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INVESTMENT OF PROSECUTION RESOURCES IN CAREER CRIMINAL CASES

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BACKGROUND

Justification for a career criminal program rests on several basic assumptions: (1) that a small number of offenders (habitual criminals) account for a disproportionate amount of crime; if these offenders were imprisoned, crime would be reduced significantly;¹ (2) that habitual criminals are distinguishable from "routine" offenders who commit fewer and less serious offenses;² (3) that once an habitual offender is identified, his case can be singled out for increased prosecutorial effort; and (4) that this special handling will enhance the probability of conviction and, perhaps also, the length of prison time received by the convicted offender.³

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¹ James Q. Wilson has been a major proponent of this position. See J. WILSON, *THINKING ABOUT CRIME* (1975); Wilson & Boland, *Crime*, in *THE URBAN PREDICAMENT* 179 (1976). Several researchers have shown that a small number of offenders account for a disproportionate amount of crime. See J. PETERSILIA, *FOCUSING ATTENTION ON CAREER CRIMINALS—AN IDEA WHOSE TIME HAS COME* (RAND P-6112, 1978); K. WILLIAMS, *THE SCOPE AND PREDICTION OF RECIDIVISM* (INSLAW, PROMIS Research Publication No. 10, 1979); M. WOLFGANG, R. FIGLIO & T. SELLIN, *DELINQUENCY IN A BIRTH COHORT* (1972). However, researchers have questioned how large an impact the incarceration of offenders has on crime rates. For an overview, see Cohen, *The Incapacitative Effect of Imprisonment: A Critical Review of the Literature*, in *DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES* 187 (1978).

² But see K. WILLIAMS, note 1 *supra*; Dershowitz, *The Law of Dangerousness: Some Fictions about Prediction*, 23 J. LEGAL EDUC. 24 (1971); Monahan, *The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus*, in *DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES* 244 (1978); von Hirsch, *Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons*, 21 BUFFALO L. REV. 717 (1972).

³ In general, see J. McMullin, *The Development of the Career Criminal Concept* (Sept. 20-21, 1979) (workshop paper, Career Criminal Conference, Alexandria, Va.). For evaluations, see Chelimsky & Dahmann, *The MITRE Corporation's National Evaluation of the Career Criminal Program: A Discussion of the Findings*, 71 J. CRIM. L. & C. 102 (1980); Phillips & Cartwright, *The California Criminal Prosecution Program One Year Later*, 71 J. CRIM. L. & C. 107 (1980).

The research reported in this paper initially concentrates on the third premise that career criminal units increase attorney time devoted to the handling of habitual offenders. The findings were drawn from a larger study deriving case weights for the prosecution of adult felony cases in Los Angeles County, California.⁴ In that study, case weights were defined as the average amount of attorney time spent on a criminal case, holding constant the type of offense and disposition. Weights were calculated independently for both the career criminal unit and the routine caseload. A summary of the methodology used in the Los Angeles study is provided in the second section of this paper. The third section of the paper presents (1) case weights for the prosecution of career criminal and noncareer criminal cases; (2) the distribution of attorney time, broken down by the activity with which the attorneys were engaged, for career criminal and noncareer criminal cases; and (3) the distribution of attorney time over the life of a typical case, both for career criminal and routine cases. After this discussion of case weights and attorney time distribution, the report discusses the premise that career criminal units enhance the probability of conviction of habitual offenders.

METHODOLOGY

To derive the case weights, it was necessary to collect information on the amount of attorney time spent on prosecution. It was anticipated that this time should be categorized by the stage in the criminal justice process that the case had reached and what the attorney was doing while he worked on the case. This information was collected in the first set of data—the time data.

Daily time data were collected over a seventy-three day period from all deputy district attorneys who processed felony cases in the four branch offices and the main office of the Los Angeles County District Attorney. In addition, the study distinguished cases handled by the career criminal

⁴ See W. Rhodes, R. Hildenbrand, J. Hausner & T. Dungworth, *Case Weights for the Prosecution and Defense of Felony Cases in Los Angeles* (INSLAW Nov. 8, 1979).

