34.2%	52	65.8%	79	100.0%
Other	63	57.3%	47	42.7%	110	100.0%
Total	163	44.5%	203	55.5%	366	100.0%
B. Use of Weapons						
Yes	16	55.2%	13	44.8%	29	100.0%
No	79	43.9%	101	56.1%	180	100.0%
Total	95	45.5%	114	54.5%	209	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	128	40.6%	187	59.4%	315	100.0%
No	27	60.0%	18	40.0%	45	100.0%
Total	155	43.1%	205	56.9%	360	100.0%
*2. Years of Local Residence Mean number of years	5.5		8.5		7.1	
*3. Months at present address Mean number of months	22.0		41.9		32.8	

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Tucson, Arizona

CHARACTERISTIC	Financial Release Conditions (n = 181)		Nonfinancial Release Conditions (n = 216)		Total Defendants (n = 397)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	10	27.0%	27	73.0%	37	100.0%
Separated, divorced, widowed	15	50.0%	15	50.0%	30	100.0%
Single	53	34.6%	100	65.4%	153	100.0%
Total	78	35.5%	142	64.5%	220	100.0%
2. Supports Family						
Yes	23	31.5%	50	68.5%	73	100.0%
No	58	38.2%	94	61.8%	152	100.0%
Total	81	36.0%	144	64.0%	225	100.0%
3. Living Arrangement						
With parent	14	25.0%	42	75.0%	56	100.0%
With spouse	10	26.3%	28	73.7%	38	100.0%
With other relative	11	37.9%	18	62.1%	29	100.0%
With unrelated person	15	38.5%	24	61.5%	39	100.0%
Alone	18	45.0%	22	55.0%	40	100.0%
Total	68	33.7%	134	66.3%	202	100.0%
* 4. Number of Dependents						
Mean number of dependents	0.3		0.5		0.4	
C. Employment Status						
Employed	46	35.9%	82	64.1%	128	100.0%
Unemployed	52	39.4%	80	60.6%	132	100.0%
Total	98	37.7%	162	62.3%	260	100.0%

*Statistically significant at the .05 level

— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Tucson, Arizona

CHARACTERISTIC	Financial Release Conditions (n = 181)		Nonfinancial Release Conditions (n = 216)		Total Defendants (n = 397)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
* A. Age at Arrest Mean number of years	30.3		27.7		28.9	
B. Ethnicity						
Black	11	35.5%	20	64.5%	31	100.0%
Hispanic	44	45.4%	53	54.6%	97	100.0%
White	90	43.1%	119	56.9%	209	100.0%
Total	145	43.0%	192	57.0%	337	100.0%
C. Sex						
Male	157	45.2%	190	54.8%	347	100.0%
Female	22	46.8%	25	53.2%	47	100.0%
Total	179	45.4%	215	54.6%	394	100.0%

*Statistically significant at the .05 level

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: San Jose, CA

CHARACTERISTIC	Financial Release Conditions (n = 154)		Nonfinancial Release Conditions (n = 178)		Total Defendants (n = 332)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
*A. Number of prior arrests						
Mean number of prior arrests	6.1		3.1		4.5	
*B. Number of prior convictions						
Mean number of prior convictions	2.9		1.6		2.2	
C. Prior Failure To Appear						
Yes	25	62.5%	15	37.5%	40	100.0%
No	86	45.7%	102	54.3%	188	100.0%
Total	111	48.7%	117	51.3%	228	100.0%
*D. CJS Status at Time of Arrest						
No involvement with CJS	82	36.3%	144	63.7%	226	100.0%
On pretrial release	31	73.8%	11	26.2%	42	100.0%
On probation	23	56.1%	18	43.9%	41	100.0%
On parole	4	80.0%	1	20.0%	5	100.0%
Total	140	44.6%	174	55.4%	314	100.0%

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: San Jose, CA

CHARACTERISTIC	Financial Release Conditions (n = 154)		Nonfinancial Release Conditions (n = 178)		Total Defendants (n = 332)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	4	80.0%	1	20.0%	5	100.0%
Burglary	11	61.1%	7	38.9%	18	100.0%
Aggravated assault	5	83.3%	1	16.7%	6	100.0%
Simple assault	6	66.7%	3	33.3%	9	100.0%
Larceny, theft	20	66.7%	10	33.3%	30	100.0%
Fraud, forgery	5	45.5%	6	54.5%	11	100.0%
Drug possession, distribution	16	72.7%	6	27.3%	22	100.0%
Prostitution	3	75.0%	1	25.0%	4	100.0%
Driving while intoxicated	53	30.8%	119	69.2%	172	100.0%
Other	23	54.8%	19	45.2%	42	100.0%
Total	146	45.8%	173	54.2%	319	100.0%
* B. Use of Weapons						
Yes	12	75.0%	4	25.0%	16	100.0%
No	124	42.2%	170	57.8%	294	100.0%
Total	136	43.9%	174	56.1%	310	100.0%
III. Community Ties						
A. Residence						
1. Local Resident						
Yes	145	45.7%	172	54.3%	317	100.0%
No	8	57.1%	6	42.9%	14	100.0%
Total	153	46.2%	178	53.8%	331	100.0%
2. Years of Local Residence Mean number of years	12.1		14.1		13.1	
* 3. Months at present address Mean number of months	13.3		49.6		32.8	

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: San Jose, CA

CHARACTERISTIC	Financial Release Conditions (n = 154)		Nonfinancial Release Conditions (n = 178)		Total Defendants (n = 332)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
* 1. Marital Status						
Married	35	35.4%	64	64.6%	99	100.0%
Separated, divorced, widowed	41	45.6%	49	54.4%	90	100.0%
Single	68	51.5%	64	48.5%	132	100.0%
Total	144	44.9%	177	55.1%	321	100.0%
* 2. Supports Family						
Yes	29	29.0%	71	71.0%	100	100.0%
No	78	52.3%	71	47.7%	149	100.0%
Total	107	43.0%	142	57.0%	249	100.0%
* 3. Living Arrangement						
With parent	38	53.5%	33	46.5%	71	100.0%
With spouse	32	33.0%	65	67.0%	97	100.0%
With other relative	16	48.5%	17	51.5%	33	100.0%
With unrelated person	15	34.1%	29	65.9%	44	100.0%
Alone	12	32.4%	25	67.6%	37	100.0%
Total	113	40.1%	169	59.9%	282	100.0%
4. Number of Dependents						
Mean number of dependents	0.1		0.4		0.3	
* C. Employment Status						
Employed	82	38.7%	130	61.3%	212	100.0%
Unemployed	69	59.5%	47	40.5%	116	100.0%
Total	151	46.0%	177	54.0%	328	100.0%

*Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: San Jose, CA

CHARACTERISTIC	Financial Release Conditions (n = 154)		Nonfinancial Release Conditions (n = 178)		Total Defendants (n = 332)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
* A. Age at Arrest						
Mean number of years	29.0		32.3		30.2	
B. Ethnicity						
Black	26	63.4%	15	36.6%	41	100.0%
Hispanic	46	45.5%	55	54.5%	101	100.0%
White	80	43.7%	103	56.3%	183	100.0%
Total	152	46.8%	173	53.2	325	100.0%
C. Sex						
Male	128	45.4%	154	54.6%	282	100.0%
Female	25	52.1%	23	47.9%	48	100.0%
Total	153	46.4%	177	53.6%	330	100.0%

*Statistically significant at the .05 level

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Financial Release Conditions (n = 245)		Nonfinancial Release Conditions (n = 163)		Total Defendants (n = 408)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
* A. Number of prior arrests						
Mean number of prior arrests	4.7		4.4		4.6	
* B. Number of prior convictions						
Mean number of prior convictions	1.9		2.1		2.0	
C. Prior Failure To Appear						
Yes	29	58.0%	21	42.0%	50	100.0%
No	112	57.4%	83	42.6%	195	100.0%
Total	141	57.6%	104	42.4%	245	100.0%
D. CJS Status at Time of Arrest						
No involvement with CJS	187	59.0%	130	41.0%	317	100.0%
On pretrial release	11	52.4%	10	47.6%	21	100.0%
On probation	31	64.6%	17	35.4%	48	100.0%
On parole	4	100.0%	0	0.0%	4	100.0%
Total	233	59.7%	157	40.3%	390	100.0%

* Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Financial Release Conditions (n = 245)		Nonfinancial Release Conditions (n = 163)		Total Defendants (n = 408)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
* A. Charge						
Robbery	13	68.4%	6	31.6%	19	100.0%
Burglary	30	50.0%	30	50.0%	60	100.0%
Aggravated assault	23	54.8%	19	45.2%	42	100.0%
Simple assault	16	43.2%	21	56.8%	37	100.0%
Larceny, theft	33	57.9%	24	42.1%	57	100.0%
Fraud, forgery	9	81.8%	2	18.2%	11	100.0%
Drug possession, distribution	75	63.6%	43	36.4%	118	100.0%
Prostitution	0	0.0%	0	0.0%	0	0.0%
Driving while intoxicated	0	0.0%	0	0.0%	0	0.0%
Other	42	72.4%	16	27.6%	58	100.0%
Total	241	60.0%	161	40.0%	402	100.0%
B. Use of Weapons						
Yes	58	57.4%	43	42.6%	101	100.0%
No	186	60.8%	120	39.2%	306	100.0%
Total	244	60.0%	163	40.0%	407	100.0%
III. Community Ties						
A. Residence						
1. Local Resident	204	58.3%	146	41.7%	350	100.0%
Yes	33	71.7%	13	28.3%	46	100.0%
No						
Total	237	59.8%	159	40.2%	396	100.0%
* 2. Years of Local Residence Mean number of years	4.9		12.4		7.9	
* 3. Months at present address Mean number of months	16.0		46.5		28.2	

* Statistically significant at the .05 level
— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Financial Release Conditions (n = 245)		Nonfinancial Release Conditions (n = 163)		Total Defendants (n = 408)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
*1. Marital Status						
Married	22	52.4%	20	47.6%	42	100.0%
Separated, divorced, widowed	18	52.9%	16	47.1%	34	100.0%
Single	52	35.9%	93	64.1%	145	100.0%
Total	92	41.6%	129	58.4%	221	100.0%
2. Supports Family						
Yes	30	46.9%	34	53.1%	64	100.0%
No	42	37.2%	71	62.8%	113	100.0%
Total	72	40.7%	105	59.3%	177	100.0%
* 3. Living Arrangement						
With parent	23	30.3%	53	69.7%	76	100.0%
With spouse	23	54.8%	19	45.2%	42	100.0%
With other relative	9	36.0%	16	64.0%	25	100.0%
With unrelated person	15	48.4%	16	51.6%	31	100.0%
Alone	18	43.9%	23	56.1%	41	100.0%
Total	88	40.9%	127	59.1%	215	100.0%
* 4. Number of Dependents						
Mean number of dependents	0.2		0.5		0.4	
C. Employment Status						
Employed	123	58.6%	87	41.4%	210	100.0%
Unemployed	104	58.8%	73	41.2%	177	100.0%
Total	227	58.7%	160	41.3%	387	100.0%

* Statistically significant at the .05 level

— Continued —

DEFENDANT CHARACTERISTICS BY TYPE
OF RELEASE CONDITIONS JUDGES SET

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Financial Release Conditions (n = 245)		Nonfinancial Release Conditions (n = 163)		Total Defendants (n = 408)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest						
Mean number of years	28.8		26.7		28.0	
* B. Ethnicity						
Black	94	47.5%	104	52.5%	198	100.0%
Hispanic	46	73.0%	17	27.0%	63	100.0%
White	102	70.8%	42	29.2%	144	100.0%
Total	242	59.8%	163	40.2%	405	100.0%
C. Sex						
Male	216	59.8%	145	40.2%	361	100.0%
Female	29	61.7%	18	38.3%	47	100.0%
Total	245	60.0%	163	40.0%	408	100.0%

* Statistically significant at the .05 level

APPENDIX C

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Note: These data are from six sites included in the National Evaluation of Pretrial Release. For more information about that study, see Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Report, Series B, Number 2, a publication of the National Institute of Justice (Washington, D.C.: U. S. Government Printing Office, October 1981).

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Baltimore, MD

CHARACTERISTIC	Detained Defendants (n = 73)		Released Defendants (n = 476)		Total Defendants (n = 549)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
*A. Number of prior arrests						
Mean number of prior arrests	9.5		5.7		6.2	
*B. Number of prior convictions						
Mean number of prior convictions	3.9		2.7		2.9	
*C. Prior Failure To Appear						
Yes	14	22.6%	48	77.4%	62	100.0%
No	42	12.5%	294	87.5%	336	100.0%
Total	56	14.1%	342	85.9%	398	100.0%
*D. CJS Status at Time of Arrest						
No involvement with CJS	42	10.6%	373	89.4%	417	100.0%
On pretrial release	2	22.2%	7	77.8%	9	100.0%
On probation	12	15.6%	65	84.4%	77	100.0%
On parole	9	40.9%	13	59.1%	22	100.0%
Total	67	12.8%	458	87.2%	525	100.0%

*Statistically significant at the .05 level.

— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Baltimore, MD

CHARACTERISTIC	Detained Defendants (n = 73)		Released Defendants (n = 476)		Total Defendants (n = 549)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	7	46.7%	8	53.3%	15	100.0%
Burglary	7	36.8%	12	63.2%	19	100.0%
Aggravated assault	4	12.1%	29	87.9%	33	100.0%
Simple assault	5	7.6%	61	92.4%	66	100.0%
Larceny, theft	10	13.2%	66	86.8%	76	100.0%
Fraud, forgery	2	8.7%	21	91.3%	23	100.0%
Drug possession, distribution	2	3.3%	58	96.7%	60	100.0%
Prostitution	0	0.0%	6	100.0%	6	100.0%
Driving while intoxicated	4	17.4%	19	82.6%	23	100.0%
Other	32	14.7%	186	85.3%	218	100.0%
Total	73	13.5%	466	86.5%	539	100.0%
B. Use of Weapons						
Yes	14	20.9%	53	79.1%	67	100.0%
No	58	12.1%	421	87.9%	479	100.0%
Total	72	13.2%	474	86.8%	546	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	64	12.1%	464	87.9%	528	100.0%
No	4	44.4%	5	55.6%	9	100.0%
Total	68	12.7%	469	87.3%	537	100.0%
*2. Years of Local Residence Mean number of years	20.8		23.8		23.4	
3. Months at present address Mean number of months	64.4		74.4		73.1	

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Baltimore, MD

CHARACTERISTIC	Detained Defendants (n = 73)		Released Defendants (n = 476)		Total Defendants (n = 549)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
*1. Marital Status						
Married	5	5.0%	95	95.0%	100	100.0%
Separated, divorced, widowed	19	13.4%	123	86.6%	142	100.0%
Single	46	15.3%	255	84.7%	301	100.0%
Total	70	12.9%	473	87.1%	543	100.0%
*2. Supports Family						
Yes	19	9.2%	187	90.8%	206	100.0%
No	51	15.4%	280	84.6%	331	100.0%
Total	70	13.0%	467	87.0%	537	100.0%
3. Living Arrangement						
With parent	27	14.1%	164	85.9%	191	100.0%
With spouse	5	5.3%	89	94.7%	94	100.0%
With other relative	16	15.1%	90	84.9%	106	100.0%
With unrelated person	16	18.4%	71	81.6%	87	100.0%
Alone	6	10.5%	51	89.5%	57	100.0%
Total	70	13.1%	465	86.9%	535	100.0%
4. Number of Dependents Mean number of dependents	N.A.		N.A.		N.A.	
*C. Employment Status						
Employed	20	7.4%	250	92.6%	270	100.0%
Unemployed	50	18.3%	223	81.7%	273	100.0%
Total	70	12.9%	473	87.1%	543	100.0%

* Statistically significant at the .05 level
— Continued —

CONTINUED

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CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Baltimore, MD

CHARACTERISTIC	Detained Defendants (n = 73) No.	Percent	Released Defendants (n = 476) No.	Percent	Total Defendants (n = 549) No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest Mean number of years	28.0		29.6		29.4	
B. Ethnicity						
Black	57	15.2%	317	84.8%	374	100.0%
Hispanic) White)	16	9.3%	156	90.7%	172	100.0%
Total	73	13.4%	473	86.6%	546	100.0%
C. Sex						
Male	62	13.7%	390	86.3%	452	100.0%
Female	11	11.6%	84	88.4%	95	100.0%
Total	73	13.3%	474	86.7%	547	100.0%

* Statistically significant at the .05 level

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Washington, D.C.

CHARACTERISTIC	Detained Defendants (n = 54) No.	Percent	Released Defendants (n = 388) No.	Percent	Total Defendants (n = 442) No.	Percent
I. Prior Record						
*A. Number of prior arrests						
Mean number of prior arrests	4.6		2.0		2.3	
*B. Number of prior convictions						
Mean number of prior convictions	2.6		0.9		1.1	
*C. Prior Failure To Appear						
Yes	13	50.0%	13	50.0%	26	100.0%
No	18	16.8%	89	83.2%	107	100.0%
Total	31	23.3%	102	76.7%	133	100.0%
*D. CJS Status at Time of Arrest						
No involvement with CJS	10	6.1%	155	93.9%	165	100.0%
On pretrial release	5	27.8%	13	72.2%	18	100.0%
On probation	13	44.8%	16	55.2%	29	100.0%
On parole	5	17.2%	24	82.8%	29	100.0%
Total	33	13.7%	208	86.3%	241	100.0%

*Statistically significant at the .05 level.

— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Washington, D.C.

CHARACTERISTIC	Detained Defendants (n = 54)		Released Defendants (n = 388)		Total Defendants (n = 442)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	10	30.3%	23	69.7%	33	100.0%
Burglary	9	20.9%	34	79.1%	43	100.0%
Aggravated assault	3	10.7%	25	89.3%	28	100.0%
Simple assault	1	5.6%	17	94.4%	18	100.0%
Larceny, theft	14	21.5%	51	78.5%	65	100.0%
Fraud, forgery	0	0.0%	18	100.0%	18	100.0%
Drug possession, distribution	1	2.7%	36	97.3%	37	100.0%
Prostitution	4	9.5%	38	90.5%	42	100.0%
Driving while intoxicated	0	0.0%	78	100.0%	78	100.0%
Other	9	12.0%	66	88.0%	75	100.0%
Total	51	11.7%	386	88.3%	437	100.0%
* B. Use of Weapons						
Yes	9	20.5%	35	79.5%	44	100.0%
No	9	5.5%	155	94.5%	164	100.0%
Total	18	8.7%	190	91.3%	208	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	49	11.7%	370	88.3%	419	100.0%
No	4	40.0%	6	60.0%	10	100.0%
Total	53	12.4%	376	87.6%	429	100.0%
2. Years of Local Residence Mean number of years	17.2		15.0		15.3	
3. Months at present address Mean number of months	55.0		52.1		52.4	

* Statistically significant at the .05 level.
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Washington, D.C.

CHARACTERISTIC	Detained Defendants (n = 54)		Released Defendants (n = 388)		Total Defendants (n = 442)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
*1. Marital Status						
Married	4	6.8%	55	93.2%	59	100.0%
Separated, divorced, widowed	16	22.9%	54	77.1%	70	100.0%
Single	31	13.8%	194	86.2%	225	100.0%
Total	51	14.4%	303	85.6%	354	100.0%
*2. Supports Family						
Yes	5	6.8%	68	93.2%	73	100.0%
No	32	16.7%	160	83.3%	192	100.0%
Total	37	14.0%	228	86.0%	265	100.0%
3. Living Arrangement						
With parent	16	13.2%	105	86.8%	121	100.0%
With spouse	4	6.6%	57	93.4%	61	100.0%
With other relative	7	13.5%	45	86.5%	52	100.0%
With unrelated person	12	20.3%	47	79.7%	59	100.0%
Alone	7	21.2%	26	78.8%	33	100.0%
Total	46	14.1%	280	85.9%	326	100.0%
4. Number of Dependents Mean number of dependents	0.2		0.4		0.4	
*C. Employment Status						
Employed	18	9.4%	173	90.6%	191	100.0%
Unemployed	33	16.2%	171	83.8%	204	100.0%
Total	51	12.9%	344	87.1%	395	100.0%

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Washington, D.C.

CHARACTERISTIC	Detained Defendants (n = 54)		Released Defendants (n = 388)		Total Defendants (n = 442)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest Mean number of years	27.9		30.1		29.8	
B. Ethnicity						
Black	46	16.2%	238	83.8%	284	100.0%
Hispanic)	4	11.4%	31	88.6%	35	100.0%
White)						
Total	50	15.7%	269	84.3%	319	100.0%
C. Sex						
Male	49	13.4%	318	86.6%	367	100.0%
Female	5	6.8%	69	93.2%	74	100.0%
Total	54	12.2%	387	87.8%	441	100.0%

*Statistically significant at the .05 level.

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Louisville, KY

CHARACTERISTIC	Detained Defendants (n = 86)		Released Defendants (n = 346)		Total Defendants (n = 432)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
A. Number of prior arrests Mean number of prior arrests	N.A.		N.A.		N.A.	
* B. Number of prior convictions Mean number of prior convictions	5.9		1.8		2.7	
C. Prior Failure To Appear						
Yes	27	23.9%	86	76.1%	113	100.0%
No	33	18.3%	147	81.7%	180	100.0%
Total	60	20.5%	233	79.5%	293	100.0%
D. CJS Status at Time of Arrest						
No involvement with CJS	69	19.8%	280	80.2%	349	100.0%
On pretrial release	11	23.4%	36	76.6%	47	100.0%
On probation	0	0.0%	11	100.0%	11	100.0%
On parole	0	0.0%	6	100.0%	6	100.0%
Total	80	19.4%	333	80.6%	413	100.0%

*Statistically significant at the .05 level.
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Louisville, KY

CHARACTERISTIC	Detained Defendants (n = 86)		Released Defendants (n = 346)		Total Defendants (n = 432)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	0	0.0%	6	100.0%	6	100.0%
Burglary	3	15.0%	17	85.0%	20	100.0%
Aggravated assault	0	0.0%	16	100.0%	16	100.0%
Simple assault	5	7.4%	63	92.6%	68	100.0%
Larceny, theft	3	5.9%	48	94.1%	51	100.0%
Fraud, forgery	0	0.0%	12	100.0%	12	100.0%
Drug possession, distribution	0	0.0%	27	100.0%	27	100.0%
Prostitution	1	5.6%	17	94.4%	18	100.0%
Driving while intoxicated	2	9.5%	19	90.5%	21	100.0%
Other	70	37.0%	119	63.0%	189	100.0%
Total	84	19.6%	344	80.4%	428	100.0%
*B. Use of Weapons						
Yes	1	2.4%	41	97.6%	42	100.0%
No	85	21.8%	305	78.2%	390	100.0%
Total	86	19.9%	346	80.1%	432	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	65	17.2%	313	82.8%	378	100.0%
No	7	43.8%	9	56.3%	16	100.0%
Total	72	18.3%	322	81.7%	394	100.0%
*2. Years of Local Residence Mean number of years	8.8		17.5		15.8	
*3. Months at present address Mean number of months	18.2		42.4		37.6	

* Statistically significant at the .05 level
— Continued

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Louisville, Kentucky

CHARACTERISTIC	Detained Defendants (n = 86)		Released Defendants (n = 346)		Total Defendants (n = 432)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	8	9.4%	77	90.6%	85	100.0%
Separated, divorced, widowed	12	15.2%	67	84.8%	79	100.0%
Single	13	8.8%	134	91.2%	147	100.0%
Total	33	10.6%	278	89.4%	311	100.0%
*2. Supports Family						
Yes	9	6.2%	137	93.8%	146	100.0%
No	23	14.2%	139	85.8%	162	100.0%
Total	32	10.4%	276	89.6%	308	100.0%
3. Living Arrangement						
With parent	12	11.4%	93	88.6%	105	100.0%
With spouse	8	10.1%	71	89.9%	79	100.0%
With other relative	1	2.5%	39	97.5%	40	100.0%
With unrelated person	5	10.6%	42	89.4%	47	100.0%
Alone	7	17.9%	32	82.1%	39	100.0%
Total	33	10.6%	277	89.4%	310	100.0%
*4. Number of Dependents Mean number of dependents	0.2		1.0		0.9	
*C. Employment Status						
Employed	37	15.8%	197	84.2%	234	100.0%
Unemployed	43	24.2%	135	75.8%	178	100.0%
Total	80	19.4%	332	80.6%	412	100.0%

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Louisville, KY

CHARACTERISTIC	Detained Defendants (n = 86)		Released Defendants (n = 346)		Total Defendants (n = 432)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
*A. Age at Arrest Mean number of years	41.9		29.7		32.1	
B. Ethnicity						
Black	24	14.9%	137	85.1%	161	100.1%
Hispanic) White)	59	22.1%	208	77.9%	267	100.0%
Total	83	19.4%	345	80.6%	428	100.0%
C. Sex						
Male	76	20.9%	287	79.1%	363	100.0%
Female	7	10.9%	57	89.1%	64	100.0%
Total	83	19.4%	344	80.6%	427	100.0%

* Statistically significant at the .05 level

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Tucson, Arizona

CHARACTERISTIC	Detained Defendants (n = 111)		Released Defendants (n = 294)		Total Defendants (n = 405)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
*A. Number of prior arrests Mean number of prior arrests	8.9		3.7		5.1	
*B. Number of prior convictions Mean number of prior convictions	5.4		1.6		2.7	
C. Prior Failure To Appear						
Yes	24	30.4%	55	69.6%	79	100.0%
No	55	24.4%	170	75.6%	225	100.0%
Total	79	26.0%	225	74.0%	304	100.0%
D. CJS Status at Time of Arrest						
No involvement with CJS	74	25.2%	220	74.8%	294	100.0%
On pretrial release	7	25.9%	20	74.1%	27	100.0%
On probation	9	34.6%	17	65.4%	26	100.0%
On parole	4	28.6%	10	71.4%	14	100.0%
Total	94	26.0%	267	74.0%	361	100.0%

*Statistically significant at the .05 level.
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Tucson, Arizona

CHARACTERISTIC	Detained Defendants (n = 111)		Released Defendants (n = 294)		Total Defendants (n = 405)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	4	66.7%	2	33.3%	6	100.0%
Burglary	4	16.0%	21	84.0%	25	100.0%
Aggravated assault	4	21.1%	15	78.9%	19	100.0%
Simple assault	3	21.4%	11	78.6%	14	100.0%
Larceny, theft	12	23.1%	40	76.9%	52	100.0%
Fraud, forgery	2	25.0%	6	75.0%	8	100.0%
Drug possession, distribution	7	13.2%	46	86.8%	53	100.0%
Prostitution	1	33.3%	2	66.7%	3	100.0%
Driving while intoxicated	11	13.8%	69	86.2%	80	100.0%
Other	49	43.8%	63	56.2%	112	100.0%
Total	97	26.1%	275	73.9%	372	100.0%
B. Use of Weapons						
Yes	10	34.5%	19	65.5%	29	100.0%
No	46	25.3%	136	74.7%	182	100.0%
Total	56	26.5%	155	73.5%	211	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	75	23.4%	246	76.6%	321	100.0%
No	20	43.5%	26	56.5%	46	100.0%
Total	95	25.9%	272	74.1%	367	100.0%
*2. Years of Local Residence Mean number of years	4.9		8.3		7.4	
*3. Months at present address Mean number of months	11.9		41.1		33.1	

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Tucson, Arizona

CHARACTERISTIC	Detained Defendants (n = 111)		Released Defendants (n = 294)		Total Defendants (n = 405)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	3	8.1%	34	91.9%	37	100.0%
Separated, divorced, widowed	7	23.3%	23	76.7%	30	100.0%
Single	35	22.2%	123	77.8%	158	100.0%
Total	45	20.0%	180	80.0%	225	100.0%
2. Supports Family						
Yes	12	16.2%	62	83.8%	74	100.0%
No	37	23.7%	119	76.3%	156	100.0%
Total	49	21.3%	181	78.7%	230	100.0%
*3. Living Arrangement						
With parent	7	11.9%	52	88.1%	59	100.0%
With spouse	3	7.9%	35	92.1%	38	100.0%
With other relative	7	23.3%	23	76.7%	30	100.0%
With unrelated person	6	15.4%	33	84.6%	39	100.0%
Alone	15	37.5%	25	62.5%	40	100.0%
Total	38	18.4%	168	81.6%	206	100.0%
*4. Number of Dependents Mean number of dependents	0.2		0.5		0.4	
C. Employment Status						
Employed	20	15.4%	110	84.6%	130	100.0%
Unemployed	33	24.3%	103	75.7%	136	100.0%
Total	53	19.9%	213	80.1%	266	100.0%

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Tucson, Arizona

CHARACTERISTIC	Detained Defendants (n = 111)		Released Defendants (n = 294)		Total Defendants (n = 405)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest Mean number of years	30.3		28.2		28.8	
B. Ethnicity						
Black	9	27.3%	24	72.7%	33	100.0%
Hispanic	20	20.2%	79	79.8%	99	100.0%
White	58	27.5%	153	72.5%	211	100.0%
Total	87	25.4%	256	74.6%	343	100.0%
C. Sex						
Male	97	27.4%	257	72.6%	354	100.0%
Female	12	25.5%	35	74.5%	47	100.0%
Total	109	27.2%	292	72.8%	401	100.0%

*Statistically significant at the .05 level.

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: San Jose, CA

CHARACTERISTIC	Detained Defendants (n = 49)		Released Defendants (n = 288)		Total Defendants (n = 337)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
*A. Number of prior arrests						
Mean number of prior arrests	8.4		3.9		4.6	
*B. Number of prior convictions						
Mean number of prior convictions	3.7		1.9		2.2	
*C. Prior Failure To Appear						
Yes	15	35.7%	27	64.3%	42	100.0%
No	21	11.2%	167	88.8%	188	100.0%
Total	36	15.7%	194	84.3%	230	100.0%
*D. CJS Status at Time of Arrest						
No involvement with CJS	20	8.8%	207	91.2%	227	100.0%
On pretrial release	11	26.2%	31	73.8%	42	100.0%
On probation	8	19.0%	34	81.0%	42	100.0%
On parole	1	16.7%	5	83.3%	6	100.0%
Total	40	12.6%	277	87.4%	317	100.0%

*Statistically significant at the .05 level.

— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: San Jose, CA

CHARACTERISTIC	Detained Defendants (n = 49)		Released Defendants (n = 288)		Total Defendants (n = 337)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
*A. Charge						
Robbery	2	40.0%	3	60.0%	5	100.0%
Burglary	5	27.8%	13	72.2%	18	100.0%
Aggravated assault	1	16.7%	5	83.3%	6	100.0%
Simple assault	3	33.3%	6	66.7%	9	100.0%
Larceny, theft	13	43.3%	17	56.7%	30	100.0%
Fraud, forgery	1	9.1%	10	90.9%	11	100.0%
Drug possession, distribution	5	21.7%	18	78.3%	23	100.0%
Prostitution	0	0.0%	4	100.0%	4	100.0%
Driving while intoxicated	3	1.7%	170	98.3%	173	100.0%
Other	10	22.7%	34	77.3%	44	100.0%
Total	43	13.3%	280	86.7%	323	100.0%
*B. Use of Weapons						
Yes	6	35.3%	11	64.7%	17	100.0%
No	30	10.1%	267	89.9%	297	100.0%
Total	36	11.5%	278	88.5%	314	100.0%
III. Community Ties						
A. Residence						
1. Local Resident						
Yes	44	13.7%	278	86.3%	322	100.0%
No	4	28.6%	10	71.4%	14	100.0%
Total	48	14.3%	288	85.7%	336	100.0%
2. Years of Local Residence Mean number of years	11.7		13.4		13.2	
3. Months at present address Mean number of months	20.2		35.5		33.2	

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: San Jose, CA

CHARACTERISTIC	Detained Defendants (n = 49)		Released Defendants (n = 288)		Total Defendants (n = 337)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
*1. Marital Status						
Married	9	8.9%	92	91.1%	101	100.0%
Separated, divorced, widowed	10	11.0%	81	89.0%	91	100.0%
Single	29	21.6%	105	78.4%	134	100.0%
Total	48	14.7%	278	85.3%	326	100.0%
*2. Supports Family						
Yes	7	6.9%	95	93.1%	102	100.0%
No	36	23.7%	116	76.3%	152	100.0%
Total	43	16.9%	211	83.1%	254	100.0%
*3. Living Arrangement						
With parent	17	23.3%	56	76.7%	73	100.0%
With spouse	8	8.1%	91	91.9%	99	100.0%
With other relative	6	18.2%	27	81.8%	33	100.0%
With unrelated person	3	6.7%	42	93.3%	45	100.0%
Alone	7	18.9%	30	81.1%	37	100.0%
Total	41	14.3%	246	85.7%	287	100.0%
4. Number of Dependents Mean number of dependents	0.1		0.3		0.3	
*C. Employment Status						
Employed	20	9.3%	194	90.7%	214	100.0%
Unemployed	29	24.4%	90	75.6%	119	100.0%
Total	49	14.7%	284	85.3%	333	100.0%

* Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: San Jose, CA

CHARACTERISTIC	Detained Defendants (n = 49)		Released Defendants (n = 288)		Total Defendants (n = 337)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
*A. Age at Arrest Mean number of years	26.0		31.5		30.7	
* B. Ethnicity						
Black	14	33.3%	28	66.7%	42	100.0%
Hispanic	12	11.8%	90	88.2%	102	100.0%
White	23	12.4%	163	87.6%	186	100.0%
Total	49	14.8%	281	85.2%	330	100.0%
C. Sex						
Male	41	14.3%	245	85.7%	286	100.0%
Female	8	16.3%	41	83.7%	49	100.0%
Total	49	14.6%	286	85.4%	335	100.0%

* Statistically significant at the .05 level

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Detained Defendants (n = 68)		Released Defendants (n = 358)		Total Defendants (n = 426)	
	No.	Percent	No.	Percent	No.	Percent
I. Prior Record						
*A. Number of prior arrests						
Mean number of prior arrests	7.8		4.2		4.8	
*B. Number of prior convictions						
Mean number of prior convictions	3.6		1.8		2.1	
*C. Prior Failure To Appear						
Yes	16	30.2%	37	69.8%	53	100.0%
No	28	13.7%	176	86.3%	204	100.0%
Total	44	17.1%	213	82.9%	257	100.0%
D. CJS Status at Time of Arrest						
No involvement with CJS	49	14.8%	282	85.2%	331	100.0%
On pretrial release	4	19.0%	17	81.0%	21	100.0%
On probation	11	22.0%	39	78.0%	50	100.0%
On parole	1	25.0%	3	75.0%	4	100.0%
Total	65	16.0%	341	84.0%	406	100.0%

* Statistically significant at the .05 level.

— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Detained Defendants (n = 68)		Released Defendants (n = 358)		Total Defendants (n = 426)	
	No.	Percent	No.	Percent	No.	Percent
II. Current Case						
* A. Charge						
Robbery	19	65.5%	10	34.5%	29	100.0%
Burglary	14	22.6%	48	77.4%	62	100.0%
Aggravated assault	4	9.3%	39	90.7%	43	100.0%
Simple assault	3	8.1%	34	91.9%	37	100.0%
Larceny, theft	11	18.6%	48	81.4%	59	100.0%
Fraud, forgery	1	9.1%	10	90.9%	11	100.0%
Drug possession, distribution	6	5.1%	112	94.9%	118	100.0%
Prostitution	0	0.0%	0	0.0%	0	0.0%
Driving while intoxicated	0	0.0%	0	0.0%	0	0.0%
Other	10	16.4%	51	83.6%	61	100.0%
Total	68	16.2%	352	83.8%	420	100.0%
B. Use of Weapons						
Yes	18	16.1%	94	83.9%	112	100.0%
No	50	16.0%	263	84.0%	313	100.0%
Total	68	16.0%	357	84.0%	425	100.0%
III. Community Ties						
A. Residence						
*1. Local Resident						
Yes	51	14.0%	312	86.0%	363	100.0%
No	15	30.0%	35	70.0%	50	100.0%
Total	66	16.0%	347	84.0%	413	100.0%
2. Years of Local Residence Mean number of years	7.9		7.7		7.7	
3. Months at present address Mean number of months	28.4		28.1		28.1	

*Statistically significant at the .05 level
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Detained Defendants (n = 68)		Released Defendants (n = 358)		Total Defendants (n = 426)	
	No.	Percent	No.	Percent	No.	Percent
B. Family Ties						
1. Marital Status						
Married	5	11.6%	38	88.4%	43	100.0%
Separated, divorced, widowed	8	21.6%	29	78.4%	37	100.0%
Single	24	16.2%	124	83.8%	148	100.0%
Total	37	16.2%	191	83.8%	228	100.0%
2. Supports Family						
Yes	9	13.4%	58	86.6%	67	100.0%
No	16	13.7%	101	86.3%	117	100.0%
Total	25	13.6%	159	86.4%	184	100.0%
3. Living Arrangement						
With parent	14	17.5%	66	82.5%	80	100.0%
With spouse	5	11.9%	37	88.1%	42	100.0%
With other relative	3	11.1%	24	88.9%	27	100.0%
With unrelated person	6	19.4%	25	80.6%	31	100.0%
Alone	5	11.9%	37	88.1%	42	100.0%
Total	33	14.9%	189	85.1%	222	100.0%
4. Number of Dependents Mean number of dependents	0.2		0.4		0.4	
*C. Employment Status						
Employed	24	11.2%	191	88.8%	215	100.0%
Unemployed	40	21.3%	148	78.7%	188	100.0%
Total	64	15.9%	339	84.1%	403	100.0%

* Statistically significant at the .05 level.
— Continued —

CHARACTERISTICS OF DETAINED
AND RELEASED DEFENDANTS

Site: Miami, Florida (Felony Cases Only)

CHARACTERISTIC	Detained Defendants (n = 68)		Released Defendants (n = 358)		Total Defendants (n = 426)	
	No.	Percent	No.	Percent	No.	Percent
IV. Demographic Characteristics						
A. Age at Arrest Mean number of years	28.9		27.8		28.0	
B. Ethnicity						
Black	38	18.3%	170	81.7%	208	100.0%
Hispanic	6	9.2%	59	90.8%	65	100.0%
White	23	15.3%	127	84.7%	150	100.0%
Total	67	15.8%	356	84.2%	423	100.0%
C. Sex						
Male	63	16.8%	313	83.2%	376	100.0%
Female	5	10.0%	45	90.0%	50	100.0%
Total	68	16.0%	358	84.0%	426	100.0%

* Statistically significant at the .05 level

Section 4

ALTERNATIVES TO JAIL AND PRISON

93284

Alternative Forms of Punishment and Supervision for Convicted Offenders

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Harvard University
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If it appears rational, feasible, just and effective (from a crime control perspective) to focus our scarce and expensive prison resources on the few who are identified as dangerous high-rate offenders, what measures can we take toward the many offenders whose crimes or whose rate of criminality do not earn them a stretch of jail or prison time? I think it helps to take this general question, posed by the conference organizers, and break it into two parts. First, could we still exact punishment from less serious or less frequent offenders if our jails and prisons were more perfectly focused on dangerous high-rate offenders than they now are, or would we have to sacrifice the potential deterrent effects of imprisoning and threatening to imprison at the lower levels of crime? Second, are there ways to incapacitate offenders (that is, to exercise effective control over their movement and behavior) without imprisoning them, or must we rely wholly on the doubtful deterrent power of our lower-order punishments, to control the behavior of offenders who do not qualify for "selective incapacitation"?

Introduction

My own view is that we are at present virtually without any credible capacity to punish* or incapacitate offenders except by imprisoning them.

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* I am simply excluding from discussion here the host of cases (e.g., first offenders on relatively minor charges) in which the need for punishment seems (at least on the basis of current practice and attitudes) satisfied by the process of arrest, appearance before the court, and imposition of various hortatory sanctions (conditional or unconditional discharge, and their equivalents).

(This is a sad state of affairs, whether or not the system is refocused to target the high-rate dangerous offender more perfectly.) Indeed, I believe that a substantial amount of jailing today results, not from judicial preference for imprisonment, but from the quite reasonable perceptions of judges and prosecutors that there is no other way to make punishment certain in cases where it would be unconscionable to let petty offenders "walk" yet one more time, and that there is no other way to protect the community from further offenses (and to protect the judge's rear end) in cases where the offender's unconstrained liberty seems too threatening to community tranquillity.

While I think it apparent that alternative punishments can be devised for those for whom jail is, at the moment, thought to be necessary for punishment, and while I think techniques of surveillance and control can be developed for the supervision, in non-custodial settings, of offenders whose future behavior is of real concern, I think it easy to do injury to the orderly development of workable "alternatives" of these types. I think it would be injurious if, for example, a policy shift of the kind under consideration at this conference suddenly required the alternatives field, in its present primitive state of development, to take on major new responsibilities for effective punishment and control. There is a great deal of hard work ahead before the alternatives field can respond to such a demand.

I think I can illustrate the present impoverishment of the "alternatives" field in a way that surfaces an important issue that

might otherwise remain buried in the apparent dichotomy between "high-rate" offenders and the rest. It appears that New York City judges annually impose about 8,000 jail sentences of 90 days or less. If these offenders serve an average of 40 days on Rikers Island, they occupy about 1,000 cells -- roughly half the cell space available for sentenced prisoners. Now, I think these sentences too short to have been inspired by a perceived need to incapacitate the offenders. They are for punishment. Although the 8,000 include quite a spectrum of current offenses and prior criminal records, I believe that the bulk are petty thieves -- they have long records, but are charged with stealing a $20 pair of pants, copper pipes from an abandoned building, disco tapes from Crazy Eddie, or sneakers from Hudson's. I need not offer a lengthy argument to show that there is an awful lot of petty theft going on. The aggregate injury of these crimes is great and the risk of violence is low (but real, as it always is with chronically delinquent behavior), but these offenders are not good candidates for the "focused incapacitation" which is the prime interest of this conference. There are too many of them, and their offenses do not draw sufficient outrage to qualify them for the same treatment as even two-time robbers, for example. Yet they are certainly "high-rate" offenders. It is precisely because of their persistence that our courts feel compelled, eventually, to start dishing out 15, 30, 60 and 90 day jail terms.

As the Vera Institute is presently engaged in a substantial effort to secure systematic use of an alternative punishment for precisely these cases -- to test, in practice, the practical and political difficulties and potential of punishment short of jail -- I would like to dwell further on this corner of the question posed to me, in the hope that doing so will make more palatable some of the general observations to which I must return.

Can There Be Punishment Without Jail?

First, it is useful to ask why the existing array of alternative sentences is insufficient to prevent systematic use of short jail sentences to punish, for example, the petty thieves I have described. The simple answer is that prosecutors and judges do not view any of the current "alternatives" as workable punishments in these cases -- principally because they have no confidence that the sentences, if imposed, will be enforced.

Fines.

Of course, fines are viewed by some as punitive, and fines are imposed with surprising frequency and with much greater success than is commonly thought -- but fines are not a promising alternative to jail for punishing the petty thieves who clog the lower courts and local jails today. We have recently gathered a great deal of data about the imposition and collection of fines in New York City; although we have just begun analysis of these data, it appears that about a third of the sentences imposed in Criminal Court are fines; the use varies from 15% of sentences in theft cases, to 33% in drug, disorderly conduct and loitering cases, to 65% in gambling cases. Surprisingly, only 20% of sentences for prostitution were fines

(but 75% were "time served"). Not only are fines imposed more frequently than we thought, but they are collected more often than not -- a real surprise to those accustomed to the cynicism of courtroom wisdom. From our data it appears that three-quarters of the total fine amount is actually paid within 12 months of sentence. (Collections run at 80%, if we exclude Manhattan where the low rate of fine collection in prostitution cases distorts the picture.) Even more surprising to me is that, after 12 months, only about 20% of individuals fined remain "unpunished"; 67% paid their fines and 12% were punished through the jail alternative.*

Fines look like a pretty good punishment. Maybe they could be more widely used; but I think it would be far from easy to extend their use without diminishing the certainty of extracting the punishment, and I think it would be especially difficult to conceive of fine amounts and fine enforcement procedures that would make fines a rational or an effective alternative punishment for the class of offenders now consuming scarce jail resources on 30, 60 and 90 day sentences -- the "high-rate", low seriousness recidivists.

They are characterized by extreme poverty, no realistic prospects for gainful employment, illiteracy, lack of linkage to familial, voluntary or government supports, short time-horizons, little sense of obligation, and (obviously) less than perfect responsiveness to threats of jailing for non-compliance with obligations. If fined, they would not pay; enforcement against defaulters could not be achieved through the procedures used to monitor and compel compliance by those now fined; and punishment could be exacted only by resentencing to jail -- an eventuality which would not occur,

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*Ida Zamist, "Report on New York City Empirical Research on Fines," Working Paper #10 in FINES IN SENTENCING, VOL. II (Vera Institute of Justice, New York: 1982).

given the Warrant Squad's backlog of felony warrants and the inherent difficulty of finding individual members of this transient group on the streets. The punishment would be exacted only if, upon rearrest, the court were to impose consecutive terms -- a result that would clearly frustrate the overarching policy preference to conserve scarce jail resources for focused incapacitation.

It is sometimes suggested that fines (or financial restitution) become workable punishments if one can conceive and finance programs that put unemployed offenders into paid jobs, and either garnish wages or use the conventional fine enforcement machinery. Although this course would put money into the hands of those from whom we wish to extract it, the net economic gain to the offender is hard to square with our punitive intent -- particularly in areas and in times of labor market shrinkage.

In short, in jurisdictions where too many offenders either go unpunished now or would go unpunished if we consumed prison and jail resources on an incapacitative crime control strategy, the potential for building or maintaining our punitive capacity through expanded use of financial penalties is, in my view, very limited indeed. If this is true for fines, it is also true for monetary restitution -- currently more popular in the "alternatives" field, but plagued with the same operational difficulties and performance impossibilities as fines.

I suspect there are jurisdictions where fines and monetary restitution could be used more than they are now -- or could be enforced better than they are now -- but I suspect that the offenders who could be punished by pursuit of this strategy are employed, first offenders for whom the mere

fact of arrest and experience of criminal processing is often more punitive than payment of a fine (and is a sufficient deterrent) and whose punishment by the "alternative" would not, in fact, free up jail space for implementation of a "focused incapacitation" crime control strategy.

Probation and Conditional Discharge.

If fines and monetary restitution are out as alternative punishments for the large class of offenders now drawing short jail terms, what potential is there in the remaining conventional alternative punishments -- probation and conditional discharge? New York law on the conditions that may be made part of a probation order or conditional discharge is, like the law of most jurisdictions, more than broad enough for punishments to be fashioned to fit almost any circumstance. And, in theory, attaching punitive conditions to a probation order ought to be more effective than attaching them to a conditional discharge, if only because probation officers are in theory employed precisely to enforce such conditions. But, without substantial new resources and the development of new techniques for supervising and enforcing conditions, these apparent opportunities for innovative punishments are wishful thinking; further, to the extent that the potential for alternative punishment exists, it is more easily achieved if probation is bypassed altogether and new structure is built up around the bare power of the court, through conditional discharge and like powers, to authorize the necessary machinery for the monitoring, supervision, and enforcement of punitive conditions.

