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CAREER CRIMINAL PROSECUTION: POTENTIAL OBJECTIVES

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INTRODUCTION

The concept of career criminal programs, which involves concentrating prosecutors' resources on repeat offenders with serious criminal records, is more than five years old. Federal, state, and local officials have instituted more than fifty projects utilizing federal or state Law Enforcement Assistance Administration grants. These programs have been immensely popular among practitioners and the press. They are routinely praised as being one of the most significant innovations that the LEAA has produced to date. Nevertheless, when practitioners take a hardheaded look at what these programs accomplish, they are uncertain about the ultimate impact of the programs.

There is no confusion about career criminal programs' immediate goals. Once the prosecutor has specified his local definition of who is to be considered a "career criminal," it is generally accepted that the program should strive for (1) increased conviction rates and higher conviction levels; (2) increased incarceration rates and longer terms; (3) higher bail and increased use of pretrial detention; and (4) speedier dispositions of cases. The real issue is not whether these immediate project goals are desirable, but whether their achievement will reduce crime or otherwise aid society in the long run.

The purpose of this article is to describe a number of career criminal programs' long-term objectives. The article will demonstrate how the prosecutor's choice of ultimate objectives should influence such program decisions as the selection criteria for including defendants in the program and trade-offs in performance with other parts of the prosecutor's office. The three long-term objectives this paper will consider are crime reduction, symbolic justice, and improved office performance. The paper will demonstrate how crime can be reduced through incapacitation or deterrence, depending on the screening criteria and the success of the program in achieving its immediate goals. The

paper will then argue that the program can fulfill a valuable symbolic role for the community, regardless of its ultimate effects on crime. Finally, the paper will demonstrate how these programs can lead to long-term improvements in the performance of the prosecutor's office by introducing or testing a host of innovations which later can be adopted officewide without significant additional costs.

CAREER CRIMINAL PROSECUTION AS A CRIME REDUCTION TECHNIQUE

The career criminal is a one-man crime wave. If we can bring him to a speedy trial, and make sure that, if found guilty, he is sent back to prison, we can give the streets back to the people. Our job is to put the career criminal out of business.—President Gerald R. Ford¹

Although the crime reduction effects of career criminal programs may not be as dramatic as President Ford predicted, the programs are expected to be effective. In fact, the failure of existing projects to demonstrate perceptible impacts on crime is one of the most critical issues faced by the program to date. The two methods by which one expects the programs to reduce crime are incapacitation and deterrence. The incapacitation effects of the system are those crimes that the program prevents by taking offenders out of the community while they are incarcerated. The program prevents the crimes that the career offender would have committed if he had not been restrained.² The deterrent effects³ of the system are the inhibiting effects that sanctions have on potential offenders. These are the crimes that would have occurred if potential offenders knew that they would not be punished.

In theory, increases in any one or combination

¹ This statement was made by President Gerald R. Ford in a speech before the International Association of Chiefs of Police in 1974.

² One model for calculating the amount of crimes prevented involves calculating what fraction of the time an offender will be incarcerated under a given sanction policy and assuming that this fraction of crime will also be prevented.

³ Analysts define special deterrence as applying only to the offender who is sanctioned and general deterrence as applying to all potential offenders.

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of conviction rates, incarceration rates, or sentence lengths should increase deterrence and incapacitation effects. However, this paper will examine how a number of practical problems may affect our ability to observe impacts on crime. These practical problems include how conviction rates are defined, the number of offenders handled by the program, the selection criteria, the timing of the crime effects, and the effects of the program on other parts of the office. Prior to this examination, this article will summarize the conclusions of a recent study concerning the scientific evidence in support of the incapacitation and deterrence theories.

Blumstein, Cohen, and Nagin examined evidence substantiating both theories. They found:

Analyses of natural variation (in sanctions between states), with few exceptions, find a negative association between crime rates and non-capital sanction risks. . . . [A]ny conclusion that these negative associations reflect a deterrent effect, however, is limited principally by the inability to eliminate other factors that could account for the observed relationship, even in the absence of a deterrent effect. . . . In summary, therefore we cannot yet assert that the evidence warrants an affirmative conclusion regarding deterrence.⁴

They found the evidence in support of the incapacitation theory more compelling.

