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THE PROSECUTOR'S ROLE IN THE URBAN COURT SYSTEM: THE CASE FOR MANAGEMENT CONSCIOUSNESS

WILLIAM A. HAMILTON* AND CHARLES R. WORK**

Crime worries the urban American more than any other issue. In a nationwide opinion survey released in January, 1973, by the Gallup Poll, crime moved into top position as the most vexing concern of Americans residing in cities of 500,000 or more. Just twenty-five years ago, these same Americans, according to Gallup, found many other issues more distressing, including poor housing, traffic congestion, and high taxes.

In the view of today's urban American, one of the prime causes of the crime problem is lenient courts. Gallup found that the number of city residents who blame the crime problem on lenient courts has increased by fifty percent in just eight years.¹ Today, almost three out of every four urban Americans believe that the courts are too lenient.

No one involved in the administration of criminal justice can ignore such evidence of waning public confidence. It is possible, of course, to interpret the concern for lenient courts in more than one way. The most obvious conclusion is that the public believes that sentences are not severe enough. This interpretation, however, may be an oversimplification, and the widespread public disaffection uncovered in the polls and characterized as a concern for leniency may signify an even deeper and more pervasive dissatisfaction with the criminal courts. Perhaps what the public perceives but has not as yet articulated is a failure of the criminal court system to exhibit an awareness of the public's priorities. Too often, the criminal court

system appears to be operated in an aimless, unfocused and arbitrary fashion, ingesting and disposing of its workload without any sense of direction. It is our contention that one of the primary remedies for the floundering urban criminal court systems is the development of management consciousness in the office of the public prosecutor.

PROSECUTOR'S RESPONSIBILITY FOR INTELLIGENT USE OF COURT RESOURCES

The public prosecutor is often forgotten in discussions of the criminal justice system. In fact, the system is usually defined as being composed of three parts: the police, the court, and corrections. The prosecutor is viewed primarily as a functionary of the court and therefore not considered separately.

The truth is that the prosecutor is far more than a mere functionary of the court. The prosecutor represents a separate and equal branch of government which is intended to be independent of the court. The prosecutor who allows his identity to be subsumed into and confused with the court is not performing his rightful function. That the court and the prosecutor can and should have different but compatible goals can be seen by an analysis of the role of each.

The court in many respects is an arbitrator, and essentially plays a passive role. It can only consider matters brought to its attention. It is essentially in a position of having to react to actions taken by others. Furthermore, the court is constrained to look at each matter on a case-by-case or individual basis, affording each issue brought before it a comparable degree of importance.

By contrast, the prosecutor is an advocate and essentially plays an active role. Unlike the court, the prosecutor is not constrained to accept passively as his workload every matter that is presented to him. He can screen out matters referred to him by police agencies that fail to meet his standards and priorities. He can initiate and channel investigations into the types of matters that he views as having prosecutive priority. The prosecutor can choose from a broad inventory

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¹ American Institute of Public Opinion, 14-15 January 1973. 1,504 adults, 18 years of age and older, residing in 300 different localities were interviewed in a survey during December, 1972. 74 percent responded that courts are not harsh enough with criminals. This is a 26 percentage point increase over the number holding this view in 1965, according to an earlier Gallup survey.

of treatments in handling his workload, including various types of diversionary programs, such as employment training or drug treatment. Instead of responding to his workload on a case-by-case basis, the prosecutor can evaluate the importance of the individual matters or cases in relation to all the other matters or cases he considers. He can give differential treatment to his cases, proportioning his time and resources among them based on his judgment of their relative importance.²

By properly exercising his role, the prosecutor performs a vitally important function for the court which the court is prevented from performing for itself: he precludes random access to its limited adjudicative resources, and preserves these resources for the timely judgment of the matters to which the public attaches priority. It is in this sense that the prosecutor serves as the guardian, protector, and custodian of the community's scarce resources for adjudication.

Unfortunately, in many jurisdictions the prosecutor does not appear to be performing this custodial function satisfactorily. Badly understaffed and lacking a sufficiently strong management consciousness, the prosecutor slips into a passive role similar to that of the court, indiscriminately accepting virtually every matter referred to him, and giving each matter equal emphasis. Even when this custodial responsibility is recognized and accepted, the prosecutor often lacks the means and techniques to differentiate rigorously among cases on the basis of public priorities. No prosecutor would find it difficult to compare the priority of a first-degree murder case with that of a petty larceny case. However, it is a great deal more difficult and challenging to differentiate among all assault cases in terms of priority.