Probation supervision caseloads are now running at close to 200 per officer in New York. (In some other jurisdictions they were reported to have reached 500 per officer by 1980.)* In New York, the only condition

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* Kevin Krajick, "Probation: The Original Community Program," Corrections Magazine, Vol. VI, No. 6 (December, 1980), p. 8.

that can realistically be monitored is the requirement that the offender report periodically to the probation office: usually, that "contact" is required once a month. (Recently, "differential supervision" was adopted in the City, so that a relatively small group are subjected to "intensive" probation -- a misnomer under which they are required to report once a week.) Although it is undeniably burdensome to show up for probation interview (and, no doubt, some probationers view the requirement as a punishment imposed with punitive intent), there is a deep habit of thought in the dispositional process and in the public mind that persons are <u>either</u> punished (jailed) <u>or</u> put on probation (let off with a slap on the wrist). That is hard to change. Essential to changing it would be to enforce the reporting requirement vigorously, however trivial the burden it represents. According to a recent audit by the Comptroller of the City of New York, almost half of the required contact visits were not kept, and it appeared from probation records that "more than 70% of the probationers. . . violated the terms of their probation an average of 4.7 times." In a third of the cases of probationers who failed to report for their required office visits, the court was not even informed of the violation; in another 10%, the court was informed, but not until six months had passed — by which time all these offenders had absconded. The Department's response to these audit observations was: "It is inconceivable that the Department would contact the court on the first missed appointment. The courts and the prison system couldn't possibly handle the volume."* True, but sad for those who want to see probation used

*Audit Report on Financial and Operating Practices and Procedures of the New York City Department of Probation, July 1, 1977 to April 30, 1980 (Office of the Comptroller of the City of New York, Bureau of Audit and Control: 1981).

as an alternative mechanism to exact certain punishment. *

Part of the problem, of course, can be attributed to the huge probation caseloads in New York City, and the 34% reduction in probation staff levels between 1974 and 1981. But the more serious problem, I think, is that the enforcement side of probation simply isn't taken seriously by anyone. It follows that, if probation is imposed for the purpose of punishing, it must be by judges who have not yet learned the rules of the game and the realities of probation and police practice. The weight of a probation order is typically felt only if a new offense brings the offender back before the court during the term of the sentence, if the court is requested to revoke the prior probation sentence, and if the court resolves to punish the offender with jail time in addition to the time it feels necessary to impose on the new offense.

Clearly, if probation were taken seriously, if violations were vigorously pursued and violators sought out and returned to the court for missing their appointments, and if the court were prepared to back up the reporting requirement by jailing violators, there could be punishment by probation order and courts might be induced to make systematic use of it. It seems obvious that the punitive appeal of probation would be much enhanced, however, if the enforced conditions went beyond office visiting requirements -- if, for example, performance of some specified number of hours of unpaid labor for the benefit of the community were made a condition. The "community service sentence" is an alternative much discussed in relation to probation these days. But I believe it would require, if it were to earn wide usage as a punishment in cases where punishment matters, an entirely new focus of probation on its supervision and enforcement functions -- a

* I do not deal at all in this paper with the possibility of radical reorganization and redirection of probation departments.

focus which would, in my view, be easier to achieve outside the probation bureaucracies. As a hint of how destructive it can be to introduce such an alternative punishment without ensuring integrity in the monitoring, superivision and enforcement functions, we need only to look to the results of an LEAA effort to introduce restitution and community service sanctions in New Jersey:

> Three types of restitution were to be used: monetary, community service, and direct victim service. The program began in September, 1979 in 14 counties. . .
>
> The record of performance in some counties can only be described as shocking. In Hudson, 2263 hours of community service were ordered but only three hours performed. In Essex, $23,386 in restitution was ordered and $756 paid; 570 community service hours were ordered, and 121 performed. In Middlesex, Atlantic, Cape May, Cumberland, Hunterdon, and Ocean, not one hour of community service was performed. In Cumberland, Ocean and Salem, not one dollar was paid in restitution.
> "Restitution Program Goes Wrong", News and Views (New Jersey Association on Corrections: October 1981) p.5.

"Community Service" Sentencing.

As I suggested above, it seems to me that compelling the performance of a certain number of hours of unpaid labor for the benefit of the community is one of the best concepts available today for non-incarcerative punishment. However, community service sentencing -- which is, if the rhetoric is pierced, no more than a form of involuntary servitude when it is enforced -- is a dangerous concept as well. It is dangerous because it is so attractive. Because it is so attractive, it tends to win rather uncritical endorsement -- and to be imposed as an "alternative punishment" -- even when no resources or even attention is paid to its enforcement. Under those conditions — which, in my view, prevail in almost all U.S.

jurisdictions where it has been intrdouced -- the concept is quickly diluted. Because it is not in fact used in cases where punishment is a serious concern but is used where white, middle-class, first-time offenders are relied upon to enforce their own punishment, it becomes useless as a structure for punishing the chronic, low-level recidivists who are actually the ones now consuming a large volume of jail cells on short, punitive terms of incarceration. Once this pattern of use is established for a new "alternative", I think it nearly impossible to persuade prosecutors and judges to use it in cases where they are serious about punishment.*

I do not believe this idea for an alternative punishment must fail, but I know it is difficult, slow work to build around it a structure of operations and of expectations that support even part of the punitive requirements of most jurisdictions.

Beginning with a small pilot project in the Bronx in 1979, the Vera Institute has now supervised and enforced almost 1,000 community service sentences and -- at the request of a city administration pressed by overcrowding at Rikers Island, the local jail for sentences of a year or less -- Vera last year expanded the project to serve the Criminal Courts in Brooklyn and Manhattan, as well as the Bronx. The program is now operating at a volume of 1,000 sentences per annum. This community service sentence -- 70 hours of unpaid labor, to be performed over 10 working days, in crews, under the direct superivision of project staff at community sites -- is built around the conditional discharge sentence. In order to avoid inappropriate use of the punishment, the Community Service Sentencing Project refuses to

*See, Sally Hillsman and Susan Sadd, Diversion of Felony Arrests: An Experiment in Pretrial Diversion. (National Institute of Justice: Washington, 1981).

accept any first offenders: courtroom staff select persons charged with property crimes (at felony or misdemeanor level) who have at least one prior adult conviction. (The likelihood of a jail term for convicted property offenders is only about 15% for those without priors, but jumps to almost 50% for those with one or more prior convictions.) Staff also participate in the plea-negotiation process to try to avoid being saddled with cases which are not viewed seriously by the prosecution or which are not being handled competently by the defense.

Over the course of developing the project, staff devoted most of their energies to establishing and maintaining credibility of the sentence as punishment. They keep strict accounting of the hours worked, until the full 70 are completed; they go into the community to find and confront offenders who fail to appear at the assigned service sites; they work closely with the Police Department's Warrant Squad to ensure execution of arrest warrants issued at the project's request for those offenders whose failure to comply requires re-sentencing; and they shepherd these re-sentencing cases through the labyrinth of the Criminal Court to ensure that, if the punishment of compulsory service is avoided, the punishment of jail is not.

The results are somewhat encouraging. After much initial scepticism in each borough, and many efforts by judges, prosecutors and -- sadly -- defense attorneys to make use of this essentially punitive sanction in cases which, in the ordinary course, would end with non-jail sentences, the project seems to be working on its own terms. Those sentenced to it to date averaged seven prior adult arrests and just over four prior adult convictions. Fifty-eight percent were arraigned on felony charges. Forty-five percent

had been sentenced to jail or prison on their last prior conviction. Virtually all were unemployed at the time of the arrest for which community service was imposed as a sentence. Virtually all were Black or Hispanic. And virtually all of the roughly 10% who have failed to comply with the community service sentence were, when re-sentenced, sentenced to short jail terms.* We seem to have had some success in focusing the use of this alternative on those who would have drawn short jail terms -- these 1,000 display a profile very much like the profile of the 8,000 who get short, punitive jail terms each year.

The point of this story, in this context, is that if we want non-jail punishments in the stressed courts of our larger cities, we will have to build them -- slowly and with considerable care to avoid the pitfalls of earlier efforts to "divert" less serious offenders from jail.** Vera's evaluative research on this community service sentencing effort is in mid-course, but our best guess at the moment is that roughly 45% of those sentenced to community service in New York would have drawn jail terms in the absence of the project, and that the average length of these terms would have been about 100 days. If, in the end, this effort succeeds in establishing a new punishment, short of jail, the lessons may prove useful in the creation -- over time -- of an array of non-custodial punishments.

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*It is necessary to add here, although the point does not very much advance a discussion of alternative punishments, that this population of petty recidivists is severely disadvantaged and very short of the kinds of resources -- educational, financial, familial, etc. -- that would be required for a change in lifestyle to occur. The project attempts to avoid confusing participants, so it tries not to mix the required punishment with "helping" interventions; but it extends an open offer, to anyone who completes the sentence, of help in finding job, job training, addiction treatment, welfare advocacy, and so forth. About two-thirds of the 90% who complete the sentence take up this offer; about half of these actually follow-through on the referrals opened up for them; and about half of them (or about 15% of the total) stick with the job, the training, or the treatment.

**See Sally Hillsman and Susan Sadd, supra, p. 10; Joan Potter, "The Pitfalls of Pretrial Diversion", Corrections (February, 1981).

The obstacles to creating new punishments are not just theoretical and operational. Even as this conference considers whether it would be wise, practical and just to re-focus each element of the criminal justice system on high-rate serious offenders, practitioners around the country are using the early returns from Rand's research, and the research of others, to provide a rationale for "career criminal" programs. In New York -- and, I would wager, elsewhere as well -- the shift from a deterrence strategy (punishment) to a selective incapacitation strategy is much in evidence, and not just for "serious" or "dangerous" offenders. Many of the petty recidivists who ordinarily draw short jail terms are beginning to be viewed as "career criminals" -- which, in a sense, they certainly are. Our attempts to induce systematic use of an alternative punishment for short jail-term cases therefore come directly into conflict with the emerging ideology. Although, in my view, it is difficult to imagine the creation of sufficient jail space to support incapacitative sentences for our hordes of petty thieves, the political atmosphere surrounding our developmental effort is clearly shifting toward the stormy.

I raise this issue at this point, because it would be a serious mistake to think it easy to keep the focus of a "selective incapacitation" strategy on high-rate offenders of the more dangerous type. The following case may illustrate the dilemma:

> Sebastian had 33 prior arrests and 17 prior convictions -- all misdemeanors, and almost all for petit larceny or female impersonation (out-of-state) -- when, in November 1981, he appeared before the Criminal Court charged once again with petit larceny. He had already served ten short jail terms, the most recent one (five months) for petit larceny, imposed in July of the same year. He had the right profile for our community service sentence, but the bad news was that the prosecution tagged his file to indicate "career criminal" status; as he stood before the judge for sentencing, the People demanded a year in jail.

> The good news was that the judge was not inclined to believe that jail could deter Sebastian or that it was worth trying to incapacitate him. But he could find no suitable grounds for refusing the People's recommendation until, looking up suddenly from his reading of the dry language of the Complaint, he exclaimed, "A year would be absurd -- this man stole a teddy bear!" Which, indeed, he had.
>
> So Sebastian was ordered to do community service. He accepted his punishment with good grace; although his rather exotic garb sometimes got in the way, he willingly labored 7 hours a day, alongside the rest of the sentenced crew (and some community volunteers) to help restore to habitable condition some run-down housing that was to be managed by a local community group in Harlem. Until he had done 63 hours. On the morning of what would have been his last day of the community service sentence, he was before the court again -- for petit larceny. Now, he's doing the year.

This "career criminal" problem can be given statistical as well as anecdotal expression. The pattern of offending for the petty recidivists who draw short jail terms in Manhattan is pretty clear. About half are re-arrested within four months of release from jail. Because about a quarter are re-arrested within 30 days of release from custody, and because this population draws short jail terms (six months or less), the picture changes only a little when rearrests are computed without regard to real "time at risk". Thus, even when those sentenced to jail are assumed to be "at risk" from the date of sentencing, about 40% have been re-arrested within four months. In this context, it should not be surprising that those sentenced to community service sentences in Manhattan show a 44% rearrest rate within four months of sentencing. (There is not the early bulge in rearrests during the first month "at risk", which was evident for these offenders when released from jail; this is in part the result of their being under supervision 7 hours a day for the first two weeks or so of the period at risk. But being punished by community service does not [illegible] boy scouts and virgins out of petty recidivists.)

There is a certain irony here. The project aimed at establishing a workable enforceable punishment for a class of offenders who were not deemed "serious" but who could not, given their persistence, go unpunished. But at just the moment when that effort is beginning to show some success and stability, the context of crime control strategy is shifting from punishment to incapacitation. As the data to date suggest, a community service sentence is far too mild in its incapacitative impact to survive a requirement that the behavior of petty recidivists be brought under control through sentencing policy. This leads me to the second question posed to me by the conference organizers.

Can There Be Incapacitation Without Jail?

For some years, I have been fascinated by the lack of serious attention paid by program sponsors and even by evaluative researchers to the in-program offenses committed by persons sent, for whatever reasons, to "alternatives." The best example that comes to mind is Project New Pride. At the end of the '70's, under criticism from Congress and from the field that the Office of Juvenile Justice and Delinquency Prevention was not devoting sufficient program or research funds to serious delinquency, it was decided that this admirable Denver program, which offered an unusual but not uniquely rich array of remedial and counselling services, would be elevated to Exemplary Program status, and millions were allocated to its replication.* Replication was sound, but the rationale was not. First, the OJJDP program guidelines specified that replications were to focus New Pride intervention at serious delinquents, but initially defined "serious delinquents"

*See Suzanne Charlé, "The Proliferation of Project New Pride," Corrections Magazine (New York, October, 1981).

in terms that would have excluded (as too "light") roughly half the persons who had been enrolled in New Pride itself.. Second, over 50% of New Pride participants had been re-arrested during their participation in that program.* The extent to which the program's shortcomings on the incapacitative side were overlooked is clear from the OJJDP program announcement inviting replications: "Juvenile justice agencies refer multiple offenders to Project New Pride with confidence that both youth and community interests are protected." (Program Announcement, page 1.) Not only had the program not protected community interests, no one noticed.

We can't incapacitate with mirrors -- they only serve to blind the public for a while. And the individuals to whom we entrust the sentencing function -- prosecutors and judges -- have an understandably hard time handing out non-incarcerative sentences (however much "control in the community" is promised) to offenders about whom they have real worries on the incapacitative side.

Incapacitation has to be expensive, and intrusive, whether or not it is achieved with bricks and mortar. There is an important question -- not addressed in this paper -- about whose future behavior (of what kind) is disturbing enough to warrant incapacitation. For example, I do not, personally, consider it worth the effort to achieve 24 hour-a-day control over the behavior of persistent petty thieves, although, as suggested above, I think it worth the (less costly) effort to punish their thievery. Nevertheless, there are offenders who would not qualify for incarceration in a "focused incapacitation" policy environment, whose incapacitation in the noncustodial setting would be of practical and political importance.

By and large, there is astonishingly little that can be offered to sentencers -- or to the public -- by way of program techniques and supervisory patterns (much less, program models) that have been shown to work substantial reductions in the frequency and seriousness of chronic offenders' in-program crime.

*See Project New Pride: An Exemplary Project (OJJDP, Washington, 1979), Table 4, p. 57; Table 5, p.59; Table 6, p.60; Table 7, p. 64; and pp. 58-61.

Probation.

If probation, as we know it, lacks the burdens we associate with punishment and the machinery we know to be necessary to enforcing any punitive condition, the probation sentence is even less promising as a framework for exercising even a modest degree of control over the offenders we choose not to send to jail. If obeyed, the routine requirement that an offender spend an hour a month, or an hour a week, in the presence of his supervising officer leaves an offender more than enough time to continue his criminal career wtihout missing a step. Even in special "intensive" probation programs, where caseloads are reduced to 15 or 20 offenders per officer, contact supervision is too sporadic to be plausible as a system for control -- almost all of the offender's hours belong to him, and to the streets.

Although the rhetoric of probation may be changing in response to the spreading interest in incapacitation as the basic strategy for crime control,* the literature still abounds with discussions of the hoary dilemmas arising from the dual functions of probation -- care and control. There are few places to find informative discussion of the practical problems that must arise in any serious attempt to take responsibility for controlling the behavior of the chronically delinquent. I am not aware of any very useful experiences from this field which could inform the design of a program

*See, e.g., Walter Barkdull, "Probation: Call it Control -- And Mean It," Federal Probation, Vol. 40, No. 4 (1976); William D. Swank, "Home Supervision: Probation Really Works," Federal Probation, Vol. 43, No. 4 (1979); Adrian James, "Sentenced to Surveillance," Probation, Vol. 26, No. 1 (1976); John Paul Bonn, "A Proposed Model for Probation Supervision," Journal of Probation and Parole (Fall, 1978).

giving reasonable assurances to sentencers that probationers' opportunities to commit crime would be reduced to a meaningful extent.*

Intensive Supervision.

"Intensive Probation" usually signifies an unusual intensity of services -- not an unusual intensity of supervision, surveillance or control. So far as I am aware, one has to look outside the formal probation field for supervision programs that feature caseloads low enough to permit staff to try to take responsibility for direct control of offenders' behavior. Where caseloads are reduced to 5 or fewer, and where program managers are courageous enough to tackle the surveillance and control functions head-on, the real problems surface -- as do some hints of programmatic solutions.

If we are ever to have the benefits of programs that do offer a degree of incapacitation without recourse to jail (and, in my view, we must have them whether or not we adopt a selective incapacitation strategy for crime control), it will take a lot of time and a lot of tolerance for failure in high-risk intensive supervision programs which test staffing and management techniques that take maximum advantage of very low caseloads. These experiments will be expensive, when compared to programs with high caseloads but little supervision; but the staffing cost looks less prohibitive when one considers that incapacitating offenders in many of our jails -- Rikers Island, for example -- requires, in addition to the capital plant and the operating OTPS costs, one corrections officer for every two prisoners. Given our current policy dilemmas and programmatic ignorance, it is to be regretted that we have not seriously tried -- outside of jails and prisons -- to deliver incapacitative effects through programs having supervision of caseloads of two.

* But see, Bonnie P. Lewin, A Review of Past and Current Efforts by the Criminal Justice System to Combine Controls and Services in the Handling of Offenders (Vera Institute, New York: 1979).

Yet, it hardly suffices to sound a call for low caseloads. The real problem is that program operators would be at a loss to know what to tell their caseworkers to do, if they were suddenly blessed with staff resources that match the incapacitation mandate. I remember sitting through hours of meetings in one special probation unit where the officers, who had particularly strong social work training and had been encouraged for years to experiment with case-work techniques, suddenly had their caseloads reduced to five and had been directed to make every effort to direct clients' behavior and avoid re-arrests. They argued and they despaired, because they couldn't think how to make productive use of the time now available in the therapeutic relationships with clients that were growing very deep indeed. The unit broke up after a while because the intensity of these staff disputes began to disrupt the larger bureaucracy from which the intensive supervision unit had been carved.

A similar problem arose last year when a not-for-profit agency in New York City, after years of creditable work with delinquent 16-21 year olds, established a special intensive supervision unit to give sentencing judges good reasons to expect convicted offenders' behavior to be directly controlled by project staff. Experienced, street-wise counselors were given caseloads of five, and the offenders (whose sentences to jail or state prison were effectively suspended pending outcome of a trial period of intensive supervision), were required to be with their supervisors seven hours a day, five days a week, for an initial six week period. It took very little time for this staff to become desperate for some way to structure the hours when the offenders were being controlled. Fortunately, the agency

at that time had units funded to provide direct employment, employment training, and remedial education; in what seemed to me to be a hopeful development, daily use was made of the employment and educational resources (with the intensive supervision staff directly supervising the work crews), and additional hours of direct supervision were created by concentrating group and individual counseling sessions in the after-work or after-class hours. Rather unusual circumstances permitted this ad hoc creation of a program design that made a very controlling form of supervision at least tolerable to both sides. But before much could be learned, the federal funds supporting this agency's job creation, vocational training and remedial education units were cut off.

Employment and School.

It would be helpful if we could look to existing supervised structures for the incapacitative effects we seek, rather than go through a laborious research and development effort to create new ones. Conventional wisdom, buttressed by some empirical evidence, tells us that the devil makes work for idle hands, that truancy is associated with delinquency and unemployment with adult crime, that obtaining and holding a paid job is crime-averting for at least some high-crime groups, and that a return to regular school attendance (particularly if coupled with paid after-school and summer jobs) reduces the incidence of delinquency for at least some high-risk youth.

But job creation programs and alternative schools do not, by themselves, offer sufficient incapacitative potential to provide a solution to the problem posed by the conference organizers. Even a 9-to-5 job leaves a lot of time for crime. For a group whose criminality is wholly or

partly an income-producing activity, paid employment will be less than a perfect crime control measure -- some will simply supplement their illegitimate income with their new legitimate pay, some will increase their criminality by adding theft-on-the-job to their other delinquencies, some will change the frequency or the type of crimes they commit, while a few will, of course, develop a stake in the legitimate life-style and abandon their former behavior.*

Despite evidence that well-supervised employment programs can suppress crime rates among high-risk groups,** and despite anecdotal evidence from various police departments (including New York City's) that patrol strategies focused on returning truants to the supervision of their schools reduces the incidence of street crime during school hours, we are left uncomfortable by the knowledge that it takes only a few hours of actual criminal conduct over the course of a year to make someone a very high-rate offender indeed.

In my view, then, it is important to refine our understanding of how to facilitate entry into and retention in the labor force of "unemployable" urban youth; it is of related importance to bring back into the educational system those youth who have become alienated from it; and supervision programs aiming for incapacitative effects can (and probably must) take advantage

*See, James W. Thompson, Michelle Sviridoff and Jerome E. McElroy, Employment and Crime: A Review of Theories and and Research (Vera Institute: New York, 1981).

**Id. See also, Peter H. Rossi, Richard A. Berk, and Kenneth J. Lenihan, Money, Work and Crime: Experimental Evidence (New York, Academic Press: 1980); Lucy N. Friedman, The Wildcat Experiment: An Early Test of Supported Work (National Institute on Drug Abuse, Rockville Md.: 1978); Robert Taggart, "The Crime Reduction Impacts of Employment and Training Programs (Testimony before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on Employment Opportunities of the Committee on Education and Labor, October 27, 1981); and the testimony of Michael Smith before the same Committees, October 28, 1981. But see, Manpower Demonstration and Research Corporation, Summary Findings of the National Supported Work Demonstration (Cambridge, Mass.: Ballinger, 1980).

of the supervision and control that are part of quality jobs and schooling. But, although schooling and employment are clearly of use in programs aimed at incapacitating high-risk groups, they are hardly sufficient to that purpose and, if the need to incapacitate is taken seriously, they will have to be combined with a mix of other measures of control which, taken together represent very great burdens indeed. Neither economy nor justice is likely to tolerate application of such systems of control over extended periods of time. In the end, the principal crime control benefit of employment and educational elements in supervision programs is not likely to be their short-term and less-than-perfect incapacitating impact, but -- do we dare say it in this context -- their long-term rehabilitative impact. In short, a supervision program that fails to come to grips with attitudes and values has a Sisyphean task.

Before leaving this topic, I must point out that there is a disturbing self-defeating quality to the idea that supervised work programs be used to incapacitate. At Vera, where we have designed and run (reasonably well, I think) quite a number of employment programs targeted at various populations whose incapacitation would be of interest to this conference, we have never done it with incapacitation in mind. Our programs have their roots in ideas about changing the lifestyle opportunities and values of high-risk groups. As a result, we have developed techniques for worksite supervision, choosing worksites, and finding supervisors with the street smarts to handle disruptive behavior while getting productive work out of a crew unaccustomed to the demands to the workplace.

What worries me in the present context is this. Even if we were to figure out how to structure employment to achieve the maximum incapacitative

effects -- which assumes, as I suggested above, melding it with other forms of supervision and control in non-working hours -- the very virtues of good job supervision are in conflict with the incapacitative effects we are seeking. One of the lessons from our programs is that the working environment must be highly disciplined.* Discipline is maintained by having strict but absolutely clear rules of conduct, so constructed that obedience to them virtually guarantees no serious trouble for the community, for fellow workers, or for supervisors. This works fine so long as violations are met with immediate suspension from work and forfeit of pay. The penalty makes sense because those who are not interested in the pay or are unwilling to conform to worksite standards will either withdraw quickly from such an environment or will be fired. With them gone, a good job of incapacitating the others can be done. But, of course, workers who quit or are fired are not incapacitated at all. If workers were required to meet the regime, and be at work, upon real threat of jail, worksite management would be more difficult. Programmatically, the response would be, I guess, to have special worksites for the bad actors, and to make the work, the supervision, or the pay less rewarding than at the regular site. Possible. Difficult. Interesting. But probably fatal. The quality, the values, the peer interaction, the feelings of personal commitment to a non-criminal lifestyle that might flow from a real workplace are probably more important in controlling behavior during unsupervised moments than anything else. Turn a job into a prison and maybe you get the worst of all possible results -- loss of the crime-averting characteristics of employment status, without a capacity to monitor behavior 24 hours a day.

*I am addressing the requirements of employment programs designed specifically for "unemployable ex-offenders," not the requirements of the private sector workplace, where there are rather different imperatives.

House Arrest and Surveillance.

There remain a few program ideas that aim expressly to control participants' behavior so effectively, around the clock, that a true incapacitative impact is achieved. I have heard various reports of successful "house arrest" programs, but find the concept difficult to credit because I cannot see how it could be applied to the New York City population whose incapacitation would be important if the selective incapacitation policy under consideration at this conference were adopted. For example, there is a delightul account of a Home Supervision program from William Swank, Supervising Probation Officer of San Diego County ("Home Supervision: Probation Really Works," Federal Probation Vol. 43, No. 4 (1979)). Because of overcrowding in the juvenile detention facility there, the court remanded a number of juveniles to house arrest; a unit of probation officers were given the general assignment of seeing to it that they stayed put. They would make daily visits and more frequent phone calls -- scheduled and unscheduled -- to create an atmosphere of surveillance that would keep their charges at home. Failure of these youth to be where they were supposed to be led to their return to secure custody.

Swank's account is one of the most interesting, because he gives a sense of the trial and error process by which these probation officers developed techniques -- pretty much from scratch -- suitable to their innovative assignment. And we can be impressed to read that 22 percent of the youth were returned to court for violation of the simple, highly restrictive rules of house arrest, that about two-thirds of these were in fact removed to juvenile hall, and that only one percent were arrested for

new offenses while under this restrictive supervision. This seems even more impressive, when we see that the officers' caseloads were 25. My doubts about the generalizability of this program to communities I know better than I know San Diego (which is, sadly, not at all) can be illustrated by this account by Swank of one of the program's failures:

> [T]he job can have its embarrassing moments, too. A Home Supervision officer was chasing a violator who scaled a wall. When the officer also went over the wall, he realized that he had stumbled into a nude swimming party. The quick thinking youth apparently shed his clothes and disguised himself as one of the guests. He was apprehended the following day (fully clothed and grinning ear-to-ear).

More relevant, in my view, was a short-lived program launched a few years ago by the Hartford Institute of Criminal and Social Justice, to test a comprehensive program for controlling the behavior of chronic delinquents, with major felonies in their histories, while retaining them in the community and providing them a full menu of services. It was very ambitious and, for those of us hungry for practical lessons about programs of this kind, very interesting.

The Hartford program operated by taking responsibility for the behavior of these chronic delinquents on early release from the state's secure facility, and graduating them through a series of security classifications characterized by gradually less restrictive rules designed to protect the community by making it impossible for these youth to commit a crime. Upon entering the program, in the first and most restraining classification which applied for the first four or five weeks, the participant was required to comply wtih a curfew beginning at about 8:30 in the evening. During the time outside of curfew, the participant was either with a program worker,

at school, or at home, and every half hour or so the worker would place a call or put in a visit to monitor the participant's whereabouts and conduct. Continued compliance with the rules permitted entry into the second, less restraining classification. The process was repeated through four levels of security until, at the end of the program, a participant was responsible for controlling his own behavior. Failure along the way resulted in a participant's being placed back into a more restraining classification where his behavior could be more directly controlled by the staff. Failure to get out of classification one, in the time permitted by program rules, led back to the state training school. There was much more to the program than this, but this is enough detail to give the basic idea.

Obviously, the security provided by such a program must be more than a 9 to 5 concern. Let me give an example. The staff workers got worried about one youth, shortly after he entered the program. The worker assigned to the case stationed himself outside the boy's house at about 10 o'clock, to check on the curfew. He saw the boy climb out a window and down a drainpipe and followed him as he went into a nearby park and started to stalk a young woman. He had had some accusations of rape earlier in his offense history, and when he closed in on the woman at a remote spot in the park, the staff worker seized him, brought him out of the park, put him in his car, and drove him back to the training school.

There are very few programs in this country that can deliver that kind of security, if any. This is one of the very few that have tried. But it is easy to see how important it is to be able to deliver that kind of security, where incapacitation is in fact a real concern. A serious crime was prevented, the youths in the program (including the one who was

caught) were shown that there are consequences to their actions, and, by controlling the behavior of the particular boy, the program avoided incurring the wrath of the community which would have made it difficult or impossible to continue its efforts to work with other chronic delinquents in a community setting where it is possible to hope for adjustment to a crime-free adulthood.

The Hartford program offered some wonderful opportunities to experiment with staffing patterns to avoid burn-out, supervisory and surveillance techniques to monitor behavior, and management techniques to avoid destructive conflict between the program's incapacitative and rehabilitative objectives. But the opportunity disappeared when one of the participants eluded the network of controls and shot someone. Political and economic difficulties followed. It quickly became a less risky, and less interesting program.

There are other, scattered program efforts (particularly the "tracking" programs that experimented with surveillance and control in the juvenile field in the late 1970's) from which lessons can be teased with which to start constructing intensive supervision programs that offer a modicum of incapacitation outside of secure facilities. But the field is, in my view, at a primitive stage.

Concluding Observations -

No society is wise which provides only two choices for dealing with offenders -- imprisonment or nothing at all. We need to develop enforceable punishments, short of jail. We need to develop strategies for social control, short of jail. To pursue these objectives, we need some political courage, some program finance, and quality research aimed as much at program process as at program impact. Our need for these things is clearly much greater if, as the conference organizers anticipate, adoption of a focused incapacitation strategy for crime control will consume jail and prison resources with incapacitating the dangerous few. Should this come to pass soon, the "alternatives" field would be, in my view, hard-pressed to accommodate.

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January 19, 1982

TO: Members of the Steering Committee of the Harvard Project on Public Danger, Dangerous Offenders and the Criminal Justice System

FROM: John Monahan

RE: Current and potential use of the mental health system to control dangerous behavior

I have been asked by Mark Moore to prepare a memorandum on the extent to which the mental health system is or could be brought into play to assist in the control of dangerous behavior in society. Three questions have been put: (a) Does the mental health system operate as a adjunct to the criminal justice system in incapacitating persons accused of crime? (b) Does the mental health system place strain on the criminal justice system by allowing disordered persons to be sent to jails and prisons? and (c) Does the mental health system, through civil commitment, function as an alternative intake mechanism to the criminal justice system for potentially dangerous persons?

I will recast these questions a bit in attempting to answer them, and will frequetly draw upon information obtained in the course of an ongoing National Institute of Justice grant to Henry J. Steadman, Director of the Special Projects Research Unit of the New York State Department of Mental Hygiene, and myself.

I. THE MENTAL HEALTH SYSTEM AS AN ALTERNATIVE FORM OF DISPOSITION FOR PERSONS ACCUSED OF CRIME

The clearest form of interaction between the criminal justice and mental health systems occurs in the case of "mentally disordered offenders," persons formally charged with or convicted of crimes who are believed to be mentally disordered. This group consists of persons in four categories: (a) defendants found incompetent to stand trial; (b) defendants found not guilty by reason of insanity; (c) "mentally disordered sex offenders," and (d) prisoners under active sentence transferred to mental hospitals for treatment. Each group is discussed separately below. The data are from a forthcoming article by Steadman, Monahan, Hartstone, Davis and Robbins (in press) and a forthcoming book by Monahan and Steadman (in press).

(1) Defendants Incompetent to Stand Trial

There were somewhat over 6,400 inpatient admissions of defendants found incompetent to stand trial (IST) in the United States in 1978 (Table 1). The average daily hospital census for this group was 3,400. If it is assumed that the prior and subsequent years' rates of admission and release were similar to those in 1978, one can estimate the average length of stay in the hospital for IST's to be 6.4 months. The above figures refer to defendants adjudicated IST. Since approximately 4 defendants are evaluated for IST for each IST adjudication, this would yield a national annual IST evaluation rate of approximately 25,000 defendants.

In theory, a defendant found incompetent to stand trial is sent to a mental health facility to have his or her competency restored. Upon the restoration of competency, the defendant is tried for the crimes charged. Therefore, any time spent in a mental health facility as IST is "incapacitation time" that is in addition to the criminal sentence the defendant receives if found guilty at trial. In practice, however, there appears to be a strong tendency for judges to take time spent in a mental hospital as IST into account in setting the criminal sentence. For example, when a defendant has been hospitalized as IST for a period equal to or greater than the probable sentence he or she would receive if guilty, the defendant's attorney usually pleads him or her guilty in return for the judge's sentencing the defendant to "time served" (Steadman & Hartstone, in press). Time spent in the hospital as incompetent, therefore, is generally instead of rather than in addition to, time spent in jail or prison. The only circumstance in which a finding of IST could result in less time institutionalized than if the defendant had been found guilty (without first being treated as IST) would be when the incompetency precluded a determination of guilt. This could occur if a defendant was found IST and could not be restored to competency within a "reasonable" period. Under the Supreme Court's 1972 Jackson decision, the defendant would have to be released or civilly committed. There are no studies of whether any defendants are actually being released as a result of Jackson. Since some states (e.g., California) have changed their commitment laws to make persons found to be IST and untreatable automatically qualify for indefinite civil commitment, it is doubtful that many, if any, defendants "walk" as a result of being found imcompetent. Given that a finding of incompetency almost always results in a total period of institutionalization (i.e., mental hospital plus jail or prison, if found guilty) at least as long as the jail or prison sentence would have been had incompetency never been raised, the incapacitative function of the criminal law would not appear to be compromised by this category of mentally disordered offender.

(2) Defendants Not Guilty by Reason of Insanity

There were somewhat over 1,600 inpatient admissions of defendants found not guilty by reason of insanity (NGRI) in

the U.S. in 1978 (Table 1). The average daily census for this group was 3,140. If the assumption is made that these admission and census figures are relatively constant over time, the average length of stay in the hospital for NGRI's would be computed as 23.2 months. At least in urban states, in about half the cases the crime of which the NGRI is acquitted is murder (Steadman & Braff, in press). The mean length of stay varies directly with the seriousness of the charge of which the defendant is acquitted.

The first thing to be observed about the number of defendants found NGRI is that it is so small. The number of persons residing in state hospitals as NGRI in 1978 was approximately 1% of the number of persons residing in state prisons as convicted offenders. One study (Pasewark & Pantle, 1979) found that state legislators overestimated the frequency of insanity pleas by a factor of 40.

The question invariably arises in this context as to whether NGRI acquittees spend more or less time in the hospital than they would have spent in prison had they been convicted. There is little doubt but that the national average length of NGRI hospitalization of approximately two years is more than some defendants would have received if convicted (e.g., misdeamants) and less than others' would have received (e.g., murderers). This is to be expected since the standards for NGRI hospitalization and release differ drastically from the standards for imprisonment: hospitalization has no retributive component and imprisonment has little therapeutic rationale. Research in New York State (Pasewark, Pantle & Steadman, in press) suggests that in recent years NGRI acquittees have spent in the hospital approximately one-third less time than they would have spent in prison had they been convicted of the charges on which they were tried. The ubiquitousness of plea bargaining makes interpretating these data problemmatic: had the insanity defense not been a go-for-broke option, the defense attorney may well have pled the case to a reduced charge, and therefore obtained a reduced sentence. It is not clear, therefore, that abolishing the insanity defense (assuming it could be done constitutionally) would substantially raise the average time incapacitated of persons who would otherwise avail themselves of it.

In any event, marginally altering the incapacitation of a group that is only 1% the size of the imprisoned offender population is unlikely to have a measurable effect upon crime rates. The primary importance of the insanity defense has always been its symbolic affirmance of a system of law based upon personal responsibility. It is the exception that proves the rule that the rest of us--those who are not grossly disordered--are accountable. Any modification of the defense would have to weigh heavily this symbolic function (Dershowitz, 1974; Stone, 1975).

(3) Mentally Disordered Sex Offenders

Slightly in excess of 1,200 males (and no females) were found to be "mentally disordered sex offenders" (MDSO's) in

in 1978 (Table 1) and the average daily hospital census for this group was 2,442. Making the same assumptions as above, the average length of stay was 24.2 months. Of the 27 states that have had MDSO procedures, eight have repealed them in recent years, including California, which had by far the largest MDSO program in the U.S., on January 1, 1982.

MDSO procedures are, in theory, a "civil" alternative to criminal prosecution for sex offenses by persons who are mentally disordered but not legally insane. In practice, however, MDSO procedures seem to be well integrated into the criminal process: they provide an "interstitial" deposition--confinement in a mental hospital--that is a less severe sanction than imprisonment and a more severe sanction than jail (Forst 1978). One California study (Sturgeon & Taylor, 1980) of persons committed as MDSO compared with persons convicted of sex crimes and sent to prison found the prisoners to be incapacited in prison approximately three times longer than were the MDSO's kept in the hospital.

One recent review of research on MDSO procedures (Monahan & Davis) in press) concluded that there is some evidence to support the following six assertions: "(1) they are well integrated into standard criminal justice plea bargaining procedures, rather than being an alternative to these procedures; (2) they are invoked primarily on the basis of a record of prior sexual offenses; (3) there may be a significant racial bias in their application [i.e., blacks are less likely to be found MDSO]; (4) they are applied to persons for whom serious mental disorder is at best dubious; (5) they may protect the physical safety of institutionalized sex offenders better than imprisonment; and (6) they allow for a shorter period of institutionalization than is the case with imprisonment."

In my opinion, MDSO procedures are one form of explicit criminal justice--mental health interaction where reform might produce a tangible increase in incapacitation with a corresponding increase in public safety. Abolishing MDSO laws has been recommended by the Group for the Advancement of Psychiatry (1977) and the Panel on Legal and Ethical Issues of the President's Commission on Mental Health (1978).

The clear trend in the U.S. in the past few years has been to repeal MDSO laws on the grounds that they compromise public safety. The research can be read to support this movement.

(4) Prisoners Transferred to Mental Hospitals

Close to 11,000 prisoners under active sentence were transferred to mental health facilities in 1978 (Table 1) and the average daily census was 5,158. Making the previous assumptions, the average length of stay was 5.7 months, at which time the prisoners were returned to the regular prison population or, if their sentence had ended, were released.

Approximately half the prisoners were transferred to in-prison mental health units and half to out-of-prison units. About 3 out of 4 transfer cases stay within facilities administered by state Departments of Corrections, with the remainder being temporarily under the jurisdiction of state Departments of Mental Health. Extrapolating from prison census figures, one could estimate that 3.9% of U.S. prisoners were transferred to a mental health facility at some point during 1978.

While administratively transferring a prisoner to a mental health facility does not necessarily lengthen a prisoner's sentence (Baxstrom v. Herold, 1966), neither does it shorten it. Transfer thus has no effect upon incapacitation.

The Supreme Court's 1980 Vitek decision, holding that prisoners must be accorded a hearing before being transferred to a mental hospital, has focused attention on problems of "overidentifying" as mentally disordered inmates who are more properly viewed as management problems. A recent survey of staff at the prisons from which inmates are transferred and at the hospitals to which they are transferred, however, found that they believed "underidentification to be a much more serious problem: many more inmates who are truly mentally disordered and in need of transfer to a hospital are not getting it than are inmates being transferred inappropriately (Hartstone, Steadman & Monahan, in press).

Two annotations should be made to what has been said regarding all four types of "mentally disordered offender." The "incapacitation effect" of institutionalization in a mental hospital has been presumed to be equal to that of institutionalization for a similar period in a prison. This is true only to the extent that the security at both types of facility is similar. This may be true for some mental health facilities but not for others. Thus Atascadero State Hospital, the maximum security mental hospital in California, has had only 3 patients escape in the past 8 years, but Patton State Hospital--where mentally disordered offenders are also committed--has had 477 patient escapes in the past six years (New York Times, December, 1981). Such a lack of security was influential in the California legislature's repeal of the state's MDSO law earlier this year.

Secondly, it should be noted that incapacitation is not the only way that the mental health system can affect criminal or dangerous behavior. While there is theoretically no deterrent effect to hospitalization--some would define mental disorder for legal purposes as a lack of capacity to be deterred--all but the hopelessly cynical could admit to the possiblity of a rehabilitative effect. To the extent that (a) "mentally disordered offenders" are indeed mentally disordered; (b) their mental disorder played a predisposing role in the commission of their crimes; and (c) mental hospitalization reduces the

severity of their mental disorder, it would follow that their rates of future crime would be suppressed by hospitalization. I would not relish the task of defending any of the above propositions, but it is worth noting that it is not necessarily by incapacitation alone that the mental health system affects the crime rate of those offenders for whom it is an alternative disposition to jail or prison.

II. THE MENTAL HEALTH SYSTEM AS AN ALTERNATIVE FORM OF INTAKE FOR VIOLENT PERSONS

The mental health system may function not only as an alternative disposition for persons charged with crimes (as with "mentally disordered offenders") but also as an alternative form of intake into state jurisdiction for those who have committed, or are believed likely in the future to commit violent acts. This could occur in two circumstances: (a) when a police officer chooses to petition for civil commitment as "dangerous to others" someone whom the officer would otherwise have arrested; and (b) when a police officer--or anyone else--petitions for civil commitment an individual who, although he or she has not yet committed an arrestable act, would have committed one in the future but for the treatment received or incapacitation provided by mental hospitalization. This latter circumstance is an alternative form of intake since, by invoking it, one precludes (or at least postpones) arrest and imprisonment.

The relevant empirical questions, therefore, concern the size of the population for whom commitment was in lieu of arrest and imprisonment for a past act, and the size of the population for whom commitment prevents arrest and imprisonment for a future act. Both questions are especially slippery. To answer the first, one must either survey mental patients and independently determine the proportion who could just as easily have been processed through the criminal justice system or survey police officers as to whether they "could have" and "would have" arrested the people they petition for commitment, had the commitment option not been available. To answer the second, one must rely upon the questionably-valid clinical predictions of future harm made by mental health professionals at the time of commitment.

The NIJ project of Henry Steadman and myself provides indirect data on the extent to which mental hospitalization is being used in place of arrest and imprisonment and whether this has increased following changes in national mental health policy. We reasoned that an increase in the proportion of patients with a history of arrest and imprisonment would be one index of an increase in the use of mental hospitals to incapacitate people who in the past were under the control of the criminal justice system. Arguably the people now being admitted to mental hospitals who have a record of arrest and imprisonment would still be being dealt with through the criminal justice system, had the mental health system not undergone the transformations described below.

To the extent that there is an increase in the proportion of former offenders (i.e., persons with a history of arrest and imprisonment) in the population of persons being committed, credence is lent to the argument that by focusing upon "dangerousness" as the standard for commitment the mental health system is coming to substitute for the criminal justice system as a form of intake for arrestable persons.

We chose 1968--just prior to the national movement to focus commitment standards on "dangerousness"--and 1978 as the time frame for our analysis. For the part of the project relevent here, we examined the records of 400 random admissions to state mental hospitals in New York and in California and 200 random admissions to state mental hospitals in Texas, Iowa, Massachusetts and Arizona in 1968 and in 1978 (for a total of 3,200 patient records).

While the data are not fully analyzed, some preliminary figures are available on the arrest and imprisonment histories of mental patients. Between 1968 and 1978, the proportion of state mental hospital admissions with a history of previous arrest rose from a mean of 41.5% to a mean of 52.6%. Five of the six states studied reported increases in the prior arrest history of their mental patients. To the extent that these data are generalizeable to other states, most people now being admitted to mental hospitals have had prior experience in the criminal justice system. That experience, however, does not often include incapacitation in a state prison. The proportion of admissions to state mental hospitals with a history of prior imprisonment was very low in 1968 (6.7%) and increased only marginally (to a mean of 7.8%) by 1978. There was considerable variation among states in this regard. In three of the six states studied the percentage of mental patients with a history of prior imprisonment increased (from a mean of 4.2% to a mean of 9.2%) and in the other three it decreased (from a mean of 9.3% to a mean of 6.5%). Since most patients admitted to mental hospitals have been arrested and yet few have been imprisoned, it might be assumed that many had spent at least some period in a local jail, since it is likely that these persons were not released on their own recognizance at the time of arrest. Interpreted in this manner, the data would suggest that state mental hospitals have increasingly assumed a role formerly played by local jails in incapacitating people who commit offenses. The focusing of commitment standards on the crime-like concept of "dangerousness" may have played some role in this increase. While the data on the type of crime for which the patients were previously arrested is not yet analyzed, one might infer that the acts were not extremely serious (e.g., murder), since few of them ever resulted in imprisonment.

A study by Monahan, Caldeira and Friedlander (1979) addressed police officers' perceptions of the proportion of the population they petition for commitment that is liable to arrest. Fifty police officers in Southern California were surveyed when the officers had just petitioned an individual for civil commitment.

In 30% of the cases, the officers were of the belief that they could have made a legal arrest had they chosen to do so. While the charge would often have been minor (e.g., disturbing the peace, indecent exposure), in 40% of the legally arrestable cases the charge would have been assault with a deadly weapon (e.g., threatening a spouse with a knife). In virtually all of the cases whose commitment criteria included "dangerous to others," the individual had performed (52%) or threatened (42%) a physically assaultive act. Interestingly, however, the police officers stated that they actively considered making an arrest in less than half the cases where they had it within their legal discretion to do so (14% of the total sample). Further, the commitment law in California provided for a petitioning police officer, if he or she chose, to be notified before any person held in 72-hour emergency commitment was released into the community, so that the officer could initiate an arrest. In only 20% of the cases in which the officer believed he or she could have made a legal arrest (6% of the total sample) did the officer check the box on the commitment form requesting this notification of release.

While the police officers in this study, therefore, thought that they had the legal right to arrest 30% of the people they committed, they considered arrest as a feasible option in less than half of these cases and took active steps to assure that arrest was used as a back-up in the event commitment failed in only 6% of the cases. The reasons that the officers gave for not arresting people they legally could have arrested were evenly divided between a legalistic "no intent or motivation to commit a crime"--a form of what might be called "presumptive insanity defense"--and a paternalistic "in need of help not incarceration."