A. District Attorney Case Weights: County-wide, Exclusive of the Special Prosecution Units in Central Office

Case Type	Dismiss		Guilty Plea	SOT Acquittal*	Bench		Jury	
	Mun. Ct.	Sup. Ct.			Convict	Acquittal	Convict	Acquittal
Robbery	181	556	530	474**	591**	535	2363	2307
Burglary	193	264	465	432	798	765	1447	1414

B. District Attorney Case Weights: Special Units

	Dismiss		Guilty Plea	SOT Acquittal	Bench		Jury	
	Municipal Court	Superior Court			Convict	Acquittal	Convict	Acquittal
Career Criminal Robbery and Burglary	954***	1404*** (3)	3423 (16)	3290	****	****	11080*** (3)	10947***

*SOT: Standing on the transcript.

**Fewer than 5 observations in at least one of the time slices.

***Zero observations in at least one of the time slices.

****Too few observations to estimate.

FIGURE 1

Deputy district attorney time and activity form (DA-A)

unit. Attorneys were instructed to fill out form DA-A (shown in figure 1) daily.

Each deputy district attorney was asked to supply his name, a unique identification number, and the date the form was completed. Deputies were asked to supply the name of the case upon which they were working and the complaint number of that case. Together with the date and attorney identification number, these data elements enabled the matching of cases reported on the time form with the second data base—case attributes stored in the Prosecutor's Management Information System maintained by the office of the District Attorney, Los Angeles County.

The second column of the form was used to record case status, defined as the point in the judicial proceeding reached by the case. Case status number (1) was used if the attorney worked on noncase-related matter. For other case-related matter, the status indicated whether the case was at the precomplaint stage, (2); being presented to a grand jury, (3); or in the process of being filed, (4). Status (5) indicated that the case was in the municipal court, status (6) that it was in pretrial in the superior court, and status (7) that it was at trial in the superior court. Status (8) represented that the case had reached probation and sentencing, while status (9) indicated that a probation violation hearing was being conducted. Status (10) indicated that the case had reached an appellate court. Sta-

tuses (11) and (12) indicated that the attorney was working on multiple cases.

The fourth column of the form was used to record the attorney's activities, broadly defined to include time spent on court appearances, conferences, telephone calls, preparation, and other activities. These broad categories were subclassified into forty-five narrowly defined subactivities that, together with the twelve status codes, provided 540 unique elements in a status-activity matrix, a summary of which is provided in the next section.

Case weights, that is the average time spent by attorneys on criminal cases, were calculated. Because of the way data were collected, it was necessary to develop a model to calculate these weights.⁵ Using this model, the following steps were involved in deriving these weights:

- (a) Cases were selected only if the first charge was robbery or burglary.
- (b) Chronological time⁶ spent in municipal court was divided into ten equal time "slices." The average

⁵ Justification for this model can be found in W. Rhodes & R. Hildenbrand, A Model for Estimating Case Weights for the Prosecution of Felony Cases (Sept. 1979) (paper presented at the Annual Meeting of the Southern Economic Ass'n, Atlanta, Ga.).

⁶ Chronological time means the time from filing to preliminary hearing in the municipal court and the time from superior court arraignment to trial.

- amount of attorney time spent in each slice was calculated. These ten slices were then added to determine the average time spent in municipal court.
- (c) The above process was repeated for superior court. Thus, it was possible to speak of the average time spent both in municipal court and superior court.
 - (d) The average amount of attorney time spent on case screening and sentencing was also determined.
 - (e) The above four times—the averages for case screening, municipal court, superior court, and sentencing—were summed separately for cases ending in rejections, dismissals in municipal court, dismissals in superior court, guilty pleas, bench trials, and jury trials. These average times are reported in the next section as case weights.