As long as there is a reasonable presumption that offenders who are imprisoned would have continued to commit crimes if they had remained free, there is unquestionably a direct incapacitative effect.

Models exist for estimating the incapacitative effect, but they rest on a number of important, and as yet untested, assumptions. Using the models requires adequate estimates of critical, but largely unknown, parameters that characterize individual criminal careers. The most basic parameters include estimates of individual crime rates and of the length of individual criminal careers as well as of the distribution of both of these parameters across the population of criminals.⁵

In sum, research to date cannot assert unequivocally that increases in sanctions will lead to significant reductions in crime, although the evidence points in that direction. Consequently one is left to his own interpretations of the available

evidence to decide the magnitude of effects that can be expected realistically.

A more practical problem is that many prosecutors interpret the conviction rate under a career criminal program as the percentage of cases filed by the unit that result in conviction. This definition is inconsistent with incapacitation and deterrence theories, which are concerned with the probability that a crime will lead to conviction. By focusing on only those cases filed by the prosecutor's office, the impacts of case screening become confounded with those of prosecution effectiveness. Specifically, if a prosecutor increases his conviction rate through tighter case screening without changing the probability of conviction given arrest, there will be no deterrent or incapacitation effect.⁶ For an incapacitation or deterrent effect to exist, the actual risk of sanctions (conviction, incarceration, or sentence length) associated with particular types of crime must be increased.

Another problem is that the number of offenders processed by a program may be so small that the resulting incapacitation or deterrent effects on the overall crime rate cannot be distinguished from random fluctuations. Suppose that a program concentrates on adult robbers with prior felony convictions—a definition that might include about 20% of the robbery cases filed by the office. Further, assume that the program is able to increase the average time served for defendants under the program by 25%—from four to five years. Finally, assume that the average time served for all other robbers, including those not convicted, is two years. Under these conditions, the one year increase in average time served for defendants under the program translates to less than a 10% increase in the average time served for all robbery defendants. Based on the most recent models of incapacitation effects, this increase in average sentence length could be expected to reduce adult robberies by 3% at most. It would not have any effect on juvenile robberies, which may comprise 30% to 50% of the total. One does not know what its deterrent effect might be.

Furthermore, the reduction in crime resulting from career criminal programs will not be observed immediately. The deterrent effects will take some time for potential offenders to adjust to the new sanctions. The incapacitation effects will not be felt

⁴ DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS OF CRIME RATES 6 (1978).

⁵ *Id.* at 9.

⁶ Conversely, an evaluation that measures the conviction rate, based on cases filed, will miss all of the benefits of better police investigation and liaison work.

until four or five years after the program's start, which is when the extended terms for defendants under the program would begin to take effect. Finally, if an increase in program sanctions is achieved at the expense of lower sanctions for other defendants, because of more dismissals or greater plea bargaining to reduce case backlogs, the overall deterrent or incapacitation effects could be reduced further.

These arguments are not presented to point out the futility of attempting to reduce crime through the career criminal program approach. Rather, they are offered to explain why crime reduction may not be observed immediately and why a program ultimately must have a significant effect on the jurisdiction's average sanction severity if crime is to be affected. On a more optimistic note, the size of the incapacitation effects resulting from the program may be increased if prosecutors learn to identify and focus on those defendants whose prior records indicate that they will be the most active in crime.

The selection criteria adopted by a program can limit the program's impact. The principal benefit that a career criminal program offers is more thorough and effective prosecutions—a characteristic that should result in higher conviction rates and tougher sentences for marginal cases that would not be prepared properly under routine procedures. However, many programs exclude this type of case from consideration. By concentrating on "sure-winner" cases, for which the results of increased prosecution effort may not be felt readily, prosecutors may be limiting severely the amount of improvement programs may achieve.