In line with the preliminary findings from the NIJ project, it would appear from this study that civil commitment is used in lieu of arrest as an intake mechanism for state jurisdiction over "dangerous" behavior for a sizeable portion of the committed population. As with the NIJ data, one might infer that the acts that precipitated commitment were not viewed as extremely serious, since the police so infrequently took steps to make sure that the individual remained in some form of custody.

The second question relevant to the use of the mental health system as an alternative intake mechanism to the criminal justice system concerns the size of the population for which commitment prevented arrest for a future violent act. Predictions by the committing mental health professional that, absent commitment, the committed individuals would perform a "dangerous" act are the only available estimates of this form of alternative intake. Another study done in Southern California (Monahan, Ruggiero & Friedlander, 1982) of 594 consecutive commitments found that the examining psychiatrists predicted 29% of the involuntary admissions to mental hospitals to be "dangerous to others," one of the three possible criteria for commitment in California (the other two being "danger to self" and "grave disability," defined as "an inability to feed, clothe, or house oneself"). Importantly,

however, only 5% of the committed population was believed to be "dangerous to others" without also being either "dangerous to self" or "gravely disabled" at the same time. That is, almost all of 29% of the population predicted to be dangerous to others were also predicted to be suicidal or unable to feed, clothe, or house themselves. The importance of this observation is its implication that "dangerousness to others" could be completely eliminated as a criterion for involuntary commitment and 95% of the people now being committed still would be.

It would appear from all these data that the mental health system may be playing a significant role as an alternative intake mechanism to criminal justice for the incapacitation of "dangerous" persons. This may be due as much to the mental health systems ability to preventively detain people who could be arrested for acts they will commit in the future as to that system's functioning as an alternative to arrest at the time of commitment. Even if mental health professionals were accurate in only one of three of the cases in which they predicted dangerousness for the purpose of commitment (Monahan, 1981), this would still amount to approximately 10% of the committed population who would actually perform a violent act if not committed.

It should be emphasized that this "incapacitative" or "police power" aspect of the mental health system for persons who are dangerous to others is almost entirely incidental to its paternalistic function of treating people who are actively (through suicide) or passively (through an inability to feed, clothe or house) dangerous to themselves. Not only does this observation describe the empirical state of affairs in civil commitment (i.e., almost all people being committed as dangerous to others are also committable on paternalistic grounds), it also describes how many mental health professionals believe commitment should function (e.g., Stone, 1975).

III. THE MENTAL HEALTH SYSTEM AS A SOURCE OF STRAIN ON CRIMINAL JUSTICE INTAKE AND DISPOSITION

The issue here is the opposite of those raised in the previous two sections. Rather than a concern with the extent to which the mental health system is substituting for the criminal justice system as a form of intake or disposition for the incapacitation of criminals--or people who would be "criminals" but for their disordered mental status--the point here is whether the mental health system is placing strain on the criminal justice system by failing to perform such functions.

In this regard, it is sometimes claimed that prisons and jails are larger and more difficult to manage now than they were a decade or two ago, and that at least part of this change is attributable to an increase in the absolute and relative number of inmates who are mentally disordered. This situation is lamented both by police officers and wardens, who say that

they do not have the resources that such offenders require, and by mental health professionals who believe that arrest or imprisonment may accelerate a deterioration in an offender's disorder. Both groups attribute the source of this alleged increase in rates of disorder to changes in national policy toward the mentally disordered. These changes have included (a) "deinstitutionalization" of mental hospitals from an average daily census of just under 600,000 in 1955 to one somewhat over 100,000 in 1980; and (b) the libertarian "patients' rights movement," responsible for narrowing the criteria for involunatry hospitalization from an amorphus "need for treatment" to a specific concern with "dangerousness," beginning with California's Lanterman-Petris-Short Act in 1969. The argument is that these two developments--making it easier to get out of mental hospitals and harder to get in, respectively--have resulted in large numbers of disordered people being at large and unsupervised in the community. This situation is said to result in (a) police officers, under pressure to maintain order in the presence of bizarre behavior and unable to effect a commitment under the tightened criteria, arresting disordered people on minor charges (loitering, jaywalking, etc.); and (b) mentally disordered persons, who want treatment and are unable to gain access to public mental hospitals because they are not seen as "dangerous," giving lie to these predictions by committing a serious violent act that results in their arrest. While there is no shortage of anecdotes on this second claimed result of changes in the mental health system, I know of no systematic research on the topic.

An initial empirical question relevant to the issue of police arresting more disordered people is the prevalence of diagnosable mental disorder in jail and prison populations, and any change in this rate since the policy changes mentioned above. One approach to answering this question would be to compare findings from psychiatric epidemiological surveys of jail and prison populations pre and post the deinstitutionalization of mental hospitals and the tightening of commitment criteria. Unfortunately, there are few reliable surveys in this area, and none that permit accurate longitudinal comparisons. Roth (1980) reviewing recent studies of prison populations, concluded that "approximately 15 to 20 percent of prison inmates manifest sufficient psychiatric pathology to warrant medical attention or intervention" but that the rate of psychosis was "on the order of 5 percent or less of the total prison population." Bolton (1976) in a survey of over 1,000 adult offenders in five California county jails reported 6.7% of the jail inmates to be psychotic, 9.3% to have a non-psychotic mental disorder and 21.0% to have a personality disorder. Again, it is impossible to tell if these rates are higher or lower than they would have been had mental hospitals not been deinstitutionalized or commitment codes not been tightened.

The NIJ project of Henry Steadman and myself attempted to gain indirect information on changes in the proportion of mentally disordered persons in criminal justice populations by assessing the "confinement careers" of people in state institutions. While many disordered people no doubt escape mental hospitalization, we reasoned that an increase in the proportion of prison inmates with a history of mental hospitalization would be one index of an increase in the prevalence of mental disorder. For the part of the project relevant here, we examined the records of 400 random admissions to state prisons in New York and in California and 200 random admissions to state prisons in Texas, Iowa, Massachusetss and Arizona in 1968 and in 1978 (for a total of 3,200 prisoner records).

While, as before, the data are not yet fully analyzed, some preliminary figures are available. Overall, we find a small increase in the proportion of state prisoners with a history of previous state hospitalization: 10.3% of the persons admitted to prison in 1968 had previously been a patient in a state hospital and 12.6% of the persons admitted to state prisons in 1978 had such a history. These averages, however, mask significant within-state changes. Of our six target states, three had increases in the proportion of prisoners with a history of hospitalization between 1968 and 1978 (from a mean of 7.8% to a mean of 16.0%), and three had decreases in such inmates (from a mean of 12.9% to a mean of 9.3%).

The data would not seem to support a major across-the-board influx of mentally disordered persons (who, in a prior decade, would have been hospitalized) as the source of prison population increases and management problems.

It is important to note that these are state-level data. Only state imprisonment and state hospitalization were compared. It is entirely possible that a significant shift has occurred at the local level. Disordered persons who have been dumped from a mental hospital without any provision for care and who do not qualify for commitment under "dangerousness" standards may be being arrested on "disorderly conduct"-type charges to get them off the streets. But these people would become part of the local jail, rather than the state prison population.

There is some evidence that local jails have seen such changes in their clientele. Bonovitz and Guy (1979) studied a Philadelphia county jail before and after the implementation of a restrictive commitment statute focused on "dangerousness." One year after the implementation of the act, as compared with one year before its implementation, there were 51% more requests by jail staff for consultation regarding mentally disordered inmates and the number of admissions to the jail psychiatric unit had increased by 94%. Persons admitted to the jail psychiatric until after the commitment statute was changed had been arrested for less serious crimes ("disorderly conduct," "treaspassing,"

etc.) and had fewer prior arrests than persons admitted to the unit under the old statute. The authors concluded that "faced with complaints about individuals acting in a bizarre or socially unacceptable manner, the police felt their only alternative was to arrest the person to remove him from the community."

The Monahan, et al (1980) study mentioned earlier found some--but limited--support for this phenomenon. One of 50 randomly chosen arrests had been made where the officer would have preferred commitment, but was precluded from doing so by the narrowness of the statute. The officer stated: "We had this woman, old lady about 77. She was definitely off. She lived with about 50 animals, cats mostly. We finally had to book her for cruelty to animals. We get her down here [i.e., the jail] so the doctors could take a look at her and then send her over to the hospital. We didn't want to take her to jail, but there was nothing else we could do."

While cases such as this may be a significant problem in jails--while still a very small proportion of the total jail population--it is highly unlikely that they would ever progress through the criminal justice system to the point of being sent to state prison (and thus would not be reflected in the Steadman-Monahan data above). People are not sent to state prison for disorderly conduct, trespassing, or having too many cats.

I would conclude that there are no data yet available to support the deinstitutionalization of mental hospitals or the tightening of civil commitment standards as major factors in the national increase of state prison populations. There are some data that suggest that these movements may be responsible for moderate increases in the proportion of disordered persons in local jails. Whether this phenomenon is sufficiently serious to consider returning to broader commitment criteria is an issue on which many values compete.

IV. CONCLUSIONS

To the extent that the overarching question that gave rise to this exercise was, "Can the mental health system be modified in such a way as to better control dangerous behavior in society?," the conclusions of this memorandum will not be particularly encouraging.

I see no danger-reduction potential in any feasible "reform" of incompetency to stand trial procedures or the insanity defense. Mentally disordered sex offender laws seem to be withering away of their own accord. The proposal of the Attorney General's Task Force on Violent Crime (1981) for a verdict of "guilty but mentally ill," if acted upon, could result in significant increases in prison-to-hospital (and back again) transfers of convicted offenders. While this has serious implications for the provision of treatment services to mentally disordered inmates--who, in the opinion of prison officials, are already severely underserved--it has no implications for the incapacitation of dangerous persons, since offenders would be institutionalized for the same amount of time regardless of the institution they are in.

Since the codes of virtually all states now include as a criterion for civil commitment the prediction of "dangerous" or "harmful" behavior, the mental health system appears to be doing all that it can (and more than many mental health professionals believe it should) be doing to serve as an alternative intake system for the control of dangerousness. Lengthening the duration of commitment for "dangerousness," of course, might enhance its incapacitative effect. But given the research on the questionable validity of long-term predictions of violence, the facts that these people have not been arrested, much less convicted of an instant offense, and the lack of treatment demonstrated to be effective in the control of violent behavior, such a move would, in my opinion, be prohibitively costly both to traditional views of civil liberties and to the mental health system, which would, even more than at present, lose its identity as a system primarily concerned with the welfare of its wards.

The finding that the tightening of civil commitment criteria may have resulted in an increase in the proportion of mentally disordered persons in local jails has implications for the provision of mental health services to jail populations. But it would not seem to have implications for the control of dangerousness unless one assumed that hospital treatment "would have" alleviated the potential for dangerous behavior of those disordered persons going to jail. Support for such an assumption, however, is in short supply.

Perhaps members of the Steering Committee can be more creative than I in thinking of ways that the mental health system can assist in the control of violent behavior in society without losing its identity as a "helping" institution.

Table 1

Admission and Census of Mentally Disordered Offenders in U.S. Facilities

by Legal Status and Gender

LEGAL STATUS	ADMISSIONS				CENSUS			
	MALE	FEMALE	GENDER UN-DETERMINED	TOTAL	MALE	FEMALE	GENDER UN-DETERMINED	TOTAL
Incompetent to Stand Trial	3295	266	2859	6420	1945	165	1290	3400
Not Guilty By Reason of Insanity	847	127	651	1625	1863	285	992	3140
Mentally Disordered Sex Offenders	753	0	450	1203	2437	5	0	2442
Mentally Ill Inmates:								
External Mental Health Units	5323	261	64	5648	2510	122	52	2684
Internal Prison Mental Health Units	5061	186	0	5247	2334	140	0	2474
Total	15,279	840	4,024	20,143	11,089	717	2,334	14,140

From Steadman, Monahan, Hartstone, Davis and Robbins (in press).

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Section 5

PROSECUTORIAL DECISION-MAKING

Prosecutorial Selectivity: A View of Current Practices

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Prosecutorial Selectivity: A View of Current Practices

The purpose of the Conference on Public Danger, Dangerous Offenders and the Criminal Justice System is to explore the crime control potential of a more explicit criminal justice system focus on dangerous offenders. This paper discusses the extent to which prosecutors are already focused on dangerous offenders, whether they could become more focused in this direction, and if so what changes would be needed in current operating procedures and capabilities.

There are numerous ethical, moral and legal problems involved in such a focus as well as practical questions concerning the utility of a greater prosecutorial focus at a time when jails and prisons are crowded. These issues are important and must be answered before a policy of increased attention can be advocated. They are outside the scope of this paper, however.

I. ARE PROSECUTORS CURRENTLY FOCUSED ON DANGEROUS OFFENDERS?

A. Some General Considerations

What prosecutors might do about dangerous offenders depends in part on the definition of dangerousness chosen. If a definition based on the offense committed is chosen and dangerousness is defined as stranger-to-stranger homicides, assaults, rapes and robbery, the target group of any prosecutorial emphasis on dangerousness would be fairly broad.

If a definition based on the offender is chosen, however, and dangerousness defined in terms of high rates of offense,

a prosecutorial emphasis on dangerousness would take on a very different cast. Some cases would still receive more attention than others, but the task of identifying those to receive the special attention would be more difficult and would have to be based on prior criminal history or some other method of predicting future criminal behavior. The size of the target group would depend upon the particular criteria chosen.

A third method of definition might be based on both offense and offender, that is, it might focus on murderers, robbers or rapists who repeat their offenses at a high rate. Obviously if this method of definition were used, the target group would be much smaller than with either of the other definitions.

In theory the ways that prosecutors might focus on dangerous offenders are almost limitless. Seven of the more important of these are:

(1) Concentrating prosecutorial resources and efforts on the dangerous offenses.

(2) Special efforts to charge and convict dangerous offenders arrested for dangerous crimes.

(3) Special efforts to charge and convict particular individuals identified as dangerous offenders with minor crimes whenever they are committed.

(4) Increasing the seriousness of charges for dangerous offenders by loading them up with multiple counts, enhancements and maximum charges.

(5) Increasing the seriousness of conviction charges for dangerous offenders through reduced pleabargaining or other tough prosecutorial stances.

(6) Increasing the severity of sentences imposed on dangerous offenders by active involvement in the sentencing process.

(7) Seeking collateral penalties (such as high bail for dangerous offenders).

Merely to list these various actions is to indicate that few if any prosecutorial offices have focused on dangerous offenders to the maximum extent. In part this is a question of resources. Prosecutors everywhere are sorely pressed by the financial plight of local and state government and lack the resources to do all that they would like. In part, however, the issue is also one of strategy and tactics. How far can a prosecutor responsibly go in concentrating his resources on dangerous offenders? Other matters may warrant lesser attention, but there are many that cannot be ignored altogether.

While prosecutors have clearly not gone as far in focusing on dangerous offenders as they might, they have gone much further in some areas than in others. It would be foolhardy to try to summarize the extent to which the 3,000 plus prosecutorial offices throughout the country are attempting to carry out these seven actions. Their practices vary enormously and there is little that one can say with certainty other than that someone else is doing it another way. This paper is consequently based on the literature, visits and discussions with several dozen prosecutors around the country over the past several years, and a recent study by the Center on Administration of Criminal Justice, University of California, Davis for the National Institute of Justice of practices in four prosecutorial offices.

The overall conclusion is that prosecutors currently place relatively little special emphasis on charging and convicting dangerous offenders but that many do emphasize actions that

increase the severity of the level of conviction and the sentence of those dangerous offenders charged. To a considerable extent this conclusion applies to all three of the definitions of dangerousness previously discussed.

B. Concentrating Resources on the More Serious Offenses

One way that prosecutors might focus on dangerous offenders is by concentrating resources on offenders charged with crimes thought to be dangerous. Virtually all prosecutors do this to some extent. Homicide cases are universally treated more seriously than burglaries or minor assaults, and particularly notorious or gruesome homicides--such as those perpetrated son of sam or the Hillside strangler--more seriously than run-of-the mill homicides. Tremendous resources are often poured into these cases on both guilt and sentencing issues.

Once the homicide threshold is passed, however, there is relatively little focus on particular offenses. Virtually all prosecutors pay more attention to felonies than to misdemeanors and there is generally less leniency employed in charging and prosecuting the more serious felonies than for other crimes.[1] No prosecutorial offices observed, however, have an explicit concentration on some specific set of dangerous offenses such as stranger-to-stranger rapes, assaults and robberies, and in practice these crimes in most offices do not appear to be treated all that differently from other non-trivial felonies.

C. Special Emphasis on Charging and Convicting Dangerous Offenders

A second way that prosecutors might focus on dangerous offenders is to place special emphasis on charging and convicting them. If the offense definition of dangerousness were used, this would mean seeking to charge and convict as many arrestees for the target offenses as possible. If the offender definition is used, this would mean seeking to charge and convict as many offenders meeting the particular definition as possible.

The indications are that neither dangerousness definition is important in screening decisions, in nol prosses, dismissals or preliminary hearing decisions, or in the attrition-conviction decision considered as a single process. In addition these conclusions do not appear to be altered by the existence of career criminal prosecution units.

(1) Screening and Charging. In the modern sector of the prosecutorial world cases, and particularly felonies, are considered by the prosecutor before they are filed in court. Obviously one way in which prosecutors can take dangerousness into account is in the decision to charge.

(a) Published Standards. Because of concerns about the problems of exercising discretionary authority in an effective and even-handed way there have been several important efforts in recent years to prescribe the proper methods for screening and charging. Standards for decision-making have been developed by the National District Attorneys Association, the California District Attorneys Association and the American Bar Association. A review of these standards indicates that the primary emphasis is on sufficiency of the evidence and selection of a charge appropriate to the offense. The standards also generally discuss the exercise of leniency powers. Very little is said, however,

about the extent to which the dangerousness of the offender--either in terms of the offense or the offender's prior record--should be taken into account. The implication is that dangerousness should either not be considered or that dangerousness is a very minor factor.

The character of the published standards is illustrated by the National District Attorneys Association Guidelines. These indicate that:

> The prosecutor should utilize his discretion in screening to eliminate those cases from the criminal justice system in which prosecution is not justified.[2]

The Guidelines then go on to indicate the factors to be considered. These are:

a. Doubt as to the accused's guilt;

b. Undue hardship caused to the accused;

c. Excessive cost of prosecution in relation to the seriousness of the offense;

d. Possible deterrent value of prosecution;

e. Aid to other prosecution goals through non-prosecution;

f. The expressed wish of the victim not to prosecute;

g. The age of the case;

h. Insufficiency to admissible evidence to support a case;

i. Attitude and mental state of the defendant;

j. Possible improper motives of a victim or witness;

k. A history of non-enforcement of the statute at issue;

l. Likelihood of prosecution by another criminal justice authority;

m. The availability of suitable diversion programs;

n. Any mitigating circumstances; and

o. Any provisions for restitution.[3]

Of the 15 considerations mentioned, only one--that concerning possible deterrent value--has any conceivable relationship to dangerousness. Even as to this standard the relationship is tenuous and so general as to be largely meaningless.

While the national standards emphasize the factors which might lead to prosecutor to reduce or eliminate the charge, they provide relatively little guidance as to how the factors should be brought into play. The California standards attempt to go further. They emphasize four requirements:

a. The prosecutor, based on a complete investigation and through consideration of all pertinent data readily available to him, is satisfied that the evidence shows the accused is guilty of the crime to be charged.

b. There is a legally sufficient, admissible evidence of a corpus delicti.

c. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged.

d. The prosecutor has considered the probability of conviction by an objective fact-finder hearing the admissible evidence....[4]

As a minor part of the discussion the California standards indicate that the prosecutor should consider:

> The accused's background including his prior record. (The fact that his alleged conduct is consistent or inconsistent with prior proven conduct may remove or create a reasonable doubt. Such evidence could become admissible at trial even if only in rebuttal.)[5]

Although very general, these guidelines are important evidence of the way that screening and charging decisions

are made. They were written by experienced and knowledgeable prosecutors, and many prosecutorial offices indicate that the guidelines state their policy.

A third important set of standards are those developed by the American Bar Association. Encompassing many aspects of the criminal justice system and first approved in 1971, these standards were revised in 1980.

The standards concerning the prosecution function discuss charging as an aspect of discretion. They indicate that the prosecutor is not obliged to present all charges which the evidence might support and list some factors which the prosecutor might take into account. Dangerousness is not mentioned and the only factor which might be thought of as related to dangerousness is "the extent of harm caused by the offense."[6]

(b) Studies of Screening and Charging. Neither offender dangerousness in general nor prior record as a particular form of offender dangerousness loom large in studies of screening and charging. The dominant consideration is convictability.

In one important series of studies Joan Jacoby developed four models of the screening process. The legal sufficiency model calls for charges to be issued in any case in which there is a legal basis for proceeding. The system efficiency model emphasizes diversion of minor cases and quick and efficient dispositions. The trial sufficiency model is the most stringent of the four, allowing filing only in those cases which could be won at trial. The fourth model, defendant rehabilitation, is based on nonpunitive handling for many of the more minor cases.

While these models were developed as ideal types, they are based on observations of existing systems of screening and charging and have been found to describe many existing systems. None includes either dangerousness or prior record as a major component of the decision to charge.[7]

In a more recent study of intake procedures Jacoby, Mellon, Ratledge and Turner presented information about 30 hypothetical cases to 855 prosecutors in 15 jurisdictions. This study showed that prosecutors rarely used information about the defendant's prior history in making the charging decision.[8]

Other major analyses of screening such as those by Abrams, Cole, Davis and Neubauer simply contain no discussion of dangerousness or prior record.[9] While it is clearly not fair to conclude from these omissions that dangerousness is not a consideration in charging, the omissions do seem to be at least some indication that dangerousness is not an overriding consideration.

There are also indications, however, that dangerousness or considerations related to dangerousness do play some role. Miller discussed the issue over twenty years ago in his classic work on prosecution:

> if the circumstances of the offense are particularly heinous, such as a combination murder-rape, full enforcement is likely, especially in view of the accompanying publicity. But even when the offense is not particularly heinous, a number of factors in the suspect's personal history may make officials especially anxious to "put him away" for a long time. Among them are his criminal record, noncriminal conduct bearing on his character, official suspicion of the commission of offenses which they cannot prove, or connection of the suspect with a professional criminal or with syndicated criminalism.[10]

Kaplan in his discussion of the U.S. Attorney's office for the northern district of California is even more specific:

> Prosecution was undertaken in certain other situations where the chances of conviction fell somewhat below the norm. In the case of the more serious crimes, it was often felt that the accused should be put on trial even though prosecution might routinely be declined for a lesser crime where conviction was equally uncertain. In fact, in a few cases where the defendant was believed to be guilty of previous offenses and likely to commit future ones unless prevented, the assistant concluded that he was justified in taking a considerably greater chance of losing the case in order to attempt a conviction--a conclusion which was fortified where the case under consideration appeared to be as good a one as the investigatory agency could obtain.[11]

There were limits to how far this process might be pushed, however:

> On the other hand, the weaker the case, the more difficult it became to justify the prosecution and the greater the weight the assistant gave to the view that an unsuccessful prosecution would only both embolden the defendant and make later prosecution, perhaps on a stronger case, more difficult. And where it appeared that even on conviction the accused would be unlikely to receive what the assistant felt was a severe enough sentence, the assistant tended to conclude that the possible gains were not worth the effort and decline prosecution until either a stronger case or one more likely to result in sufficient punishment came along.[12]

These comments square fully with observations and interviews made in the Center on Administration of Criminal Justice study of four jurisdictions ranging in size from 500,000 to 1.5 million in population. Charging deputies in these jurisdictions indicated that prior record was not a major consideration in the decision as to whether to issue a charge or not. If the defendant was a particularly bad actor, that fact might be taken into account in borderline cases and might cause a case to be filed when it otherwise would not have been.

Otherwise neither prior record nor dangerousness appeared to be an important factor in deciding whether to charge.

One apparent exception to these findings is a number of studies from Los Angeles. A 1969 survey of charging deputies indicated that prior record was an important part of the charging process. Twenty-four percent of those responding said they gave great weight to this factor, while an additional 47 percent said they gave some weight to prior record.[13] Later studies by Greenwood and Mather confirmed the importance of prior record as a consideration in charging.[14] These later analyses also suggest, however, that prior record is used much more as a consideration in deciding which cases to refer to the city attorney for misdemeanor prosecution than to decide whether to file a charge at all.[15] The importance of prior record may consequently be a function of arrangements which allocate the prosecution of felonies to the district attorney and misdemeanors to the city attorney.

(c) Nol Prosses, Dismissals, Preliminary Hearings. In jurisdictions which do not screen before charging, attrition occurs largely as a result of nol prosses, dismissals or other decisions not to go forward with the case. Decisionmaking in these jurisdictions is somewhat less open than in the jurisdictions which rely on charging and the information available is less satisfactory. Much more is known about the reasons cases are dropped than the reasons they go forward. This may be because that is the way the decisions are made. Weak or bad cases are dropped; other cases simply continue. The few

empirical studies available suggest that prior record has some influence in some jurisdictions but little in others.[16]

(d) Analyses of the Conviction Process as a Whole. Another way of analyzing the effects of dangerousness is to study the effect on the conviction process as a whole. In the Vera Institute study of felony arrests in New York defendants with a prior criminal record were found to have been convicted more often than those without a prior record. In one sample the conviction rate for stranger-to-stranger robberies was 92 percent. For those with no prior arrests it was 17 percent.[17] Defendants with a prior record were also more likely to be convicted in the Los Angeles cases analyzed by Peter Greenwood and associates.[18]

A recent Center on Administration of Criminal Justice study, however, found different results in two jurisdictions--one in California and the other in Florida. In both robbery defendants with no prior adult record were convicted more often than defendants with a prior record. Defendants with a prior robbery conviction, however, were convicted at a higher rate than those with no record. Defendants who had a prior robbery arrest but no conviction were convicted at a lower rate in both jurisdictions than those with no prior robbery record.[19] (See appendix Tables 1-4.) Multivariate analysis was able to bring out no relationship between prior record and case outcome.

Other multivariate analyses--by Forst and Brosi of Washington, D.C. cases, by Greenwood of California OBTS data and by Bernstein, Kelly and Doyle of cases from New York state--have also shown prior record to have no impact on case outcome.[20]

D. Special Treatment for Dangerous Offenders Committing Minor Offenses

A fourth way prosecutors might focus on dangerous offenders is to watch for minor offenses committed by offenders identified as dangerous and then take special steps to secure convictions and parole and probation revocations.

This practice occurred occasionally in the jurisdictions included in the Center on Administration of Criminal Justice study. The practice did not exist as a formal policy, however, and occurred only as the result of occasional informal contacts between police and prosecutors.

E. Increasing Charge Levels

A fifth way in which prosecutors could focus on dangerous offenders is by increasing charge levels. In the jurisdictions included in the Center on Administration of Criminal Justice study there was a tendency to charge the highest level of crime possible, to add multiple counts where appropriate, and to take advantage of recidivist and enhancing statutes. Prior record was the principal trigger for these actions although other indicia of dangerousness such as gratuitous force or injury also had some effect. Studies in other jurisdictions also show the effects of prior record on the charges placed but suggest that practices vary substantially from jurisdiction to jurisdiction.[21]

F. Pleabargaining

A sixth way in which prosecutors focus on dangerous offenders is through a tougher stance on pleabargaining. Some prosecutors have policies which limit pleabargaining for particular offenses

or for particular kinds of offenders. While this was not true for the jurisdictions included in the Center on Administration of Criminal Justice study, prior record clearly had a major impact on the extent of bargaining and the willingness to make concessions. Other studies confirm the widespread use of prior record by prosecutors as an element in pleabargaining, while at the same time indicating a great deal of variability in the weight given to prior record.[22]

G. A More Active Sentencing Focus

A seventh way in which prosecutors might focus on dangerous offenders is through a more active involvement in the sentencing process. Individual instances of this kind of focus were observed in the Center on Administration of Criminal Justice study but nothing like a systematic policy. Offices observed in other studies show policies ranging from frequent involvement to general disregard of sentencing.[23] Some but by no means all of these differences can be accounted for by differences in sentencing laws.

Whether as a result of additional prosecutorial effort or not, studies of sentencing show that prior record has an important effect on the sentence given.[24]

H. Career Criminal Prosecution

The picture painted thus far is that while prosecutors make special efforts to see that dangerous offenders who are convicted are convicted of higher charges and given longer sentences, they do not go very far in making special efforts to charge or convict dangerous offenders. How far is this

picture altered by career criminal prosecution? To what extent do they achieve the focus on dangerous offenders that the regular prosecution process does not?

The evidence available suggests that career criminal prosecution has intensified the prosecutorial focus on conviction charge and sentencing but had relatively little effect on either the number of convictions or the rate of conviction. The Mitre Corporation evaluation of career criminal programs in San Diego, New Orleans, Kalamazoo and Columbus, Ohio indicated an effect on strength of conviction but none on conviction rate.[25]

A recent report by the California Office of Criminal Justice Planning concerning career criminal prosecution units in 12 large counties showed strong effects on level of conviction, sentencing, plea bargaining, bail and the use of enhancements. There was also an effect on conviction rates, but a very marginal one. These increased from 89.5 percent of the career criminal type cases examined in an earlier period to 91.6 percent of the cases handled by the career criminal units.[26]

While not discussed in either evaluation, the indications are that many of these units also do not have any great effect on the number of career criminals prosecuted. Many primarily handle cases charged in the regular prosecution process and then referred for special handling. In these jurisdictions career criminal prosecution units do not get involved in seeing that particularly dangerous offenders are charged in the first instance.

I. Role of Criminal History Information

To the extent that offender dangerousness is a focus for special prosecutorial action, what factors go into the determination that a particular offender is dangerous or deserves special attention?

In the Center on Administration of Criminal Justice study the major component clearly was the defendant's prior criminal history. Other factors such as injury to the victim, participation in a string of robberies or burglaries, and suspicion of other crimes also occasionally came into play.

The concept of prior criminal history used was largely general rather than specific to a particular crime. The fact that the defendant had two prior felonies and a prior prison was usually more important than the fact that the prior felonies were both robberies or both burglaries. In no instances observed did charging or prosecuting deputies make calculations based on the rate of offending. The idea that an 18 or 19 year old with a prior robbery conviction is likely to be a very high rate offender who might be more dangerous than an older offender with a longer RAP sheet would be very foreign to the deputies observed. If instructed to make calculations of this kind, however, the deputies observed would have little difficulty doing so.

J. Extent and Accuracy of Prior Record Information

The availability and accuracy of prior record information varied in the offices studied by the Center on Administration of Criminal Justice. In two offices charging was never undertaken without the presence of a prior record. In the third office this information was generally not available at the time of the initial charging interview but was generally available prior to the final charging decision. In the fourth office local arrest records were generally available at the time of charging but dispositions and statewide RAP sheets were present in a relatively small percentage of the cases. Juvenile record information was generally not available except for commitments to state juvenile institutions. In all jurisdictions adult criminal history information was almost always available mt the time of sentencing.

The accuracy of all RAP sheets left something to be desired. Disposition information was a particular problem. In general the local records were the most complete and accurate, the state records the next most complete and accurate and the out-of-state the least accurate.

These findings are consistent with the results of a national survey of 71 prosecutors made by the Rand Corporation. This survey showed that less than 20 percent of the prosecutors received juvenile record information and that many prosecutors were unhappy with the adult record information available.[27]

II. CAN THE PROSECUTION BE MORE FOCUSED?

It follows from the description of current prosecutorial approaches to dangerous offenders that the prosecution could focus more pointedly on dangerous offenders, particularly insofar as charging and convictions are concerned.

Given attrition rates of 30 to 60 percent for robbery in many jurisdictions and indications that relatively small proportions of this attrition is attributable to positive determinations of innocence, it seems almost a truism to say that more robbers could be convicted. Certainly this would be true for robbery offenses in the jurisdictions included in the recent Center on Administration of Criminal Justice study.

In the two intensive study jurisdictions more convictions would require an increase in filings and some additional risk-taking on cases. These actions would reduce the conviction rate as a percentage of cases filed but would increase the number of robbers convicted. The marginal conviction likelihoods of the cases which fall just below the charging threshold have not been calculated but an increase of 15 percent in filings could be expected to produce something like a 10 percent increase in convictions. Further increases in filings would probably produce only minor increases in convictions and might very well produce considerable unfairness and additional work.

What the prosecutor can do to become more focused on dangerous offenders is important. It is much less important, however, than what the police could do. Convictions are primarily brought about by strong evidence, and in our system strong evidence is primarily gathered by the police. This may seem like an elementary point but few jurisdictions are organized to take advantage of this relationship.

The Center on Administration of Criminal Justice study of robbery and burglary was ultimately able to explain around 60 percent of the case outcomes. By far the greatest part of the explanation achieved was due to evidence--used in a broad sense to include such things as victim-witness problems as well as identifications, confessions and physical evidence. Virtually all the evidence in the cases studies was collected early and by the police. The prosecution was responsible for very little.

There were strong indications both from the study of case records and from the qualitative data gathered from interviews and observations that greater police attention to case building would produce more evidence and stronger cases. Among other things there is currently a major gap between the police and the prosecutor in their approach to cases. The police generally view their task to be that of clearing the case or achieving a filing. They are interested in convictions but generally do not see the securing of convictions as their goal. In addition they often lack any very clear perception of what is needed to produce a conviction.[28] Prosecutors on the other hand are generally not staffed to investigate cases before charge and tend to use whatever investigative resources they have at trial or during the later stages of case processing.

How the police might be able to achieve this greater attention on case building involves many steps and is beyond the scope of this paper. One tradeoff worth considering, however,

would be to devote substantially more investigator time to case building where investigators can be reasonably effective and substantially less to apprehension where investigators have had much less success.[29] The success of the felony augmentation unit developed by the Vera Institute and the New York City Police Department in increasing convictions and the level of convictions by improving case preparation is but one indication of the practicality of this approach.[30]

III. CHANGES IN CURRENT OPERATING PROCEDURES AND CAPABILITIES

If the prosecution is to become more focused on dangerous offenders, the steps required are relatively easy to state. There are significant constraints, however, on the ability and willingness of prosecutors to create such a focus.

Some of the more important steps required to establish a more focused approach are:

--Emphasize dangerousness as consideration in charging and in decisions as to the amount of effort to be devoted to achieving convictions.

--Orient career criminal prosecution units to pay more attention to charging and convicting dangerous offenders.

--Develop systems for insuring the presence at charging of information concerning prior adult and serious prior juvenile records.

--Develop more effective relationships with the police concerning the production of evidence and the investigation of cases.

--Utilize victim-witness programs to assist in the prosecution of dangerous offenders.

--Alter internal measures of performance to emphasize actions concerning dangerous offenders.

--Review policies concerning conviction level, pleabargaining, and sentencing of dangerous offenders.

Two additional steps which are more controversial but which could be undertaken are:

--Emphasize dangerousness in making recommendations concerning pretrial release.

--Consider the desirability of tougher prosecutorial stances concerning the current minor offenses of offenders who have previously been identified and convicted as dangerous offenders.

The most important step required to establish a more focused approach is for prosecutors to recognize the problem. Once this is accomplished the necessary changes in operating procedures and capabilities are likely to follow as a matter of course.

It is nonetheless useful to spell out some of the specific operational changes needed. The most important of these is to build dangerousness into the criteria for charging and the decision as to how much effort should be involved in prosecuting the case. This is not so much a matter of developing new procedures as it is developing a new set of attitudes and priorities.

One way of accomplishing this goal is for criminal career prosecution units to become more involved in charging and convicting dangerous offenders. The overall effectiveness of these units and the extent to which they produce results commensurate with the resources employed is beyond the scope of this paper. If they were to become more involved in charging and in reaching out to convict dangerous offenders, however, there is evidence to suggest that these units could be effective in securing the conviction of additional dangerous offenders.

One office observed, for example, while not involved in charging, was highly skilled in the techniques required to produce additional convictions. Aside from the question as to whether they become more involved in charging, it also seems clear that if these units are to have maximum effectiveness against dangerous offenders, their intake criteria will have to be refined so that their efforts are more concentrated on offenders defined as dangerous under the emerging definitions.

If dangerousness is to become a part of the charging process, prosecutors also need additional information at the time of charging. Exact needs will depend upon the definition of dangerousness chosen. All offices, however, should have access to prior adult records and serious prior juvenile records. Obtaining the prior adult records should present no major problem. While some offices do not now have these at the time of charging, the information is generally available and could be obtained. The prior juvenile information will require more effort, however. Some offices now have this available but many do not and will have to develop mechanisms for acquiring it.

An additional important step in developing a greater focus on dangerous offenders is a more effective relationship between the prosecutor and the police in the production of evidence and the investigation of cases. Theoretically this problem might be addressed as it is in some European countries--by the assignment of case investigators to the

prosecutor rather than the police. While this is not a practical option in the United States, it would be possible to achieve a much closer working relationship.

Victim-witness programs are an additional resource which could be brought into play against dangerous offenders. As one of the principal reasons for not charging many dangerous offenders is the existence of present or anticipated problems concerning the cooperation of a victim or witness, a greater use of these programs for this purpose could be particularly helpful.

Most organizations of any size develop numerical indicators of performance to help gauge whether they are achieving their goals. One consequence of a greater emphasis on dangerous offenders may be to reduce both office and individual conviction rates based on the number of cases charged. Alternative performance measures which emphasize dangerousness and which reward rather than penalize actions against dangerousness offenders need to be developed.

While prosecutors currently are more successful in emphasizing dangerousness in actions involving conviction level, plea-bargaining and sentencing than in charging, many offices could still do more to focus on dangerous offenders even in these areas. One way to achieve this greater focus would be for all offices to review their policies bearing on these decisions.

The major constraints which are likely to be encountered

in persuading prosecutors to employ a more focused approach to dangerous offenders are:

--The diversity of current prosecutorial and criminal justice systems.

--The perception of many prosecutors that they already are focused on dangerous offenders.

--A lack of clarity as to whether the focus should encompass a large number of offenders or a small number of offenders.

--The major budget problems faced by state and local government generally.

Prosecutors are mostly elected officials who have their own problems and priorities. They are by tradition and design expected to be fiercely independent and most are. They operate within widely divergent legal systems and employ a diverse array of personnel and management philosophies. Some carefully manage well-organized offices of career professionals, while others loosely preside over legal neophytes looking for a fast way to get courtroom experience. This diversity makes change of any kind difficult and complicates considerably the process of identifying specific alterations in operating procedures and capabilities that would be useful.

While the reality is that most prosecutors are not focused to the maximum extent on dangerous offenders, the perception by many prosecutors that they are already so focused is likely to be a second important constraint.

A third constraint in any major additional focus on dangerous offenders is the lack of clarity in current proposals concerning the size of the dangerous offender population. However much they may desire to focus on dangerous offenders, prosecutors have other pressures and goals and cannot completely transform their offices. If the number of dangerous offenders ultimately identified is relatively small, prosecutors will have little difficulty devoting additional attention to them. If the group turns out to be larger, however, prosecutors may have difficulty absorbing the workload or revising their priorities.

A fourth important constraint is the current budgetary situation of state and local government. In many jurisdictions this situation is making it difficult to continue present functions much less take on new ones. An additional focus on dangerous offenders is likely therefore to be financed through a reallocation of existing resources rather than through new resources. This is always harder to accomplish than funding from new money.

Aside from the questions as to what prosecutors would need to do in order to achieve a greater focus on dangerous offenders, there are also important questions as to the process by which these steps might be accomplished. Some methods of implementation would clearly be more acceptable from a legal and ethical point of view than others. Policies which are openly stated and based on fixed criteria are likely to be much more acceptable than discretionary actions hidden from public view.[31] In implementing any increased focus on dangerous offenders consideration should consequently be given to the development of guidelines which might be openly adopted by prosecutors who are interested in the programs. Such guide-

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lines should be as specific as possible. Consideration should also be given to the possible development of a statutory framework for any program developed as legislative debate and action would resolve many of the legal and ethical problems posed by the focus.

III. SUMMARY AND CONCLUSIONS

Prosecutors gēnerally do not take dangerousness into account in making decisions as to whether particular offenders should be charged but do generally take dangerousness into account in making decisions as to the kind of charges which are placed, the stance that will be taken in pleabargaining and in the kind of bail and sentence recommendations that are made.

Prosecutors could place an additional focus on dangercus offenders. This would result in the conviction of a larger number of dangerous offenders. While such a focus would have a useful crime control impact, an even greater impact could be achieved if the police were mobilized to gather more evidence and build better cases on dangercus offenders.

Specific steps which prosecutors might take include building dangerousness into their charging criteria, reorienting career criminal prosecution units, developing better prior record information at the time of charging, developing better relationships with the police concerning case investigation, utilizing victim-witness programs against dangerous offenders, and altering internal measures of performance which are not now focused

on dangerous offenders. Constraints on any major prosecutorial effort to achieve this kind of focus include the diversity of current prosecutorial and criminal justice systems, a perception by some prosecutors that they are already focused to the maximum extent on dangerous offenders, a lack of clarity as to how many dangerous offenders there are and major budget problems now facing state and local government.

An additional focus on dangerous offenders could best be achieved through the development by prosecutors of openly stated policies with fixed criteria.

Table 1

Robbery Arrestees - Prior Adult Record
(In percent of persons arrested)

	Florida City		California City	
	Number	Percent Convicted	Number	Percent Convicted
None	57	60	41	44
Minor	18	33	16	12
Moderate	43	40	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 2

Robbery Arrestees - Prior Record for Robbery
(In percent of persons arrested)

	Florida City		California City	
	Number	Percent Convicted	Number	Percent Convicted
Yes, arrest only	18	44	44	23
Yes, conviction	28	57	23	52
Apparently not	147	48	125	35
No information	6	67	8	12
Total	200	50	200	34

Table 3

Prior Adult Record By Age
Florida City Robbery Arrestees

Age	No prior adult record		Prior adult record	
	Number	Convicted on Current Charge	Number	Convicted on Current Charge
18	17	59	10	40
19	12	25	15	47
20	3	67	14	36
21	2	50	10	100
18-21	34	29	49	49
All adults	57	60	142	45

Table 4

Prior Robbery Record By Age
Florida City Robbery Arrestees*

Age	No prior robbery record		Prior robbery record	
	Number	Percent Convicted	Number	Percent Convicted
18	23	57	1	-
19	22	32	3	33
20	14	29	3	100
21	10	40	1	100
18-21	69	45	8	75
All adults	147	48	46	52

*This includes prior juvenile robberies when these were recorded. The juvenile records available were incomplete, however.

Notes

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2. National District Attorneys Association, National Prosecution Standards 125 (1977).

3. Id.

4. California District Attorneys Association, Uniform Crime Charging Standards (1974).

5. Id. at 18.

6. American Bar Association Standards for Criminal Justice, The prosecution Function, standard 3-3.9 (2d ed. 1980).

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8. See Jacoby, Performance Measurement for Prosecution and Defense 40 (Bureau of Social Science Research, Washington, D.C.)(July 1981).

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10. F. Miller, Prosecution 287 (1970).

11. Kaplan, The Prosecutorial Discretion--A Comment, 60 Nw. L. Rev. 174, 181-82 (1965).

12. Id. at 182.

13. Prosecutorial Discretion in the Initiation of Criminal Complaints, 42 So. Cal. L. Rev. 519 (1969).

14. P. Greenwood, S. Wildhorn, E. Poggio, M. Strumwasser and P. DeLeon, Prosecution of Adult Felony Defendants 42, 94-96 (1976); L. Mather, Plea Bargaining or Trial 47-48 (1979).

15. Mather, supra note 14.

16. See J. Eisenstein and H. Jacob, Felony Justice 206 (1977); Myers and Hagan, Public and Private Trouble: Prosecutors and the Allocation of Court Resources, 26 Social Problems 439, 449 (1979); Bernstein, Kelly and Doyle, Societal Reaction to Deviants, 42 Am. Soc. Rev. 743, 750 (1977).

17. Vera Institute of Justice, Felony Arrests 74 (Revised ed. 1981). This particular sample may be skewed.

18. P. Greenwood, S. Wildhorn, E. Poggio, M. Strumwasser and P. DeLeon, Prosecution of Adult Felony Defendants 39-41 (1976).

19. The results in one of the two jurisdictions lack statistical significance.

20. Forst and Brosi, A Theoretical and Empirical Analysis of the Prosecutor, 6 J. Legal Studies 177 (1977); Greenwood,

Rand Research on Criminal Careers: Progress to Date 21 (August 1979); Bernstein, Kelly and Doyle, Societal Reaction to Deviants, 42 Am. Soc. Rev. 743, 750 (1977); See also Hagan, Parameters of Criminal Prosecution: An Application of Path Analysis to a Problem of Criminal Justice, 65 J. C. L. & Crim. 536 (1975); Clarke and Koch, The Influence of Income and Other Factors on Whether Criminal Defendants Go to Prison, 11 Law and Society Rev. 57 (1976).

21. Forst and Brosi, A Theoretical and Empiricc1 Analysis of the Prosecutor, 6 J. Legal Studies 177 (1977); See also Hagan, Parameters of Criminal Prosecution: An Application of Path Analysis to a Problem of Criminal Justice, 65 J. C. L. & Crim. 536 (1975); Unpublished data from a study of plea bargaining by the Institute of Criminal Law and Procedure, Georgetown University also supports this view.

22. See, e.g., McDonald, Rossman and Cramer, The Prosecutor's Plea Bargaining Decisions, in W. McDonald, ed., The Prosecutor 151 (1979).

23. See Jacoby, Performance Measurement for Prosecution and Defense 26 (Bureau of Social Science Research, Washington, D.C.) (July 1981).

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THE PROSECUTOR'S CASE SELECTION PROBLEM: "CAREER CRIMINALS" AND OTHER CONCERNS

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THE PROSECUTOR'S CASE SELECTION PROBLEM:
"CAREER CRIMINALS" AND OTHER CONCERNS

The prosecutor's problem of deciding which arrests to prosecute and then how much attention to give to each is as exemplary a model as any of the classical problem of allocating scarce resources to an unlimited demand for service. The typical big-city district attorney's office receives cases from the police roughly on the order of 100 per prosecutor annually; few D.A.s believe they are able to devote sufficient attention to each one.

While the prosecutor's rules for making difficult case selection and "targeting" decisions are not derived analytically from a specific set of goals, they are nonetheless related. The prosecutor does not, after all, select cases randomly, nor does he give equal attention to each case. Approximately 30 percent of all arrests for felonies and serious misdemeanors are rejected at the initial screening stage in the typical urban prosecutor's office,[1] and the amount of attention given to the cases that are accepted varies substantially within any given office.[2]

This article addresses itself to the prosecutor's policies for screening arrests and determining how much and what kind of attention to give to each of those that are accepted for prosecution. These policies can have potentially important consequences for a society plagued by crime. We look first at the basic goals of prosecution and how the concept of targeting on cases involving the most criminally active offenders fits

with those goals. We then review the available evidence that indicates how prosecutors actually allocate their time to different types of cases. Next we consider the rules for identifying the cases that are most deserving of extra attention under a program of targeting on repeat offenders. We conclude with some thoughts about future directions both for prosecution policy and for research to support the prosecutor's case selection and targeting processes.