As the result of inadequate staffing, inadequate differentiation among cases, and insufficient management consciousness, court backlogs grow

²The "differential treatment" afforded to cases within the prosecutor's office has been the subject of much comment recently, particularly with reference to the prosecutor's practically limitless discretion in many areas. See, e.g., Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 19 U.C.L.A.L. REV. 1 (1971); La Fave, *The Prosecutor's Discretion in the United States*, 18 AM. J. COMP. L. 532 (1970); Comment, *Prosecutorial Discretion—A Re-Evaluation of the Prosecutor's Unbridled Discretion and its Potential for Abuse*, 21 DE PAUL L. REV. 485 (1971). See generally Symposium, *The Discretion of the Prosecutor in Criminal Procedure*, 18 AM. J. COMP. L. 483 (1970).

inexorably. Prosecutors fight vainly to acquire additional staff. The public becomes increasingly pessimistic and contemptuous about the criminal court system. If these trends are to be brought under control, the prosecutor must perform his custodial or protective function. To be an effective custodian of the community's adjudicative resources, the prosecutor must actively manage his caseload and systematically develop and apply priorities.

The need for priorities is most obvious in major urban centers where the public prosecutor must handle thousands of cases on an assembly-line, mass-production basis. The combination of a high-volume workload and inadequate staffing means that there is little time for the prosecutor to prepare most of his cases. The prosecutor often does not have sufficient staff to assign each case individually and, consequently, cannot hold any one of his assistants responsible for a case from beginning to end.

One frequent result of the high-volume, assembly-line system is that the habitual offender can achieve a degree of anonymity in the crowd and thereby exploit the system to make its weaknesses work for him. Most repeat offenders, for example, learn that by securing the services of a heavily committed defense counsel they can increase their chances of gaining a series of continuances or postponements. The habitual offender learns quickly that this is an effective strategy for exhausting the government's witnesses to the point where they refuse to appear, or to the point where the passage of time has often blurred their memory and their testimony lacks credibility. Should the case go to trial, the prosecutor and the court are too often oblivious of the fact that there are other cases pending against the defendant, or even that he is a fugitive from other cases before the court.

THE PROMIS CASE EVALUATION AND MANAGEMENT SYSTEM

In the District of Columbia, the United States Attorney is the public prosecutor for common law crimes as well as federal crimes. In the exercise of his local jurisdiction in the District of Columbia Superior Court, the United States Attorney is faced with the problem of prosecuting thousands of cases on an assembly-line, mass-production basis.

In 1969, the then United States Attorney,

Thomas A. Flannery, perceived an urgent need for new techniques to manage these cases. With a grant from the Law Enforcement Assistance Administration, a special team of lawyers, management analysts, criminologists, statisticians, and computer science specialists worked to develop new case management tools.³ This effort led to the development of an innovative, computer-based information system for the prosecutor, known as PROMIS (Prosecutor's Management Information System).⁴

Several types of information are contained in PROMIS. A complete summary of information relating to the defendant is fed into the system. In addition to general facts such as name, sex, race, date of birth, address, and employment status, the system also contains information regarding previous arrests and convictions and alcohol or drug abuse. PROMIS also contains complete information about the alleged crime and the defendant's arrest. The date, time, and place of the crime are recorded, as are the number of persons involved, the gravity of the crime in terms of the amount and degree of personal injury, property damage, and intimidation. The time, place, and date of the arrest, as well as the type of arrest and the identity of the arresting officers are also noted.

PROMIS also contains a complete history of the criminal charges growing out of the incident. The system contains both the original charges placed by the police against the defendant and the charges actually filed in court against him, together with the prosecutor's reasons for any change in the charges. The penal statute number for the charge, the FBI Uniform Crime Report name for the charge, and the standardized offense

codes developed under Project SEARCH (System for the Electronic Analysis and Retrieval of Criminal History) are also included.

The system contains a complete summary of court events and information about witnesses. PROMIS contains the dates of every court event connected with the case, from arraignment to sentencing, the outcome of each event and the reasons for each outcome, and the names of the parties involved with each event, including defense and prosecution attorneys and the judge. The names and addresses of all witnesses, the prosecutor's assessment of the witnesses' value to the case, and any indication of reluctance to testify on the part of the witnesses are also included in the system.

The centerpiece of the PROMIS system, however, is the automated designation of priorities for pending criminal cases. Priorities are assigned by the computer on the basis of an evaluation of the gravity of the crime and the criminal history of the defendant.