CASE WEIGHTS AND TIME DISTRIBUTION

How does the amount of attorney time spent on the prosecution of habitual offenders compare with the routine prosecution of criminal cases? Table 1 presents case weights for robbery and burglary cases, two offenses of which the career criminal unit in Los Angeles County handled a fairly large volume. Because of the small number of cases observed, table 1 reports a composite weight for career criminal cases. It was possible to derive distinct case weights for the routine prosecution of robbery and burglary cases.

Regardless of the disposition, it is evident that attorneys devoted more time to the cases of habitual offenders processed through the career criminal program than they did to the cases of other offenders processed through regular prosecution. For example, a guilty plea required about nine hours for a routine robbery case and about eight hours for a routine burglary. But for a career criminal case, a guilty plea required nearly sixty hours. Jury trials also were more expensive when prosecuted by the career criminal unit. A routine robbery trial required about thirty-nine hours; a routine burglary, about twenty-four hours. A career criminal case, in contrast, required close to 185 hours. Overall, it appears that conviction by the career criminal unit demanded between five and seven times as many attorney hours as did conviction through normal prosecution.

Investigation revealed that career criminal attorneys spent more time on virtually every aspect of prosecution—court appearances, conferences, telephone calls, preparation, and other activities. However, the expanded amount of attorney time was not proportional across each activity group.

First, career criminal attorneys appeared to

spend proportionally somewhat less time on court appearances, 32% of total time compared with 30% to 44% for the nonspecialized offices. They also spent proportionally less time on administrative and noncase-related activities, 9% relative to 9% to 14%. The implication is that specialized attorneys spent proportionally somewhat more time on preparation. Second, the division of this case preparation time was interesting. Special unit attorneys spent a disproportionate amount of their conference and telephone time on witnesses, 43% for the special unit and 12% to 31% for the nonspecialized units. Recalling that career criminal attorneys spent about five times as much effort per case as their counterparts in nonspecialized units, it is evident that witness contacts increased by a factor of about ten for career criminal cases.

Police witnesses got somewhat less attention; special unit prosecutors spent 16% of their conference and telephone time with police, relative to 21% to 29% for the rest of the office. These findings may imply that "quality" prosecution relies less upon police to build the case and more on the input of witnesses and victims. This is not to say that special unit prosecutors ignored police input. On the contrary, because of the greater absolute time spent on criminal cases by special unit prosecutors, even the smaller proportion of their time accounted for more total police input into case preparation. The point is that when attorneys have a choice, they choose to invest more heavily in increasing witness input into the case. There is likely to be a lesson in this "revealed preference" for additional witness input, suggesting that the quality of prosecution would be enhanced by special programs aimed at increasing the role of witnesses.

Special unit prosecutors also spent disproportionately less time on plea negotiations and other interaction with the opposing counsel. Special unit prosecutors spent 19% of their combined conference and telephone time in this manner, relative to 17% to 43% by noncareer criminal attorneys. These differences are so large that they suggest that special unit prosecutors actually spent about the same amount of absolute time on plea negotiations as did the attorneys from the regular units despite the overall heavier expenditure in career criminal cases. The implication is that special unit attorneys spent much more time on building cases than they did on settling them.