Goals, Policies, and Consequences of Prosecution

When asked, most prosecutors are inclined to say that the process of case selection, like medicine, is both science and art, that experienced prosecutors know how to blend the technical requirements of the law with the good judgment that comes from years of practice, which of course tells us nothing about the underlying goals that influence the case selection process or whether the prosecutor consciously makes case selection and targeting decisions with those goals in mind. Prosecutors say that their goals include justice and crime control, but that each case is unique; whether and how to prosecute a given case cannot be determined by pondering over elusive goals or resorting to a formula that derives from such goals.[3]

The systematic assessment of case selection and targeting strategies nonetheless requires a consideration of the goals of prosecution and the consequences of the strategies designed to achieve those goals. The question of how much more attention to give to cases involving repeat offenders, for example,

holding all other factors constant, is equivalent to the question of how much less attention to give to other cases, those having stronger evidence and involving more serious offenses. Such a question can be addressed systematically only when the consequences of the alternatives are understood. Increasing attorney time by 10 percent for cases involving the most criminally active offenders will yield how much less crime? Decreasing attorney time by 10 percent on cases involving more serious offenses and less active offenders will have what consequences? Does the former justify the latter?

All of the relevant consequences of a particular case screening or targeting strategy, of course, cannot be determined with any degree of accuracy. It is useful, nonetheless, to provide a logical framework within which one can attempt to develop guidelines for case screening and targeting decisions in a prosecutor's office. Prosecutors currently have little analytic basis for responding to simultaneous calls for programs that give more attention to cases involving repeat offenders, programs for more attention to cases involving serious harm to victims, and for maintaining high standards of evidence, all the while having resources at constant or even declining levels in the face of rising crime rates and case loads.

One such framework has been proposed by William Landes.[4] Drawing from conventional microeconomic theory, Landes postulated that the prosecutor's goal is to produce as many convictions as possible, especially in the most serious cases.

Stated technically, the Landes model posits that the prosecutor will allocate resources to cases so as to maximize the expected number of convictions weighted by their respective sentences, subject to a resource constraint.

A second framework, aimed at the goal of controlling crime, has been proposed by the author, with Kathleen Brosi.[5] If the control of crime is the prosecutor's primary goal, he will be willing to give less attention to cases involving serious offenses in order to give more attention to cases involving offenders whom he assesses to be more crime prone, even though the current cases of these offenders may involve less serious offenses than those of the less crime-prone offenders in the system. This latter framework, exemplified by the twentieth century practice of convicting notorious gangsters on charges of income tax evasion, represents an investment by the prosecutor, in that he gives up something in the present (doing justice by obtaining convictions for serious offenses in one set of cases) so that future periods can benefit from a reduction in crime resulting from the incarceration of more dangerous offenders in other cases, offenders currently charged with less serious offenses and cases that require more investigative work to strengthen the evidence.[6]

How Do Prosecutors Actually Select Cases?

The available evidence on case selection and targeting strategies actually used by prosecutors is not plentiful. In the Forst and Brosi study we tested our model of the factors that govern prosecutive case selection and subsequent processing

decisions by analyzing the case characteristics that best predict the prosecutor's decisions to accept a felony case at screening and then to carry it forward at successive stages of prosecution. Using 1973 data from PROMIS (the Prosecutor's Management Information System) for Washington, D.C., that study found that the cases that proceeded the farthest through the system tended to be those, first, that had the strongest evidence (measured by such factors as number of witnesses, whether physical evidence was collected by the police, and the amount of time that elapsed between the offense and the arrest) and, second, that involved the most serious offenses (measured both by the maximum sentence for the most serious charge indicated by the police or prosecutor and by the Sellin-Wolfgang index, a measure of the amount of harm inflicted on victims by the offense).[7] Cases involving defendants with longer criminal records (measured by number of prior arrests, and controlling for the defendant's age) were not found to be selected at a higher rate or carried forward to a more advanced stage of prosecution than other cases.

These results, describing an office that had no "career criminal" program at the time the data were recorded, suggest that the prosecutor might not target on the more crime-prone offenders in the absence of such a program. This inference, corroborated in 1977 by a survey of federal prosecutors,[8] is consistent with the Landes model of prosecution. While also consistent with the deterrence aspect of crime control, the findings of those studies suggest that the prosecutor does not

automatically target on cases with the idea of realizing the incapacitative effects associated with the conviction and incarceration of the most criminally active offenders.[9]

More recent research by Eleanor Chelimsky and Judith Dahmann has produced quite different findings: attorney time given to cases that are processed by career criminal units may actually be excessive. In a survey of four jurisdictions, the number of cases accepted per attorney per month for prosecutors assigned to those units was found to be only about one-fourth of that for the other prosecutors in each of the four offices, and the career criminal cases were found to be no more likely to end in conviction.[10] Similar results have been obtained in research by William Rhodes. Measuring the number of attorney hours allocated to each felony case in the main office and four branch offices of the Los Angeles County District Attorney, Rhodes found that the amount of attention given to robbery and burglary cases in the career criminal unit was about five times the amount given to robbery and burglary cases that were processed conventionally, with results in terms of conviction rates that appeared no better.[11]

The accumulated evidence, in short, suggests that too little attention may be given to cases involving chronic offenders in an office with no special targeting program, and too little attention may be given to other cases in offices that do have such programs. It is possible that simply flagging cases involving criminally active offenders to remind the prosecuting attorney that the case warrants special

consideration may produce a more balanced, if not more efficient, allocation of resources than the alternative of processing such cases through separate career criminal units. It is not evident that career criminal units are essential to induce the prosecuting attorney to see to it that: (1) the witnesses in flagged cases are encouraged to provide the support needed for successful prosecution; (2) the police have properly obtained and processed physical evidence; and (3) the judge is made aware of the defendant's prior record in making decisions about both pretrial release and the sentence.

Incapacitation for Which Offenders?

More fundamental than the question of how much more attention to give to cases involving more crime-prone offenders are questions that pertain to our ability to identify these offenders prospectively and then to increase their expected terms of incarceration:

- Which offenders are the most crime prone?
- How much more criminally active are they than other offenders?
- How accurately can they be identified among a larger pool of offenders prior to their commission of subsequent crimes?
- How do existing targeting guidelines compare with empirically derived guidelines?
- How can incapacitation effects be produced?

How much more attention to give to cases involving the most criminally active offenders will depend on the answers to these questions. A strategy of giving more attention to a targeted

group of cases would make little sense if the defendants in those cases were not in fact more criminally active than defendants in cases not targeted, holding constant the evidence in the respective groups of cases. The benefits of incapacitation would also be lessened if targeting by the prosecutor had no effect on pretrial release decisions, the likelihood of conviction, or the sentences given to the offenders convicted. We will now review what is known about each of the above questions in an attempt to see where we stand regarding our ability to identify criminally active offenders and then reduce crime by increasing their expected terms of incarceration.

Identifying Criminally Active Offenders. A substantial amount of research has been done both to identify the extent to which some offenders are truly more crime prone than others and to develop means of identifying them prospectively. Common knowledge among police and prosecutors that a small group of offenders account for a disproportionate number of crimes has received substantial empirical validation within the past ten years. In 1972, Marvin Wolfgang and his associates reported that 18 percent of a group of juvenile delinquents in Philadelphia accounted for 52 percent of all the offenses committed by the group.[12] Then in 1976 Kristen Williams, analyzing PROMIS data from Washington, D.C., for 1971-75, found that 7 percent of the 46,000 different defendants arrested accounted for 24 percent of the 73,000 felony and serious misdemeanor cases handled by the prosecutor for that jurisdiction.[13] These findings provided much of the stimulus

for the institution of federally sponsored career criminal programs in jurisdictions throughout the country.[14] More recent findings of research done at the Rand Corporation have further validated the existence of substantial variation in the amount of criminal activity among different offenders.[15]

It is one thing, however, to identify crime-prone offenders retrospectively and another to identify them before they demonstrate their criminal proclivity. Obviously, if they cannot be identified for special case treatment prospectively, then there can be no opportunity to obtain the benefit of a strategy of reserving prison space for the most criminally active offenders.

The emerging evidence indicates that prospective identification of crime-prone offenders, while imperfect, can nonetheless be done with a moderate degree of accuracy in some settings and a high degree in others. Statistical prediction of criminal and deviant behavior has demonstrated itself with some consistency to surpass the accuracy of subjective prediction by clinicians and other experts.[16] Recent studies have revealed a number of factors in particular to be consistent predictors of recidivism: recent prior criminal record, youthfulness, drug use, and charges of robbery or burglary.[17]

Predictive Accuracy. The accuracy of these prediction models can be demonstrated in several ways. Williams's model of recidivism, when used to predict the most recidivistic half of the 46,000 defendants in her study, correctly identified in

that half 84 percent of the 478 offenders who revealed themselves retrospectively as the most recidivistic 10 percent of the cohort.[18] (A random selection would have identified only 50 percent, on average.) Rhodes's model of recidivism among a cohort of released federal offenders, when used to identify prospectively the 7 percent most recidivistic offenders in the cohort, revealed that only 15 percent of that group in fact failed to be rearrested during a five year follow-up period. In contrast, two-thirds of the 93 percent identified prospectively as the least recidivistic in fact failed to be rearrested during the follow-up period.[19]

The Rhodes findings are especially noteworthy because they indicate a low rate of false positives for an available targeting strategy that restricts itself to a small fraction of cases meeting empirically derived targeting criteria. ("False positives" are persons identified as recidivists prospectively but not retrospectively.) The false positive rate of 15 percent is biased downward to the degree that subsequent arrests may occur when the person in fact committed no subsequent crime and due to statistical "shrinkage";[20] the rate is biased upward to the extent that the 15 percent not rearrested actually committed subsequent offenses.

False positives are an obvious concern to a society that values freedom, protection of the innocent, and the reform of ex-offenders. True positives, which in Rhodes's study outnumber false positives by more than 5 to 1, are an equally obvious concern to a society that values the freedom associated

with a safe environment. By restricting career criminal programs to a sufficiently small portion of those most likely to recidivate, and using acceptable multivariate models to identify those cases, the false positives rate can be reduced to levels that are otherwise unattainable.

Existing Strategies and Empirically Derived Strategies. In their survey of four jurisdictions with career criminal programs, Chelimsky and Dahmann found four entirely different sets of career criminal targeting strategies.[21] While such differences may be attributable to the prospect of recidivism predictors varying from place to place, it is safe to conjecture that the criteria vary primarily due to arbitrariness; few people know what actually predicts recidivism in any particular jurisdiction. Such variation in targeting criteria imposes crime costs on society to the extent that the criteria used do not result in a strategy of targeting on those offenders who are predictably the most crime prone.

In her analysis of selection criteria for career criminal programs, Williams found that the estimated incapacitation effects of empirically derived targeting criteria in fact surpass, by from 10 to 50 percent, those associated with criteria developed by the Law Enforcement Assistance Administration: current case a serious felony and one prior conviction. These estimates were based on a variety of assumptions about the size of the group of cases targeted, the conviction rate increase associated with the program, and the sentence that followed.[22] Similarly, Roth and Wice's model

of crime on bail, when used to predict the most recidivistic of a sample of 424 defendants who were required to post cash or surety bond, revealed that the number of persons jailed in that sample could have been reduced from 170 (those who failed to make bond) to 98 (those predicted to be the most recidivistic) without any increase in the expected rate of pretrial rearrest.[23] While our ability to increase conviction rates for targeted cases may be limited, these studies suggest that our ability to improve on existing criteria for selecting cases for prosecution and special treatment may be substantial.

Increasing Incapacitation Effects

Improved case selection and targeting criteria are not worth much to a prosecutor interested in reducing crime through increased incapacitation if his opportunities to increase the expected amount of incarceration for the offenders selected and targeted are restricted. The Department of Justice, aware of this basic problem, has identified four tangible ways in which the prosecutor can use a career criminal program to increase expected terms of confinement for criminally active offenders: (1) increasing conviction rates; (2) inducing the judge to jail the defendant prior to trial; (3) obtaining a guilty verdict in trial rather than accepting a plea; and (4) inducing the judge to impose a longer term of incarceration.[24] While other benefits have been identified,[25] we will focus on those that are more directly related to the attainment of increased incapacitation effects.

Increasing Conviction Rates. The prosecutor can exert control over the rate at which arrests involving criminally active offenders end in conviction in two important ways: by accepting cases involving these offenders at a higher rate at the initial screening stage and by taking greater care to ensure that the witnesses and physical evidence are properly managed.

The greatest opportunity to increase conviction rates for cases involving repeat offenders may be at the initial case screening stage. Approximately half of all arrests that fail to end in conviction are rejected by the prosecutor in the screening room.[26] Many of these cases should not end in conviction; for example, because they involve domestic quarrels among persons without prior records, episodes that get out of hand and are ended by an arrest. Many of the others, however--the number cannot be known precisely--are cases involving criminally active offenders whose current case is simply not very attractive to the prosecutor. Unattractive cases are those in which the offense is not grave or in which the evidence brought by the police is not complete, or both. The expedient decision for the prosecutor is simply not to accept such cases.

One of the grave errors of our modern criminal justice system is that no one is held accountable for the millions of arrests for serious offenses that have been rejected by the prosecutor in recent years, many of which are unattractive cases involving offenders with criminal records. The police

regard conviction as the prosecutor's responsibility; they do not routinely learn what happens eventually to the cases they bring to the prosecutor. The prosecutor typically measures his conviction rate as the number of convictions divided by the number of indictments (or, worse, divided by the sum of convictions plus not-guilty findings). Thus the majority of arrests that fail to end in conviction are the official responsibility of no particular criminal justice agent. The opportunity to obtain the benefits of incapacitation for the most criminally active of the offenders in these cases rejected at screening is not known; it could be substantial.

Opportunities to increase conviction rates in cases involving the most crime-prone offenders exist as well for cases accepted by the prosecutor. Proper management of witnesses and evidence is crucial to successful prosecution and need not consume lavish prosecution resources. Paralegal staff trained in witness management could make certain that witnesses are given proper information and encouragement about their cases and could assist prosecutors in meeting court events on schedule. They might even outperform the harried attorney in this role. Prosecutors can also see to it that the police have obtained and properly processed all of the physical evidence available to support the successful prosecution of cases involving repeat offenders. Filling evidentiary holes in these case is likely to be done most successfully soon after the offense and arrest; the scrupulous prosecutor can offer specific suggestions and encouragement to the police in repeat offender

cases at the screening stage, when spent shells, finger prints, and other such evidence may still be fresh and available.

Inducing The Judge to Detain the Defendant. While the constitutional issues involved in the ongoing pretrial detention debate are not likely to be resolved soon, one dominant practical consideration tends to moot that discussion: Few judges care to read in the newspaper that a defendant they released on bail murdered or seriously injured someone. Right or wrong, judges are inclined to find a legitimate reason for locking up the most dangerous defendants; hence they are interested in knowing which ones are in fact the most dangerous. The prosecutor can serve both the judge and the community by providing this information to the judge to support the determination of the defendant's pretrial status: These decisions may otherwise be based on factors that are unrelated to either the risk of flight or crime on bail; the decisions may also omit the consideration of factors that are predictive of pretrial misconduct.[27]

Obtaining Guilty Verdicts. It is well known that most convictions are the result of guilty pleas rather than guilty verdicts. To the extent that guilty verdicts tend to result in longer sentences for the offender,[28] the prosecutor may be willing to invest the additional resources needed to prepare a case for trial. While formal analytic models can provide a framework for making these decisions in individual cases, the relevant data needed to use these models do not exist;[29] as a result, these decisions must be based on intuition. The

decisions can nonetheless be made in an informed way: the prosecutor need only be aware of the likelihood of the defendant's committing crime if released.

Recommending Longer Sentences. It has become part of the standard baggage of criminological wisdom that the certainty of punishment has more impact on crime than the severity. While this may be true for certain classes of offenders--for example, short jail sentences may sufficiently deter individual offenders who have never before experienced incarceration--it is likely to be untrue for currently active offenders who have been jailed or imprisoned previously. As in the case of the prosecutor's recommendation to the judge in the pretrial release decision, the prosecutor can provide the judge with information about the offender's crime proneness to support the sentencing decision.

What Next?

Increasing the prosecutor's ability to reduce crime requires the meeting of a number of preconditions. It requires, first, that the prosecutor be willing to do more than pay homage to crime control, that he be willing to accept cases involving the most criminally active offenders and work to convict them even when these cases may be otherwise unattractive. This may be possible only after the district attorney establishes a system of accountability within the office that offers some incentive for prosecutors to work toward the conviction and incarceration of those offenders.

Such a prosecutor should be willing to exploit simple, unobtrusive procedures that lead to the incarceration of the most active offenders: Find out the factors that are associated with recidivism; base case selection and targeting decisions at least partly on those factors; identify for the judge those defendants who are predictably the most crime prone when their cases come up for pretrial release and sentencing decisions; ensure that witnesses and evidence are properly managed in those cases and avoid delays that may impose costs on witnesses or otherwise jeopardize the prospect of obtaining a conviction; and consider the defendant's crime proneness in deciding whether to accept a plea or take the case to trial. The current procedures for dealing with repeat offenders, which use arbitrary selection criteria and which feature the "career criminal" unit as a centerpiece, may be largely ceremonial, ineffective, and costly.

The prosecutor's ability to deal with the most criminally active offenders can be enhanced also by the research community. The development of crime prediction models for individual offenders requires large data bases such as those developed at the University of Pennsylvania, INSLAW, and the Rand Corporation. These data bases are usually expensive to construct and analyze, but the social costs of not having them are surely higher. It is both socially and financially expensive, for example, to be filling our jails with many who do not meet a legitimate, empirically supportable standard of pretrial detention. Improving our ability to predict

recidivism includes the uncovering of factors that are associated with recidivism both in different locations and at different times. Some factors are more consistent predictors of recidivism than others, and we are only beginning to learn these aspects of recidivism prediction.

Further research would be useful also to better establish the effectiveness of the myriad options available to the prosecutor in making decisions at the case screening stage, in plea negotiations, and in case management generally. In order to allocate resources in a manner that can predictably reduce crime, it will be helpful to know how specific prosecution strategies actually increase conviction probabilities for specific kinds of cases, how much each such strategy costs, and the actual average terms of incarceration that follow each strategy.

The research community would do well, in any event, to "package" its findings in a manner that makes them more understandable to practitioners. With a few exceptions, social scientists have not been known for producing products that are "user friendly".

NOTES

1. Arrest Convictability as a Measure of Police Performance (Washington, D.C.: INSLAW, 1981), p.7.

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18. Williams, ibid., p. 27.

19. Rhodes, et al., op. cit. (note 17), p. 54.

20. "Shrinkage" arises from the fact that a model is shaped both by the phenomena that produce systematic variation in the data and by randomness. To the extent that a model is shaped by randomness, it will artificially "predict" observations that formed the model in the first place; i.e., it will predict accurately to a degree that exceeds the accuracy with which the model would predict when applied to a large number of different observations generated by the same underlying phenomena. Shrinkage tends to decline as the sample size grows large.

21. In San Diego, for example, the charges in the current case are critical to selection for career criminal targeting; those charges are irrelevant to the program in New Orleans. Chelimsky and Dahmann, op.cit. (note 10), pp. 63-73. A survey of the selection criteria used in 146 different career criminal programs in jurisdictions throughout the United States confirms the variety of case selection criteria found by Chelimsky and Dahmann. Institute for Law and Social Research, National Directory of Career Criminal Programs (Washington, D.C.: Department of Justice, 1980).

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23. Roth and Wice, op. cit. (note 17), pp. 63-64. They also showed that jail populations could be reduced if the primary goal of pretrial detention were to reduce the rate at which defendants fail to appear in court (pp. 63-64).

24. William DeJong, Policy Briefs: Career Criminal Programs (Washington, D. C.: U.S. Department of Justice, 1980), pp. 4-5.

25. For example, Peter Greenwood has identified symbolic justice and improved office performance as potentially important benefits that are at best only indirectly related to crime control. Greenwood, "Career Criminal Prosecution: Potential Objectives," Journal of Criminal Law and Criminology, vol. 71 (1980), pp. 85-88.

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28. On the other hand, Rhodes has found that the average sentences for guilty verdicts may not exceed those for guilty pleas in similar cases in some jurisdictions. William Rhodes, Plea Bargaining: Who Gains? Who Loses? (Washington, D.C.: Institute for Law and Social Research, 1978). Also, parole boards may override plea negotiation agreements by basing their release decisions on the "real" offense, as documented in a presentence investigation

report, rather than the official charges of conviction in the court record.

29. Such data include the probability of convicting a particular defendant in trial, expected hours of trial preparation, probability of incarceration if guilty plea, probability of incarceration if guilty verdict, expected term if incarcerated by guilty plea and by guilty verdict, offenses prevented per year of incarceration for this defendant, and returns to alternative use of prosecution resources.

Section 6

POLICE INVESTIGATIVE AND APPREHENSION METHODS

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INVESTIGATIVE STRATEGIES FOR IDENTIFYING DANGEROUS REPEAT OFFENDERS

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INVESTIGATIVE STRATEGIES FOR IDENTIFYING DANGEROUS REPEAT OFFENDERS

Introduction

Frustration with what appears to be ineffective methods of controlling crime coupled with increasing budgetary constraints on agencies of the criminal justice system have led criminal justice decisionmakers to look for more effective and efficient methods of controlling crime. There are three mechanisms available to the criminal justice system for controlling crime: general deterrence, rehabilitation, and incarceration. Of these three mechanisms, general deterrence and rehabilitation have lost a great deal of their earlier support, in part, because of an inability to demonstrate that either of these two mechanisms contribute significantly to controlling crime (Blumstein, et al., 1978; Martinson, 1974). This leaves only the third mechanism--incapacitation of repeat offenders by imprisonment. Evidence that a relatively small number of offenders are responsible for committing a disproportionate number of serious crimes (Wolfgang, et al., 1972; Peterson, et al., 1980) has led many to the conclusion that selectively imprisoning the small number of very active offenders can be an efficient method of controlling crime. Public concern about repeat dangerous offenders has made this group of criminals the focus of criminal justice agencies and of criminological research.

Initial attempts to focus on repeat dangerous offenders and other career criminals were conducted by prosecutors' offices (McGillis, 1977; Institute for Law and Social Research, 1977). These

programs relied on previous arrest and conviction records to identify career criminals. Unfortunately, by the time most repeat offenders have been identified using these records, the offender's criminal activities have already peaked (Petersilia, et al., 1978). Thus, imprisoning repeat offenders after their criminal activity has peaked does not prevent as many offenses from occurring as was originally hoped. The solution to this dilemma is to routinely collect and use information about offenders, in addition to arrest and conviction records, in order to identify these offenders early in their criminal careers. Two such sources of information are available: juvenile crime records (Boland, 1980) and information collected by police regarding other crimes offenders have committed. This paper addresses the second source of information on criminal activity--information gathered by police. In particular, this paper focuses on the role of police investigative activities.

The first section of this paper presents a description of the investigative process. This provides the necessary background for understanding current investigative practices.

One possible approach to identifying repeat offenders is described in the second section. This approach involves routine post arrest investigations of criminals to determine if they are repeat offenders and to provide evidence of such behavior to the prosecutor.

The third section presents an outline of another approach to police repeat offender operations: proactive investigations of

suspected offenders. The purpose of this approach is not only to provide additional information about the criminal behavior of offenders, but to remove active offenders from society earlier and to insure that the necessary evidence supporting a conviction is available to the prosecutor.

The last section summarizes the policy implications of the earlier sections and provides a discussion of the potential of investigative operations designed to apprehend and provide information about dangerous repeat offenders.

Throughout the discussion that follows, it is assumed, unless otherwise stated, that excellent police-prosecutor relations exist. This assumption is made because all police investigative efforts described are doomed to failure unless such relations are present. Because many police agencies have poor relations with the public prosecutor's offices this assumption necessarily limits the immediate impact of the proposals that follow. Therefore, improvements in this relationship must be made prior to, or in conjunction with, implementation of any of the suggestions made in this paper.

The information and data presented in this paper are gleaned from a two-year study by the Police Executive Research Forum, a project funded by the Police Division of the National Institute of Justice, on robbery and burglary investigative practices in DeKalb County (Georgia) Department of Public Safety; St. Petersburg (Florida) Police Department; and Wichita (Kansas) Police Department.

Logs were completed by patrol officers and detectives in these agencies that described the actions these officers took, how much time was expended conducting them, and the information acquired during investigations of robbery and burglary. In addition, official records of these cases were collected and direct observations were made of detectives and patrol officers (Eck, forthcoming). This information has been supplemented by conversations with and observations of detectives in several other law enforcement agencies.

Investigative Process

This section describes the process by which serious crimes are investigated; beginning with the report of an offense, through the preliminary investigation, assignment of the case to a detective and culminating with the arrest of the offender and preparation of the case for the prosecutor. The process described characterizes the important elements of the investigations process common to most police agencies.

Preliminary Investigations

Most investigations begin when a citizen calls the police to report a crime. The police operator takes information regarding the nature and location of the incident, and a patrol unit is assigned to the case. The unit will proceed immediately to the incident location if the incident warrants an immediate response. However,

delayed responses are often used for incidents that are not emergencies.

After arriving at the scene, the patrol officer assigned to the case begins a preliminary investigation. This phase of the investigative process entails answering three questions:

- Is the offense a crime, and, if so, what type of crime?
- What information is available that can lead to the identification of the suspect?
- Is the offender still at or near the scene and, if so, can he be arrested?

If the offense is a serious crime of violence the patrol officer may call for a detective to come to the crime scene. Depending on the department, these cases can include all crimes of violence or be restricted to homicides and cases where death is likely. The detective assigned to the case takes over the investigation at this point.

Patrol officers investigating serious crimes spend the majority of their time interviewing victims and checking crime scenes. If witnesses and other citizens with information about the crime are available they will also be interviewed. Sometimes a search for witnesses is conducted in the area surrounding the scene depending on the seriousness of the offense (the more serious the crime, the more likely the officer is to conduct a search) and whether witnesses are likely to be found in the surrounding area.

Most cases result in the patrol officer completing a preliminary investigation report based on these actions. If no arrests have been made, a copy of the preliminary report is sent to the investigations section for follow-up investigation.

If an arrest has been made by the patrol officer, the suspect is brought to the police station for booking. In many agencies a detective is assigned to the case at this point to interrogate the suspect and prepare a case for prosecution. In other agencies the patrol officer may be solely responsible for carrying out these procedures.

Case Assignment

Assignment of crimes to detectives can occur at three stages of the investigative process:

- During the preliminary investigation for particularly serious violent crimes;
- when an on-scene arrest is made;
- after completion of the preliminary investigation.

Since most cases do not result in an on-scene arrest and most do not warrant the immediate response of a detective, most cases are assigned after the patrol officer has completed the preliminary investigation. In many agencies, property offenses (burglary and larceny) are screened prior to assignment to detectives. Except in large jurisdictions with great numbers of crimes of violence, all violent

offenses usually are assigned to a detective for follow-up investigation.

Follow-up Investigation

This stage of the investigative process addresses three issues:

- The identity of the suspect.
- How the suspect can be located and arrested.
- The development of sufficient evidence to support charges brought against the suspect.

Detectives make greater use of information under the "control" of the department (i.e., records, other officers, informants, suspects) than do patrol officers; follow-up investigations are more "suspect-centered" and less "victim-centered" than preliminary investigations (Eck, forthcoming).

If an arrest is made the suspect will be interrogated by the detective and a report submitted to the prosecutors office. This report will describe how the suspect is linked to the offense and document the evidence supporting the assertion that the suspect is the offender. It is at this stage of the investigation that the investigative process may have a large impact on whether the suspect is treated as a serious repeat offender.

Post-Arrest Investigations

It rapidly becomes obvious to anyone who spends time with detectives that detectives know a great deal about the behavior and life styles of the criminals they are seeking to arrest. Active criminals are arrested many times for a variety of offenses during the time most detectives work in the Criminal Investigation Division. Even when they are not arrested they may be suspected of having committed crimes that detectives cannot officially solve. These suspicions arise from a variety of sources: criminal informants may implicate other offenders; testimony of victims and witnesses may provide information to detectives that a particular offender probably committed the crime; suspects may, on occasion, admit to other offenses. In short, detectives know much more about offenders than ever appears in official records.

Once a suspect has been identified and, especially if arrested, detectives should be in a good position to determine whether the offender is a serious repeat offender. This determination will rely on information documented in police records and on unrecorded information about other offenses the suspect may have recently committed. If there is sufficient evidence to show that the suspect has been involved in crimes other than the one for which he was arrested either additional charges can be brought against the suspect or the prosecutor can use this information to decide if the suspect is a dangerous repeat offender.

To determine if suspects arrested for committing serious crimes can be linked to other related offenses, data from the Police Executive Research Forum's study of robbery and burglary investigative practices are used. The data used for this paper describes investigations by detectives after case assignment. The issues addressed in this paper were not addressed in the Forum's study, so there are several limitations to the data:

- Data showing whether detectives obtained related offense information was gathered, but data on the type of related offense was not collected.
- Data reflect investigation of cases for which an arrest was made, and cases for which no arrest was made. This will understate the value of post-arrest investigations since most cases do not result in an arrest.
- Since post-arrest investigations were not separated from follow-up investigations, it cannot be determined if the related offense information was obtained by detectives before or after a suspect was identified and arrested.

Despite these limitations, related offense information can serve as a proxy for detective knowledge about the criminal activity of suspects. At the very least this data can be used to formulate hypotheses for additional research on police investigations of repetitive dangerous offenders.

Three questions will be asked about related offense information obtained by detectives:

- How often do detectives obtain related offense information?

- What are the typical sources of related offense information?
- If a source is used by a detective, what is the likelihood that related offense information will be obtained.

The answers to these questions will have important implications with respect to the potential usefulness of post-arrest investigations.

How Often Do Detectives Obtain Related Offense Information?

Table 1 shows the frequency with which detectives in three agencies obtained related offense information during a case-day* of an investigation. Related offense information was obtained during seven to 16 percent of the case days. This information was not obtained extremely often; at best, in only one case-day out of six. Since the data comes from investigations of solved and unsolved offenses the likelihood that related offense information will be obtained during investigations resulting in an arrest is necessarily underestimated. This suggests that reliance on traditional investigative practices during post-arrest investigations to provide knowledge about criminal behavior will produce useful results. Whether this method produces dramatic improvements in the ability of law enforcement agencies to identify repeat dangerous offenders early in their careers is not known.

*Data was collected on each day of an investigation so that a case-day is a day on which a particular case was investigated. Five cases investigated by a detective on one day represents five case-days, and a single case investigated for six days represents six case-days.

Table 1

Frequency with which Detectives Obtained Related Offense Information

DeKalb County	15.7 Percent (228)
St. Petersburg	12.1 Percent (38)
Wichita	7.3 Percent (59)
Mean	11.7 Percent

What are the Typical Sources of Related Crime Information?

Given that a detective has obtained related offense information during a case-day, what is the likelihood a particular source provided this information? This question is answered by the data in Table 2. Sources of related offense information are listed in Table 2 in order of the likelihood that each source provided related offense information. Although there is some variation among sites with respect to the actual percentages, there are fewer differences with respect to the relative importance of each source. In all three agencies, victims, suspects, detectives, and department records are the most likely to be sources of related offense information. Patrol officers and informants are the least likely to be sources of related offense information.

The importance of suspects, detectives and department records is not unexpected. Suspects often tell detectives of other offenses they have committed (Skolnick, 1966). As mentioned previously, detectives sometimes have knowledge of crimes that they cannot officially solve. Finally, department records will contain previous arrest information as well as details of other crimes that may be similar to the case being investigated.

If a Source is Used By a Detective, What is the Likelihood Related Offense Information Will Be Obtained?

Table 3 lists sources of related offense information in order of the likelihood that a source will provide related offense

Table 2

Frequency with which Related Offense Information Came From Sources

Sources	Mean (%)	DeKalb County (%)	St. Petersburg (%)	Wichita (%)
Victims	29.3	30.3 (69)	29.0 (11)	28.8 (17)
Suspects	28.4	30.3 (69)	21.1 (8)	33.9 (20)
Detectives	21.9	30.3 (69)	23.7 (9)	11.9 (7)
Department Records	19.2	14.0 (32)	31.6 (12)	11.9 (7)
Supervisors	9.5	9.2 (21)	15.8 (6)	3.4 (2)
Other Citizens	9.0	11.4 (26)	10.5 (4)	5.1 (3)
Witnesses	8.8	7.5 (17)	10.5 (4)	8.5 (5)
Informants	6.5	5.7 (13)	10.5 (4)	3.4 (2)
Patrol Officers	5.5	8.8 (20)	2.6 (1)	5.1 (3)

Table 3

Frequency with which Sources Produce Related Offense Information

Sources	Mean (%)	DeKalb County (%)	St. Petersburg (%)	Wichita (%)
Informants	40.0	17.8 (13)	80.0 (4)	22.2 (2)
Department Records	18.9	33.2 (32)	17.4 (12)	6.2 (7)
Suspects	18.4	26.0 (69)	13.3 (8)	15.8 (20)
Supervisors	17.5	10.6 (21)	37.5 (6)	4.4 (2)
Detectives	15.4	18.6 (69)	18.4 (9)	9.3 (7)
Other Citizens	8.0	13.3 (26)	7.7 (4)	3.1 (3)
Patrol Officers	7.1	11.8 (20)	5.3 (1)	4.4 (3)
Witnesses	6.3	7.2 (17)	5.7 (4)	6.0 (5)
Victims	4.5	5.8 (69)	4.7 (11)	2.9 (17)

information (if the source is used). The rank order of sources changes from Table 2 to Table 3. The biggest differences between the two are that informants head the list in Table 3 whereas in Table 2, they are near the bottom, and victims have gone from first place in Table 2 to last place in Table 3. The reason is shown in Table 4. Informants are interviewed relatively infrequently, whereas victims are interviewed quite often. Victims are not likely to provide related offense information but are interviewed so often that they are, in fact, more likely to be the source of related offense information than are informants who are much more likely to provide related offense information.

Using traditional investigative procedures during post-arrest investigations will not be particularly successful in documenting additional criminality on the part of arrested suspects if detectives use their sources of information with the same frequency as they do during a follow-up investigation. More use must be made of informants and less of victims and witnesses.

There is, however, a major drawback to this approach: the most productive sources do not provide information that prosecutors can use for making decisions regarding repeat offender classification. Informants generally desire anonymity, and therefore, are not likely to testify in court or want their statements recorded for official purposes. Suspects will be less willing to give out information about other offenses they have committed if the information will be used against them. Detectives and other police officials may have suspicions about an offender's criminal behavior, but judicial

Table 4

Frequency with which Actions are Taken on Case-Days

Action	Mean (%)	DeKalb County (%)	St. Petersburg (%)	Wichita (%)
Victim Interviews	76.4	81.4 (1182)	74.6 (235)	73.2 (594)
Suspect Interviews	17.6	18.2 (265)	19.1 (60)	15.6 (127)
Check Department Records	17.5	16.7 (243)	21.9 (69)	13.9 (113)
Discussions with Detectives	16.8	25.5 (371)	15.6 (49)	9.2 (75)
Witness Interviews	16.2	16.2 (235)	22.2 (70)	10.3 (84)
Other Citizens Interviews	14.0	13.4 (195)	16.5 (52)	12.0 (97)
Discussions with Patrol Officers	8.7	11.7 (170)	6.0 (19)	8.4 (68)
Discussions with Supervisors	8.1	13.6 (198)	5.1 (16)	5.5 (45)
Informant Interviews	2.6	5.0 (73)	1.6 (5)	1.1 (9)

proceedings require more than unsubstantiated suspicions. Finally, some department records are already used (prior arrests and convictions) but other records (method of operation files) only loosely support conclusions regarding dangerousness of offenders.

This analysis suggests that post-arrest investigations will result in some improvements in the identification of repeat dangerous offenders. The limitation on the usefulness of the most productive sources of related offense information imply that dramatic improvements are unlikely. There is another approach to dangerous offender investigations that may be more productive.

Proactive Investigations

An important assumption underlying most criminal justice system responses to repeat dangerous offenders is that these criminals will eventually be caught, and when this occurs, the full weight of the law will be brought to bear on them. Although it is probably safe to assume that any active offender will be caught eventually, there are other problems with this assumption.

- When repeat offenders are caught, there may be insufficient evidence to support a conviction that will result in the offenders long-term imprisonment.
- While waiting for these offenders to be caught many people may be victimized.

One approach that has been suggested (Greenwood, et al., 1977) is the use of proactive investigations. Proactive investigations of repeat dangerous offenders would be directed at identifying these criminals prior to their apprehension, collecting sufficient evidence of their criminal behavior to support a conviction, and arresting these offenders sooner than would occur under normal conditions.

In the previous section, it was shown that detectives can gather information about the criminal activity of offenders. Unfortunately, the sources of this type of information make this information unusable for prosecutorial decisionmaking and court proceedings. If instead of merely acquiring information about criminal behavior, this information is used in an investigation to produce information that is of greater utility, this problem can be reduced. For example, an investigation of offender A is begun because it is suspected that offender A is involved in several commercial robberies. At this point, only a suspicion exists as to A's guilt and A cannot be found. An informant tells a detective that offender A is associating with offenders B and C and that the three have been committing armed robberies of convenience stores. The informant has no direct knowledge of this and would not testify to the fact even if he had direct knowledge. Files on offenders B and C provide addresses of their residences and descriptions of their cars. Surveillance of B and C leads detectives to offender A. Surveillance also shows that none of the three are employed and that they spend most of the day inside, coming out only at night. Photographs of offenders B and C

are shown to witnesses of earlier robberies in which A is a suspect, one witness picks the photo of B out of a photo spread. Meanwhile, several convenience stores are staked out in an area the three offenders have been frequenting. Offenders A and C are captured at one of these locations while committing a robbery. The entire robbery is witnessed by the detectives staking out the store. Offender B escapes but is arrested later at his apartment.

There are two major advantages to this approach to investigating repeat offenders:

- Proactive investigations allow greater control over the quality of the information gathered since they are less reliant on the memories of victims and witnesses and are more reliant on observations made by police investigators.
- Dangerous offenders can be identified sooner and removed from society much more quickly than is true using traditional apprehension strategies.

Further research and evaluation of proactive investigations of dangerous offenders is needed because little research work has been conducted (Pate, et al., 1976 being a notable exception) on this important topic. Proactive investigations also require close contacts with probation, parole, and correctional authorities to keep track of recently released and potentially dangerous offenders. Although police-prosecutor relationships have been studied extensively (Greenwood, et al., 1977; Forst, et al., 1977) little research has been conducted on police-corrections relationships.

Conclusion

Three topics have been discussed in this paper:

- The investigative process followed by most police agencies;
- the usefulness of post-arrest investigations; and
- the usefulness of proactive investigations.

Post-arrest investigations are a continuation of the investigative process normally followed by most police agencies. The use of post-arrest investigations should be conducted as a matter of routine to determine the amount of prior criminal activity of arrested suspects, and to identify repeat dangerous offenders. However, the most productive sources of information about related offenses are not likely to be useful for documenting repetitive criminal behavior. These sources will either be unwilling to make statements that could put them in jeopardy (suspects and informants) or their statements are based on suspicions that cannot be substantiated (detectives and other officers) by hard evidence. Therefore the use of post-arrest investigations is unlikely to lead to dramatic improvements in the ability of the criminal justice system to identify, convict, and punish dangerous repeat offenders. Because of limitations on the data used, this conclusion must be considered tentative, pending further research on this issue.

Proactive investigative strategies appear to have greater potential than post-arrest investigations. However, even less data is

available from which to make firm judgments regarding the utility of this approach than there is for post-arrest investigations. There is clearly a need for further research and evaluation in this area.

If the conclusions drawn in this paper are not enthusiastically expressed it is out of concern that greater claims will be made for the success of programs regarding criminal justice system response to dangerous offenders than these programs can ever fulfill. This paper is not intended to raise unrealistic expectations, for the disenchantment resulting from unrealistic expectations often undermines the progress that has been made.

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THE POLICE ROLE IN SERIOUS HABITUAL OFFENDER INCAPACITATION: A WORKING PAPER

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INTRODUCTION

The purpose of this paper is to review what is known about the current police role in the incapacitation of the serious habitual offender and to suggest some activities the police might engage in to strengthen their ability to identify recidivists, implement arrest-oriented tactics targeted upon repeat offenders and better support career criminal adjudication programs. Based upon a review of the federally sponsored Career Criminal Program for prosecutors and an evaluation of the Integrated Criminal Apprehension Program for police, this paper also suggests several levels of police activity which could be targeted at the serious habitual offender. The levels of activity represent points in the criminal justice process at which the police become actively involved in career criminal activities. In general, the intensity of police involvement increases and the payback for this involvement increases as the point of involvement moves from the post-arrest to the pre-arrest stage. The levels of involvement are:

1. **Police Post-Arrest Identification and Prosecutive Support** - Aside from non-involvement in career criminal cases this is the first reactive level of police involvement. It is the system now recommended by the federally sponsored Career Criminal Program. In general, police are expected to notify the prosecutor when a career criminal has been arrested and provide post-arrest investigative and court liaison support to the prosecutor.

2. **Intensive Post-Arrest Case Preparation** - A slightly more active police involvement in the career criminal program would entail the commitment of investigative resources to developing an expanded case against the arrestee via the attribution of additional crimes or charges to the original crime for which the suspect was arrested. This might be accomplished by using interrogation, crime analysis and intensive investigative procedures to discover additional crimes to which the suspect might be linked.

3. **Pre-Arrest Identification and Targeting** - The third and most proactive possible level of involvement is the identification of serious habitual offenders by the police before they are arrested. The objective of this approach is to make officers more aware of career criminals and to provide the basis for implementing police apprehension-oriented tactics. Pre-arrest targeting might be accomplished by compiling a list of career criminals, distributing the list to patrol officers and investigators and commiting special resources to monitoring the activities of those on the list. The Integrated Criminal Apprehension Program has recommended that this approach be adopted.

Information will be presented concerning the extent to which these approaches have been adopted and, where evidence is available, the likely effectiveness of activities the police might use to increase the apprehension of "active" recidivists will be commented upon. After a short description of the theoretical basis for focusing upon career criminals, the paper discusses the police components of the federally sponsored Career Criminal Program, the potential of the Integrated Criminal Apprehension Program (especially its crime analysis component) as a method to improve career criminal programs and concludes with a selective review of research that focuses upon the ability of police to proactively target serious habitual offenders.

Theoretical Background

During the past decade a growing body of literature has appeared which supports the theory that a relatively small number of criminals commit a disproportionate amount of crime in the United States. A study by Marvin Wolfgang of the University of Pennsylvania was instrumental in establishing the basis for much of the more recent research that has been conducted to further specify the characteristics of this sub-population which has been labeled, "career criminals". In his study of a birth cohort of 10,000 males born in Philadelphia in 1945, Wolfgang found they committed 10,214 crimes by the time they

reached young adulthood. Of greater significance, the study found that only six percent of the cohort was responsible for fifty percent of the crimes committed by the entire group.[1]

Since publication of the Wolfgang study, other scholars have found similar patterns of criminal behavior among both juvenile and adult offenders. Furthermore, these studies have attempted to identify the relationship between career criminals and a variety of socio-economic or criminal characteristics, and to predict the extent to which offenders are likely to be habitual in their activities. A Rand Corporation study of 49 career criminals serving prison sentences for robbery found that each had committed approximately 20 crimes per year when they were on the street.[2] The study further suggested that these repeat offenders could be grouped into two categories based upon the frequency and extent with which they pursued criminal activities and a range of personal socio-economic characteristics.

A more recent cross-sectional study of arrestees by INSLAW contributed more information about offenders.[3] The study, based upon an analysis of over 72,000 arrests in the District of Columbia found that 7% of the defendants accounted for 25% of the arrests.

Studies based upon official records of criminal activity as well as self-reported data indicate that there is a core of habitual criminals who commit a disproportionate share of crime. However, the current state of knowledge is insufficient to positively identify individuals

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[1]Marvin E. Wolfgang, Robert M. Figlio and Thorsten Sellin, **Delinquency in a Birth Cohort** (University of Chicago Press, 1972).

[2]John Petersilia, Peter W. Greenwood and Marvin Lavin, **Criminal Careers of Habitual Felons** (National Institute of Law Enforcement and Criminal Justice, July 1978).

[3]Kristen M. Williams, **The Scope and Prediction of Recidivism** (Institute for Law and Social Research, July 1979).

habitual offenders and take action to incapacitate them at an early point in their careers. At best, criminal justice professionals are left to work with loosely defined criteria upon which to target some recidivists as potential career criminals. Even if the research community were able to develop a refined model that could positively identify particular recidivists, local operating conditions would make implementation of such a strategy difficult. First, it would be difficult to identify these individuals using data contained in most criminal justice files. While criminal history files typically contain arrest and incarceration information, they lack other suspect data (addiction patterns, education, employment) which might enhance crime prediction equations. Second, state statutes regarding career criminals, where such statutes exist, rely primarily upon conviction information as the criteria for selecting a sub-population of recidivists as serious habitual offenders. Given that conviction rates are so low, the use of conviction criteria for selecting career criminals seriously underestimates the actual level of criminal involvement of many recidivists.

Beginning in the 1970's the criminal justice community engaged in efforts to more effectively identify, apprehend and prosecute multiple offenders. Some Serious Habitual Offender (SHO) programs which originated at the local level have been adopted by the Department of Justice as initiatives for further development and dissemination. This paper is primarily concerned with two such programs: the Career Criminal Program (CCP) and the Integrated Criminal Apprehension Program (ICAP).

The **Career Criminal Program** is intended to assist local prosecutors in targeting their resources upon a minority of cases involving serious repeat offenders. When serious offenders are identified, they are given special prosecutorial attention. Some of the mechanisms used by the prosecutor include vertical prosecution, assignment of an experienced prosecutor, limited plea and sentence bargaining and expedited case processing. These activities are designed to maximize the potential for successfully adjudicating cases involving career criminals.

The **Integrated Criminal Apprehension Program** sponsored by LEAA for police departments outlines a number of patrol and investigative activities law enforcement agencies might engage in to improve apprehension effectiveness. Among the program guidelines is a serious habitual offender component. To support career criminal case processing, ICAP departments were urged to assist prosecutors in identifying career criminals, to intensify post-arrest investigative support to prosecutors and to distribute information to officers about serious habitual offenders in the community. In addition, ICAP encouraged departments to develop a crime analysis system to support suspect identification processes.

CAREER CRIMINAL PROGRAM POLICE ACTIVITIES

Career Criminal Program guidelines specify four activities the police can engage in to support the prosecutor's program. These are:

The rapid identification of career criminals;

The collection of criminal history information;

The provision of investigative assistance to the prosecutor; and

The provision of liaison officers to the court to facilitate judicial processing.