The gravity of the crime is measured in terms of the degree of harm done to society rather than in terms of the legal nomenclature. A scale developed by the criminologists Thorsten Sellin and Marvin E. Wolfgang,⁵ which assesses crime gravity in terms of the extent of personal injury, property damage, and intimidation, was modified for use in the PROMIS system.

The gravity of the criminal history of the defendant is assessed by a modified version of a scale developed by another team of criminologists headed by D. M. Gottfredson.⁶ That scale examines factors such as the number and density of prior arrests, the number of previous arrests for crimes against persons, the use of aliases, and the use of hard narcotics.

In the District of Columbia Superior Court, the calendar is set and controlled by the court. PROMIS produces an advance list of the cases

⁵ See T. SELLIN & M. WOLFGANG, *THE MEASUREMENT OF DELINQUENCY* (1964). The modifications made to the Sellin-Wolfgang scale were minor.

⁶ See D. Gottfredson & R. Beverly, *Development and Operational Use of Prediction Methods in Correctional Work*, 1962 (Proceedings of the Social Statistics Section of the American Statistical Association, Washington, D.C., 1962); D. Gottfredson & J. Bonds, *A Manual for Intake Base Expectancy Scoring*, April 1, 1961 (Form CDC—BEGIA) (California Department of Corrections, Research Division, Sacramento); Gottfredson & Ballard, *Differences in Parole Decisions Associated With Decision-Makers*, 3 J. RES. IN CRIME & DELINQ. 112 (1966). Scale modifications were minor.

³ The team was headed by Joan E. Jacoby, then Director of the Office of Crime Analysis of the District of Columbia, and Charles R. Work, then Deputy Chief of the Superior Court Division of the Office of the United States Attorney, Washington, D.C. The project manager was William A. Hamilton, then Senior Consultant, Peat, Marwick, Mitchell & Co. Other team members were Sidney H. Brounstein, Robert H. Cain, Joyce H. Deroy, James M. Etheridge, John L. Gizzarelli, Fred L. Lander III, Soo Lee, Dean C. Merrill, John M. Middleton, Stanley H. Turner, Frederick G. Watts, Dennis W. Wright, and Robert Whitaker.

⁴ See generally Hamilton, *Modern Management for the Prosecutor*, 7 THE PROSECUTOR 472 (1971); Watts & Work, *Developing An Automated Information System for the Prosecutor*, 9 AM. CRIM. L.Q.—(1970); Work, *A Prosecutor's Guide to Automation*, 7 THE PROSECUTOR 479 (1971); Merrill, *Using the PROMIS Tracking System for Criminal Justice Evaluation*, in PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON CRIMINAL JUSTICE INFORMATION AND STATISTICS SYSTEMS 231 (1972).

scheduled by the court for each calendar date and ranks the cases according to their priority crime and defendant ratings. A special team of attorneys intensively prepares and monitors the cases which are given high priority ratings. The cases are still called in the order that the court establishes, but the prosecutor, through special pre-trial efforts, assures a superior degree of preparation for the high priority cases. The special team of prosecuting attorneys prepares the priority cases in advance of trial. When a priority case is called by the court, the team delivers the government's case to the courtroom prosecutor.

Another key feature of PROMIS is the ability to track the workload of the criminal court system from three separate vantage points. First, the police department's complaint number, assigned to the criminal incident, is included in PROMIS. With this number it is possible to follow the full history of the court actions arising from the crime even though those court actions may involve multiple defendants, multiple cases, and multiple trials and dispositions. Second, the fingerprint-based number assigned by the police department to the defendant after his arrest is incorporated into the PROMIS system. Because the same number is used by the department if the individual is subsequently arrested for another crime, it is possible to accumulate criminal history files on offenders and note incidents of recidivism. Third, PROMIS includes the court docket number of the pending prosecution. It is thus possible to trace the history of any formal criminal action from arraignment through final disposition and sentencing, and to account for the separate fate of each count or charge.

The inclusion of these three numbers is very significant. The number-keys provide "instant replay" capability to track the criminal incident, the defendant, and the court actions and provide a basis for communication among the various constituent agencies of the criminal justice system. Lacking such an ability, there is no mechanism for information exchange among the agencies.

Another important aspect of the PROMIS system is that explanatory data is deliberately included to indicate the reasons for each event and disposition. This "reason data" is acquired as a by-product of the collection of data for the system's day-to-day operational support functions. For example, PROMIS not only records the date and the fact that a case was screened out, con-

tinued, or dismissed, but it also records the reason for the disposition. An analysis of this "reason data" enables the prosecutor to study in more detail the effectiveness of various prosecution policies and procedures.