It also was found that attorneys in the career

TABLE 1
CASE WEIGHTS FOR ROBBERY AND BURGLARY

DEPUTY _____ # _____ DATE _____					
STATUS 1. Not Case Related (no specific case) 2. Pre-complaint (potential case/ specific suspect) 3. Grand Jury Matter 4. Filing proceeds 5. Municipal Court 6. Superior Court pre-trial 7. Superior Court-trial (up to sentencing) 8. Superior Court-probation & sentencing 9. Superior Court-probation violation & other post P&S 10. Appellate Court	COURT APPEARANCES 11. Arraignment 12. Preliminary Hrg 13. Motions 14. Trial-SOT/SOT(+) 15. Trial-bench 16. Trial-Jury 17. Probation & Sentencing Hrg 18. Taking plea (guilty/nolo) 19. Grand Jury-formal presentation 20. Probation Viol. Hrg 21. Diversion related 22. Other	CONFERENCES 31. Citizen 32. Witness 33. Police Officer/ Agent/Agency 34. opposing Counsel 35. Judge 36. Intra-office 37. Other 38. Plea Negotiation	TELEPHONE 41. Citizen 42. Witness 43. Police Officer/ Agent/Agency 44. Opposing Counsel 45. Judge 46. Intra-Office 47. Other	PREPARATION 51. Points & Auth.(drafting) 52. Pleadings 53. Memoranda 54. Fact Investigation 55. Legal Research 56. Search Warrant (drafting) 57. Search Warrant (review) 58. Rejections 59. Other Prep.	OTHER ACTIVITIES 61. Correspondence 62. Training 63. Travel 64. Administrative 65. Waiting for opposing Counsel 66. Waiting for Court to reach matter 67. Waiting for Witness 68. Other (include special projects & assignments)
	<input type="checkbox"/> CENTRAL <input type="checkbox"/> POMONA <input type="checkbox"/> NORWALK <input type="checkbox"/> SEX'L ASSLT		<input type="checkbox"/> LONG BEACH <input type="checkbox"/> CAREER CRIMINAL <input type="checkbox"/> ORGANIZED CRIME <input type="checkbox"/> MAJOR FRAUDS		
Case Name	Status	Complaint No.	Activity	Explanation (if necessary)	Time Hrs. Mins.

criminal unit invested their time earlier in the life of a case. As figure 2 illustrates, very little time was spent early in the life of a routine criminal case; instead, attorney time was concentrated at the preliminary hearing. This was in contrast to career criminal cases, for which the attorney investigated the case immediately following filing and continued his preparation throughout the case's life in municipal court. In superior court, the pattern was similar. Little time was spent during the first thirty to sixty days in the life of a routine criminal case, but for a career criminal case, the attorney input was immediate and sustained throughout the case's life in superior court.

Taken together, these findings seem to indicate that Los Angeles County has been successful in channeling additional resources into the prosecution of career criminal cases. Of the resources that were spent, a greater proportion was devoted to case preparation, especially to preparation of lay witnesses. Resources were devoted earlier in the life of the cases of habitual offenders, and the commitment of resources was sustained throughout the life of these cases. The question remains open, of course, whether the application of those resources improved the prosecution of cases.

RETURNS TO INCREASING PROSECUTIVE RESOURCES

It is extremely difficult to draw inferences con-

was more likely than regular prosecution to secure a prison sentence. The probability of conviction, of course, as well as the probability of a prison sentence, depended on more than the expenditure made on prosecution. Other factors, such as the seriousness of the offense and the quality of the evidence pointing toward conviction, were relevant. An attempt to control for some of these factors was made by holding the following constant: (1) the type of defense counsel; (2) the number of charges; (3) the number and type of witnesses; and (4) the elements of the offense, such as the amount of harm done to persons and the amount of property loss.

According to the regression results, the fact that the career criminal unit prosecuted the case did not have a statistically significant impact on the probability of conviction. One must be very cautious in drawing a firm conclusion about career criminal cases. In this section of the report, regression analysis is used to determine whether the expenditure on career criminal cases increased the probability of conviction and, for convicted cases, whether prosecution by the career criminal unit criminal units based on this finding, however. Only 5% of the cases entering the analysis were career criminal cases. It is always difficult to predict when so few cases are available for analysis. Additionally, it is difficult to believe that the variables entering

into the statistical analysis control accurately for the intrinsic convictability of a case. It could be that the career criminal cases were more difficult to prosecute than routine criminal cases and, thus, that attorneys from the career criminal unit actually brought marginal cases "up" to convictable standards. Whatever the explanation, the findings failed to demonstrate a significant impact on convictability of the special handling afforded by the career criminal unit.