With the exception of criminal history information it should be noted that these activities occur during the post-arrest period, are largely reactive in nature and are case rather than suspect specific. That is, the police involvement is designed merely to help the prosecutor decide whether a career criminal is involved and, if so, to ensure that the specific crime has been investigated thoroughly. The CCP in no way suggests that the prosecutor or the police should attempt to broaden cases by further investigating other criminal activities the arrestee might have been involved in but for which no evidence has been developed and no charges filed.

Identification of Career Criminals - The early identification of career criminals is described in the CCP literature as critical because it enables the prosecutor to assign the case to the CCP unit and to quickly initiate prosecutorial actions. Criminal history information is essential to determine whether or not a suspect has a record that would identify him as a serious habitual offender.

Results from the national CCP and ICAP evaluations indicate that the identification process usually occurs in two stages. During the initial stage, police check departmental records for previous arrest information. This is frequently inconclusive in determining the positive identification of career criminals for at least two reasons. First, although local police records usually contain accurate arrest data, they often contain incomplete conviction information and career criminal status is usually determined by convictions, not arrests. Second, local police record systems usually contain information about suspect activity that occurred only in that jurisdiction. If the offender were active in a different city, county or state, this information is not readily available.

Because of the limitations of police criminal records, prosecutors in the CCP and ICAP jurisdictions implemented a procedure to review police identification recommendations. This review might involve a check of county and state record systems as well as a request for an FBI rap sheet which may contain conviction data which are frequently missing from local police records. These conditions suggest that if early and positive identification of serious habitual offenders in the post-arrest period is to be accomplished, there is a need for improved criminal history information systems that include both arrest and conviction data from multiple jurisdictions. The structure of this data base suggests that such a system might be best developed and maintained by an agency with multi-jurisdictional responsibility.

The structure and organization of the court system is a second issue that confounds the ability of the police to quickly bring career criminals to the attention of the prosecutor. The national CCP

evaluation found, for example, that in Franklin County, Ohio there were organizational impediments to police-prosecutor cooperation. All felony cases had to be processed in the municipal court before they could be passed on to the county prosecutor and the trial court. Consequently, processing in lower or municipal courts may delay special handling of some cases.[4] A similar situation also exists in Memphis, Tennessee where cases are initially handled in municipal court.

The results of the CCP evaluation indicate that even early identification of career criminals and referral to the prosecutor "have not been universally successful". Although only limited quantitative data were presented, early identification appeared to be fairly routine in San Diego, while in New Orleans, police identified approximately 13% of the career criminals at booking. Police involvement in the identification and referral process was rare in Franklin County, Ohio and Kalamazoo County, Michigan.[5]

Police Investigative Support and Court Liaison - Both of these activities are designed to support the prosecutor while cases are being prepared for adjudication. Investigative support has potential for providing the prosecutor with additional case substance while the court liaison duty is primarily designed to facilitate court processing. Both represent the assignment of "police leg men" to help the prosecutor prepare a case. The national CCP evaluation did not attempt to assess how extensive police activities were in these areas. The evaluators did emphasize, however, that these activities occurred in the post-arrest period and were of limited importance.[6]

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[4]Chelimsky and Dahlmann, **Career Criminal Program National Evaluation: Final Report** (National Institute of Justice, July 1982), p. 97.

[5]Chelimsky and Dahlmann, **Career Criminal Program National Evaluation**, pp. 77, 70, 98.

[6]Chelimsky and Dahlmann, **Career Criminal Program National Evaluation**, p. 99.

The CCP guidelines have labeled the above activities as essential to the development of a successful CCP prosecution. However, evidence as to how critical these activities are to an effective program and how appropriate they are for the police to engage in has not been seriously examined. There is little hard evidence from the national CCP evaluation that any of the police-related CCP activities had an impact upon case outcomes. When CCP cases were compared with control cases, the impact of CCP in the four national evaluation sites and in an evaluation of a similar program in California was found to be marginal.[7] In order to identify the effect of each of the CCP components upon case outcomes, it would be necessary to examine each case in depth and determine what factors led to both favorable and unfavorable outcomes. While this might be possible for most cases by reviewing case documentation, it would be nearly impossible for those cases which resulted in a jury trial since jury deliberations are secret.

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In addition to the above specific comments on the prosecutor-police career criminal interactions, several general observations are in order. These comments are based upon observations and interviews in four ICAP sites. Hence, they may not be representative of all serious habitual offender initiatives. First, it is clear that the role of the police in CCP has been reactive and passive. Although ICAP has encouraged departments to engage in some pre-arrest career criminal type activities, the Career Criminal Program has not encouraged police agencies to mount any SHO initiatives that could lead to increases in the rates at which recidivists are apprehended. Furthermore, the program has not encouraged police and prosecutors to develop more extensive cases against arrested SHO's. For example, departments have not committed resources to the development of additional charges against career criminals. Even if such strategies could be effectively

[7]California, Office of Criminal Justice Planning, **California Career Criminal Prosecution Program: Second Annual Report to the Legislature** (California, January 1980), pp. 3.44-46.

strategies could be effectively implemented by police, they might not be welcomed by prosecutors since the CCP is basically designed to allocate scarce prosecutorial (not police) resources in a prioritized fashion. The reactive nature of the CCP was expressed by the national evaluators when they stated that the program involves "the singling-out of a small number of cases to do with them what cannot be done with the same intensity in all or most cases".[8]

A second general consideration regarding the efficacy of SHO activities upon the ability of the criminal justice system to incapacitate recidivists is the relationship between the prosecutor and the police. Criminal justice involves the sequential processing of cases by several inter-related but independent agencies. The points at which prosecutor and police systems meet provide opportunities not only for cooperation but also for tension. Each of the criminal justice agencies involved makes independent decisions about cases and offenders that affect the workflow and workload of other agencies in the system. Thus, a successful Career Criminal Program involves prosecutorial decisions about how the police can support the prosecutor, and police decisions about how receptive they will be to the prosecutor's initiatives. Although the national evaluations of both the Career Criminal Program and the Integrated Criminal Apprehension Program indicate that prosecutors and police have often cooperated with one another, it should be emphasized that the level of interaction has remained low. None of the agencies involved in the process has made significant changes in the traditional way in which they have interacted with one another. It is unlikely that the few system-linking activities engaged in could have had more than marginal impact. Furthermore, the national evaluators of CCP explicitly point out that police and prosecutors generally do not cooperate with one another, and that the development of incentives for cooperation might foster more joint initiatives.[9]

[8]Chelimsky and Dahlmann, **Career Criminal Program National Evaluation**, p. 3.

[9]Chelimsky and Dahlmann, **Career Criminal Apprehension Program National Evaluation**, p. 100.

A third observation involves the scope of the Career Criminal Program sponsored by LEAA. As indicated, CCP is primarily a prosecutor's program which nevertheless contains logical links to police, court and correctional agencies. The police role in the program is particularly crucial since it is the police who identify crimes, develop probable cause for an arrest, apprehend suspects and develop the essential evidence needed by a prosecutor to prepare a case. These activities are done as routinely for career criminals as they are for all other crime cases investigated by the police. In fact, even if a career criminal is involved, most of these activities occur before either the police or prosecutor have identified the offender as a serious habitual offender. Hence, the CCP does not affect in any way the most critical routine police processing of investigative cases. Evidence that these activities are critical to the identification and apprehension of offenders comes from studies of police effectiveness. INSLAW, using data from the Prosecutor's Management Information System (PROMIS), found that rapid response to criminal incidents was related to the apprehension process. Studies of the investigative process by the Rand Corporation[10] and Police Executive Research Forum[11] as well as preliminary indications of the University City Science Center's evaluation of ICAP suggest that most apprehensions occur because of routine police processing carried out during or shortly after a crime occurs by patrol personnel. The CCP enters the process after the above activities have been largely completed.

ICAP SERIOUS HABITUAL OFFENDER ACTIVITIES

ICAP guidelines suggest extending police involvement into the Career Criminal Program by specifying that police departments should develop a list of serious habitual offenders and distribute it to patrol and investigative personnel.[12] The ICAP specifications contain the bare outline of a limited but proactive effort on the part of police to make officers more aware of serious habitual offenders as a means to improve arrest opportunities should the identified recidivists continue their criminal careers. A second way in which the ICAP model would support career criminal apprehension is the development of a crime analysis system to provide operations personnel with crime pattern and suspect information. Finally, ICAP also proposes that the prosecutor provide police personnel with timely and comprehensive feedback regarding case preparation, status and disposition. This latter point was designed to remove much of the mystery surrounding judicial processing after the police turn a case over to the prosecutor.

If, as the national evaluation of CCP indicates, CCP as it is currently structured has only a very limited potential for strengthening SHO incapacitation, are there any activities the police might engage in to help facilitate SHO apprehension? The answer to the above is a tentative "yes". It is tentative because the ICAP departments have not vigorously implemented activities which could enhance apprehensions and because available police research is ambiguous about the ability of police to proactively apprehend identified suspects.[13] Before proceeding to a discussion of these results, it is necessary to review the activities ICAP has proposed to support career criminal incapacitation. The next section discusses ICAP efforts to target habitual offenders and the contribution that crime analysis can make to police crime control efforts.

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[10]Peter W. Greenwood, Jan M. Chaiken, John Petersilia and Linda Prusoff, **The Criminal Investigations Process** (Rand Corporation, October 1975).

[11]John Eck, **Managing Case Assignments: The Burglary Investigation Decision-Model Replication** (Police Executive Research Forum, 1979).

[12]In early and mid-1977 LEAA personnel responsible for CCP and ICAP attempted to integrate the two programs. A conference for CCP and ICAP program directors was held and a document prepared and disseminated which outlined how the programs were complementary. Conversations with LEAA program monitors and observations of CCP and ICAP projects suggest that little was done to foster cooperative efforts after the document was published.

[13]It is necessary to distinguish between the ICAP program and the ICAP "projects". The "program" calls for rather extensive modification of serious habitual offender activities as well as patrol and investigative operations. One might regard the program as a library from which participating agencies, in developing their local "projects", choose activities. Hence, a "project" will usually implement only a subset of the entire "program". Not every ICAP project will implement the serious habitual offender component of the program.

Selective Targeting of Serious Habitual Offenders - Three of the four ICAP sites currently being evaluated (Memphis, Springfield and Stockton) have developed a list of career criminals and assembled information about the criminals that could be distributed to field officers. The notebooks or "mugbooks" typically contain the following information:

Name	Employment
Address	Beat location
Precinct	Physical description
Alias	Confinement date
Vehicle	Release date
Picture	Major criminal activity

The number of offenders in the files range from 50 in Springfield and 80 in Stockton (the smaller departments), to 1400 in Memphis.

In each of the departments, assembly of the information and the distribution of serious habitual offender notebooks to patrol generally took from 24 to 36 months. The length of time needed to prepare the books was a function of the amount of information that needed to be assembled and the priority assigned to the project by the police departments. In some instances police/prosecutor negotiations on the criteria for selecting nominees was also a factor. This labor-intensive effort involved the screening of a large number of offender records with apprehensions in multiple jurisdictions as well as information from correctional institutions, probation offices and parole agencies. Further, the file needs to be reviewed and updated frequently, as new offenders gain serious habitual offender status and as the confinement status of those already on the list changes.

Although the preparation and maintenance of the SHO file is time consuming, it is only the first step in the process of developing a proactive police initiative directed at SHO's. Once notebooks are completed they must be distributed to operations personnel who are in a position to initiate tactics designed to apprehend the offenders should they engage in criminal activities. It is at this stage that law enforcement managers must make major decisions about how and to what extent resources will be shifted from traditional patrol and investigative functions to focus upon the serious habitual offender.

Of the three ICAP evaluation departments with serious habitual offender lists, only Stockton has developed a proactive response to actively pursue serious habitual offenders. The other two departments (Memphis and Springfield) have merely distributed serious habitual offender notebooks to operations personnel. They have not implemented any special tactics to stimulate systematic surveillance of these offenders. However, there is evidence in police research that the mere dissemination of suspect information to patrol officers yields significant apprehension results. As part of a proactive patrol experiment in Kansas City, some patrol officers were provided with information about serious offenders. The 1976 study indicated that provisions of such information significantly improved their ability to arrest suspects on the list.[14]

The Stockton Police Department has developed a more proactive patrol plan by implementing a strike force comprised of from six to ten patrol officers to engage in discrete missions, usually one or two a month. The unit conducts decoy operations, saturates high crime areas, serves warrants, provides for tactical support of investigative and Sting operations and conducts surveillance of known offenders. During a 20 month period in 1979 and 1980, the unit conducted 23 missions directed towards particular suspects, usually with outstanding warrants.[15] Although the evaluation is not complete, we suspect that the Stockton method of strike force surveillance will result in more SHO arrests than the less active information dissemination methods used by the other ICAP departments. Results from the ICAP evaluation will not be available until the fall of 1982. Data about known offenders

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[14]Tony Pate, Robert A. Bowers and Ron Parks, **Three Approaches to Criminal Apprehension in Kansas City: An Evaluation Report** (Police Foundation, 1976) p. 24-33.

[15]Thomas Beall, **A Case Study Evaluation of the Implementation of the Integrated Criminal Apprehension Program in Stockton, California** (University City Science Center, March 1981), p. 81.

who have been arrested will be analyzed to determine what circumstances surrounded their arrests. This information should provide some insight into the extent to which the dissemination of information about SHO's, more active strike force tactics like those used in Stockton and routine patrol operations contribute to the apprehension process.

ICAP Crime Analysis Activities - The operation of a Crime Analysis Unit (CAU) is the key component of ICAP. It is the common theme that links all of the ICAP activities together, and it is the one standard feature of the program that each participating police department has attempted to implement. The CAU can provide police managers with written reports regarding the allocation of resources, the management of calls for service and the development of investigative priorities. A focus of the CAU and the one that is germane to SHO incapacitation has been the development of **tactical information** that patrol, special operations and investigative supervisors can use to direct their operations. The decisions are tactical in that they can address specific crime problems or criminals. Reports generated by CAU's have enabled patrol managers to design directed patrol tactics and investigators to apprehend suspects based upon modus operandi, stolen property and offender characteristics.

Departments typically collect substantial amounts of crime and suspect information. However, in most instances these data are treated on a case-by-case basis and are seldom organized so that information from the reports can be abstracted, sorted and merged to facilitate the investigative process. In order to make better use of crime data, ICAP has supported departments in developing manual and automated systems for analyzing crime and linking crimes to particular suspects. One objective of analysis is to link two or more crimes to the same perpetrator. Analysis may provide information on people, places or property which links particular crimes with specific serious habitual offenders.

At this stage of the ICAP evaluation it is difficult to conclusively indicate the effectiveness of crime analysis units in the apprehension process. We are implementing a research design which enables us to assess the suspect identification and apprehension

process. Because of the need to establish evidentiary chains, police generally provide substantial documentation in offense reports, investigative supplementals and arrest reports. These source documents are being content analyzed to determine the extent to which crime analysis, patrol actions, investigation activities, and non-police activities (alarms, security personnel and citizens) influence the apprehension process.

At this writing data are still being collected. However, our impression from reviewing and coding approximately 2000 cases is that the results will be similar to other studies of police effectiveness. In general, it is our impression that:

- Most arrests are made shortly after a crime is initiated;
- Patrol officers make most arrests by responding to citizen calls for service;
- Investigative activity is primarily a duplication of patrol work; and
- Investigators contribute little to the suspect identification process and make relatively few arrests.

It appears that only a very small proportion of the arrests can, in any way, be linked to crime analysis activities. This must be qualified since the proportion of personnel resources committed to crime analysis in each of the four departments is quite small. The proportion of analysts to sworn personnel ranges from a high of 1.1% in Springfield to a low of .5% in Memphis with .9% in Norfolk and .8% in Stockton. In comparison, the four departments commit from 12% to 22% of their sworn personnel to investigative activities.

Pending the outcome of the final ICAP evaluation report, it is still possible to make some reasoned comments about state-of-the-art regarding crime analysis and its potential impact upon serious habitual offender incapacitation. Although crime analysis has been part of the law enforcement vocabulary for some time, little definitive research

has been done to develop and refine methods to enhance the extent to which crime and suspect information can be used by operational personnel. Nearly nine years ago, George A. Buck et.al., prepared a Prescriptive Package on crime analysis methods.[16] This was followed by Hobart Reinier's state-of-the-art review of crime analysis activities among police agencies. Reinier concluded:

> That crime analysis has no value in and of itself [and that] The only valid measure of the quality of patrol supported by crime analysis is measurement of the **use of analysis products** in deciding how, when and where to assign personnel and other resources, and the strategies and tactics to be employed by these resources.

The review found that operations personnel were suspicious of sophisticated analysis and did not feel it could contribute significantly to patrol deployment decisions.[17]

Reinier's assessment of the crime analysis function would appear to still apply today based upon our observations in the ICAP sites. Although the collection and analysis of crime and suspect information has tremendous intuitive attractiveness as a means to increase apprehensions and control crime, this has not occurred. Several factors appear to account for the current undeveloped potential of crime analysis. Two of the factors are related to the crime analysis function. The first is the need by law enforcement agencies to develop a crime analysis function that is capable of collecting and analyzing large amounts of crime/suspect data. The ICAP departments have had difficulty in designing reports with which to collect information and in developing

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[16] **Police Crime Analysis Unit Handbook** (National Institute of Law Enforcement and Criminal Justice, November 1973).

[17] G. Hobart Reinier, **Crime Analysis in Support of Patrol: National Evaluation Program Phase I Report** (Foundation for Research and Development in Law Enforcement and Criminal Justice, Inc., November 1976), p. 82.

both manual and automated systems to support analysis of the collected data. Second, the analysis function requires considerable creativity on the part of crime analysts. It requires data management, analytical, intuitive and interpretive skills that are not necessarily developed in routine patrol and investigative work. At the same time, civilian analysts having data management and analytical skills often lack sufficient knowledge of police operations.

Two additional factors that have constrained effective implementation of crime analysis systems are related to police operational traditions. First, the link between crime analysis and operations has not been as strong as it could be. This is due, in part, to the limited utility and occasional poor quality of crime analysis products and, in part, to the lack of commitment from patrol commanders and first-line supervisors to use the information in making decisions. Finally, the ability of patrol and investigative managers to plan activities and allocate resources in order to increase the apprehension capabilities of their officers is limited. This is not surprising given the reactive nature of patrol and investigation work as well as the tendency by police to view and treat each incident as individual and isolated, rather than as part of a pattern of similar events.

Although the current state-of-the-art regarding crime analysis is limited, there are some indications that by studying crime patterns and suspect information, it will be possible to identify ways to improve the current data collection and analytical methods of crime analysis. Such advancements in knowledge could lead to the development of techniques that are more useful to patrol and investigative officers in apprehending serious habitual offenders. Several examples are discussed.

- The Memphis Police Department has developed automated routines to quickly search for method of operation, stolen property, vehicle characteristics and license plate numbers collected on offense reports. If similar data were available on suspects, matches could be executed.

- A study conducted in Portland, Oregon, as part of its ICAP project examined the relationship between the location of a crime and the home address of persons arrested. The study found that many of those apprehended lived in close proximity to the places where the crime of arrest was committed. The median distance was 1.4 miles.[18] Data from several cities indicate that suspects apprehended in Sting operations usually lived in close proximity to the Sting location where they fenced stolen goods.[19] If departments maintained files of offender by location, it would be possible to narrow the search for likely suspects.

- The University City Science Center's recently completed evaluation of anti-fencing operations has found that in addition to producing felony arrests, Sting operations have substantial potential for collecting suspect and crime intelligence from known offenders. If these data were collected and used by police departments, they could serve as a base for expanding suspect identification and apprehension activities. By analyzing suspect transaction characteristics, the evaluators also found that it was possible to identify groups of suspects who affiliated with one another.[20]

- In Norfolk, investigators collect detailed information from pawn shops, gold and silver dealers and junk yards. These property transaction data are routinely compared with stolen property reported on offense reports and have been used to successfully link stolen property with likely suspects.

The above are just some examples of how information about crime and suspects might be used to impact the suspect search and apprehension process. There is a need for research and experimentation to discover how criminals operate. Likewise, there is a need to develop improved

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[18]David Sumi, **Spatial Patterns of Burglary and Robbery Offenders in Portland, Oregon** (City of Portland, Office of Justice Programs, June 1978), p.9.

[19]Robert A. Bowers and Jack W. McCullough, **Assessing the "Sting": An Evaluation of the LEAA Property Crime Program** (University City Science Center, February 1982). p. 110-112

[20]Bowers and McCullough, **Assessing the "Sting".**

methods for organizing and analyzing the crime information that departments currently collect. Given the fact that technology for managing data has become increasingly powerful and accessible, a greater investment in developing crime analysis techniques along with stronger links to patrol operations would seem to offer benefits to serious habitual offender apprehension strategies.

PROACTIVE STRATEGIES - OTHER RESEARCH FINDINGS

Although one might think that the research community has developed considerable insight into what the police can do to more effectively apprehend offenders, this does not appear to be the case. The 1976 review of police research conducted by the University City Science Center concluded that:

> Most of what is commonly called "knowledge" about Traditional Preventive Patrol is, in fact, opinions based primarily on experiential evidence. The gaps in knowledge are pervasive and, as a result, few definitive statements can be made about the impact of alternative approaches to patrol upon the ability of departments to realize the goals of patrol.[21]

A more recent review of police research conducted for the National Institute of Justice reached similar conclusions. The report was designed to synthesize what is known about police activities and their impact upon apprehension and crime rates. The authors concluded "there are no definitive studies that have been able to clearly depict the presence (or absence) of a relationship between police patrol and crime deterrence." The authors noted that the most significant knowledge gap in preventive patrol research exists in the relationship among patrol levels, tactics and crime rates.[22]

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[21]Theodore Schell, et.al., **Traditional Preventive Patrol: National Evaluation Program Phase I Summary Report** (National Institute of Law Enforcement and Criminal Justice, June 1976), p. 77.

[22]Edward H. Caplan, Richard C. Larson and Michael F. Cahn. "Patrol" in Richard Larson, et.al., **Synthesizing and Extending the Results of Police Research Studies: Final Project Report** (Public Systems Evaluation, October 1981), pp. 1-119-121.

Reviews of specialized patrol operations by criminal justice researchers have come to similar conclusions about its effectiveness. The National Evaluation Program Report on specialized patrol projects stated "that no conclusive statement can be made regarding the performance and effectiveness of specialized patrols."[23]

Given such findings, is it realistic to expect police to do anything to improve apprehension rates for serious habitual offenders or even less troublesome criminals? Some evaluation research, although not definitive in nature, suggests the possibility that a few tactics have potential. Two such evaluations include The Police Foundation Study of Location-Oriented and Perpetrator-Oriented Patrol conducted in Kansas City[24] and the University City Science Center's recent evaluation of nine Sting projects.[25] Both studies suggest that specialized operations in which officers concentrate on specific criminal problems have crime apprehension potential.

The Perpetrator-Oriented Patrol (POP) surveillance of selected groups of known criminals is important to the SHO incapacitation research because it is one of the few studies to evaluate the effectiveness of the police in identifying recidivists and targeting them for surveillance and possible arrest. It would be easy to draw definitive conclusions from the evaluation of POP if all measures indicated consistent patterns of effectiveness; however, not all results were definitive. The study compared arrest, charging and conviction rates for officers assigned to "location-oriented", "perpetrator-oriented" and regular patrol. The evaluators found that the specialized patrol units spent less time in making target arrests for robbery and burglary than did regular patrol officers and that they made a greater

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[23]Kenneth W. Webb, et.al., **Specialized Patrol Projects: Phase I Summary Report** (Institute for Human Resources Research, 1976).

[24]Tony Pate, Robert A. Bowers and Ron Parks, **Three Approaches to Criminal Apprehension in Kansas City: An Evaluation Report** (Police Foundation, 1976).

[25]Bowers and McCullough, **Assessing the "Sting"**

proportion of those arrests on the basis of officer-initiated activities.[26] While the researchers generally found location-oriented patrol to be superior to perpetrator-oriented patrol in making apprehensions, the data do suggest that officers can develop location and perpetrator specific tactics to increase police arrest rates as well as focus specifically on a set of identified career criminals.

The more recently completed evaluation of Sting projects suggests that by posing as fences, police can focus effectively on individuals who are currently active in property crime. The report suggests that Sting projects were quite successful at encountering and arresting criminals with histories of prior felony arrests and convictions.[27] Significantly, the undercover activities also led to the acquisition of considerable information, in the form of self-reported descriptions of the suspects' active criminal careers, which suggests the inadequacy of the formal conviction criteria generally used to classify career criminals. An alternative to using undercover techniques like Sting to simply effect arrests might entail the selective dissemination of obtained intelligence information regarding the current and past activities of habitual offenders. By providing such information to the patrol force, the probability of making arrests might be further improved. The 1976 Study of Kansas City's Criminal Information Center clearly indicated that the provision of such information significantly improved the ability of patrol to make arrests.[28]

PROPOSALS FOR FUTURE RESEARCH

A necessary and continuing research priority is further inquiry into the role that police might play in the career criminal incapacitation process. Self-reported accounts of criminal activity indicate that habitual criminals are apprehended for only a small

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[26]Pate, Bowers and Parks, **Three Approaches to Criminal Apprehension**, pp. 77-80, 92-95.

[27]Bowers and McCullough, **Assessing the "Sting"**, pp. 102-110.

[28]Pate, Bowers and Parks, **Three Approaches to Criminal Apprehensions**, pp. 26-40.

number of the crimes they commit. Yet, the manner in which police allocate resources indicates they are primarily involved in investigating specific incidents of reported crime rather than identifiable individuals whom there is reason to believe may be responsible for a large number of criminal incidents.

This paper outlines several closely associated research topics that would lead to a better understanding of current police practices and capabilities regarding the apprehension of serious habitual offenders and to the development of strategies that could enhance apprehension opportunities. Three of the topics address the pre-arrest identification of career criminals and the development of proactive police interventions to make arrests as soon as there is evidence of a resumption of an SHO's criminal activities. The fourth topic focuses specifically upon the enhancement of criminal charges via the analysis of crime and suspect information which can help identify additional crimes of an already apprehended suspect. The fifth topic addresses the attrition of cases that occurs between initial arrest and the prosecutor's decision to prosecute for the original charge, reduce the charge or drop a case entirely. The final topic proposes a policy analysis of the criminal justice system which would identify how the components are currently addressing career criminal issues and prescribe more effective strategies.

Two related objectives conjoin the proposed research. First, attention should be paid to developing technologies which would increase the ability of the police to identify and apprehend serious habitual offenders. Our use of the word "technologies" is quite broad. It includes not only hardware technology but, more importantly, non-hardware techniques which law enforcement agencies use to attack crime. Second, research should address methods to promote the adoption of improved technologies by enforcement agencies. Currently, there is a substantial gap between the state-of-the-art in police operations and the way the majority of police agencies operate. Our experience with ICAP suggests that it is extremely difficult to induce police departments to examine and adopt improved methods of operation. The mere dissemination of research products and loosely structured grants are frequently weak stimuli to improvement.

TOPIC 1. State-of-the-Art Review - Suspect Oriented Apprehension Strategies

There is a need to know more about what police departments are currently doing to focus resources upon the incapacitation of serious habitual offenders in their communities. The use of the National Evaluation Program (NEP) format to gather descriptive and evaluative information about apprehension oriented strategies would be an appropriate technique. The NEP format has proven to be a relatively rapid and inexpensive method to gather and integrate substantial amounts of descriptive and evaluative information about a variety of police and other criminal justice topics.

Among the issues which could be addressed in an NEP-type review would be the extent to which police agencies:

- o are aware of serious habitual offender issues;
- o have incorporated Career Criminal Program concepts into their decision-making processes;
- o have developed information systems to identify SHO's;
- o have committed resources to offender-based apprehension tactics, and
- o have developed working relationships with other criminal justice organizations regarding SHO initiatives.

Other factors to be considered in the review would be an analysis of barriers to the implementation of police career criminal activities as well as mechanisms that have been developed to facilitate implementation of these activities. Examples of the kinds of programs to be reviewed would be the career criminal case apprehension project operated by the New York City Police Department, the perpetrator-oriented patrol program in Kansas City, Sting highroller operations that focus upon specific types of criminal activity with high-dollar volume crime, organized crime infiltration efforts and other local police programs like the Miami, Florida Police Department's Strategic Target-Oriented Project (STOP). In addition to reviewing activities

among municipal and county law enforcement agencies, it would be valuable to review similar operations that are conducted by state investigative agencies (and possibly the FBI). These agencies tend to devote a greater share of their resources to investigating particular kinds of suspects and patterns of criminal activity rather than investigating every reported crime.

TOPIC 2. Research Demonstration - Crime Analysis System Development

The development of a capability by the police to apprehend serious habitual offenders is based upon assembling a complex, yet flexible, system to manage a career criminal data base and develop tactics to improve the surveillance of suspects, detect criminal activity and make arrests. Assembling a data base is a difficult task. Data for an effective tracking system must come from a variety of sources. Police records can supply information about offense patterns and, if the suspect has been apprehended, criminal history and method of operation information. The courts can supply information about case dispositions while correctional, parole and probation agencies can be consulted to determine an SHO's current status. If the data base is to be automated, departments will need to make decisions about computer hardware and the development of software.

Crime analysis has been a part of the police vocabulary for a number of years and the ICAP program has strongly encouraged departments to experiment with it. In spite of the experimentation, the ability of departments to collect and analyze crime and suspect information and engage in tactical planning is still in a rather primitive state. The development of experimental, demonstration crime analysis units coupled with research components in several departments could provide solid information upon which to demonstrate effective crime analysis methods and career criminal targeting systems.[29] Such a demonstration could also provide basic information upon which to develop prescriptive materials that enforcement agencies could use to develop effective methods for quickly apprehending targeted offenders. This research demonstration would involve the development of:

- o More efficient data collection forms for offense, arrest, field interview and suspect ' intelligence information;
- o Computer hardware and software to analyze the data for general trends as well as to search for specific pieces of information;
- o Reporting mechanisms that operations personnel (patrol, investigations and tactical) could use to implement strategies and tactics designed to apprehend serious habitual offenders and develop stronger cases against them;
- o Strategies and tactics that operations personnel can use to implement crime deterrence and apprehension operations against habitual offenders; and
- o Routine procedures that departments can use to assess the effectiveness of various apprehension tactics and which will enable them to make informed decisions concerning the allocation and assignment of resources.

TOPIC 3. Research - Narcotics Operations as a Model for Career Criminal Tactics

Our preliminary analysis of approximately 1,500 arrests in four ICAP departments strongly suggests that the vast majority of felony arrests are the consequence of fortuitous circumstances, rather than any purposive activity upon the part of police personnel. In most instances, crimes are brought to the attention of the police by citizens and private security personnel who also identify (by name and address) the offender and, in some instances, hold the suspect until the police arrive. Because of the nature of the ICAP program and the evaluation design, no attempt was made to review and analyze the operation of police units that focus their activities upon particular types of crime that are often "victimless" and unreported - vice and

[29]The Wilmington Split-Force and Service Call Management Experiment might serve as an example of the type of demonstration that could be supported.

narcotics. However, Peter K. Manning in **The Narcs' Game,**[30] and Mark H. Moore in **Buy and Bust**[31] have suggested that narcotics officers are more target-oriented than other police investigators and patrol officers. Furthermore it appears as though most police investigative operations tend to focus upon individual crimes, whereas narcotics investigators are suspect oriented in that they tend to focus upon known drug users and dealers. It is possible that some of the techniques which vice and narcotics units use to proactively seek out criminals and target individuals for arrest could be successfully applied to serious habitual offenders.

The proposed research would explore the extent to which narcotics investigation targeting procedures (and perhaps vice tactics) could be adapted to more general serious habitual offender initiatives by police. The research design could explore the resource inputs, investigative techniques and outcomes of this activity in five to seven departments. Such analysis could develop parameters regarding the costs, processes and outcomes of investigative strategies focused upon serious habitual offenders.

TOPIC 4. Research Demonstration - Intensive Case Follow-Up

Reviews of reported crimes and arrest data reveal that the police are not very effective in apprehending offenders. Uniform Crime Reports indicate low apprehension rates while studies of self-reported crime indicate that criminals are apprehended for only a small proportion of the crimes they commit. Therefore, it is extremely important that enforcement agencies be able to develop the best possible cases and link apprehended criminals with other crimes they may have committed.

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[30]Peter K. Manning, **The Narc's Game: Organizational and Informational Limits on Drug Law Enforcement** (Cambridge, Mass.: M.I.T. Press, 1980).

[31]Mark H. Moore, **Buy and Bust: The Effective Regulation of an Illicit Heroin Market** (Lexington, Mass.: Lexington Books, 1977).

Initial impressions from the ICAP data are that police efforts in this regard are minimal. Only rarely do detectives successfully link arrestees to additional criminal incidents. This failure occurs for reasons that are both within and outside the control of the police. First, it is the policy of most police agencies to have investigators review all crime reports and arrests. This places a premium on rapid case review and emphasizes reactive rather than proactive investigative effort. Second, within general categories of crime type, cases are usually assigned to detectives on an unstructured, almost random basis. As a result, cases are often viewed as individual and isolated incidents rather than as part of a crime series. Investigators usually do not have any systematic way of acquiring knowledge about all the crimes in their assignment area. Hence, they may lack a clear sense of how a particular crime may be part of a pattern. Third, there are few mechanisms or incentives that police officers can legimately offer an arrestee to reveal other criminal activities or to testify to the activities of others. Although narcotics investigators will often try to "turn" their arrestees, this practice is not generally used by investigators assigned to violent or property crimes. A final factor is illustrative of the way policy decisions by prosecutors can affect police investigative efforts. In interviews (conducted during the ICAP evaluation) concerning the limited efforts to link arrestees to other crimes, detectives have indicated that prosecutors will often prosecute only for the crime with the best evidence (usually the apprehension crime).

The development of a research-demonstration project to explore the feasibility of making stronger and broader cases against persons arrested for a crime could provide important knowledge for developing serious habitual offender cases. This approach assumes that an arrestee was involved in other crimes for which no arrest has been made. The investigator begins by systematically reviewing similar crimes to develop a range of other crimes the arrestee could have been involved in. To be effective, such a system would demand development of a crime intelligence and analysis system that would support identification of crime patterns, MO information and suspect characteristics.

The research would explore the feasibility of using more aggressive investigative methods to discover other crimes committed by the suspect. The use of "buy money" to purchase information about crimes and the more extensive use of search warrants to locate stolen property might be considered. Finally, an effort would be made to develop perpetrator-oriented patrol and investigative strategies for improving surveillance of "career offenders" upon their release from custody.

TOPIC 5. Research - Case Attrition and Degradation

Although police are the gatekeepers to the criminal justice system, it is the prosecutor who usually determines the charges that will be filed against a suspect and which cases will be accepted for adjudication. In this regard, prosecutors have enormous discretion in determining whether and how to prosecute criminal complaints.[32] The career criminal evaluation and other studies of the criminal justice system suggest that police/prosecutor cooperation has been limited. Even more disturbing is the lack of police knowledge concerning the reasons why cases are dropped by prosecutors. Prosecutors frequently argue that police make arrests that will not stand up to prosecutive standards. Others argue that prosecutors are overburdened and must drop some cases completely or reduce charges in other cases. Finally, the police frequently plead ignorance of what standards of evidence the prosecutor needs and the reason why "solid" cases are dropped.

Despite these various points of view, it is clear that many cases are dropped or reduced to lesser charges.[33] This occurs in the case of

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[32]Joan E. Jacoby and Leonard R. Mellon, **Policy Analysis for Prosecution: Executive Summary** (Washington, D.C.: Bureau of Social Science Research, April 1979), p. 2.

[33]Barbara Bassier, "51% of Manhattan Felony Charges Found Reduced", **The New York Times**, February 12, 1982, p. 1. See also New York City Police Department, **Felony Case Deterioration: Process and Cause** (Office of Deputy Commissioner Legal Matters, December, 1981). The level of case attrition but not the reasons for it are documented in Brian Forst, Judith Lucianovic and Sarah J. Cox, **What Happens After Arrest** (Washington, D.C.: Institute for Law and Social Research, August 1977).

serious habitual offenders as well as others. Given that police apprehension rates are low, it is important that cases be given the fullest consideration. As a consequence, there is a need to examine the case attrition process. The proposed research would identify factors affecting case attrition and develop mechanisms to ensure that police present thorough cases to the prosecutor and that prosecutors clearly delineate their adjudication priorities and evidentiary needs. There is a need to objectively examine the issues surrounding case degradation and to develop guidelines that both police and prosecutors can use to ensure that as much as possible is done to prosecute successfully a maximum number of cases. A study, conducted in four to six sites, could provide considerable insight into these problems and lay the basis for the development of solutions.

TOPIC 6. Research - Policy Analysis

The criminal justice complex is frequently described as a system. In many respects, however, each component of the system operates independently. Consequently, policy decisions by one of the components to either engage in or neglect specific activities may affect the ability of other agencies of the system to perform. In this case, decisions made by particular components of the system affect the apprehension, prosecution and incapacitation opportunities of other components of the system. For example, the decision by police to expend patrol and investigative resources upon all reported crimes rather than to focus upon serious habitual offenders limit the number of career criminals apprehended and the quality of cases prepared against the most serious offenders. This resource allocation decision by the police also limits the number of career criminals a prosecutor has an opportunity to work with. Discretionary decisions by a prosecutor to reduce charges or drop cases against career criminals limit the opportunities for judges to impose appropriate sentences. Finally, judges may disregard evidence of a career criminal pattern in imposing sentences.

Given that each component of the criminal justice system has considerable discretion in dealing with career criminals, there is a

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to examine the way policy decisions concerning resource allocation, case management and priority setting affect the ability of each component and of the overall system to properly process the serious habitual offender. The development of a policy system analysis, describing how decisions made by each of the components affects the overall ability of the criminal justice system to deal effectively with serious habitual offenders, could highlight the importance and difficulty of developing an effective serious habitual offender strategy and provide the basis for developing cooperative policies among enforcement, prosecution and court personnel.[34]

CONCLUSION

The examination of the police role in career criminal apprehension contained in this paper suggests that police resources are currently underutilized in this regard. Furthermore, research regarding the effectiveness of various apprehension strategies is both limited in scope and contradictory in their findings. The paper concludes by suggesting several research projects that might contribute knowledge to the development of effective serious habitual offender apprehension strategies by the police.

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[34]Jacoby and Mellon, in **Policy Analysis for Prosecution**, implement a research method to examine how decisions made by prosecutors affect office organization, procedures and tasks. It is possible that this model could be adapted to examine how policy decisions made at various points in the criminal justice process affect the processing and outcome of serious habitual offender cases. For example, enforcement policy decisions that allocate a large number of sworn personnel to reduce response time and to provide patrol with a considerable amount of unobligated time (as much of 60% of all patrol hours) limit the ability of the police to target resources upon serious habitual offenders.

Section 7

CRIMINAL HISTORY RECORDS

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Identifying Serious Offenders

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Introduction

For the last ten years the American law enforcement community has been engaged in a major effort to change the way the courts prosecute and sentence habitual criminals. All but 2 states have passed or have pending legislation enabling or requiring judges to impose more severe sentences on defendants who repeatedly commit certain serious crimes. By the end of 1980, 140 urban prosecutors had in operation special career criminal units designed to increase the chance of a conviction and prison sentence for the most serious repeaters. While the details of these repeat offender laws and career criminal programs vary, they all focus on adults with significant prior records (usually a defendant must have one or more prior convictions) and many target only on the most serious violent crimes.

The potential utility of these initiatives is supported, in many cases has been justified, by a remarkably consistent body of statistical studies all reporting the now familiar fact that a few recidivist offenders commit an unusually large number of serious crimes. The most recent and most sophisticated studies of criminal careers confirm this central fact, but in addition suggest that in practice discovering who these few recidivists are may be more difficult than was originally thought. These new analyses of criminal careers show that many of the most serious offenders are young and highly versatile criminals who may have no or only a minor adult record, and who are just as likely to steal and sell drugs as rob and assault.

Both prosecutors and judges, who make the critical decisions that determine who will be convicted and punished in the felony courts, are now ill equipped to take either of these characteristics of criminal behavior into account. Prosecutors' charging decisions tend to be dominated by a concern for evidence and the seriousness of the crime; and judges, to a large extent, sentence to prison defendants who have prior adult records. Without a complete and accurate criminal history prosecutors may miss a career criminal when he is arrested for a larceny (but not likely a robbery); and even when convicted for a robbery, judges may show leniency because, the defendant--even though he has committed many prior juvenile crimes--has not yet acquired an adult record. To some extent these decisions reflect the priorities of the felony court to deal with serious crimes and punish more harshly those who have already had a second chance, but also prosecutors and judges do not now routinely receive the criminal history information they need--primarily a defendant's juvenile record--to know who the serious offenders are.

Criminal Careers

That age and criminal activity are inextricably linked is suggested by virtually every study of criminal careers published within the last five years. In 1978 the Rand Corporation published a study by Joan Petersilia of 49 habitual offenders serving prison terms for armed robbery in California. The 49 offenders in interviews claimed responsibility for 10,505 crimes prior to their prison term. The average

age at which these offenders began their careers was 14, and 43 percent of their crimes were committed before the age of 18. Between the ages of 16 and 22 they committed as many as 40 crimes per year (when not in jail); between the ages of 22 and 32 offense rates dropped to an annual average of 8 per year.[1]

A similar pattern was found by James L. Collins Jr. in a reanalysis of Marvin Wolfgang's Philadelphia cohort data. The Philadelphia data tracked the criminal activities of 10,000 boys born in 1945 from age 8 to 30 and identified 15 percent as chronic offenders, defined as those with 5 or more contacts with the police. The annual offense rates of the Philadelphia chronics peaked at about age 16 with four serious crimes per year and then declined as defendants grew older.[2]

Another recent RAND study by Jan and Marcia Chaiken used interview data with prison inmates in California, Texas, and Michigan to identify nine different types of high rate offenders. A key characteristic of the most serious of the nine offender types, labeled "violent predators", was their youth. Even though the predators were serving an adult prison term at the time of the study, their average age was 23 and they reported beginning their violent careers well before the age of 16.[3]

Another key finding of all of these studies is that habitual criminals, while they commit a large number of serious offenses, also commit a lot of other types of crimes as well. Among the delinquents of Wolfgang's 1945 cohort study the chronic offenders by age 18 accounted for 76 percent of the

violent crimes committed by all delinquents in the study. But of the total crimes committed by the chronics themselves only 9 percent were crimes of violences. Twenty four percent were the index property crimes of burglary, larceny, and auto theft, and 67 percent were non-index offenses. A second cohort study, also by Wolfgang, of boys living in Philadelphia but born in 1958, found a similar pattern, even though the younger delinquents were found to have an overall violence offense rate three times higher than those born in 1945. The chronics of the 1958 cohort accounted for 71 percent of all crimes of violence attributed to the cohort delinquents, but of all crimes the chronics themselves committed, only 15 percent were crimes of violence.[4]

The Wolfgang estimates, based on the relatively small number of crimes that end in an official police arrest, are consistent with the Rand studies that rely both on official records and defendant self-reports of crimes. The "violent predators" identified by Chaiken and Chaiken were found to commit robberies and assaults at much higher rates than the other eight offender groups in their study, but still the vast majority of the crimes committed by the predators were the less serious crimes of theft, fraud and selling drugs. And of the 10,505 crimes committed by the habitual offenders studied by Petersilia, 943 or 10% were crimes of violence (robbery and aggravated assault). The most common crimes were drug sales (34%), burglary (22%), and auto theft (14%).

These two characteristics of serious offenders -- their youth and their versatility -- create problems for prosecutors and judges in identifying them since neither the seriousness of a defendant's official record which almost always excludes juvenile crimes, nor the seriousness of the crime-two of the most important factors that have been found to influence court outcomes-may be a sufficient guide for consistently distinguishing dangerous criminals.

The Problem of Identification

Although sentencing is the ultimate goal of career criminal programs, if significant sentences are to be imposed identification of the offenders must occur shortly after arrest (as long as several months before a judge considers a sentence), and the key decision maker is the prosecutor not the judge.

In most cities within a matter of hours after the police arrest a suspect for a felony crime the case is taken to the prosecutor's office for screening and charging. How a case is viewed by the prosecutor at this point is just as important to a strategy of targeting career criminals as how the judge views the crime and defendant at sentencing. It is normally at screening that a felony arrest, if it is not rejected, becomes either a felony or a misdemeanor charge. The consequences for the potential punishment of the defendant are considerable. Convicted felons may be sentenced to state prison for periods of a year or more. Misdemeanants cannot be incarcerated for more than a year and more likely receive jail sentences of several months or sentences to probation.

In most places a felony charge means presentment to a grand jury for an indictment or a preliminary hearing for a finding of probable cause and subsequent processing in the upper or felony court. A relatively small fraction of the felony arrests made by the police, however, end up being processed by the felony courts on a felony charge. In Manhattan, New York in 1979 the police arrested approximately 30,000 adults for felony crimes. Of these 30,000 arrests, 5765 or 19% were handled in the Supreme Court following a grand jury indictment.[5] In Los Angeles, most felony charges are filed by "information" rather than by a grand jury indictment. Still in 1979 of 70,000 felony arrests a similar percentage, 22%, were "held to answer" on felony charges in the Superior Court after a preliminary hearing.[6]

Of the 80 percent of the felony arrests that do not make it into the felony court a substantial fraction will end up being rejected or dismissed and the remainder convicted on misdemeanor charges. In both Los Angeles and Manhattan in 1979 about 50 percent of the felony arrests were either rejected for prosecution or dismissed at some point in the case disposition process (most of these dismissals occur before the upper or trial court stage). About 35 percent in each city were convicted as misdemeanors.

Contrary to what one might think not all felony arrests are reduced to misdemeanors because the available evidence is legally insufficient to prove a felony; many are handled as misdemeanors as a matter of policy. In New York prosecutors

refer to such crimes as "technical felonies" by which they mean the evidence is sufficient to prove a felony but the nature of the crime is such that misdemeanor prosecution may be pursued irrespective of the legal evidence. In Los Angeles prosecutors use the term "wobblers" to describe the majority of common felony crimes (primarily property crimes) which according to California law may be prosecuted either as felonies or misdemeanors at the discretion of the district attorney. A recent study by the New York City Police Department and the New York County District Attorney reported that of 3000 felony arrests monitored over a two month period half were charged as misdemeanors in the complaint room. In 27 percent of the reduced cases prosecutors said legal insufficiencies were the reason for the reduction; in two-thirds of the cases the reason given was "policy".[7]

Studies on how prosecutors use their discretion in making such decisions are sparse, but those that do exist suggest that prosecutors especially in the early stages of case processing are more offense than offender oriented. Joan Jacoby who studied the charging decisions of 855 prosecutors in 15 urban jurisdictions concluded that prior record played no part in this decision.[8] Brian Forst and Kathleen Brosi in an analysis of 6000 felony arrests presented to the District of Columbia prosecutor found that prosecutorial priorities, as measured by the amount of attention devoted to a case, were a function of evidence and crime seriousness but were not at all influenced by a defendants prior record.[9] If prosecutors are

primarily interested in vigorously pursuing cases in which the crime is serious and the evidence strong (no matter who the defendant), but serious criminals commit all types of crimes, valuable opportunities to incapacitate them may be lost because only some (the most serious) of their crimes are charged as felonies and prosecuted in the felony courts.