PROMIS is also designed to automatically generate subpoenas or notices for the arresting police officers, the assisting officers, lay witnesses, and expert witnesses before each court date. If there is not sufficient time for the notices to be sent by mail, the information is automatically printed on a special list for telephone notification.

The computer is also programmed to generate reports on cases scheduled for special hearings. A "Mental Observation List" summarizes all cases for which hearings will be held the following day to determine the mental competency of the defendants. A "Line-up List" summarizes all cases for which court-ordered line-ups are scheduled the following day. The "Diversion List" summarizes all cases which the prosecutor is diverting from the criminal process and which are scheduled for review. The "Sentencing List" summarizes all cases scheduled for sentencing the following day and includes any sentencing recommendation arrived at in the course of plea negotiations. A "List of New Narcotics Cases" and the "Chemist Report Status List" keep the chemist informed of the progress of cases in which he is involved.

MANAGEMENT IMPROVEMENTS INDUCED BY PROMIS

The PROMIS system has led to the adoption of a number of other significant improvements in the management of the prosecutor's office. One of the primary benefits of developing any information system is that it forces management to describe and define the key office functions the system must support. A computer cannot deal with ambiguity. Consequently, the office is compelled to describe the functions in exhaustive detail. In the process, weaknesses and redundancies in operations are made visible and can be corrected. For a PROMIS-type information system, this forced exercise in descriptive analysis takes on even greater importance because the system is meant to be used as a tool for actively enforcing office policies and priorities. Thus, not only are functional weaknesses exposed, but also strategies and tactics of prosecution management are subjected to rigorous definition and review.

One example of the benefits wrought from this process has been the formation of the Special Litigation Unit within the prosecutor's office, a special six-attorney unit providing continuous, concentrated monitoring of all cases identified as having high priority by the PROMIS system. Once a case has been flagged as a priority case by virtue of a high crime gravity rating or a high defendant criminal history rating, it is assigned to a member of this unit. That assistant prosecutor contacts the witnesses, interviews them, and personally arranges for them to be present on the trial date. He reviews the periodic PROMIS reports on the case to determine whether there are any other pending cases against the same defendant and, depending upon his overall evaluation, may also contact defense counsel to ascertain if a plea can be negotiated. The conviction rate for the priority cases which receive this intensive attention from the Special Litigation Unit is approximately 25 per cent higher than for the cases processed routinely.

Several other improvements in office management have been induced by the development and operation of PROMIS. First, quarterly planning in the office has been assisted. The senior staff members of the office develop each quarter a list of problems, categorize them by type, and develop a plan for their resolution. The quarterly plan generally includes a number of policy issues requiring clarification, procedural weaknesses, personnel problems, inter-agency issues, and training matters. Internal administration is thus constantly subjected to review for efficiency and improvement.

To assist in providing consistent criminal justice administration, a manual delineating office charging policies and procedures was prepared for the assistant prosecutors. The assistant prosecutor can consult this manual at the intake and screening stage to determine the established policies for each type of offense, the standards established by the prosecutor for enrollment of defendants in diversionary programs, and the administrative procedures for effecting various decisions.

The PROMIS system exposed some important weaknesses in the recording of accurate explanations of case decisions by assistant prosecutors. Even without a computer-based case management system, it is imperative that prosecution records contain a full accounting of all transactions and

dispositions and the reasons for discretionary decisions. With the emphasis in PROMIS on recording reasons for all prosecutorial actions, it soon became apparent that this requirement for full documentation was not being met satisfactorily. The visibility that PROMIS gave to this problem led to the creation of paralegal positions in the office. Paralegals have been assigned to the mass-production courtrooms to aid the prosecutor, particularly with regard to the documentation of reasons for trial dates, continuances, *nolle prosequi's*, and dismissals. Other paralegals are assisting attorneys in the coordination of continuances, the notification of witnesses, the interviewing of citizens who wish to file complaints, and the preparation of the necessary documents at the intake and screening stage.

PROMIS has also given visibility to performance problems. Disposition rates can be displayed in a variety of ways which expose training deficiencies. A natural outgrowth of this exposure has been the development of a comprehensive training program on prosecution skills and administrative and management skills. A careful examination of the training needs has been completed for four types of staff: the management level prosecutor, the line prosecutor, the paralegal, and the administrative support staff. A curriculum design has been completed for each of these staff types and case studies. Lecture materials, video tapes, and other audio-visual aids are also being developed. The curriculum design includes a comprehensive range of subjects, from an overview of the prosecution and criminal justice systems to specialized prosecution skills, such as rehabilitating a witness after cross-examination.