CAREER CRIMINAL PROSECUTION AND SYMBOLIC JUSTICE

Laws threaten, or promise, punishment for crimes. Society has obligated itself by threatening. It owes the carrying out of its threats. Society pays its debts by punishing the offender, however unwilling he is to accept payment. . . . Were they not punished, those who did restrain themselves would feel cheated.—Ernest van den Haag⁷

Most criminal courts undermine respect for law—not by their results, but by the shabby, haphazard way in which they are run.—Charles Silberman⁸

In this era of restricted local budgets, it is inevitable that the work load thrust upon the criminal

courts will far exceed their ability to dispose of each case properly. Assembly-line processing and nine-month backlogs were the norm even before municipal governments discovered fiscal constraints. Aside from their budgetary problems, criminal courts find themselves faced with a crisis of self-doubt and lack of public confidence. Should their emphasis be on punishment or on redemption of the wrongdoer? Should all offenders be punished according to their crime or is the best approach in most cases radical nonintervention, as some labeling theorists would suggest? What evidence can criminal courts and local governments give to the public—and to victims in particular—that their victimizations are taken seriously and that efforts are made to protect them?

The career criminal program provides an answer to some of these problems. By concentrating its resources on a small group of defendants who have repeatedly flouted society's rules—a group that empirical studies have shown represents the highest risk of recidivism—the criminal justice system has a reasonable target for carrying out its symbolic functions without undue concessions to haste or expediency. The wide acclaim received by career criminal programs to date is testimony to the fact that they have the ability to convince both cynical prosecutors and skeptical victims that the system sometimes works. Programs may achieve these benefits regardless of their effects upon crime. Furthermore, by zealously prosecuting those who have made a profession out of victimizing society, programs provide a visible expression of society's outrage at the career criminals' behavior and the damage it has caused.

A SPUR TO INNOVATION

The most significant effects of career criminal programs may not be their immediate impacts on crime or victim perceptions but on the overall functioning of the prosecutor's office. In many cities, criminal prosecution procedures have become stymied by the magnitude of growing case-loads and increased procedural safeguards.

In many offices the instigation of program procedures has demonstrated that the prosecutor systematically can affect the outcome of cases. Through the use of police liaison officers or the early participation of prosecutors in complicated investigations, the quality and responsiveness of police work can be upgraded. Extra attention devoted to securing the cooperation of witnesses can result in fewer dismissals or plea bargain conces-

⁷ E. VAN DEN HAAG, PUNISHING CRIMINALS 15, 21 (1975).

⁸ C. SILBERMAN, CRIMINAL VIOLENCE; CRIMINAL JUSTICE 256 (1978).

sions. Sentence bargaining and charge bargaining can be restricted without increasing trial rates. Early case screening can avoid unproductive efforts on marginal cases. The benefits of vertical representation⁹ can be achieved without completely upsetting the efficiency of an office. Case monitoring can ensure that supervisors' policies are executed and that important cases do not slip through cracks. Criminal history systems can be made more responsive so that the prosecutor is not forced to make critical decisions without knowing the characteristics of the defendants with whom he is dealing.

In summary, the operation of career criminal program units can provide a test basis for the introduction of a variety of procedures and tech-

⁹ With vertical representation, a single prosecutor handles each case rather than passing the same case to different prosecutors.

niques that eventually will improve the functioning of an entire office. While the short-term benefits may be difficult to assess, the long-term benefits of responsiveness to public concerns may be considerable.

CONCLUSION

Career criminal prosecution and the activities it encompasses are a self-declared success. Most prosecutors who have established such units defend their merits. Nothing the evaluators say is likely to change these sentiments. However, as time passes, the career criminal program concept will continue to evolve. Selection criteria will be modified and new procedures will be tested. It would behoove those prosecutors who are involved to be able to articulate the long-term objectives of their programs, in order to guide their subordinates and to defend their program.