But prosecutorial priorities are not the only problem hindering identification of serious offenders. Unlike sentencing, which occurs weeks after an arrest, charging decisions must be made immediately and quickly, and little time is available to gather information on a defendant's other criminal activities. Charging is also the point in felony case processing at which information on the defendant is least available. Prosecutors must rely solely on official rap sheets which often do not contain sufficient information for them to be able to make a decision on the basis of the criminal as well as the crime.

Despite considerable improvements in criminal information systems prosecutors (and judges) still complain that their work is seriously hampered by inaccurate and missing information. The criminal histories, or rap sheets, they receive with police reports are generally considered to accurately list a defendants prior arrests but court dispositions are often missing. Prosecutors know that many arrests do not end in a conviction and without knowing the outcome of previous arrests they find it difficult to assess the seriousness of a defendants prior behavior and use it in making decisions on the current case. Prosecutors also complain that rap sheets are

not always available for screening. Retrieval time; though rapid by most standards, may not always be fast enough. The Division of Criminal Justice Services in New York state is required by law to provide rap sheets for the purpose of determining bail at arraignment, which usually occurs within 24 hours after arrest . But in many New York cities prosecutors must screen cases before arraignment and sometimes critical decisions have to be made about a case without a defendant's criminal record. These deficiencies, however, are only a small part of the missing data problem, as more and more studies of crime and criminal careers point to the fact that young offenders, are a significant part of the crime problem it becomes harder and harder to ignore the problem of how to identify serious but young offenders without the routine availability of juvenile records.

To appreciate how serious the identification problem may be, consider the data in Table 1 on two samples of defendants arrested for felonies in Manhattan in 1979. The first sample includes defendants who were arrested for felonies but were charged with misdemeanor crimes and had their cases disposed in the Criminal Court, the lower court of New York state. The second sample includes defendants also arrested for felonies but who were charged with felonies and had their cases disposed in the felony or Supreme Court. For each of the defendants in both samples an annual arrest rate and crime rate adjusted for time in jail were calculated and a group of high crime rate defendants, defined as persons arrested at least once a year

Table 1

High Crime Rate Offenders
Felony Arrests

	Criminal Court (N = 323)	Supreme Court (N = 839)
(Figures in parentheses are for low-crime rate offenders)		
Percentage HCR	21%	21%
Average age	24 (30)	23 (29)
Arrests per year	2 (.6)	2 (.6)
Crimes per year	34 (7)	27 (8)
Number of prior felony arrests	7 (4)	7 (4)
Number of prior misdemeanor arrests	7 (4)	5 (3)
Current Arrests		
Violent	1%	7%
Assault	4%	4%
Robbery	16%	37%
Burglary	12%	30%
Larceny	34%	13%
Other theft	4%	3%
Drugs (excludes marijuana)	21%	--*
Weapons	3%	5%
Other	5%	1%
Prior Arrests		
Violent	1%	1%
Assault	5%	5%
Robbery	7%	11%
Burglary	15%	20%
Larceny	29%	27%
Other theft	8%	8%
Drugs	19%	10%
Weapons	2%	4%
Other	14%	14%

*Felony drug cases are handled by a special city-wide prosecutor in New York City and were not available for this study.

identified. The percentage of cases in each court associated with high crime rate (HCR) offenders, the amount of crime they commit, and the nature of their prior crimes suggest the high crime rate groups in the upper and lower court are very similar. In both courts 20% of the cases were associated with HCR defendants who commit about 30 crimes per year, and whose prior crimes are predominately robberies, burglaries, and thefts. The major difference between the upper and lower court HCR defendants is in the type of current crime. The majority of the current arrests of the Criminal Court defendants, involve the less serious crimes of larceny and drug sales or possession. In the felony court the most common current arrests involve the more serious crimes of robbery and burglary.

Because the high crime rate offenders do not always commit serious crimes, identification critically depends on their prior record. But because they are young their adult record may not be sufficient either. (This is a problem not only for prosecutors at charging but also for judges at sentencing.) In both courts the high crime rate defendants are significantly younger than average. Their average age is between 23 and 24 as compared to 29 and 30 for other defendants and, almost 40 percent are between the age of 16 and 19 (In New York state criminal responsibility begins at age 16.) The problem age and crime creates for the court is better illustrated by the data in table 2. The data in table 2 show the estimated annual crime rates per year free and number of prior arrests by age of defendant for all repeat offenders arrested for felonies in

Table 2

Repeat Offenders Arrested for Felonies in 1979
Crime Rates by Age

Age	Recidivists (2 or more arrests) All Felony Arrests			Chronics (5 or more arrests) Supreme Court Cases		
	Crimes/Year	Prior Arrests	(n)	Crimes/Year	Prior Arrests	(n)
16-19	18	3	(145)	25	6	(46)
20-24	14	6	(221)	21	10	(93)
25-29	14	11	(178)	17	11	(87)
30+	10	11	(259)	13	13	(129)
Total	13	8	(803)	20	13	(147)

Source: The samples and data for Tables 1 and 2 were derived from the New York County District Attorney's PROMIS system. Data on dispositions of the sample case, a 1979 felony arrest, were extracted from the PROMIS system and merged with hand collected data on prior records taken from New York State criminal history records. The samples were designed to be representative of the population of adults arrested for felonies in Manhattan in 1979.

Manhattan in 1979. The same estimates are also shown for a more serious sample of recidivists, labeled "chronics" and defined, according to Wolfgang's definition, as those with 5 or more arrests. The chronic sample further is limited to those defendants who were not only arrested for felonies but also prosecuted as felons in the Supreme Court.

For both the recidivists and the chronics the youngest defendants, those 16-19 years old, have considerably higher crime rates but shorter records than those who are older. The teenage chronics commit an estimated average of 25 crimes per year, almost twice as many crimes as chronics over 30; but have prior records, an average of 6 per defendant, that are half as long. Similarly for all recidivists, teenagers commit almost two times as many crimes but have records one quarter as long as recidivists 30 and older.

It is the recognition of this pattern of criminal behavior, that has led a number of criminal justice experts to propose that the juvenile court tradition of confidentiality of criminal records be modified.

Juvenile Records

Almost all states have laws designed to protect the confidentiality of juvenile court and police records. The effect of these restrictions is not so much that access by the adult court is absolutely prohibited as is commonly thought, but that availability requires great effort. Prosecutors in New York, for example, can subpoena juvenile records when they think it is critical to have them. But unlike adult records

which by law must be provided to the court by the Division of Criminal Justice Services there is no law that requires any agency to routinely provide juvenile records to the adult court. Unless a complete criminal history is routinely provided shortly after arrest, it won't (as practical matter can't) be used systematically in making decisions and will only be obtained on an ad hoc basis when an informal clue - a patrolman's personal knowledge of a defendants activities, for example-arouses a prosecutor's or judge's suspicions.

But even if there were such a law it is not clear that any existing agency in New York could administratively respond to such a requirement. Arrest records are maintained by the police and dispositions by the probation department or the family court depending upon whether the case was informally adjusted or formally adjudicated. Only a small portion of these records are now computerized and very few are based on fingerprints. Putting together a criminal history for a single defendant literally requires physically going to 3 different agencies and piecing together arrest and disposition information based soley on names and dates of birth.

But even better records, while an absolutely necessary first step, may not be enough if the juvenile court does not make a legal record by obtaining formal adjudications or "findings" (the juvenile court equivalent of a conviction) in the first place. The procedural difference in the conviction process between New York's juvenile and adult courts is striking. Table 3 compares Family Court dispositions of 15

Table 3

Disposition of Manhattan Felony Arrests
(1979)

	Family Court		Criminal & Supreme Court	
	Age 13, 14 and 15	Age 15	All Ages	Age 16-17
% w/Conviction or Finding	15%	16%	57%	55%
% Placed or Incarcerated*	6%	6%	22%	11%
n	(292)	(177)	(4230)	(259)

*The adult court data excludes sentences to time served.

Source: The juvenile court dispositions were derived from data collected from Family Court files maintained by the Department of Probation. The adult court dispositions were obtained from the New York County District Attorney's PROMIS system.

year old defendants arrested for felonies with the adult court dispositions of 16 and 17 year olds arrested for the same crimes. The Family Court convicts 16 percent of the 15 year olds compared with an adult court convition rate of 55 percent. Over three times as many 16 and 17 year olds are convicted and thus acquire a formal record.

Solving the administrative, organizational, and philosophical problems surrounding the issue of juvenile records will without doubt be a hard exacting tast which is only just now beginning. President Reagan's task force on violence last summer recommended a number of proposals aimed at insuring punishment for violent offenders. Included among them is the suggestion that juvenile records be made available to prosecutors and judges at the time the juvenile commits his first adult crime. To what extent state legislature will revise the laws governing juvenile records or local authorities alter existing practices remains to be seen. But more and more, it appears the notion that youthful mistakes should not be allowed to destroy an entire life is giving way to the view that youthful offenders when they reach the adult court should not be allowed to begin with a fresh slate.

To understand how big a problem this is consider the data in tables 4 and 5. These data show the results of tracing the juvenile arrest histories for a sample of 16 to 19 year old defendants. All of these defendants had cases processed in either the Supreme or Criminal Court of Manhattan in 1979 and all had at least one adult felony arrest. (Either the sample

Table 4

Effect of Juvenile Records
on Criminal Histories of Young Defendants

All Young Felons

	Supreme Court (n=196)		Criminal Court (n=97)	
Adult Records	Age 16-17	Age 18-19	Age 16-17	Age 18-19
% w/Prior Arrest	41%	69%	51%	66%
Average Number	2.7	3.6	2.3	3.9
Adult and Juvenile Records				
% w/Prior Arrest	66%	78%	66%	79%
Average Number	3.9	4.7	4.0	6.1

Table 5

Effect of Juvenile Records on Criminal Histories of Young Defendants
Young Chronics (> 5 arrests) in Supreme Court

	Age 16	17	18	19	Total
Adult Record % Chronic	0	10	20	25	16
Adult and Juvenile Record % Chronic	19	28	37	40	33
(n)	(31)	(49)	(49)	(67)	(196)

Source: The samples for Tables 4,5, and 6 were derived from the New York County District Attorney's PROMIS data for 1979 arrests. Prior Juvenile arrests were hand collected from New York City Police Department Youth Records Unit. Prior adult arrests were hand collected from New York State criminal history records.

case originated as a felony arrest or the defendant had at least one prior adult felony arrest). Generally the results suggest that substantially fewer of these young felons, especially those who are 16 and 17, are first time offenders than their adult records suggest; and that almost twice as many could be identified as serious chronic offenders were their juvenile records routinely available to the adult court.

The figures in table 4, for example, show that for 16 and 17 year old defendants whose cases were handled in the Supreme Court 59% appear to be first time offenders on the basis of their adult records alone. When their juvenile records are taken into account only 34% in fact have no prior record. Even more important for the problem of targeting young offenders is the finding that many more of these 16 and 19 year old defendants can clearly be identified as active young career criminals (as opposed to casual two or three-time recidivists) when their juvenile and adult records are combined.

Table 5 shows the percent of young Supreme Court defendants who are chronic, having a total of 5 or more arrests, with and without juvenile records. Without juvenile records only 16% can be identified as chronic; with juvenile records twice as many, 33%, are revealed as chronic offenders. According to Wolfgang's prior research on the chronic offenders in the Philadelphia cohort, after 5 or more arrests the probability of recidivism remains close to 80 or 90 percent.

Table 6 looks at the problem of juvenile records and identification of young serious offenders from yet another

Table 6

Effect of Juvenile Records on Criminal Histories of Young Defendants
Young High-Crime-Rate Offenders in Supreme Court

No. of Prior Arrests	Age 18 - 19				Age 20 - 21			
	Without Juvenile Crimes		With Juvenile Crimes		Without Juvenile Crimes		With Juvenile Crimes*	
0	36		0		0		0	
1	21		0		8		0	
2	19		2		13		0	
3	10		5		17		0	
4	10		15		13		0	
5-10	5	5	41	78	42	50	83	100
11-20	0		27		4		13	
21+	0		10		4		4	
(n)	(41)		(41)		(24)		(24)	

* Includes only juvenile crimes since age 16.

perspective, and further attempts to view the New York data in a way that makes the findings relevant to the situation in most other states where criminal responsibility does not begin until age 18. The data show two measures of prior record for 18-21 year old high crime rate Supreme Court defendants. The first measure, labeled "without juvenile crimes" counts only those crimes committed since each defendant's eighteenth birthday. The second measure labeled "with juvenile crimes" includes for 18 to 19 year old defendants all crimes committed before age 18 including those that were traced back to their New York juvenile arrests before age 16. The 20-21 year old defendants "juvenile crimes" include only those occurring between the ages of 16 and 18 and hence were part of their New York adult record. In both cases, however, the data suggest how difficult it is for the adult court to identify these high rate offenders (during the critical 4 year period from age 18 to 21) without having information on their "juvenile" crimes. Among the 20 and 21 year old defendants 50 percent are chronic if only their adult crimes are taken into account, but all are chronic when their adult and juvenile records are merged. Among 18 and 19 year old defendants the results are much more dramatic: almost 80 percent can be identified as chronic knowing juvenile crimes, but only 5 percent appear to be chronic if only their adult crimes are taken into account.

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Footnotes

1. Joan Petersilia et. al., Criminal Careers of Habitual Felons, (Rand 1977).

2. James J. Collins Jr., "Offender Careers and Restraint: Probabilities and Policy Implications" (University of Pennsylvania Dissertation, 1977).

3. Jan and Marcia Chaiken, "Varieties of Criminal Behavior: Summary and Policy Implications" (Rand, 1981).

4. Marvin E. Wolfgang and Paul E. Tracy, "The 1945 and 1958 Birth Cohorts: A Comparison of the Prevalence, Incidence, and Severity of Delinquent Behavior" (Center for Studies in Criminology and Criminal Law, University of Pennsylvania, 1982).

5. Robert M. Morgenthau, Report of the District Attorney County of New York (1979), and New York City Police Department, Complaints and Arrests, (1979).

6. California Bureau of Criminal Statistics and Special Services, Criminal Justice Profile-Los Angeles, (1979).

7. New York City Police Department, "Felony Case Deterioration: Process and Cause," (1981).

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Limited Access to Juvenile Records for Adult Felony Prosecution and Sentencing

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Current efforts to increase the effectiveness of the criminal justice system has focussed attention on the need to take account of a prior record of juvenile misconduct in the course of prosecution and sentencing for an adult offense. The issue is: Under what conditions should the confidentiality or sealing provisions to protect the records of juvenile offenders be breached for the purpose of adult prosecution and judicial disposition? This brief note offers a preliminary exploration of this issue to identify some of the questions requiring more intensive research and a tenative set of recommendations to guide this inquiry.

The immediate justification for raising this issue emerges from research addressing the feasibility of a selective incapacitation strategy in the processing of serious adult offenders. The most useful predictive criteria for identifying high rate adult robbery or burglary offenders invariably include an early age of juvenile arrest or court appearance and prior commitment to a training school for juvenile offenders. Yet in many states access to juvenile criminal records are not available to the prosecutor or court in processing adult felony offenders. In the absence of such records serious high rate offenders may actually appear as first offenders on their initial appearance in adult court. The feasibility of a selective incapacitation strategy for adult offenders would thus appear to require access to the juvenile record, at least for major felonies. In a number

of states access to juvenile records for the purpose of prosecuting or sentencing adult felonies is available as a result of formal authorization or informal practice. Thus far, however, research studies have not focussed on comparative studies of the consequences of permitting or denying such access. Does it lead to more effective prosecution and sentencing practices for identifying and incapacitating high rate offenders at an earlier stage of their career? What limitations are imposed on access to juvenile records and what dysfunctional consequences arise from lack of limitation or from evasion?

A policy of protecting the confidentiality of juvenile records received broad acceptance as a result of the reforms of the Progressive Era in the beginning of the 20th Century, especially with the spread of the juvenile court movement. The focus on the reformation and rehabilitation of youthful offenders sought to avoid the long term stigmatizing effect of juvenile misconduct by restricting access to both the proceedings and the records they generated. It was recognized that the records of juveniles would contain many entries of police contacts for status offenses such as running away, truancy or ungovernability which would not be criminal offenses for adults. The civil nature of juvenile court procedure stressed informality with a primary focus on treatment rather than the formal adjudication of guilt. Thus the constitutional protections available to adults in criminal procedures were not customarily invoked for juveniles until the series of major U. S. Supreme Court decisions on juvenile proceedings in the last 20 years. As a consequence the state of juvenile records on arrests,

court appearances, charges, convictions and dispositions are still enormously variable in accuracy, completeness, accessibility and relevance for the purposes of adult prosecution and sentencing among different states and local jurisdictions. The fact that juvenile records are still generated through relatively informal court procedures and recorded in unsystematic fashion by local rather than statewide agencies raises legal and civil rights issues in connection with their routine use in adult proceedings.

It should also be noted that most juvenile crimes are group offenses in which a particular offender may be an occasional or situational follower. Many acts of vandalism, shoplifting, theft, and assault may actually represent transitional acts of youthful indiscretion. We probably want to protect the process by which youth may seal such acts behind them rather than make them forever accountable. From one point of view the sealing of juvenile records may become an incentive to risk further crime as an adult first offender. From another it is an incentive to terminate criminal activity because it coincides with an age of greater capacity for weighing consequences and greater availability of legitimate career alternatives. Here again is an issue on which definitive research results are absent.

The problem, therefore, is to arrive at a policy on juvenile records where we can achieve more effective crime control by making the juvenile record available when relevant to decisions about major adult offenders while at the same time providing an appropriate protective function for those who merit it. This might take the form of making juvenile records available to the adult court and

prosecutor on all cases of waiver or transfer of proceedings from the juvenile to the adult criminal court. More importantly, it might provide for a limited access to juvenile records where a previous juvenile offender has been arrested and charged at initial appearance with specific types of adult felonies punishable by more than a year in prison. To make a policy of selective incapacitation work effectively it would appear necessary for the prosecutor to possess this information prior to the preliminary hearing, as well as to the court following adjudication and prior to sentencing.

To ensure that the chief advantages of confidentiality and sealing practices are retained certain limitations on the availability and use of juvenile records should be specified. For example, one limitation might pertain to the types of adult felonies which should be allowed to trigger access to a juvenile record. These might be limited to serious or violent acts such as murder, rape, aggravated assault, robbery, burglary or arson. A further limitation might be that only information in the juvenile record relating to offenses which would be major felonies for an adult could be disclosed, in order to filter out matters which have no major relevance in an adult criminal record. Additionally one might deny access to a juvenile record if a period of two or more years of living in the open community has been accomplished without a conviction for an adult-type felony. Perhaps also a juvenile record should not be used to provide a basis for invoking mandatory sentencing or habitual offender statutes.

These proposals, of course, still set only broad outlines of an appropriate policy. There are a variety of questions which merit further consideration and research. What types of abuses are likely to arise if juvenile records become more routinely available for use in adult charging and plea bargaining decisions? Juvenile files maintained by probation departments or treatment agencies typically contain a great deal of information beyond the actual record of offenses, arrests, convictions and dispositions. How much, if any, of this information should be made available? Sometimes it may point to extenuating circumstances which would alter interpretation of the offense record. Should it then be available to the prosecutor, defense lawyer, or the court? Who is to screen and make available to the adult court the relevant information? How much discrimination or bias will enter the process as a consequence of the incompleteness or lack of verification in the records?

The practice of sealing or otherwise maintaining the confidentiality of juvenile records has undoubtedly helped many young offenders out grow a troubled past. It has undoubtedly also enabled some to continue in crime with relative impunity as a young adult offender. A possible strategy to stop the latter group at an earlier stage from continuing to offend at a high rate appears intuitively just and appealing. Such offenders should not be permitted to hide behind the confidentiality screen to exploit it for an unintended purpose. Continuation of serious felonies as an adult gives evidence of a commitment to crime that no longer justifies a claim to the confidentiality provision on juvenile records.

The policy task is to devise a way to remove that protection where it is no longer justified and retaining it where much is still to be gained. This new practice should be articulated as a general, predictable policy to which youth and their guardians might sensibly adapt. The task of research is to identify more precisely what the gains and losses are likely to be.

Section 8

RELATIVE EFFECTIVENESS OF POLICY OPTIONS

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The Crime Control Effectiveness of Selective Criminal Justice Policies

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Incapacitation and a Selective Focus

In response to public demands, research results, and not a little to the availability of Federal funding, criminal justice agencies have implemented an array of programs aimed at increasing their selectivity. Through programs like Integrated Criminal Apprehension and Managing Criminal Investigations, police agencies have increased the use of stakeouts, surveillance, and reactive investigations aimed at suspected frequent offenders.[1] Through Career Criminal Programs, prosecutors have selected serious repeat offenders for special treatment.[2] Enhanced sentences for repeat offenders and more onerous restrictions on bail and parole provisions are law in many states.[3] Many of these innovations are discussed in the papers presented above.

Despite the general enthusiasm for the career criminal focus, many questions about the potential efficacy and optimal structure of the programs remain to be answered. The first problem is identifying the frequent offenders. Tests of thousands of offenders over several decades using dozens of techniques all suggest that high-rate offenders are psychologically and demographically very much like everyone else. Until recently, no combination of objective testing methods allowed prediction of offense rates at any acceptable level of accuracy.[4] An alternative method has been employed by criminal justice agencies for years--identification based on prior arrests and convictions. Previously identified offenders have been singled out by police, prosecutors, judges, and others for differential treatment. Most of these efforts have been justified on the basis of "just deserts", the idea that recidivists should be punished for their actions more severely than first-time offenders; any selective incapacitative effects have been largely

by-products.[5] With the growing acceptance of selective incapacitation as a goal, some have suggested identifying offenders on the basis of the rate of prior arrests and convictions. And recent research suggests that criminal justice agencies may be able to do even better if they are willing to use such noncriminal indicators as employment and drug history.[6] However, use of rates or "status" variables carries with it added costs: it weakens the just deserts justification for tougher treatment, and it may not even lead to much more accurate discriminations. A variety of related technical questions remain, as well: should criminal justice agencies discriminate on the basis of all prior arrests, prior arrests for serious crimes such as robbery or assault, or what? Different discriminating tools may have greatly different effects on the selectivity of the system.[7]

Another difficult problem is determining the proportion of offenders to receive special treatment. Prosecutorial career criminal programs typically include 10 to 20 percent of the district attorney's staff, for example; larger programs allow less restrictive definitions of career criminals, but they also take resources away from the rest of the agency. The tradeoff between ordinary and enhanced processing is particularly important if the method used to identify high-rate offenders is not very accurate. If the costs of enhanced processing are much higher than the costs of ordinary processing (for prosecutor's programs the costs are three to five times higher[8]), it is easily conceivable that the enhanced system could decrease the selectivity of the system rather than increase it. A large program may do better or worse than a small program or no program at all.

There are other questions. What is the best workload for the selective unit--how "enhanced" should the enhanced processing be? What are appropriate evaluation and control measures--does it make sense to hold a police major offenders unit responsible for the robbery rate of a city, for the frequency of arrests of high-rate property offenders, or even for the conviction and incarceration of the offenders they apprehend? What these questions all have in common is that the best answers to them depend greatly on what the structure of the offending population looks like. If a very few offenders commit most serious crimes, small but intensive efforts to catch and incarcerate them are probably indicated; if criminal careers are fairly short, rates rather than numbers of prior offenses may be a better discriminating technique; if high-rate robbers are also high-rate burglars, program evaluation based on measurement of more frequent property arrests may be more reliable than measurement of violent arrests.

Although less is known about how offenders do their work than about how criminal justice agents do theirs, this ignorance is not for lack of effort. The Philadelphia cohort studies and the Rand inmate studies are only the best known of several similar research efforts. And this work has been successful in reducing the uncertainty surrounding characteristics of the offending population such as offense rate, career length, and crime choice. As detailed below, this research has narrowed the range of possible values for each parameter to roughly a factor of two. It seems plausible that this could be a tight enough range to allow precise estimates of both the selectivity of the present system and the optimal strategies for selectivity-oriented programs. If more research is necessary, it is because the range of values for some important parameters is not tight enough: in this case, further research should focus on those characteristics of the offending population that most affect both the selectivity of the present system, and

the optimal career criminal program structure.

By the same token, selective strategies that appear to be "robust", working well under a wide variety of plausible offending structures, probably deserve more immediate implementation and evaluation. Although there is reason to believe that selective efforts at the "front end" of the system (that is, efforts by police and prosecutors) will be more effective than activities at later stages of the criminal process, a lot depends on which crimes are easy to solve and which cases are likely to result in conviction: here, too, it is important to know what the offending population looks like.

This study aims to identify those characteristics of the offending population that most deserve additional study, and to tentatively evaluate the relative effectiveness of applying selective procedures to each criminal justice agency.

- Upper and lower bounds on the important parameters are estimated based on results of previous work; the sensitivity of measures of the selectivity of the present system to plausible changes of the values of each parameter is demonstrated through a computer simulation of the criminal justice system.

- Next, the simulation is extended to evaluate the predictive accuracy of tests based on the number and rate of prior arrests, and on social characteristics such as employment and marital status.

- The likely crime control effects of selective strategies are then assessed. Four strategies are considered: police procedures aimed at ensuring the arrest of repeat offenders; prosecutor's career criminal programs oriented toward more thorough and certain prosecution of them; and practices that alter bail provisions and provide for enhanced sentences for frequent, dangerous offenders.

- The final section includes tentative conclusions about the relative value of available predictive techniques, the efficacy of each selective strategy, and recommendations for further research and evaluation efforts.

Measuring Crime Control Efficiency. Before attempting to estimate the effects of the characteristics of the offending population on selectivity,

it makes sense to define what selectivity is, and why it matters. For purposes of illustration, consider a very highly idealized situation in which full information about offenders is available. In this case, all offenders and their propensities for crime commission are known to the authorities. Further, the authorities need not wait for would-be offenders to commit crimes before taking action: preventive detention is allowed, if not encouraged. Assume finally that the distribution of lambda among members of the criminal population (that is, the distribution of offense rates among citizens with nonzero rates) resembles the highly skewed distribution of Figure 1. Who should be arrested and incarcerated, and what would be the likely effect on crime rates?

Note first that those few offenders with the highest lambdas contribute far more than their share to the crime problem. This is shown by the Lorenz curve of Figure 2: between 10 and 15 percent of the criminals commit most of the crimes, for example. Assuming neither replacement of the incapacitated offenders nor any "multiplier" effect of incarceration,[9] the crime rate could be cut in half by jailing 10 percent of the criminals. Clearly, if anyone is to be jailed, the incapacitative effects will be largest if the highest-lambda offenders are incapacitated first.

This does not answer the question of how many offenders are to be imprisoned, however. Suppose that society wishes to consider both the social costs of crime, and the social costs of keeping an offender in the pen in making this decision. In order to make the best decision (and in order to estimate how well the present system is performing), two pieces of information are required:

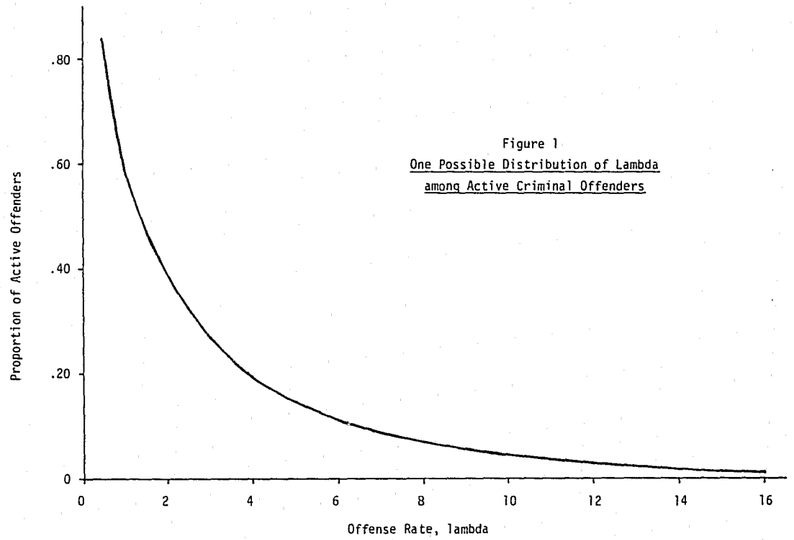


Figure 1
One Possible Distribution of Lambda
among Active Criminal Offenders

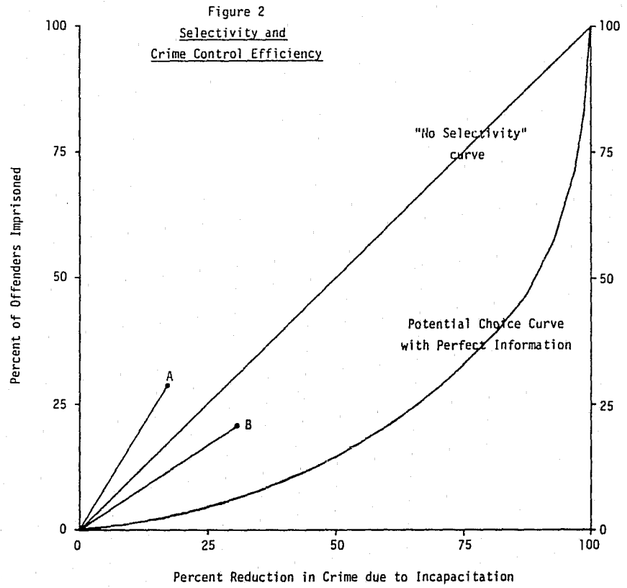


Figure 2
Selectivity and
Crime Control Efficiency

- The proportion of offenders incarcerated at any given time (shown on the vertical axis of Figure 2);
- The proportion of crimes prevented due to incapacitation of these offenders (the horizontal axis).

A measure of the efficiency of the system at any given point is the benefit-cost ratio: if benefits of incarceration are high relative to the costs, the system is doing well. The efficiency measure defined here will be called selectivity, and is equal to

$$S = \frac{\text{percent of crimes prevented}}{\text{percent of offenders incarcerated.}}$$

Since most people believe the average personal crime to be about three times as serious as the average property crime, the numerator of this selectivity measure will weight personal crimes three times as heavily.[10] Selectivity at some point in Figure 2 may be represented by the slope of a line drawn from the southwest corner to the point. If the line is exactly the 45^{o} line, the system is completely nonselective: it is incarcerating frequent offenders at neither higher nor lower rates than infrequent offenders, and the selectivity index is equal to 1. If selectivity is less than 1 (line A), the system incarcerates mostly low-rate offenders; greater than 1 (line B), the system is relatively efficient, jailing a greater proportion of high-rate offenders.

Measuring the Effectiveness of Incapacitation. Selectivity will be the measure used most frequently here to describe the characteristics of the criminal justice system's incarcerations policies. To define completely how well the system is doing, the elasticity--the percentage increase in the prison population required to cut the crime rate by one percent--is also given as an indicator of the potential benefits and costs of increased or

decreased use of incapacitation as a means of crime control. Again, the crime rate is adjusted to reflect the seriousness of each offense. For our purposes, selectivity is probably more important than the elasticity, however, since there is evidence that the important restriction on the number of people imprisoned is prison space.[11] If more people could be imprisoned than at present by building more prisons (or overcrowding still further), and if the decisions to parole and sentence an offender to prison are relatively unaffected by his offense rate,[12] then the system could be "further out" on a selectivity line. Since the aim here is to describe and analyze the efficiency of the system (the relative size of benefits and costs), rather than measure its effectiveness (the absolute size), greater emphasis will be placed on the efficiency measure.

The Present System

Uncertainty about the impact of selective incapacitation strategies on the criminal justice system may be traced to our inability to answer four basic questions:

- What is the distribution of offense rates for each index crime? How often does the average offender commit crimes, and how does he compare to the high-rate offender? How many high-rate offenders are there?
- What is the relationship between offense rates? For example, are offenders who commit many property crimes likely to commit many violent crimes as well, or are violent and property crimes mostly committed by different people?
- How long is the average criminal career? Are high-rate offenders active for a longer time than low-raters, or do they "burn out"?
- What offenses get solved? Are the police more likely to solve offenses committed by experienced (and presumably known) criminals, or do sophisticated offenders commit crimes that are more difficult for police to solve?

Despite years of research on these subjects, no one has obtained conclusive answers to these questions. In the next section the background of these issues is explained, and research results are used to put upper and lower bounds on the pertinent parameters. Then the present system is simulated to get a handle on the selectivity of present criminal justice agency efforts and the usefulness of general, or nonselective incapacitation policies, and to identify the parameters that contribute the most to uncertainty.

Sources of Uncertainty

It is difficult to observe and measure the actions of offenders, and the present uncertainty as to the effectiveness of selective policies is due mostly to this lack of knowledge. The hardest question of all to answer is perhaps the most basic--how often do active criminals commit crimes?

Distribution of Offense Rates. As with other basic parameters of the offender's work, the biggest difficulty with determining the distribution of the offense rate, lambda, has been finding a measurement technique. The most direct way to estimate the distribution is to sample the public directly, through a self-reporting survey. Sample surveys are impractical, however, because the proportion of adults who commit serious crimes is small--two percent or less.[13] However, estimates of lambda can still be imputed to the general population of active offenders if based on other kinds of samples. Researchers have studied the arrested population and the recidivist population (both adult and youth), and the incarcerated population (both people entering prison, and people in prison at a given time).

Clearly all of these are biased estimates of the active offender population. As offenders move through the criminal justice system, it is likely

that they are "filtered": offenders who are arrested should have higher average offense rates than offenders who are not; convicted offenders should have higher average lambdas than arrestees; and the incarcerated should have the highest of all. Even if the full-time, frequent offender is just as likely to be arrested for each crime he commits as the occasional criminal, it is still true that people who commit more crimes will be arrested more often, and that the arrested population will have more high-lambda offenders in it than the general population. Although in theory one could adjust estimates of lambda drawn from different populations so that they are consistent with one another, in practice this requires that we assume the system is not at all selective, or that it is filtering offenders in a particular way, at a particular rate. That, of course, is one of the things we are trying to find out.[14]

Still, each of these sample frames can yield useful estimates. People who are arrested one or more times are probably most like the general population of active offenders. The distribution of lambdas for these people will only be very different from the total offending population if there is a very large group of offenders who commit a few crimes, then stop before they are caught--a hypothesis that is both unlikely on its face and unsupported by available evidence.[15] Estimates of offense rates from samples of recidivists are likely to be more accurate than estimates from one-time loser populations, because the denominator of the offense rate (time at risk) can be measured as the time between first and last arrest. For offenders arrested once, it is necessary to assume that their careers are the same as those arrested two or more times, or to make some similar assumption that is difficult to verify. Finally, the most biased sample--the incarcerated population--is likely to give the most precise and detailed results. Only surveys of people in prison produce reports of actual offense rates, and allow estimation of the number and importance of high-rate offenders.

In their attempts to describe the distribution of offense rates across the offending population, researchers have characterized the distribution in two ways: by the average value, and by the number and importance of the most active criminals. Reasonable bounds for the average offense rate may be obtained from the relatively unbiased samples of arrestees, but to estimate the importance of the worst offenders one must turn to the more detailed data collected from prisoners. However, particular attention must be paid to correcting the biasing effects of filtering for these samples.

Average offense rate. Estimated average lambdas for once-arrested offenders are shown in Table 1. For purposes of these estimates, an "active criminal" is defined as someone who has been arrested for an index crime sometime in the recent past (usually, the last two or three years).[17] Note that two estimates are given for each study, an upper and a lower bound.[18] Among people arrested one or more times for index offenses, crimes are very likely to be committed at an average rate of 3 to 6 times per year.

Lambda estimates for the twice-arrested population are shown in Table 2. Here, the averages are even closer together than in Table 1, partly because data from two of the studies were gathered from the FBI career criminal files.[20] A third estimate, based on the distribution of offense rates reported by California prisoners, is similar, however.[21] One may conclude that, if the "active criminal population" means those people who have been arrested two or more times and are reasonably certain to be actively seeking criminal opportunities, then the average criminal commits between 9

Table 1

Average Offense Rate for Offenders Arrested One or More Times[16]

	index	property	personal
Wolfgang, Figlio and Sellin (1972)	4.2	3.6	0.6
	5.6	4.8	0.8
Greenberg (1975)	4.0		
	5.4		
Shinnar and Shinnar (1975)	5.0		
	11.0		
Williams (1979)	3.0	1.0	0.4
	4.4	3.4	1.0
approximate range	3 to 6	1 to 5	.5 to 1.0

Table 2

Average Offense Rate for Offenders Arrested Two or More Times[19]

	index	property	personal
Boland and Wilson (1978)	9.2		
	12.2		
Collins (1978)	12.6		
Blumstein and Cohen (1979)	10.2	7.9	2.4
	13.6	10.5	3.2
Peterson, Braiker with Polich (1981)	13	11	2.1
approximate range	9 to 14	8 to 11	2 to 3

14 index crimes per year.

Which group of estimates is to be believed? Unless the chances of arrest are very much higher for amateur offenders than for experienced crimand inals (they probably aren't, as explained below), the average lambda for the offending population is probably not much greater than 5 or 6 index crimes per year. However, the most widely quoted estimate is ten crimes per year; this is probably because the most careful and presumably most accurate studies have relied upon the biased samples of recidivists.[22] In the sensitivity analysis described below, three estimates are used:

- A lower bound average of 4 crimes per year (0.5 violent and 3.5 property), to which a subjective probability of 25 percent has been assigned;
- An upper bound average of 13 crimes per year (2.5 violent and 10.5 property), also assigned to be 25 percent likely;
- A central (and most likely) average of 8.5 crimes per year (1.5 violent and 7.0 property), estimated to be 50 percent likely.

All three estimates are reasonable; small changes in the likelihoods assigned to each do not affect the final results much.

Importance of Frequent Offenders. Knowing the average offense rate is useful for evaluating the effects of general incapacitation strategies. In order to determine the degree to which selective incapacitation could work, however, it is necessary to look at the entire distribution of lambda across members of the criminal population. If all offenders commit crimes at the same rate, it clearly does not matter which ones are locked up. The usefulness of selection depends on the dispersion of offenders about the average value: the greater the variation in lambdas between offenders, the greater the potential effects of selectively incapacitating the highest-rate offenders.

One important difficulty in estimating the importance of these frequent offenders is that there is no theory to predict how important they should be.[23] The observed offense rate results from an unknown (but certainly complex) interaction between an individual's predisposition to criminal behavior and the opportunities in the offender's community. A theoretically complete definition of the distribution must take into account both the predisposition and the opportunities. In addition, cohorts and regional populations differ, each offender is systematically more or less active at different stages of his career, and offenders with long careers are reputed to be more active. Each of these differences has been shown to be substantial for some samples. Thus it is very unlikely that the distribution of offense rates will have the same form for all offenses, and it is almost impossible to know what to expect before examining the data.

However, it is not likely that empirical estimates of the distribution, whether gathered from arrest and conviction records or from self-report surveys, will be precise enough to conclusively identify the skew, either. This is at least partly because skew is greatly influenced by a relatively small number of very active offenders. Because their numbers are small, the number and activity of the most active criminals will vary greatly from sample to sample due to random fluctuations.

There is an even more basic problem, however. Although self-report offense data have been found to be generally accurate,[24] some offenders are likely to be more accurate than others. In particular, validity checks of self-report data suggest that high-rate offenders exaggerate the number and severity of their offenses, while the majority of offenders with low rates tend to underreport their criminal activity.[25] Self-report studies will

systematically exaggerate the disparity between the two, and overestimate the importance of frequent offenders.

Finally, samples from a population of incarcerated criminals will suggest that high-rate offenders are more important than would samples from the population of all active offenders, even if all offenders interpreted questions consistently, remembered accurately, and told the truth. The high-rate offenders who are disproportionately represented in the in-prison samples commit a very large proportion of the crimes committed by those samples; when combined with the mostly low-rate offenders on the street, however, their contribution to the crimes committed by the entire active population is much less. The small group of frequent offenders is to some extent overwhelmed by the large number of infrequent offenders.[26]

Available estimates of the importance of the highest-rate offenders--here defined as the 10 percent of offenders who commit crimes most frequently--are below.

Commercial robbery, I	33%
Commercial robbery, II	40%
Personal robbery	39%
Auto theft[27]	48%

For each crime, these estimates are probably somewhat too large; the highest percentage shown may thus be taken as an upper bound. To obtain a lower bound, it is possible to rely on convincing evidence that all types of deviant behavior follow a "J-curve"--that is, that most people do not deviate at all, and that the proportion who deviate by each degree drops steadily as the deviance from "normality" increases.[28] This suggests that, at a minimum, the top 10 percent of offenders must commit at least 30 percent of the

crimes.[29] On balance, 37 percent seems a reasonable "best guess" as to the proportion attributable to the worst 10 percent of offenders.

Relationships between offense rates. Until recently, most researchers believed that the average criminal was a relatively sophisticated specialist, but this view has changed since the mid-1960s. Today, the general consensus is that most criminals are opportunists who do not plan their crimes very carefully and commit many different kinds of crimes.[30] The number of crimes of a given type some criminal commits should therefore be influenced by that person's aggregate propensity for committing crimes--bad guys do more of everything. Stated differently, offense rates for different crime types should be positively correlated.[31]

Correlations between crime types consistent with available data vary between .20 and a bit over .30, as shown below.[32]

	Low Estimate	High Estimate
Blumstein and Larson, I	.26	.28
Blumstein and Larson, II	.24	.30
Blumstein and Cohen	.31	.32
Peterson, Braiker, Polich[33]	.20	.29

The most reliable correlations are probably those derived from Peterson and Braiker with Polich, since they are derived from offender self-reports and are thus not influenced by any tendency of the police to incorrectly identify an offender solely as a "robber" or a "burglar" when in fact he commits both crimes regularly.[34] One may conclude that the correlation between property and violent offense rates is certainly positive, and lies roughly between .20 and .35.

If the mean offense rates for property and violent crimes, the skew of the distribution of one crime type, and the correlation between the two are all known, then the criminal propensities of a random sample of active offenders may be generated by a computer.[35] Before the simulated offenders can begin to commit simulated crimes, however, it is necessary to define upper and lower bounds for the last source of uncertainty about the criminal's career--how long it lasts.

Career length. A potential offender's criminal career is perhaps best defined as the length of time he runs a substantial risk of committing a crime. As noted earlier, everyone runs some risk at virtually all times; only an extraordinary set of circumstances will induce the average person to commit an index felony, however.[36] Rather than define something so amorphous as "substantial risk", previous researchers have adopted an operational definition of career length that begins with the offender's first arrest, and ends with his last. Since offenders have usually committed several crimes before they are caught for the first time, and may well commit several more after the last arrest, criminal careers measured in this way tend to be too short, at least for offenders who were arrested twice.

Phrasing the problem in this way suggests a more substantial difficulty in estimating the time at risk: the time between first and last arrests can only be measured for people who have been arrested at least twice. However, these offenders are likely to have longer careers than the average offender, simply because people who are caught twice have on average committed twice as many crimes as people who are caught only once. Thus estimates of career length for the general population based on this operational definition are likely to be too long, though probably by less than a factor of two.[37] Fur-

ther complicating matters, the upward bias of these results is at least somewhat offset by the fact that information is usually not available about juvenile arrests; if most offenders begin committing crimes at, say, age 15, these careers will be roughly three years too short. Some estimates based on this definition are shown below.

Shinnar and Shinnar	4 to 6 years	renewal theory
Greenberg	5 to 10 years	3.5 total career arrests
F.B.I.	5 to 11 years	adult recidivists
Collins	8 years	all offenders, juvenile and adult careers
Administrative Office	10 to 15 years	"expert opinion", based mostly on adult recidivists
Greene[38]	12 years	adult recidivists

It is clearly hazardous to estimate a theoretical average career length from these methods. An alternative that gives potentially more reliable results--and a lower bound--was proposed by Shinnar and Shinnar.[39] They assumed that the offending population was in steady state--that the proportion of people entering the population was approximately equal to the proportion leaving. In a steady state, the average total career length can be determined from the distribution of partial career lengths of arrested offenders at any time.[40] Shinnar and Shinnar applied their model to New York City arrest data, and estimated average career lengths of four to six years. Because they examined only adult arrests, and were unable to estimate the average time an offender was active before his first arrest, this estimate represents a lower bound on the mean career length.

It is important to note that even the upper bound for criminal careers

is still fairly short relative to the jail and prison sentences judges mete out. For example, the average sentence for convicted robbers in California is about two years, and 10 percent of convicted robbers received sentences of greater than 4½ years.[41] Thus, even if the average criminal career is 10 years or more, a substantial number of robbers will spend as much time in jail or prison as on the street.[42] This suggests that many offenders in prison have already "aged out" of the offending population, and would pose no threat to society if released.

Production of arrests. Perhaps the most stringent restrictions on the potential for selective incapacitation are caused by the inability of the police to solve crimes and arrest the perpetrators. Low rates of arrests cause a variety of problems for the rest of the criminal justice system. Only partial information is available as to the criminal activities of most offenders, since they can only be tied to a fraction of the crimes they commit. Even if an offender can definitely be labeled as an habitual offender, criminal justice agencies will be unable to incapacitate him if they cannot find him. And, at least partly because arrest rates are so low, police have been unable to determine whether their activities are more or less likely to lead to arrest of habitual offenders: if the most experienced criminals are consistently able to evade the authorities, even the most selective career criminal prosecution programs and judicial bail-setting and sentencing guidelines are not likely to cut crime rates much.

Before turning to this question, consider first the average probability of arrest for violent and property offenses. Blumstein and Cohen broke down clearance rates by crime type, while correcting for the fact that many crimes are not reported to the police and that several offenders are

involved in many crimes.[43] They conclude that the average chances of arrest for violent crimes are 8.3 percent, and that average arrest probabilities for property crimes are 3.4 percent. Although these figures are strictly speaking only applicable to the District of Columbia, there is evidence that differences between police departments are relatively small.[44]

These are probabilities averaged over all offenders. It is possible that some criminals are much more or much less likely to be arrested than others. To evaluate this hypothesis, consider that the police use their resources to arrest criminals in two fundamentally different ways:

- On-scene arrest. If the crime is reported very quickly after it has been committed, and if the police are able to respond quickly, they may apprehend the offender as he flees the scene. Alternatively, a victim or witness may be able to catch the perpetrator, or tell the police where they can find him immediately.
- Follow-up arrest. If the crime is reported more slowly, if the police response is delayed, or if the offender is simply too fast, the police may still make an arrest if information is available which leads them to identify and arrest the perpetrator.