But what about the supplemental investment made on prosecution? Did additional investment increase the probability of conviction? According to the statistical analysis, the probability of conviction actually decreased as the expenditure on a criminal case increased. Although counterintuitive at first, this finding has a ready explanation. First, the most difficult cases probably required the most expenditure; these were also most likely to be difficult cases in which to obtain a conviction. Second, trials are the most expensive means of disposing of a case and unlike guilty pleas, which are relatively

inexpensive, they sometimes result in acquittal. As a result, it is not unreasonable to expect a negative correlation between expenditure and conviction. Third, a strong defense may have caused the prosecutor to increase his expenditure on any given case, with the effect of holding the probability of conviction constant, rather than increasing it. Given the data constraints of this study, it is difficult to judge the effectiveness of expenditures on the probability of conviction of career criminal cases.

Nor was it possible to demonstrate that the career criminal program enhanced the sentence received by a convicted offender or that expenditure in general enhanced the sentence. As before, it is necessary to be cautious about this conclusion.

SUMMARY

It has been shown that career criminal cases consumed five to seven times as many attorney hours as the prosecution of routine criminal matters. It also has been shown that the additional

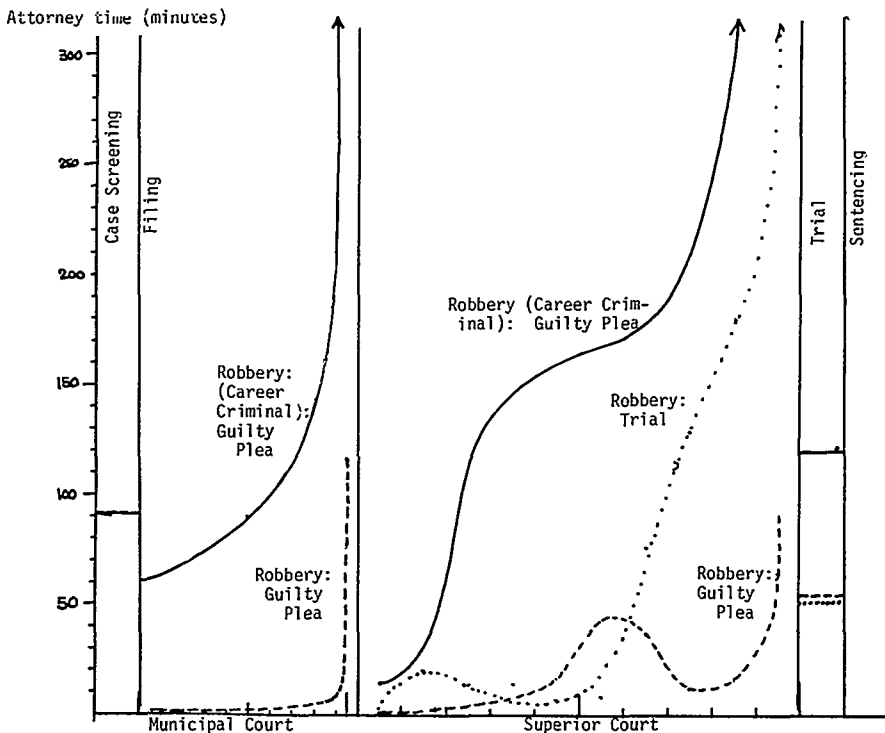


FIGURE 2
Expenditure of time over the life of career criminal and routine cases

hours allowed the prosecutor to develop his case earlier in the case life and to sustain his intensive involvement over the life of the case. It was not possible to demonstrate that this increased effort had an impact on either the probability that a case resulted in conviction or the probability that the convicted offender received a prison sentence. However, data problems dictate caution in using these latter findings to judge the effectiveness of the prosecution of career criminals.