PROMIS has also heightened the consciousness in the office of policy development and implementation. Consequently, a directives system is being developed to provide a conceptual framework for the determination and promulgation of policy and procedures. One part of that system is the intake and screening manual described earlier.

The most significant benefit from PROMIS, however, is yet to be realized: a research program on the PROMIS data base. The system currently contains complete case histories on approximately 30,000 closed cases. In addition, the data base is growing by approximately 1,200 criminal cases per month. A preliminary design has been developed for the research program. The primary thrust of the program will be to produce useful

findings and to structure experiments for operational improvements based on the findings.

PROMIS II

Following the successful implementation of PROMIS, the United States Attorney for the District of Columbia, Harold H. Titus, Jr., decided to upgrade the PROMIS system so that case information could be instantly obtained via terminals placed throughout his office. In February 1973, PROMIS II, the second stage in the development of PROMIS, became operational. PROMIS II differs from PROMIS in one significant respect: PROMIS II is an on-line, real-time system. Certain pre-formatted questions may be requested of the data base and the answer is flashed back instantaneously on a television-type screen. Moreover, PROMIS II will be useful not only to the prosecutor's office, but also to the police department.

PROMIS II is presently being operated as part of a real-time metropolitan Washington criminal justice communications network which includes a number of other systems, such as a wanted persons file and a stolen vehicle tag file, and which is directly linked to the National Crime Information Center system.

The PROMIS data base contains more than 160 separate items of information about each case prosecuted in the District of Columbia Superior Court. Although numerous other real-time queries could be designed which would be helpful to the prosecutor and the police, five queries have been developed thus far.

The defendant query. This query makes it possible for the prosecutor or the police to determine whether or not a given defendant has any other cases pending in the court system. The fingerprint-based identification number assigned by the Metropolitan Police Department is entered via a terminal and the computer flashes back on a screen the docket numbers and status of each of the defendant's pending cases. With this information, the police can identify those persons who are arrested for crimes while on some form of pre-trial conditional release. If the identification number is not available, the defendant's name can be used as the basis of the query.

The court docket number query. This query enables the prosecutor or police officer to instantly apprise himself of the pertinent facts and status of any pending case. For docket number queries,

the computer flashes back the following information: the defendant's name and bail status; the charges; the arrest date, time and place; the offense date, time and place; the names of the police officers on the case; the number and reasons for any continuances in the case; the crime gravity rating; and the defendant criminal history rating.

The police officer query. This query enables the prosecutor or the police to determine the number and status of all cases a given officer has pending. By entering the officer's badge number, one can obtain on the screen a list of all the pending cases in which he is scheduled to testify and the next court dates for each case.

The case aging query. This query enables the prosecutor to monitor delay at each stage in the criminal proceedings. The prosecutor can specify the type of case he is interested in, such as misdemeanor cases, cases bound over to the grand jury, or felony indictments, and then enter, via the terminal, any aging factor of his choosing. For example, he can specify that he wants a list of all cases which have been awaiting grand jury action for more than thirty days.

The witness query. This query enables the prosecutor or police to enter the name of a witness in any pending case and immediately determine the docket number, status, and next trial date of the case.

Other pre-formatted queries are being planned. Another query to be developed in the immediate future will enable police district commanders to request a list of their personnel due in court on any given day. This will enable the commander to plan and use his staff more effectively.

CONCLUSION

In August 1971, the Administrator of the Law Enforcement Assistance Administration wrote to 1,300 prosecutors across the country, urging them to consider installing a PROMIS-type system in their offices. Also, former Attorney General Richard Kleindienst has urged the nation's prosecutors to undertake their own reform movement and suggested that the PROMIS system or a similar type system could help assure even-handed justice.⁷

The experience of the U.S. Attorney's Office in Washington, D.C. suggests that a system of this

⁷ Address by Attorney General Richard Kleindienst, National District Attorney's Association Annual Meeting, Mar. 7, 1973.

type can become a major catalyst for reform. PROMIS can be used to restore public confidence in our urban courts by demonstrating that the court system recognizes priorities. PROMIS, through its standardized numerical rating of cases, can also promote equity in decision making by focusing attention on the problem of assuring that

defendants with like criminal records who commit offenses of comparable gravity receive equal treatment under the law.

Finally, there can be a significant national benefit, in the form of cross-jurisdictional research, from the installation of compatible PROMIS-type systems in major urban centers.