About half of all crimes that are solved and result in arrest are "cleared" as the result of an on-scene arrest; arrests are made in the other half of cases as the result of a follow-up investigation.[45] Police agencies that rely to a greater degree on one strategy than on another are likely to arrest systematically more or fewer experienced or active criminals; two departments with identical arrest rates may be using vastly differing degrees of selectivity. This is because experienced and inexperienced offenders have different weaknesses which the police may exploit in different ways.

As already noted, high-rate offenders are neither specialists nor particularly "professional".[46] However, there is evidence that more experienced criminals plan their escapes more carefully, "case" their jobs more thoroughly, and more reliably avoid identification by a victim or witness. For example, the habitual armed robbers interviewed by Petersilia, Greenwood and Lavin became less likely to be caught soon after the crime as they became more experienced, and they were more likely to credit their ability to avoid arrest to their skill, mobility, or imagination as their careers progressed. A more recent survey reinforced the view that experienced, higher-rate offenders believe skillful planning cut their risk of arrest.[47]

One may suspect, then, that the offenders apprehended at or near the scene of the crime will be mostly those who did not plan their escape very well, or who were identified by others while committing the crime. To the degree that these "unprofessional" errors are the hallmarks of inexperienced offenders, the police will apprehend mostly low-rate or young criminals through on-scene arrest.

If the patrol response does not lead to on-scene arrest, detectives swing into action. When follow-up investigations are successful, it is usually because someone tells the police who committed the crime: a victim or witness knows the culprit's name or address in over half of the felony cases that are eventually solved.[48] For the remaining half, investigators develop suspect information from a variety of sources, including physical evidence, informants, and departmental records. The key to use of these alternative information sources is that they are aimed primarily at offenders who have previously been identified by the police. Fingerprints or toolmarks are of no help in identifying criminals who have never been booked and whose methods of operation have never been filed; a physical description of the suspect by a victim or witness rarely leads to an arrest unless the citizen can

identify the suspect in a book of mug shots, or can otherwise match the description of a known offender. As noted above, when experienced offenders are caught, it is likely to be due to follow-up efforts rather than fast or effective police response to the crime scene. One would suspect that follow-up investigations probably lead mostly to capture of experienced, high-rate offenders who have already been identified by police as habitual criminals.

Evidence as to which of these two effects predominates is scanty and inconclusive. Examination of the distribution of offense rates, crimes, and arrests among offenders suggests that high-rate offenders are more successful in avoiding arrest,[49] while the high-rate offenders themselves report the same rate of arrests per crime committed as low-rate offenders.[50]

Since the selectivity of arrests may have important impacts on the ultimate incapacitative selectivity of the criminal justice system, it is prudent to examine the following alternatives:

- Constant probabilities. Suppose that the selectivity effects of the two strategies did cancel out. Then the chances of arrest would be constant for all offenders. For this base case, assume that Blumstein and Cohen's probabilities are correct.

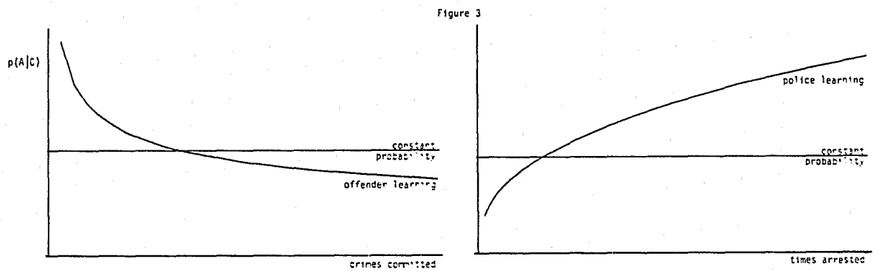
- Offender learning. Suppose that the chances of arrests depend on the number of crimes of that type previously committed, and that inexperienced, low-rate offenders are twice as likely to be caught for each crime they commit (Figure 3). This is almost certainly an overestimate of any actual on-scene arrest effects. The probabilities of arrest averaged over all offenders are assumed to be the same as before.

- Police learning. Suppose that the chances of arrest depend on the number of previous arrests for crimes of that type, and that experienced, high-rate offenders are twice as likely to be caught for each crime they commit (Figure 3). This almost certainly overstates the follow-up investigation effects. Again, the average probability of arrest does not change.

The arrest probability curves for cases two and three are in effect learning

curves: in case two, the offender is learning to commit crimes; in case three, the police are learning the identity of the offender. Hence the non-linear form of most learning curves is assumed for each case.[51]

Figure 3

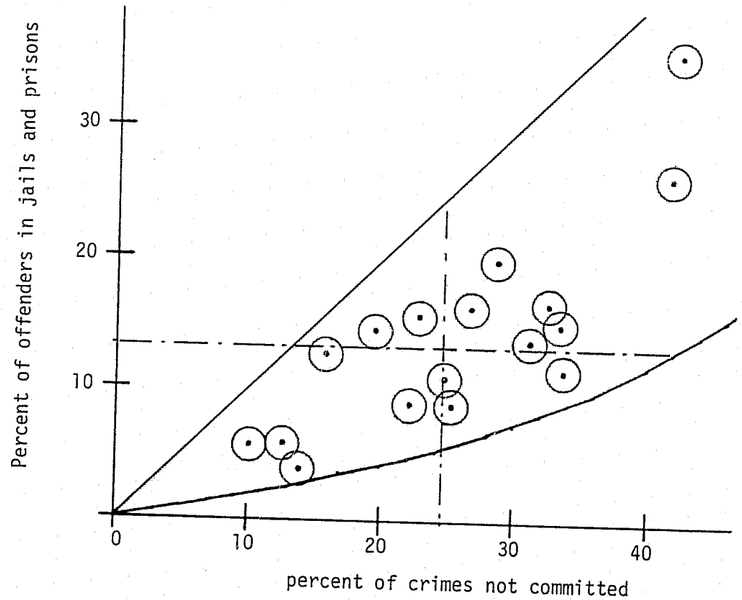


Sensitivity Analysis of Uncertain Factors

It should be obvious at this point that the range of possible values for the basic sources of uncertainty has been narrowed somewhat by previous research, but not by much. However, it is possible that the present, wide range of values is good enough to allow estimation of selectivity and elasticity for the present system with good precision. Even if the differing assumptions result in greatly differing estimates of selectivity and elasticity, it may well be that some parameters are more important than others, and that research should be oriented toward resolving the uncertainty in one or two of them. In this section, the effects of each plausible assumption about the parameters is explored, and the most important parameters identified.

In the previous section, three values each for the average offense rate and the importance of the highest-rate offenders, two values for the correlation between crime types and career length, and three arrest production

functions were identified. All of the values are plausible; just as important, all 108 combinations of values are plausible, and combinations may be important. For example, it is reasonable to suggest that increased probabilities of arrest due to police learning will only affect selectivity much if criminal careers are long, since high-rate offenders may never be arrested in a short career. However, examination of all combinations generated by an earlier version of this simulation indicated that "interaction effects" such as this were unimportant; in addition, none of them could be distinguished from random fluctuations. To make things simpler, 18 simulations of 1000 offenders each were obtained.[52] The resulting combinations of crimes prevented and offenders incarcerated are shown in the scatterplot below. For comparison, the points that would be possible if perfect information were available are shown in the figure.

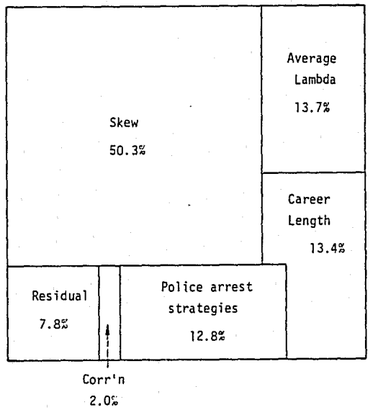


The most arresting result is that the proportion of victimizations prevented (that is, the proportion of crimes prevented, weighted to reflect the seriousness of each offense) and the proportion of offenders incarcerated vary over a wide range. At present, the criminal justice system may be incarcerating anywhere from 5 to 35 percent of the active criminal offenders. Anywhere from 10 to 40 percent of potential victimization may be prevented by incarceration policies. Both estimates are in line with the wide range of estimates of the effects of incapacitation.[53]

Perhaps more interesting are the estimates of the selectivity of the present system. The most selective points are those farthest from the 45^{o} line, which represents no selectivity at all. The estimates are about evenly distributed between 1.0 and 3.0, averaging about 2.10. At the margin, an increase of one percent in the proportion of all offenders who are incarcerated will cut the victimization rate by about 2.10 percent.[54] In most cases the "perfect information" curve is substantially better. Still, this dramatically demonstrates the importance of filtering, since criminal justice agencies make little conscious effort to be selective.

Indicators of selectivity. Of the major sources of uncertainty, which affect estimates of the system's selectivity the most? Figure 4 shows the relative importance of each source. The figure speaks for itself--by far the most important parameter is the contribution of the highest-rate offenders, the "skew" of the offense rate distribution. Even if the exact values of all other parameters were known, over half of the uncertainty about selectivity rates would remain. Of the others, only differences in the structure of arrest probabilities and differences in career length matter, and these matter little.

Figure 4
Importance of Skew in Explaining
Uncertainty about Selectivity



Analysis of Variance in Selectivity

variable	degrees of freedom	sum of squares	variance explained
Skew of lambda	2	11.09	50.3%
Average lambda	2	3.03	13.7
Career length	2	2.96	13.4
Police arrest strategies	2	2.82	12.8
Correlation	1	.41	1.9
Residual	8	1.73	7.8
Total	17	22.04	100.0%

Figure 5
Effect of Changes in the
Offending Structure on Selectivity

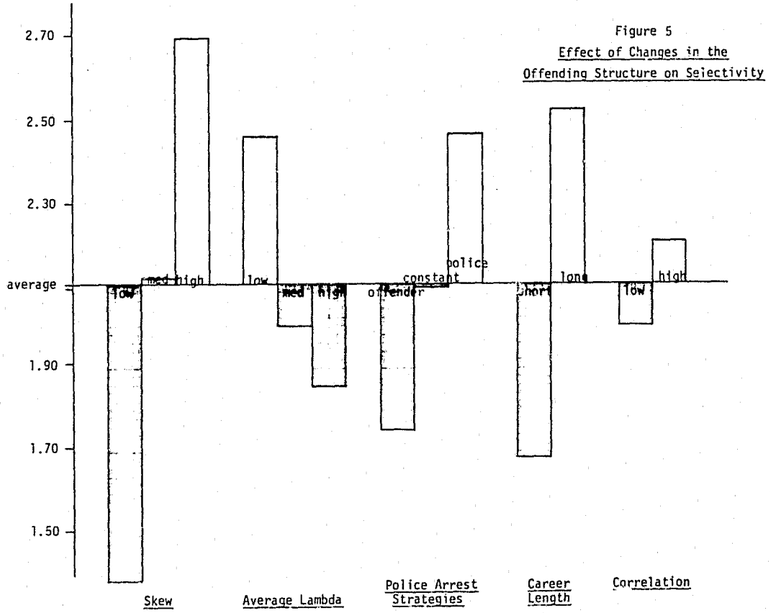
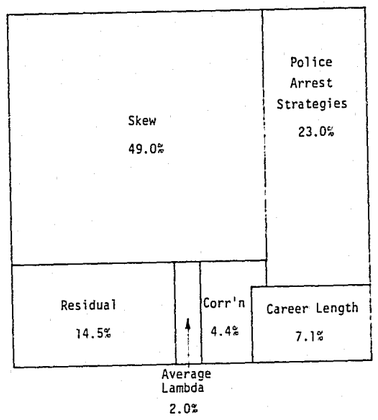


Figure 5 shows how the system becomes more selective as the highest-rate offenders commit more and more of the crimes. When the most frequent ten percent commit 48 percent of crimes, selectivity is almost twice as great as when they commit only 30 percent. Also, as one would expect, selectivity is lower if experienced offenders are successful in evading arrest, and higher if the police are successful in identifying experienced offenders at higher rates. Finally, short criminal careers indicate a more selective criminal justice system than long careers. This results from the fact that in only one component of the current system--sentencing--are some offenders typically selected for differential treatment. Judges sentence offenders with prior incarcerations to longer jail and prison terms, but give shorter terms to first-time offenders.[55] When careers are short, offenders with prior arrests and incarcerations are likely to be the highest-rate offenders; but as careers increase in length, more and more low-rate offenders get arrested and sent to jail, and are eligible for longer terms when they are next convicted. That is, prior records as typically used are a less powerful discriminating tool when careers are long than when they are short.

Indicators of elasticity. A somewhat different set of parameters influences elasticity. As Figure 6 confirms, skew and police arrest practices are the primary determinants of the benefits to increased general incapacitation. Of the other parameters, none stand out as being particularly important.[56]

Figure 7 illustrates the impact of skew and police arrest practices on elasticity. As shown above, when the distribution of offense rates is highly skewed, the present system is relatively selective due to filtering.

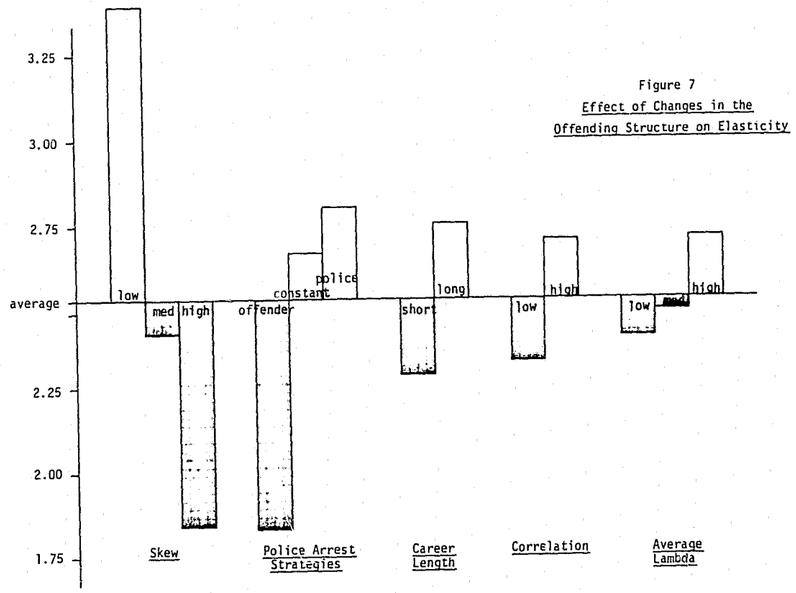
Figure 6
Importance of Skew in Explaining
Uncertainty about Elasticity



Analysis of Variance in Elasticity

variable	degrees of freedom	sum of squares	variance explained
Skew of lambda	2	13.899	49.0%
Police arrest strategies	2	6.53	23.0
Average career length	2	2.02	7.1
Correlation	1	1.25	4.4
Average lambda	2	.56	2.0
Residual	8	4.12	14.5
Total	17	28.38	100.0%

Figure 7
Effect of Changes in the
Offending Structure on Elasticity



Thus the offenders who eventually end up in prison are relatively more active than the average, and a small percentage increase in the prison population would have a sizeable effect on the crime rate. Police arrest strategies influence elasticity for a different reason. If experienced offenders learn to evade capture, the police are less likely to arrest (and eventually incapacitate) the same offenders, over and over; many different offenders go to jail, and a large proportion of offenders are in jail at any given time. So a small percentage increase in the (large) prison population will again have a large impact on victimization rates. Higher average offense rates, longer criminal careers, and higher correlations between offenses also lead to higher rates of incarceration and thus lower elasticities. These effects are relatively small, however.

Conclusions. To some people, this information will be very useful. Policymakers interested in pursuing general incapacitative policies will need to know the probable effects of increased prison space on the crime rate. Pinpointing the state of the criminal justice system on the plot on page 24 will tell them exactly what they need to know. The importance of this informati ı on the decision to use selective policies is less obvious, however. If selective policies are more efficient no matter what the system lo ks like, one might ask, then what good will basic research do? One answer is that predicting the likely impact of such programs is useful for evaluation, and invaluable for purposes of administrative control. More important, however, the optimal size and structure of selective policies, and the best method for identifying dangerous offenders, may all depend a great deal on the structure of the offending population; some programs may not be cost-effective at all. In the next two sections, a variety of

programs aimed at increasing selectivity are examined. The analysis begins where the criminal justice system must begin: with methods to identify frequent and dangerous criminals.

Identifying the Dangerous Offender

Before attempting to identify and incapacitate the dangerous offenders, we would do well to examine just what we mean when we refer to "dangerous offenders". Earlier, offenders were termed dangerous or not on the basis of lambda, their present offense rate. Because criminal justice agencies have only limited discretion as to when an offender is released, however, a complete view of dangerousness also includes the persistence of an offender's career. Consider another highly idealized case, which will be made more realistic shortly.

Let us gaze into a crystal ball to determine with complete certainty the offense rates of each individual in the offending population. Say that we can be sure that suspect Ewing will commit an extortion in September, two briberies in November, a stock fraud in February, and will then go straight for the rest of his miserable life. How dangerous should Ewing be considered today? If the seriousness of each of these offenses may be measured on some kind of social consensus scale--and the Sellin-Wolfgang index promises to do just that--then Ewing's dangerousness may be defined as the present value of the stream of offenses, weighted by the seriousness of each offense. That is,

$$D_i = \sum_t \frac{\sum_i \lambda_{ti} \cdot S_i}{(1 + r)^t}$$

where λ_{ti} is the number of times Ewing commits offense i in time period t,

S_i is the seriousness of offense i, and r is the social rate of time preference.[57] Unless we can be sure that we will be able to release Ewing when he is no longer dangerous, the best response to his acts would be to compare D to the social costs of imprisonment, and jail him if he's dangerous enough to justify it.

Although it is impossible to obtain information on future criminal behavior, available evidence suggests that we can greatly simplify this model without affecting its spirit by relying on two assumptions about the nature of offending. First, it is likely that the offense rate usually reflects relatively enduring personal characteristics, rather than rapidly changing opportunity structures, or capacities that may only be obtained after great inconvenience. For example, 68 percent of the prisoners identified in the second Rand inmate study as frequent and dangerous "violent predators" in the first two years were still violent predators in the fourth year.[58] An earlier Rand survey found that the most frequent offenders regarded themselves as "career" criminals, while less frequent offenders thought of themselves as "quasi-criminals" (drug users, or gang members, for instance), or even as "straights".[59] And when the Rand researchers investigated the stability of rates of criminal offending, they found that offense rates differed but slightly over a period of years.[60] It is reasonable to conclude that people who have been frequent offenders in the past are likely to stay that way, so long as they continue to commit crimes.

Consider also that many evaluations of programs aimed at reducing rates of recidivism have found that it is difficult to predict recidivism. Although the salient factor scores used by the U.S. Parole Commission and other parole boards give some evidence of predictive ability, results of

follow-up studies suggest that they predict low offense rates at least as much as the termination of a criminal career.[61] As a result, the predictive value of the tests may be illusory: the "good risk" for parole may not in fact be reformed; he may simply commit crimes at such a low rate that he will probably never be caught. In addition, research on the length of criminal careers indicates that career lengths may be modeled well by an assumption that a criminal is equally likely to stop committing crimes at any given moment since the beginning of his career.[62] In short, we are better at predicting the offense rate than the end of a criminal career. Moreover, the offense rate is in an absolute sense inherently more predictable than the end of a career.[63]

These two findings strongly suggest that we should consider an individual "dangerous" if we believe him likely to commit serious crimes at a high rate in the future, and that past commission of serious crimes at a high rate would be the best predictor of future commission. Since it is so difficult to predict how long the offender will continue to commit crimes, it is not too unreasonable to assume that all offenders are equally persistent. So it makes sense to use lambda, and lambda alone, as a measure of dangerousness.

Given that our interest is in predicting a weighted average of the current offense rates, there are several indicators we can use to identify the most frequent and dangerous offenders:

- The number of prior offenses, as measured by a weighted average of the number of prior arrests, has been used by criminal justice agencies for many years as an indicator of dangerousness.

Recent evidence suggests that use of two other kinds of variables may increase our predictive capacity:

- Rates of prior offenses, as measured by a weighted average of the rate of prior arrests per unit of time on the street, are a more direct measure of the offense rate;
- Prior offenses plus status variables associated with frequent offending, such as chronic unemployment, drug addiction, or marital status may also give better predictions, if reliable information on the status variables is available.

Each of these methods is most likely to work well under certain parameters of the structure of offending; each method reflects a different conception of the purposes of punishment.

If one considers the purpose of incarceration to be punishment for past acts rather than prevention of future acts, then it is more appropriate to rely on the number of prior offenses, as indicated by the number of prior arrests. If one were adamant that retribution is the only justification for incarceration, one would probably prefer to rely on convictions, since the require a greater degree of proof than do arrests. More important, however, a perfectly consistent retributivist would weight each prior arrest or conviction by the seriousness of the offense, and not by some (ultimately arbitrary) coefficient that happens to "predict" the offense rate--and serve a strictly utilitarian goal. Although seriousness-based weights would certainly not achieve crime control goals so well as prediction-weighted ones, the loss of predictive capacity may not be very large. And, even if the best predictive weights were used, the number of prior arrests would yield a few systematic errors. In particular, it is likely that some persistent but infrequent and nondangerous "small time" offenders will rack up many arrests over a long period, and thus be incorrectly identified as dangerous.

Misclassifications like this are less likely to come up if the rate of prior arrests per unit of time on the street is used to indicate dangerous-

ness. One would suspect that arrest rates would predict future offense rates particularly well if offenses are primarily driven by motivations rather than opportunities and capacities. Unfortunately, the police clear so few crimes by arrest that rates per unit of time on the street will fluctuate greatly between offenders, and the fluctuations will depend largely on chance elements rather than on the offender's real propensity for criminality.[64] What is worse, the chances of arrest probably depend on more than just chance. In particular, police procedures suggest that the likelihood of arrest is higher shortly after a previous arrest, but fades if the offender is not rearrested shortly afterward.[65] It may be difficult to reconcile use of arrest rates with the "just deserts" justification for incarceration; a case can be made that they are entirely consistent, however, if society is equally justified in punishing people for bad motivations as for bad acts. Here again, the thoroughgoing retributivist would probably prefer to weight rates by the seriousness of the offenses, and not by predictive coefficients.

Finally, if evidence of criminal motivations from prior arrest records is added to status information, predictions will clearly improve; in some cases, the estimates will get much better, since the social stability provided by a steady job and marriage is probably the best inhibitor of recidivism.[66] However, these variables are largely associated with macroeconomic policies (unemployment, for example) or with personal preferences not directly related to criminal motivations (a desire to remain single, for instance). Thus the status tests cause people to be punished for things that are not their fault or for things that are none of the government's business. Although use of status variables would certainly further the goal

of crime control, it would be entirely inconsistent with the "just deserts" justification for punishment.

Thus there is much to be said for and against each available test. Ultimately, the decision as to which test is "best" depends on how to balance the civil liberties of suspected offenders against the utilitarian goal of crime control. How much crime could be prevented if social variables or rates were used, that could not be prevented if only the length of the prior criminal record were used? And, because the structure of offending is likely to affect our estimates, in what situations will social characteristics and rates be most useful, and in what situations will they be of relatively little good?

To answer these general questions, it makes sense to ask a series of related, specific questions. Let us construct a hypothetical situation: based on the criminal record of the first half of an offender's career, how well can we predict his activity in the second half? If scores on the predictive test were the sole source of information used to incarcerate offenders, how much could the crime rate be reduced over the present, nonselective system?[67]

To answer this question, 18 cohorts of 1000 offenders each were simulated, representing different values of the parameters of the structure of the offending population. Five predictive tests were examined:

- Measures based on seriousness-weighted averages of the number of violent and property arrests, and on the rate of violent and property arrests;
- Measures that rely on length or rate of prior arrests, but weight violent and property offenses in order to best predict the offense rate;
- A measure that includes social variables, and in addition weights violent and property offenses in order to best predict the offense rate.[68]

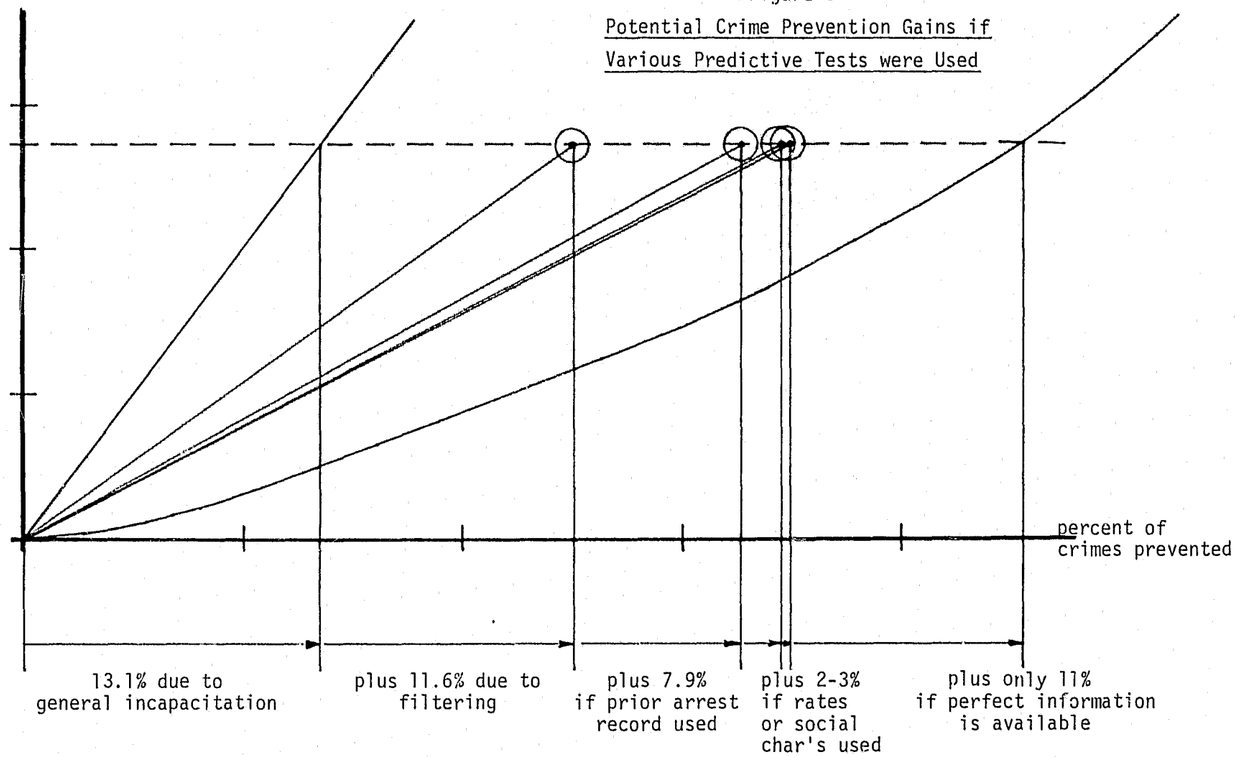
Before discussing how well these measures appear to work, let us consider first how well they could conceivably have worked. The best estimate of the proportion of offenders imprisoned (the average of all estimates discussed in the previous section) by the present system is 13.1 percent. Thus if 13.1 percent of all offenders were chosen at random to be imprisoned, about 13.1 percent of all crimes would not be prevented. If instead of choosing at random, the most frequent and dangerous 13.1 percent of offenders could be chosen instead (that is, if perfect information were available), then the percent of all crimes prevented would depend on how important these frequent offenders were to the entire distribution of offending: in the cases examined, this averaged to about 46 percent of all crimes. So we could prevent anywhere from 13.1 percent to 46 percent of all crimes, depending on how well the tests identify frequent and dangerous offenders.

As explained in the previous section, the criminal justice system is already somewhat selective. This is mostly because of filtering: the most frequent offenders are also those most often caught, prosecuted, convicted and imprisoned, even though agencies are not openly selecting them. The best guess for the number of additional crimes prevented due to filtering is about 11.6 percent. Thus, as shown in Figure 8, some 24.7 percent of potential crimes are now being prevented, because of incapacitation.

What if the prior arrest record were used to help identify the worst offenders? If criminal justice agencies could simply arrest and jail individuals on the basis of the seriousness of their prior arrests, an additional 7.9 percent of crimes could have been prevented, for a total of 32.6 percent of all crimes. If the seriousness of the rate of prior arrests were used--the "just deserts" measure of criminal motivation--then an additional

Figure 8

Potential Crime Prevention Gains if Various Predictive Tests were Used



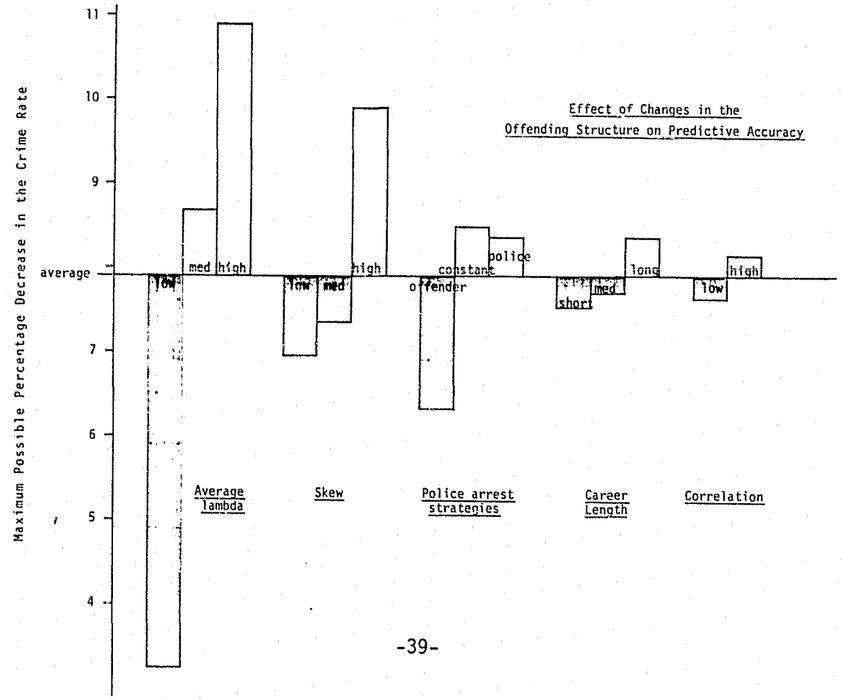
1.9 percent of crimes could have been prevented, for a total of 34.5 percent.

The system is slightly more selective if prior arrests and rates are weighted to best predict the offense rate. In this case, 8.3 percent of crimes could have been prevented by jailing the 13.1 percent of offenders with the highest predicted offense rates, using only the number of prior offenses; the figures rises to 10.3 percent if rates could be used, and to 10.6 percent if social characteristics could be used as predictors. Thus, using these "utilitarian" predictors, a total of 35.3 percent of all crimes could conceivably have been prevented, at no additional social cost.

These results confirm the tradeoff between purely retributivist methods (basing processing decisions on evidence of prior conduct only), and the utilitarian goals of crime control. At most, addition of social characteristics would cut crime rates by four percent over use of the seriousness-weighted prior arrest record, and by only <u>one</u> percent over use of the seriousness-weighted <u>rate</u> of prior arrests. If a policymaker felt that the damage to civil liberties more than offset even an optimistic gain of four percent, then social characteristics should clearly not be included in the tests. Note also that, although police at present clear fewer than 10 percent of index crimes, active offenders commit crimes often enough that predictions of the offense rate based only on arrests could yield substantial gains in crime control. Perfect information about offense rates could be used to cut crime rates by no more than an additional 11 percent.

These estimates are averaged over all estimates of the structures of offending. As one might expect, the gains to use of selective tests depend greatly on the structure. As the figure on the next page indicates, most of

the uncertainty as to how well use of prior arrest will be able to contribute to incapacitation depends on the offense rate: at low rates, fewer than four percent of crimes could conceivably be prevented by selective programs based on prior arrests; if one can be certain that individual offense rates of 4 or 5 were unrealistic, much more substantial gains of 9 to 12 percent are possible. Again as expected, prior arrests do not work well when offenders learn to escape capture by committing crimes more professionally. In this case, the most dangerous offenders systematically avoid arrests, and prior records give a distorted picture of an offender's offense frequency. However, even under the very conservative assumption that offenders with above-average motivations are half as likely



to be arrested as below-average offenders (the differences between the two groups are almost certainly smaller), note that selective procedures could still lead to substantial gains. Similarly, longer careers, a high correlation between violent and property lambdas, and a larger concentration of offenses among the most frequent criminals are all associated with higher gains to selectivity.

If selective procedures based on the number of prior offenses can hardly go wrong, selecting on the basis of rates might. Although a weighted rate of offenses was a better predictor, on average, in some cases the absolute number was more reliable. In particular, if the average offense rate was low, if careers were typically short, or if offenses were not concentrated among the worst offenders--in short, in those situations where rates could be expected to respond most sensitively to random fluctuations--then rates represented no gain over the number of prior offenses. In the (unlikely) event that all these were true, then predictions based on rates proved no better than random guesses. On the other hand, rates work particularly well if offense rates are high and concentrated among a few offenders, if the most frequent offenders commit both violent and property offenses, and if the police learn who they are and arrest them with greater regularity. In such situations, use of rates can conceivably cut the crime rate by an additional 4 to 8 percent over use of the number of prior arrests.

The usefulness of rates fluctuates greatly because they depend entirely on criminal justice system data. The gains due to addition of social characteristics fluctuate much less widely, perhaps because social characteristics represent additional information brought in from outside the system, and that depend litle on the parameters of the offending population. Again,

bigger gains are associated with higher average offense rates, police learning, and long careers; but the differences are relatively small, and the gains from using the additional sources of information virtually certain.

Based on these results we may conclude:

- The crime-control gains of using prior criminal record are substantial and relatively certain. Although persistent but infrequent offenders may receive unduly harsh treatment, the overall fairness of the system will increase.
- Rates of arrest probably represent a slight gain, and will certainly be useful discriminators if offense rates are large and highly skewed, and if active offenders are not successful in evading capture. But rates are relatively unreliable when criminal careers are short, when offense rates are low, and when the worst offenders are not much worse than the least frequent and least dangerous.
- Social characteristics also probably represent a slight gain of at most four percent of all crimes committed. Although this estimate is relatively unaffected by changes in the structure of offending, it may not be sufficient to warrant inclusion of variables like employment and marital status in a test of dangerousness.
- If prior arrests or rates of prior arrests are used, weighting each arrest by the seriousness of the offense predicts offense rates nearly as well as setting the weights to best predict the offense rate.

As has been noted, these estimates represent maximum possible decreases in the crime rate. Any program using these tests will surely have less effect on crime; it may, of course, have no effect at all if the program is poorly or ineffectively implemented. Because effective implementation is difficult, it is important to plan programs carefully. Where should the criminal justice system focus its efforts--on police, prosecutorial, bail, or sentencing selectivity?

Creating Selective Programs and Procedures

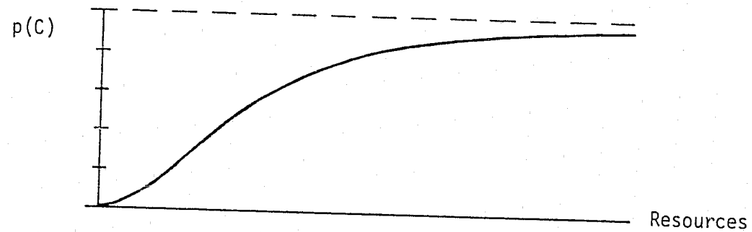
In designing programs or policies that focus the attention of an agency on frequent, dangerous offenders, it is necessary to first consider the tradeoff between the level of resources or effort devoted to dangerous of-

fenders, and the proportion of offenders to receive special attention. The tradeoff is most obvious when dangerous offenders are processed through a separate unit, such as a career criminal program: if many offenders are considered to be "career criminals", then the level of effort devoted to each cannot be as great as when only a few offenders are considered for special processing. Since criminal justice agencies may have good reasons not to establish separate units (a few are considered below), and since, even if a separate unit is established, members of it may wish to allocate a different amount of resources to each offender or case, it makes sense to ask a more general question: how much effort should the agency devote to each offender?

Determining the most effective level of effort is easy if the relationship between efforts and incarceration is well-defined. It is particularly easy if the relationship is linear, for example: then each agency would devote ten times the effort to processing an offender who commits 20 crimes each year that it would to processing a 2-crime-per-year offender. More complex functions require more complicated arithmetic, but the principle is the same. The difficulty is that, for most agencies at least, the relationship between effort and results is by no means clear.

Consider the case of the prosecutor. Since the District Attorney has little direct influence on which crimes the police solve, and no direct authority to set bail or sentence convicted offenders, the appropriate measure of the prosecutor's effectiveness is the likelihood of conviction.[69] Suppose that the level of effort devoted to a case may be measured by the number of prosecutor-days spent in preparing for and conducting the trial. What is the relationship between prosecutor-days and likelihood of conviction?

It is clearly not linear, since no case may have a higher than 100 percent chance of conviction or less than a zero percent chance. It is also likely that the prosecutor assigned to the case will devote her first efforts to the activities most likely to lead to conviction, such as reading crime and arrest reports and interviewing the witnesses. Subsequent efforts will be devoted to less-important activities--locating additional witnesses, or examining physical evidence, for example. If essentially unlimited time is available to pursuing the case, the D.A. will probably end up putting much effort into activities that increase the chances of conviction by very little.[70] Thus the probability of conviction will increase dramatically with the first few hours the D.A. puts into the case, then will increase by successively smaller amounts as the prosecutor turns to lower priority activities. The result might be the curve shown below.



If the D.A. is concerned with allocating resources so as to maximize the incapacitative value of incarceration, she will clearly devote fewer resources to cases involving minor offenders than to the cases of frequent and dangerous offenders. Because some cases are inherently stronger when they are received from the police, however, it may not make sense to press charges against even the most dangerous offenders if the case is unlikely to result in conviction without a large devotion of effort. Thus the prosecutor must allocate her scarce resources carefully; she must be willing to sacri-

fice a little in the conviction rate in order to pursue more difficult cases involving frequent offenders.[71]

The problem with the present system, of course, is that prosecutors do not typically take predictions of dangerousness into account. In most jurisdictions, prosecutors decide whether to press charges based on their perception of the chance of conviction, and to a much lesser degree on the seriousness of the immediate offense. The offense rate of the offender is typically not a factor. One reason for this failure to balance is simply that resources are scarce, and cases that require too much work must be dismissed to protect the rest of the prosecutor's workload. A less obvious problem is that deputy prosecutors are evaluated partly on the basis of their conviction record; cases that appear to be too difficult may be dropped or reduced to maintain a good record.[72]

In response to this problem, prosecutors in some jurisdictions have established career criminal units, designed to devote greater resources on cases involving offenders judged to be frequent and dangerous. By setting aside some proportion of the office's total resources, the D.A. can ensure that enough effort is put into the cases that require it (by cutting caseloads for attorneys assigned to major violator units), and reduce the onus to her deputies of taking on difficult cases (by changing the informal evaluation structure).

The same problem of scarce resources and inadequate attention to the worst offenders is faced by the police, and to a lesser degree by judges and prison authorities as well. The response in each case has been to establish what amounts to a parallel processing system for "career criminals", to which each agency may devote more resources than would have been possible

under the ordinary system. Such separate units have been examined at length in Volume I of this report. They are limited in usefulness, mostly because the number of truly high-rate offenders is too low to justify establishing a separate bureaucracy to deal with them.

A special unit may cope with these low caseloads in one of two general ways. It may devote enormous resources to each of the cases it selects. (In some prosecutor's career criminal programs, for example, each assistant district attorney spent an average of four times the number of hours on each case as was spent in regular processing.[73]) This means that members of special units will undertake many activities that are very unlikely to increase the chances of conviction much. If they undertake too many of these activities, they may draw an undue amount of resources from the main office. Particularly since the tests used to predict high-rate offenders are imperfect, this might actually result in a net decrease in selective incapacitation, and a net increase in crime rates.

Alternatively, the special unit may widen the net, focusing resources on offenders expected to commit crimes at lower rates. Unfortunately, this, too, may defeat the purpose of the special unit if many low-rate offenders are included who do not require any special processing, since resources continue to be drawn from the main office. Widening the net may also result in a net decrease in selective incapacitation.

An alternative to establishing a special unit is to enhance processing within the regular criminal justice system. This may include increasing the probability of recognizing and "screening in" cases involving high-rate offenders, putting more effort into solving and prosecuting these cases, and being more careful to set sentences and bail restrictions appropriate to the

offender's expected offense rate. It would clearly be more difficult to design and implement procedures that focus the attention of the criminal justice system through the regular processing units than through separate, parallel units. If the procedures can be implemented, however, the system could gain a lot in selectivity, while avoiding the fatal flaws of special units.

It is just because the procedures will be hard to work out that it is important to know where the potential gains are greatest. To find out, 1000 offender careers were simulated under 18 different sets of assumptions each to determine the likely crime control benefits of a plausible enhanced processing program undertaken by each criminal justice agency. Four programs were considered.

Police solve crimes that available information make the easiest to solve, with little regard for the frequency or dangerousness of the perpetrator. (Although they may be more likely to solve crimes committed by offenders they have previously arrested, this is generally because more information is available about these individuals, not because police select them out for special attention.) Suppose instead that police used surveillance, stakeout, and decoy tactics and conducted more thorough reactive investigations of crimes committed by the worst 10 percent of offenders; as a result, they triple the likelihood of arrest for the worst offenders.[74]

Prosecutors initially reject the 25 percent of cases judged least likely to result in conviction on the strength of available evidence; they allocate attention to the remaining cases to maximize the average probability of conviction. Suppose instead that the D.A. selects cases so as to maximize the probability of conviction, weighted by the expected offense

rate of each offender.[75]

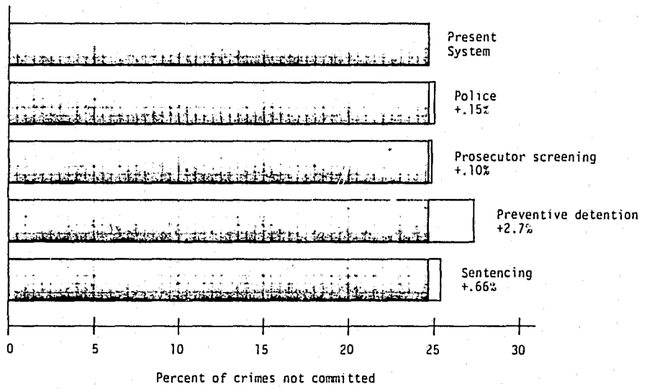
Bail is now set on the basis of the seriousness of the instant offense; a study of eight representative jurisdictions found that about 15 percent of offenders were detained until trial; the typical detained offender spends about two months in jail after the initial arrest.[76] Suppose that, instead of setting bail on the basis of the instant offense, the judge preventatively detained those 15 percent of offenders expected to commit crimes at the highest rates.

Sentences typically depend on the seriousness of the convicted offense, but stiffer sentences are often given to previously incarcerated offenders, and more lenient sentences to first offenders. Suppose instead that the length of the sentence did not depend on the instant offense, but slid up or down on the basis of the expected offense rate of the convicted offender.[77]

In any of these scenarios, each agency may use the number of prior offenses (as measured by arrests or convictions), the rate of prior offenses, a variety of social characteristics, or a combination of the three. For purposes of comparison between programs, it doesn't much matter which one is used, as long as they all use the same one. Because seriousness-weighted arrest rates predict fairly accurately and are neither difficult to validate nor difficult to justify, it will be assumed here that all agencies use the rate of prior offenses, as measured by the rate of arrests per month on the street, as the discriminating tool.

The results of implementing each of these programs, as shown below, appear to be somewhat disappointing. Preventive detention programs were successful in cutting the crime rate by nearly three percent with no increase

in the jail population; but selective police, prosecutorial, and sentencing policies had much smaller effects, averaging to less than a one percent decrease each. This seems to conflict with the prevailing wisdom--that added selectivity at the front end of the system can substantially cut the crime rate at no cost--as well as previous findings that selective sentencing can decrease crime rates by as much as 20 percent. What has gone wrong?



The problem is that prison terms are too long, relative to the average criminal career. Although selective policies were successful in that they increase the rate at which dangerous offenders are arrested, convicted, and incarcerated, these dangerous offenders all too often received very long prison terms: the average sentence for a convicted offender who had previously been incarcerated was four years, for example. Unless the average criminal career was very long, this meant that many of these offenders spent many years behind bars, although they would have "aged out" of the offending population and committed no crimes if released. So there was a large increase in the proportion of inmates who would have been inactive if released.

This illustrates the tension between the certainty of punishment and the severity of punishment. The most efficient crime control system would be one that solved crimes and convicted offenders with such regularity that, even if short periods of incarceration were used as punishment, frequent and persistent offenders would be incapacitated for most of their active career. In an imperfect system that substitutes severe punishment for certain punishment, the costs in inefficiency, as well as the social costs of wasting potentially productive lives in prison, are enormous. Because the costs increase almost as fast as the benefits if the system focused on the frequent and dangerous, selective police, prosecutor, and sentencing policies are relatively inefficient. In contrast, preventive detention programs work well, since the chances that an offender will cease activity within two months of his arrest for a crime are very small, even if criminal careers are only four years long, on average.

Of course, the average length of incarceration has been set by the legislature to reflect just deserts, and not just to incapacitate offenders efficiently. However, due to the vast amount of discretion granted to judges, there is much uncertainty as to whether the highest-rate offenders will receive the stiffest penalties. Given identical circumstances, different judges mete out greatly differing sentences. If the average sentence for previously incarcerated robbery convicts is four years, for example, 10 percent of offenders received sentences of nine years or more, while an equal percentage received sentences of less than six months.[78] Wasted prison space is largely due to abnormally long sentences; in addition, some of the benefits of selective apprehension and conviction are lost when judges pass abnormally short sentences on high-rate offenders.

CONTINUED

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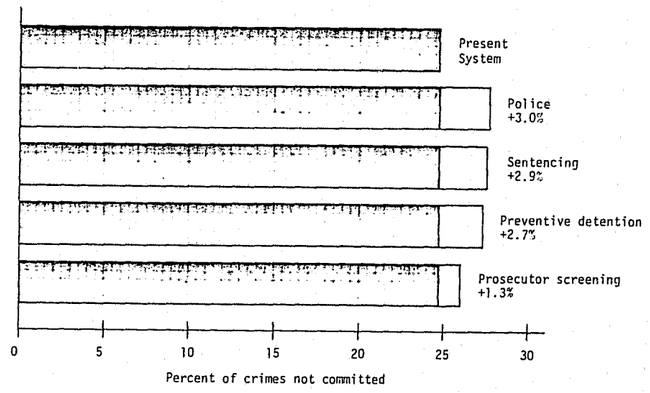
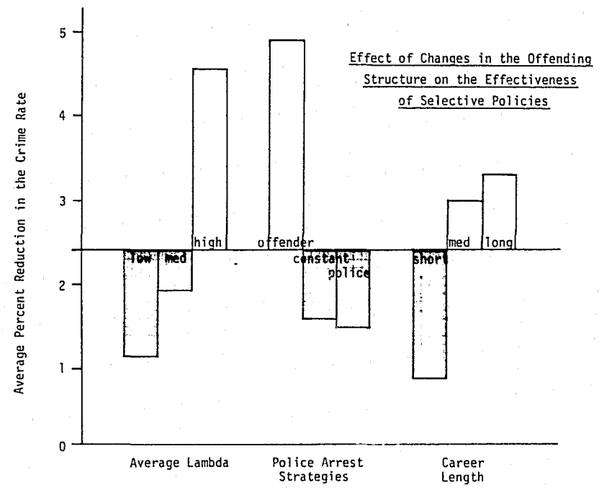
Short of developing methods for predicting the end of a criminal career,[79] little can be done to reduce the tension between severity and certainty. Something can be done about judicial discretion, however, while maintaining the severity of punishment at present levels. Instead of the discretionary sentencing scheme in place in most states, a presumptive sentencing strategy could be adopted, one that dictates a particular sentence for a particular crime or criminal, and leaves the judge with limited discretion to lengthen or shorten it.[80] If presumptive sentencing schedules were used in place of the present system, the prison population would remain unchanged (since the average sentence would not change), but wasted prison space would decrease and the benefits of incapacitation should increase (since most offenders would receive the desired sentence). Do selective programs work better under presumptive sentencing?

Decidedly, yes. The average decrease in the crime rate that could be achieved without increasing the prison population is shown below. All programs now cause substantial crime control benefits.



Police programs provide the greatest decrease in the crime rate, at a shade over three percent. This was as expected, since the police provide both the evidence and the suspects used by the rest of the criminal justice system. Sentencing programs decrease the crime rate by just under three percent, without an increase in the prison population. This makes sense, too: if the police and the prosecutor are successfully selective in arresting and convicting a high-rate offender, this may or may not lead to the offender's incapacitation; the judge has the final word on incarceration, however, and if he is selective the benefits are direct and certain. Preventive detention still decreases the crime rate by 2.7 percent, because it provides short-run incapacitation with fairly certain benefits. Finally, prosecutors could cut the crime rate by 1.3 percent or so, simply through a change in case screening. If the District Attorney is able to increase the probability of conviction for high-rate offenders by allocating additional resources to cases involving them, the decrease could be substantially greater.

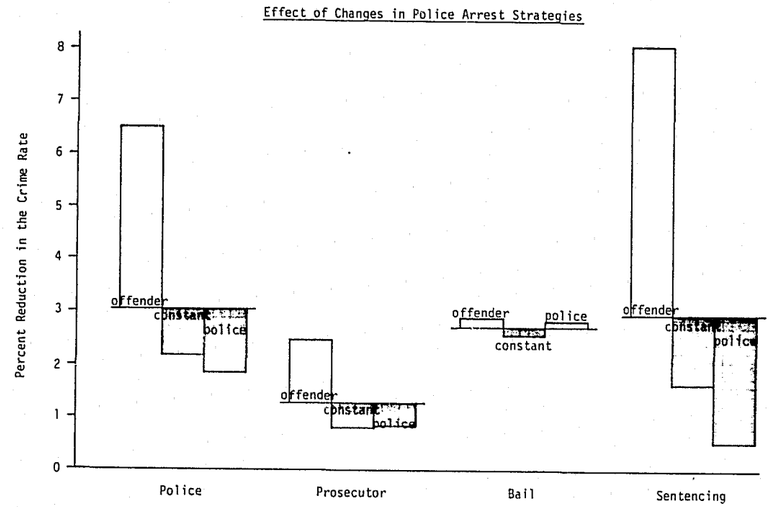
These are the expected effects, averaged over all structures of the offending population. Different selective policies work better or less well, depending on what that structure looks like. As shown in the figure below, selective policies work better: when the average offender commits crimes at a higher rate (because it is easier to discriminate high-rate offenders from low-rate offenders if they are all arrested more frequently); when experienced offenders learn to avoid capture (because selective programs help to compensate for the low degree of incapacitation due to filtering); and when offender careers are long, rather than short (because long prison sentences will result in less waste).

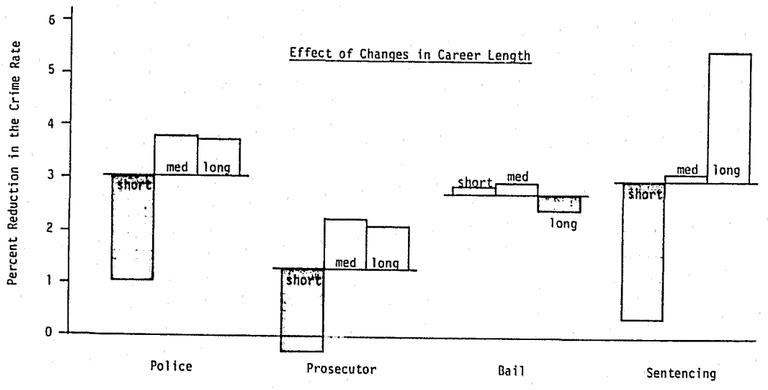


In addition, different structures suggest that different selective programs will be particularly effective. Consider Figure 9. If offenders learn to commit crimes that the police cannot solve, selective police and sentencing policies (and, to a lesser extent, selective prosecutorial screening policies) reduce the crime rate by a substantial margin--up to 8 percent. If the chances of arrest are about the same for all offenders, or if the police are already more likely to catch criminals they have caught in the past, these policies only cut the crime rate by 2 percent or less. The crime control benefits of preventive detention policies are essentially unaffected by present police arrest strategies.

The length of the average criminal career has similar effects. If careers are short, many criminals sentenced to long prison terms could be released without endangering the public; prison space is largely wasted. Police, prosecutorial, and sentencing programs which increase the frequency of these long prison terms also increase the waste, and the additional benefits

Figure 9





are almost exactly canceled by the added costs. Again, the effectiveness of preventive detention policies does not depend much on the average length of a criminal career.

Although a three percent decrease in the crime rate would be much welcomed, perhaps the most important result of this simulation is that the effects of plausible selective programs are probably not much larger than that. Larger crime control gains are possible, if the offending population is in fact structured in the most favorable possible way. For example, if the average offender commits crimes at a high rate and over a long period of time, and learns to avoid capture as he becomes more experienced, selective police programs may cut crime rates by as much as 10 percent, selective prosecutor screening may cut the crime rate by as much as 6 percent, and selective sentencing may reduce crimes by nearly 20 percent. Figures like these are more in line with earlier estimates;[81] neither are they necessarily wrong, because the assumptions on which they are based are not unreasonable. However, they are not the most reasonable assumptions, and we would do well not to count on such pleasant prospects while planning selective policies.

Conclusions

Practitioners and researchers have taken to the concept of "selective incapacitation"--directing the attention of the justice system to the most frequent and dangerous offenders--with undisguised enthusiasm. If these few offenders who commit a large proportion of the crimes could be locked up, many crimes would be prevented. Some have even predicted the crime rate would decrease by up to 20 percent, if the system adopted selective

procedures. Although such crime prevention gains may be possible, the simulation results presented above suggest that such astronomical gains are unlikely--even if programs were designed and implemented to reliably identify the worst offenders, and arrest, convict and incarcerate them at much higher rates. One reason is that the present system--by only arresting, convicting and incarcerating a fraction of the offenders--is already focusing its efforts on the worst offenders, even without making any concerted effort at doing so. Another reason is that the size of these crime control gains depends greatly on what the offending population looks like; there is good reason to believe previous studies have assumed that the average offender commits crimes over too long a period and commits them too frequently.

Still, there is much uncertainty as to how selective the present system is, and how well efforts at increasing its selectivity will work. Much of this uncertainty can be resolved if more is known about the following characteristics of the offending population.

To determine the selectivity of the present system, more reliable estimates of the contribution of the highest-rate offenders to the crime rate are needed.

To see how well different selective policies and procedures will work, it is important to determine whether police now learn who the most frequent offenders are and arrest them at higher rates, whether experienced offenders learn to commit crimes that are harder to solve, or whether the two effects cancel each other out.

Finally, to determine the most effective sentence length, it is important to know how long the average criminal career lasts, and whether high-rate offenders commit crimes over a longer career or a shorter career than low-rate offenders.

Despite the vast uncertainty about the offending population, the simulation results presented above indicate that some policies and procedures will almost certainly make the criminal justice system more selective and efficient. The ramifications of these results for predictive tests, judicial discretion, and particular selective procedures and policies are considered in turn.

Predictive tests. Perhaps surprisingly, a relatively simple scale that weighted each prior arrest by the seriousness of the offense accurately differentiated high-rate from low-rate offenders. A scale using the rate of arrests predicted about 25 percent more accurately than this, and when the rates were carefully weighted in order to reflect the chances of arrest for each crime, police arrest strategies, and so on, the tests worked better still. Social characteristics such as employment, marital status, and drug history did little to increase the accuracy of the distinction between high- and low-rate offenders. Many people consider the use of social characteristics to be unfair and unjust but believe that the justice system would be fairer and more just if it used only the number of rate of prior arrests to identify frequent and dangerous offenders.

> Justice agencies should examine the rate of each offender's prior arrests, with each arrest weighted to reflect the seriousness of the offense, to help focus their activities on high-rate offenders. If data are available that allow a more sophisticated system of weighting arrests to be developed, they should probably be used; this will only marginally increase the predictive accuracy of the test, however. Social characteristics should not be used.

Judicial discretion. It will be difficult to achieve any decrease in the crime rate without a concurrent increase in the prison population, if sentences continue to be set largely at the discretion of the judge.

Because selective programs aim mostly at offenders who have been previously arrested, convicted, and perhaps incarcerated (or alternatively, because selective programs would cause high-rate offenders to be arrested, convicted, and imprisoned with greater regularity), they focus on offenders who receive longer prison terms when they are convicted. Under the indeterminate sentencing scheme in place in most states, many of these offenders are sentenced to terms so long that they spend many years behind bars when, had they been free, they would have committed no crimes; conversely, many high-rate offenders receive short sentences at the whim of the judge.

Simulation results suggest that one in every six offenders now in prisons and jails could be released without endangering the community; if police or prosecutors are selective, or if judges are more selective than they are at present, but continue to gauge prison sentences on their idiosyncratic judgments, 50 to 200 percent more offenders could be released. Continued judicial discretion would effectively cancel the results of added selectivity at the "front end" of the system.

> State legislatures should consider presumptive sentencing as a necessary adjunct, if not a prerequisite, to a general focus on high-rate, dangerous offenders.

Selective programs and policies. If police used the rate of prior arrests to identify the most dangerous offenders, and then set out to arrest them at high rates through use of surveillance, stakeouts, and decoy operations, the crime rate could decrease by some three percent, with no increase in the prison population. Although extensive use of M.O. files and other information likely to identify patterns of criminal behavior are also promising approaches, they have not been evaluated fully enough to determine

whether they will significantly enhance selectivity. Although many police departments are presently using each of these techniques, the "targets"--the dangerous offenders--have often been selected haphazardly, and the selective operations themselves have been implemented by separate units.

> Police should train patrol officers and detectives to use surveillance, stakeouts, decoy operations, and crime-pattern investigation efforts as part of their regular routine, aiming their efforts at increasing the rate of arrests for active offenders who have been most frequently arrested in the past.

If prosecutors screened cases for prosecution on the basis of the rate of the offender's prior arrests as well as on the strength of the evidence, the crime rate could decrease by a bit more than one percent, with no increase in the prison population. A larger decrease is possible if, by putting more resources into prosecuting the cases of dangerous offenders, the prosecutor could increase the probability of convicting them. To identify the best method of reallocating resources to cases, however, it is necessary to know more about how prosecutors produce convictions. It is possible that a reallocation based on the present, limited information could decrease the selectivity of prosecutorial efforts, by pulling too many resources from other cases. This may have been the case with the career criminal program.

> Prosecutors should begin to incorporate the offense rate, as indicated by the rate of prior arrests, in their screening decisions.
>
> The National Institute of Justice should sponsor research that will specify how the activities of the prosecutor influence the chances of conviction. This is necessary to determine the best allocation of resources to cases involving frequent and dangerous offenders.

Bail policies pose special problems. Decisions about pretrial detention directly affect the freedom of a defendant; if judges used an offender's rate of arrests to set bail, it is possible that a defendant could be jailed who has never committed a crime, or for a once-guilty defendant to be considered dangerous and jailed on account of prior offenses, for which he has paid his debt to society already. To say that such abhorrent cases are unlikely, or that they are already happening under the present bail system, is to beg the fundamental question: how much unfairness should we be willing to tolerate in order to prevent a crime?

Sentencing policies pose a lesser problem, because the worst cases are less repugnant. Only convicted and thus blameworthy offenders are eligible for sentences, so we can be certain that each person who is convicted deserves some punishment. Still, even the most committed utilitarian is likely to agree that punishment is fairest when it fits the offender's past criminal history, and there are bound to be situations when the arrest record will be misleading and the sentence passed will be too long or too short. Again, we must balance fairness against crime prevention.

Full consideration of questions like this is beyond the scope of this analysis. Although there is a role for research here,[82] the tradeoff must ultimately be resolved through the political process. However, it is important to note that one of the reasons frequently offered for not authorizing and implementing selective bail and sentencing procedures--that they would prevent only a minimal number of crimes, at least in comparison with innovations at the front-end of the system--is probably not true. On the contrary, because judges have more or less complete control over incapacitation, selective bail and sentencing policies will prevent as many

crimes as selective police and prosecution policies, provided judges have the information needed to make accurate predictive judgments. As shown above, the rate of prior arrests provides ample information for making these judgments.

Whether society should choose to implement selective bail and sentencing policies depends ultimately on how effective the policies will be. About this, there is still considerable uncertainty. Because so much of that uncertainty depends on the structure of the offending population, a better knowledge of how long a criminal career lasts and how focused police arrest practices are now will go a long way to answering these questions.

Notes

1. Mary Ann Wycoff, "The Criminal Effectiveness of U.S. Police: Empirical Findings and Unresolved Issues," working paper (Washington, D.C.: Police Foundation, May 1981).

2. Judith S. Dahmann and James L. Lacy, Criminal Process in Four Jurisdictions: Departures from Routine Processing in the Career Criminal Program, technical report 7550 (McLean, Va.: MITRE Corporation, June 1977).

3. See John Goldkamp, Michael Gottfredson and Susan Mitchell-Herzfeld, Bail Decisionmaking: A Study of Policy Guidelines (Washington, D.C.: National Institute of Corrections, forthcoming) for a review of selectivity in bail decisions, and Linda Sleffel, The Law and the Dangerous Criminal: Statutory Attempts at Definition and Control (Lexington, Ma.: D.C. Heath, 1977) for a review of career criminal sentencing statutes.

4. See John Monahan, Predicting Violent Behavior (Beverly Hills: Sage, 1981) and Barbara Underwood, "Law and the Crystal Ball: Predicting Behavior with Statistical Inference and Individualized Judgment," Yale Law Journal, 88 (1979) 1408-1448.

5. For a discussion of "just deserts" and its impact on the sentencing of recidivists, see Andrew von Hirsch, "Desert and Previous Conviction in Sentencing," Minnesota Law Review, 65 (1981) 591-634, and H.L.A. Hart, Punishment and Responsibility (New York: Oxford University Press, 1968).

6. Peter Greenwood with Allan Abrahamse, Selective Incapacitation, R-2815-NIJ (Santa Monica, Ca.: Rand Corporation, 1982).

7. The effects of using different discriminators are discussed in detail in part three of this paper.

8. Eleanor Chelimsky and Judith Dahmann, Career Criminal Program National Evaluation: Final Report (Washington, D.C.: U.S. Government Printing Office, 1981).

9. The "replacement" theory suggests that, since much crime is committed in groups such as youth gangs, incapacitation of selected members of the groups will have little effect on the crime rate--the rest of the group will continue to commit offenses as they have been. The "multiplier" effect is basically deterrence: once offenders recognize that high-rate criminals are being incapacitated, they will shift to less serious crimes or commit them at a lower rate. Both theories are plausible; there is no conclusive evidence to support either one.

10. Thorsten Sellin and Marvin E. Wolfgang, in The Measurement of Delinquency (New York: John Wiley and Sons, 1964), identify what amounts to a societal consensus regarding the relative seriousness of various

criminal activities. Their index has been replicated many times since, on many different samples. Although complex, the scores are remarkably robust. See, for instance, Charles F. Wellford and Michael Wiatrowski, "On the Measurement of Delinquency," Journal of Criminal Law and Criminology, 66 (1975) 175-188, and Robert M. Figlio, "The Seriousness of Offenses: An Evaluation by Offenders and Non-Offenders," Journal of Criminal Law and Criminology, 66 (1975) 189-200.

Combining Sellin and Wolfgang's seriousness scores with arrest data for U.S. cities in 1979 (U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States: The Uniform Crime Reports (Washington, D.C.: U.S. Government Printing Office, 1980)) results in a relative weighting of almost exactly three to one. This means that the percent of crimes prevented may be defined as three times the number of violent crimes actually committed plus the number of property crimes, all divided by the expected number of weighted crimes that would have been committed, had no offenders been incarcerated.

The denominator of S is somewhat more complicated, because it is possible for a former offender to begin incarceration at a time when he is no longer active (due to trial delays) or for an offender's career to end (his motivation for committing crimes to drop to zero, or at least to the levels of most nonoffenders) while he is in prison. If prisons are successful in rehabilitating offenders, the experience of imprisonment will tend to shorten a criminal's career and prisons will contain many inactive offenders; if, on the other hand, offenders in prison tend to "store up" offenses and commit them once they are released, imprisonment may effectively lengthen criminal careers. For purposes of this paper, it will be assumed that prison neither lengthens nor shortens an offender's career, and has no effect on his motivation to commit crimes. To completely reflect the proportion of offenders in jail or prison, the denominator will be defined as the number of offender-months spent in prison for active and inactive offenders, divided by the total number of active offender-months plus the number of inactive offender-months spent in prison. Put another way, an offender's career is not presumed to end until he has returned to the street and demonstrated that he is no longer motivated to commit crimes.

11. There is considerable controversy as to whether the number of prisoners increases to fill available prison space, or whether prison space is increased in response to the need for it. Although both of these hypotheses are partly correct, there is evidence to support the common-sense notion that the number of prisoners depends largely on available space, but that the amount of space available depends mainly on political factors. See Kenneth Carlson with Patricia Evans and John Flanagan, American Prisons and Jails: Volume II, Population Trends and Projections (Washington, D.C.: National Institute of Justice, October 1980) and James Q. Wilson, "The Political Feasibility of Punishment," in Justice and Punishment, edited by J.B. Cederblom and William L. Blitzek (Cambridge, Mass.: Ballinger, 1977). For a reanalysis of Carlson's data that reaches opposite conclusions, see

Alfred Blumstein, Jacqueline Cohen and William Gooding, "Does Capacity Lead to Prison Population? A Critical Review of Some Recent Evidence," mimeographed (Pittsburgh, Pa.: Urban Systems Institute, Carnegie-Mellon University, April 1982).

12. Although parole boards and judges frequently take the number of prior arrests and convictions into account, prior record affects sentencing and parole decisions to only a moderate degree. Moreover, as shown in part three, below, the correlation between the number of prior arrests and convictions and the rate of prior offenses is only a moderate one.

13. See Michael J. Hindelang, Travis Hirschi and Joseph G. Weis, "Correlates of Delinquency: The Illusion of Discrepancy between Self-Report and Official Measures," American Sociological Review, 44 (1979).

14. One of the estimates used, derived from Mark A. Peterson and Harriet B. Braiker with Suzanne M. Polich, Who Commits Crimes? A Survey of Prison Inmates (Cambridge, England: Oelgeschlager, Gunn and Hain, 1981), was obtained through such a method of backward filtering adjustment. The method is explained in Jan M. Chaiken, "Models Used for Estimating Crime Rates," in Peterson and Braiker with Polich, pp. 224-252. The critical assumptions are that crimes and arrests are generated by a Poisson process, and that all offenders are equally likely to be arrested.

15. See Shlomo Shinnar and Reuel Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," Law and Society Review, 2 (1975) 581-611, for a discussion critical of this hypothesis.

16. Marvin E. Wolfgang, Robert M. Figlio and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972). David Greenberg, "The Incapacitative Effect of Punishment: Some Estimates," Law and Society Review 2 (1975) 541-580. Shinnar and Shinnar, "The Effects of the Criminal Justice System." Kristen M. Williams, The Scope and Prediction of Delinquency, PROMIS Research Project Publication 10 (Washington, D.C.: Institute for Law and Social Research, 1979).

17. As one might expect, the biggest complication of this definition is that many offenders are arrested only once, and it is difficult to determine how long these offenders were active criminals. The minimum length of a criminal career assumed for each estimate differs from one to four years.

18. Lower and upper bounds were estimated as described in Volume I of this report, pp. 88-95.

19. Barbara Boland and James Q. Wilson, "Age, Crime and Punishment," The Public Interest, 51 (1978) 22-34. James J. Collins, "Offender Careers and Restraint: Probabilities and Policy Implications" (Philadelphia: University of Pennsylvania, 1978). Alfred Blumstein and Jacqueline

Cohen, "Estimation of Individual Crime Rates from Arrest Records," Journal of Criminal Law and Criminology, 70 (1979) 561-585. Peterson and Braiker with Polich, Who Commits Crimes?

20. Boland and Wilson, "Age, Crime and Punishment"; Blumstein and Cohen, "Estimation of Individual Crime Rates."

21. Peterson and Braiker with Polich, Who Commits Crimes?, also make the assumption that all offenders have an equal probability of conviction given that they are arrested. This allows the authors to estimate lambda for the population of repeat offenders that are eligible for prison terms, if caught and convicted. These estimates are very similar to the direct estimates, suggesting that, if conviction probabilities are not uncorrelated with offense rates, at least they are sufficiently independent to allow comparison between different samples.

22. Besides, the larger estimates better fit most people's conception of what a reasonably defined "criminal population" should look like; many of us would describe an offender who commits two or three auto thefts over a ten year period as a very eccentric autophile, rather than as a "real" criminal.

23. Although some have cited Pareto's Law of Income Distribution as an example of a theoretically determined distribution that models a similarly complex situation, Pareto's Law strictly applies only to the distribution of wealth within a single bureaucratic hierarchy, and in fact income distributions do not fit the Pareto distribution well unless they are disaggregated by hierarchy. The utility of the Law is greatly limited, because it is difficult to define hierarchies in a reasonable way. See Benoit Mandelbrot, The Fractal Geometry of Nature (New York: W.H. Freeman, 1983).

    If any kind of "iron law" for the distribution of offense rates (or total offenses, or total deviance of any kind) can be derived, it can probably only apply to discrete, homogeneous groups (or "hierarchies") of offenders. Identifying hierarchies of individuals in an underground economy on a spatial, psychological, or other conceptual basis is bound to be more difficult than identifying hierarchies of individuals in the legitimate economy.

24. Travis Hirschi, Michael J. Hindelang and Joseph G. Weis, "The Status of Self-Report Measures," in Handbook of Criminal Justice Research, edited by Malcolm W. Klein and Kathleen S. Teilmann (Beverly Hills: Sage, 1980), discuss several studies that assess the reliability and validity of self-report measures.

25. There are three reasons for this:
    - Lying. Offenders who consider themselves to be noncriminals or marginally criminal will underreport offenses in order to put themselves in a better light; offenders who think of themselves as violent or "bad" use the interview or questionnaire to express their "badness". See John P. Clark and Lawrence L.

Tifft, "Polygraph and Interview Validation of Self-Reported Delinquent Behavior," American Sociological Review, 31 (1966) 516-523, and Peter Farrington, "Self-Reports of Deviant Behavior: Predictive and Stable?" Journal of Criminal Law and Criminology, 64 (1973) 99-110.

    - Forgetting. For low-rate offenders, crime is a less important part of their lives than for high-rate offenders. Farrington, "Self-Reports," found that low-rate criminals tend to forget their crimes, while more frequent criminals may remember themselves as more active than they really were. Forgetting is a particular problem when offenders are asked to estimate offense rates for their entire careers; in the first Ran inmate study, this averaged 24 years in length. See Joan Petersilia, Peter W. Greenwood and Marvin Lavin, Criminal Careers of Habitual Felons, R-2144-DOJ (Santa Monica, Ca.: Rand Corporation, August 1977).

    - Distortion. Self-report surveys require than an offender interpret such ambiguous offenses as "beatings", "hustles", and "cons", providing offenders with another opportunity to conceal or exaggerate their criminal involvement. Here again, high-rate offenders will be more likely to define offenses broadly and overreport their rates of offending, while low-rate offenders will define the offenses more strictly, and underreport. Although the impact of questionnaire items has yet to be examined carefully for self-report studies of criminal activity, the opportunity for distortion provided by ambiguous questions has been well documented in the literature on public opinion polling. See, for example, Hadley A. Cantril, "Experiments in Wording of Questions," Public Opinion Quarterly, 4 (1940) 330-332, and R.S. Crutchfield and D.A. Gordon, "Variations in Respondents' Interpretations of an Opinion-Poll Question," International Journal of Opinion and Attitude, 1 (1947) 1-12.

26. See Appendix 3 of Volume I of this report for an account of how the frequent offenders become more important as the criminal justice system filters.

27. These estimates were derived from gamma parameters provided by John E. Rolph, Jan M. Chaiken, and Robert L. Houchens, Methods for Estimating Crime Rates of Individuals, R-2730-NIJ (Santa Monica, Ca.: Rand Corporation, March 1981).

28. Floyd H. Allport, in "The J-Curve Hypothesis of Conforming Behavior," Journal of Social Psychology, 5 (1934) 141-183, first stated this hypothesis, based on a synthesis of many earlier studies of various kinds of deviant behavior.

29. Rolph, Chaiken and Houchens, Methods for Estimating, found that the offense rates for many crimes are approximately gamma-distributed; in fact, the estimates of the proportion of offenses committed by the 10

percent worst offenders is derived from their fitted gamma parameters, rather than from raw data which were unavailable. The least-skewed gamma distribution that still fits the J-curve hypothesis has a skew of 2.0 and an alpha parameter of 1.0. For any gamma with alpha of 1.0, the top 10 percent of the individuals in the distribution account for 30 percent of the total scores.

30. See, for example, Petersilia, Greenwood and Lavin, Criminal Careers, or Jan Chaiken and Marcia Chaiken, Varieties of Criminal Behavior, R-2814-NIJ (Santa Monica, Ca.: Rand Corporation, August 1982).

31. This change in the perception of offender activities was motivated by examinations of arrest-switch matrices, which indicate the probability that an offender who was last arrested for a crime of one type will be next arrested for a crime of any other type. Most of the correlations discussed in the text were derived from the available arrest-switch matrixes, rather than directly from offense or arrest data.

    Although arrest-switch matrixes are usually portrayed as constant matrixes that apply equally to all offenders, it is clear that the matrix elements are averaged over all offenders. Some criminals do specialize in one crime type or other. Moreover, there is no evidence for or against the notion that crime choices are made according to a memoryless (Markov) process. It may be that criminals commit several crimes of one type in a row, then consciously switch to another crime type to avoid capture or boredom. Nevertheless, Markov assumptions were made in computing crime type correlations from these matrixes.

32. The method amounts to evaluating $(x^2/N)^{.5}$ for the 2x2 steady-state violent-property transition matrix, multiplied through by an arbitrary scalar N. It represents the degree to which the uncertainty as to the next crime is decreased by knowing the last crime.

33. Alfred Blumstein and Richard C. Larson, "Models of a Total Criminal Justice System," Operations Research, 17 (1969) 119-232. Blumstein and Cohen, "Estimation of Individual Crime Rates." Peterson and Braiker with Polich, Who Commits Crimes?

34. In addition, Peterson and Braiker with Polich, Who Commits Crimes?, used a more direct method of computing the correlation. Their method amounts to regressing a transformation of the reported offense rates for each crime type against the average rates for both violent and property crimes. Table 3 shows the range of correlations between each violent crime type and the property aggregate offense rate, and between each property crime type and the violent aggregate rate.

35. The basic assumption required is that the distribution of offense rates for both violent and property crimes is gamma-distributed, and that the bivariate distribution is of the form explained by Rolph, Chaiken and Houchens, Methods for Estimating. These authors found that the assumption of gamma-variation fits most of the violent and property crimes for which the Rand inmate survey obtained offense

rates. The bivariate distribution requires four parameters, and is defined exactly by the four unknowns considered here (mean lambda for violent and property crimes, the correlation between the two lambdas, and the skew of the property marginal distribution). The following formulas were derived from Rolph, Chaiken and Houchens's work, and used to simulate offender's propensities:

$$\text{alpha0} = r(\text{lambda}(p)\cdot^5\text{skew}^2)/(4(\text{lambda}(v))$$

$$\text{alpha1} = 4(\text{lambda}(v))/(\text{lambda}(p)\cdot\text{skew}^2) - \text{alpha0}$$

$$\text{alpha2} = 4/\text{skew}^2 - \text{alpha0}$$

$$\text{beta} = 4/(\text{lambda}(p)\cdot\text{skew}^2)$$

Each individual's lambda(v) and lambda(p) are random variables, equal to the sum of two gamma-distributed random variables:

$$\text{lambda}(v)_i = g(\text{alpha1},\text{beta}) + g(\text{alpha0},\text{beta});$$

$$\text{lambda}(p)_i = g(\text{alpha2},\text{beta}) + g(\text{alpha0},\text{beta}).$$

The marginal distribution of each offense rate is thus constrained to have the same location parameter, beta.

36. The problem is, of course, that even very extraordinary circumstances will happen regularly if the population is large enough.

37. If there is no relationship at all between career length and offense rate, career length estimates based on first-to-last arrest times will be exactly twice the size of the career length for people arrested only once. Sheldon Glueck and Eleanor T. Glueck, in Unraveling Juvenile Delinquency (New York: Commonwealth Fund, 1950), found that offenders who commit crimes over a long career also commit them more frequently, though not twice as frequently. So the career length for people arrested one time only is probably less than the length for two-time offenders, but more than half the length.

38. Shinnar and Shinnar, "Effects of the Criminal Justice System." Greenberg, "The Incapacitative Effect of Punishment." U.S. Department of Justice, Federal Bureau of Investigation (F.B.I.), Crime in the United States: The Uniform Crime Reports, annual (Washington, D.C.: U.S. Government Printing Office, 1966, 1969, 1975). Collins, "Offender Careers." Michael A. Greene, "The Incapacitative Effect of Imprisonment Policies on Crime," Ph.D. dissertation (Pittsburgh, Pa.: Carnegie-Mellon University, 1977). Administrative Office of the U.S. Courts, Persons under the Supervision of the Federal Probation System, 1968 (Washington, D.C.: U.S. Government Printing Office, 1968).

39. Shinnar and Shinnar, "Effects of the Criminal Justice System."

40. This estimate is obtained by applying the fundamental theorem of renewal theory, which states that

$$f(A_i) = 1/E(t) \times (1 - \int_0^{A_i} g(T_i)\, dT,$$

where A_i represents the length of time since the first arrest of an offender who has been arrested more than once, or the time since eligibility for sampling began for a once-arrested offender. T_i is the offender's theoretical career length. The distribution of offender "ages" fits an exponential distribution with T_i equal to five; when only offenders arrested two or more times were considered, Shinnar and Shinnar obtained the usual result of 10- to 15-year career lengths, depending on the crime type.

41. Carl Pope, Judicial Sentencing (Washington, D.C.: U.S. Government Printing Office, 1975); Chaiken, "Models Used for Estimating."

42. The habitual armed robbers interviewed in the first Rand inmate study spent about half their careers in prison; since these 20-year offenders represented the most persistent criminals among those in prison, the average offender probably did less time. Petersilia, Greenwood and Lavin, Criminal Careers.

43. Blumstein and Cohen, "Estimation of Individual Crime Rates."

44. The ratio of arrests to reported crimes in Washington in 1971 is similar to the nationwide ratio reported by the F.B.I. in more recent years. See, for example, Crime in the United States, 1979. Reporting rates differ relatively little from one city to the next, as shown by results of the National Crime Survey. See U.S. Department of Justice, Criminal Victimization in 13 American Cities (Washington, D.C.: U.S. Government Printing Office, 1975). Finally, the correction for multiple offender crimes was also based on the results of the National Crime Survey, and averaged over the entire U.S.

45. Herbert Isaacs, "A Study of Communications, Crimes, and Arrests in a Metropolitan Police Department," Appendix B of Science and Technology Task Force Report of the President's Commission on Law Enforcement and the Administration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967).

46. There is a tendency for some offenders to specialize in a few crimes that require peculiar equipment or knowledge or a well-organized network of coworkers; the clear-cut examples are forgery, embezzlement, and large-scale drug trafficking. See John M. Conklin, Criminology (New York: Macmillan, 1981). However, with little exception, index crimes need little experience or knowledge, and can be committed alone.

47. Petersilia, Greenwood and Lavin, Criminal Careers; Peterson and Braiker with Polich, Who Commits Crimes?

48. This hypothesis was first developed by Peter W. Greenwood, Jan M. Chaiken and Joan Petersilia, The Criminal Investigation Process (Lexington, Mass.: D.C. Heath, 1977), and confirmed by John E. Eck, Investigating Crime (Washington, D.C.: Police Executive Research Forum, forthcoming).

49. See, for example, Volume I of this report, pp. 169-171.

50. Peterson and Braiker with Polich, Who Commits Crimes?, p. 59.

51. Since the number of arrests police actually make will be influenced by the average offense rate, the concentration of offenses among offenders, and the career length, the parameters of these functions were varied to maintain the same shape, but to average to the proper number of arrests. That is, about 8.3 percent of violent crimes and 3.4 percent of property crimes resulted in arrest in all simulations, under all arrest production functions.

52. For a complete analysis of interaction effects in a very similar version of this simulation, see William Spelman, "Crimes, Criminals, and Selective Incapacitation," working paper available from the author. The fact that no interaction effects were important or significant indicated that the complicated (and expensive) factorial design was unnecessary. Instead, a simpler design--a 3x3 Graeco-Latin Square with two replications--was used. Note that, if interactions are important, there is no way to identify them with this design. See George E.P. Box, William G. Hunter, and J. Stuart Hunter, Statistics for Experimenters: An Introduction to Design, Data Analysis, and Model Building (New York: John Wiley and Sons, 1978), pp. 245-280.

53. Jacqueline Cohen reviews five studies in which the proportion of crimes prevented was estimated, in "The Incapacitative Effect of Imprisonment: A Critical Review of the Literature," in Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, edited by Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (Washington, D.C.: National Academy of Sciences, 1978). Estimates range from a low of 2 to 8 percent (estimated by David Greenberg) to a high of 20 percent (estimated by Shlomo and Reuel Shinnar). As Cohen shows, Greenberg's lower bound is based on an unrealistically low estimate of the mean offense rate, while the Shinnars's figures would be even higher had they taken into account variations in offense rates across offenders. See Greenberg, "The Incapacitative Effect of Punishment," and Shinnar and Shinnar, "The Effects of the Criminal Justice System."

More recently, Peterson and Braiker with Polich (Who Commits Crimes?) estimated that if all offenders in California prisons were released, the armed robbery rate would increase by 22 percent. Since this estimate takes into account the greater offense rate of imprisoned offenders, but does not include offenders in jail, the fit to the simulated data is quite good.

54. This squares well with models developed by Chaiken, in "Models Used for Estimating"; using somewhat more restrictive assumptions, he found that the average offense rate for imprisoned offenders was roughly twice that of the population of offenders on the street, implying selectivity of about 2.0.

55. Specifically, it was assumed that first-time violent offenders could expect to receive a sentence .6 times as long as average, while previously imprisoned violent convicts could expect to receive a sentence twice as long. For property crimes, the differences were smaller: first-time offenders got .9 times the average sentence, previously incarcerated criminals received expected sentences 1.3 times as long as the average. Parameters were derived from Pope, Judicial Sentencing. For more information on judges's use of prior record to scale sentences, see Chapter 4, Volume I of this report.

56. Although interactions seem to be substantial, there are more than three dozen possible combination effects, and analysis of residuals show none of them to be very important.

57. For a discussion of the estimation and use of social rates of time preference, see William J. Baumol, "On the Discount Rate for Public Projects," in Public Expenditures and Policy Analysis, edited by Robert H. Haveman and Julius Margolis (Chicago: Aldine, 1970).

58. Chaiken and Chaiken, Varieties of Criminal Behavior.

59. Peterson and Braiker with Polich, Who Commits Crimes?

60. Peterson and Braiker with Polich, Who Commits Crimes?

61. In one six-year follow-up study, for example, re-arrest rates for each of the six years were calculated for four risk groups. If active members of each group committed crimes at the same rate, but the good risks were good because fewer of them were still active (that is, most of them had ended their criminal careers while still in prison), the recidivism rates for all groups would drop by equal amounts as time passed. That is, the percentage change from year to year would be the same for each group. If, on the other hand, all groups had the same proportion of active offenders, but good risks committed crimes less frequently than bad risks, the recidivism rates for bad risks would drop dramatically, while rates for good risks would drop slowly; the yearly percentage changes would differ greatly among groups. In fact, the changes did differ greatly, confirming the second hypothesis. Incidentally, the survival curves were roughly linear, supporting the notion that career lengths are exponentially distributed. See Peter B. Hoffman and Barbara Stone-Meierhoefer, "Post Release Arrest Experiences of Federal Prisoners: A Six-Year Follow-Up," Journal of Criminal Justice, 7 (1979) 193-216.

62. Shinnar and Shinnar, "Effects of the Criminal Justice System." See also Stephen Stollmack and Carl M. Harris, "Failure Rate Analysis Applied to Recidivism Data," Operations Research, 22 (1974) 1192-1205 for an application of Markov assumptions to distributions of time to recidivism. Michael Maltz and Richard McCleary, "The Mathematics of Behavior Change: Recidivism and Construct Validity," Evaluation Quarterly, 1 (1977) 421-438 also apply an exponential distribution to recidivism data, but explicitly assume that some former offenders have terminated their criminal careers by the time they are released from prison. Note, however, that more complex assumptions may fit available data better than the Markov assumptions, as noted by Stephen Stollmack in "Comments on 'The Mathematics of Behavioral Change,'" Evaluation Quarterly, 2 (1979) 118-123.

63. As Robert Martinson explains in his review of programs aimed at rehabilitating offenders, there is little evidence that rehabilitation really results from provision of services or opportunities one would expect to lead to rehabilitation. Apparently, people go straight when they damn well please. Robert Martinson, "What Works? Questions and Answers about Prison Reform," The Public Interest, 35 (1974) 22-34.

64. Rolph, Chaiken and Houchens, in Methods for Estimating, have developed Bayesian estimators for the expected offense rate that alleviate this problem. The method involves first identifying through regression or some other statistical means the relationship between propensities to commit different crime types, then "shrinking" the actual rate of arrests of each type toward the regression line. If the offender's career (measured by the time since first arrest) has been relatively short, the reweighted rate of prior arrests will be fairly close to the average value expected of all offenders; offenders with longer careers are shrunk by relatively smaller amounts. Unfortunately, shrinkage estimators are only well-defined for events generated by a Poisson process from a distribution of known form; even when theoretically correct, the gains in precision from using these Bayesian estimators are small. Rolph, Chaiken and Houchens estimated that use of shrinkage would reduce the mean square error of predicted crime propensities by about .02 to .16 percent. This is hardly worth a glass of Gallo, much less a bottle of D.P.

65. This would imply that the number of arrests in a criminal career is distributed according to a contagious distribution, such as a Polya-Eggenberger or negative binomial. Rather than face the thankless task of trying to estimate representative parameters, I satisfy myself with pointing out this Applied Mathematics dissertation opportunity, and stick my head back in the random sand.

66. Respondents in the Rand inmate studies who did not commit crimes for long periods in their careers typically cited a steady job and marriage as the factor most responsible.

67. A more traditional approach might have been to examine the proportion of the variance in offense rates that could be explained by each test, and distinguish those situations when each test predicts most and least accurately. There are two problems with this approach.

First, R^2 is not an appropriate measure of how these tests are used. Criminal justice agencies that use predictive tests usually select offenders with scores greater than some cutpoint for "special treatment"; the degree of the special treatment does not generally depend on how high the offender scores, however. Thus agencies need not be concerned with how precisely a test predicts a high-rate offender's offense rate, only with whether it correctly predicts it to be high.

More important, if the tests work, the gain lies in better selectivity and fewer crimes at the same level of incarceration, not in "better predictions" in some abstract way. It is difficult enough to balance crimes prevented against the potential for infringing in civil liberties inherent in the utilitarian goals; it makes no sense whatever to balance civil liberties against "goodness of fit."

68. Chaiken and Chaiken, in Varieties of Criminal Behavior, found that by adding social characteristics to an equation that used prior criminal record to predict the offense rates of imprisoned robbers, the percent of variance explained could be increased by some 60 percent. Since social characteristics were not directly included in the simulation, a social characteristics variable was created that consistently added 60 percent to the R-squared over and above the contribution of the number of prior arrests. The results discussed in the text include this made-up variable. Although the variable could conceivably have been added to the predictive equations using rates, the validity of the first equation is questionable enough. Besides, the point of simulating social characteristics in the first place was to demonstrate that a 60 percent increase in the R-squared did not imply that crimes prevented would also increase by a like amount. How much social characteristics would add to an equation using rates is uncertain, but the figure is almost certainly less than 60 percent.

69. This is not to say that individual prosecutors, or even prosecutor's offices, should necessary be evaluated solely on the basis of the probability of conviction; the potential for abuse of such a measure is obvious.

70. See, for example, Vincent Bugliosi's account of the activities undertaken by prosecutors in Los Angeles County to ensure the conviction of Charles Manson and his followers, in Vincent Bugliosi and Curt Gentry, Helter Skelter: The True Story of the Manson Murders (New York: W.W. Norton, 1969).

71. In operational terms, the prosecutor should solve the programming problem:

$$\max \sum_i p_i D_i$$

where p_i = p(effort, strength of evidence)

subject to $\sum$ effort $\leq E$, the total prosecutor-days available.

Forst and Brosi, in "A Theoretical and Empirical Analysis", have set up the same problem as a Lagrangean. If the District Attorney is able to affect the amount of time his associates put into each case from day to day, and if evidence has a time value (witnesses forget and move out of town; police sometimes misplace physical evidence), then the prosecutor should solve a dynamic programming problem, which may be rewritten as a Hamiltonian.

72. See, for example, Charles Silberman, Criminal Violence, Criminal Justice (New York: Random House, 1978).

73. Dahmann and Lacy, Criminal Process in Four Jurisdictions.

74. Pate, Bowers and Parks found that location-oriented patrol units and perpetrator-oriented patrol units made three times as many arrests of "targeted individuals" as regular patrol units, per officer-hour expended, primarily through use of surveillance and stakeouts. As for post-incident investigations, Eck has shown that the actions detectives take can increase the chances of crime solution; although cases may be screened for solvability, many "solvable" cases are not worked and are never solved, due to a scarcity of resources. John Eck, Managing Case Assignments: The Burglary Investigation Decision Model Replication, (Washington, D.C.: Police Executive Research Forum, 1979); John Eck, Investigating Crime (Washington, D.C.: Police Executive Research Forum, forthcoming). Thus it is plausible to suggest that, by reallocating resources to focus on crimes likely to have been committed by high-rate offenders, investigators could increase the selective impact of their activities.

75. Although Forst and Brosi indicate that prosecutors devote more resources to cases they think likely to result in conviction, there is very little information on how this allocation of resources actually affects the chances of conviction. For example, evaluations of career criminal programs that devoted four times the effort to cases involving selected offenders have concluded that these programs had no effect on either the likelihood of conviction, or the charges brought against offenders; however, because the typical career criminal unit did not screen out the most difficult cases, as the rest of the prosecutor's office did, this represents a small but real gain. Beyond this, there is little data on which to base a conviction production function. Accordingly, the program analyzed in the text involves a change in case screening procedures, not in allocation of effort among cases.

76. See Mary A. Toborg, Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Summary Report (Washington, D.C.: National Institute of Justice, October 1981).

77. More specifically, the sentence is set to be

$$S = S \cdot \hat{\lambda}_i / \bar{\lambda} .$$

That is, the sentence is directly and linearly related to the ratio of the convict's estimated lambda to the average offense rate. As before, sentence lengths are assumed to be exponentially distributed.

78. See, for example, Twentieth Century Fund, Fair and Certain Punishment (New York: McGraw-Hill, 1976), and James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little-Brown, 1977), or more generally Chapter 4, Volume I of this report, for demonstrations that the identity of the judge is even more important than the instant offense and the offender's prior record in determining the length of the sentence passed. In the simulation, this is reflected by setting the sentence equal to a random exponential variable with mean as described above, note 54. Although it could be argued that judges are in fact making expert clinical judgments as to the rehabilitative potential of each offender, and that sentences should be correlated to the offender's career length or offense rate (after all, that is the point of giving judges so much discretion), the fact that so much of the variance in sentence length lies between judges, and so little "within" judges (that is, varying on a case-to-case basis for each judge) argues against this. Even if it makes sense to consider sentence length as a kind of clinical judgment, there is excruciatingly little evidence to suggest that clinical judgments about dangerousness or rehabilitation predict at all well, anyway. See, for example, Paul Meehl, Clinical versus Statistical Prediction: A Theoretical Analysis and a Review of the Evidence (Minneapolis: University of Minnesota Press, 1954); John Monahan, Predicting Violent Behavior: An Assessment of Clinical Techniques (Beverly Hills, Ca.: Sage, 1981)

79. As suggested by note 60, above, the salient factor scores used by some parole boards probably predict the offense rate better than they predict rehabilitation or "aging out".

80. To simulate presumptive sentencing, each sentence was defined as a random normal variate, with mean the same as before, but with a standard deviation equal to the square root of the mean. A strictly mandatory sentencing strategy would almost certainly have been even more efficient, but it is probably unrealistic to expect that judges will be stripped of all their sentencing discretion anytime soon.

81. Peter Greenwood has recently calculated that the robbery rate in California could be cut by up to 20 percent, with no increase in the prison population, by enacting a selective sentencing policy that relies on criminal record and social characteristics to predict each convicted offender's offense rate. (Greenwood's estimate of the decrease in the burglary rate, at about 5 percent, is more in line with the estimates obtained here.) Greenwood uses an estimate of the average robbery offense rate of 10.6, which is considerably higher than any of the averages used here. In addition, he implicitly assumes that an imprisoned offender would have been active, had he been on the street, for the entire duration of his prison or jail sentences. Both of these assumptions would tend to cause higher predictions of crimes prevented. Peter Greenwood with Allan Abrahamse, Selective Incapacitation, R-2815-NIJ (Santa Monica, Ca.: Rand, August 1982).

82. For example, a full-blown multiattribute utility analysis could help clarify the tradeoffs in the mind of decisionmakers, though such an analysis would probably not resolve the question to anyone's complete satisfaction. For examples of such analyses, see Sellin and Wolfgang, The Measurement of Delinquency, and Ralph L. Keeney and Howard Raiffa, Decisions with Multiple Objectives (New York: John Wiley and Sons, 1976).

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