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Prosecutorial Discretion:

An Exchange System's Approach

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The state's attorney has the sole discretion to initiate criminal charges. Only exceptional cases are subject to judicial review (Nissman and Hagen, p. 13). Taking this discretionary power into account, the question at hand is raised:

Does the state's attorney when exercising his discretionary power follow a structured decision-making process like one that is explained in a system's model?

This question is important because the state's attorney has the power to determine the future of the individual. In exercising his power, the prosecutor has only one restraint: probable cause must be determined before charging the defendant (Nissman and Hagen, p. 13). In some cases, the prosecutor's decision may ruin the individual's life. Even if the individual is not convicted, his reputation may still be hurt. Without any checks on the prosecutor's discretion, the individual who is not guilty does not have a chance to regain his reputation. This power of the prosecutor is unlimited. The problem here is that the individual's right of due process may be denied.

The question at hand is also important, ^{because} discretion may breed corruption. In the system, the prosecutor is a public official. His position is one that the people elect. In his campaign, he may be endorsed by a particular group of citizens. Once he is elected office, he may represent the interests of these individuals. These interests may include the strict enforcement of a certain offense. If the prosecutor endorses these same interests, he may focus particularly on the certain offense. The defendant will not be afforded

individual treatment. In basing his decisions on the public's interests, he may not look at all the facts of the case. Because the prosecutor's main duty is to practice the law, he is not suppose to single out the interests of a certain group. This practice is corrupted. The individual has a right of due process but because the prosecutor has the sole discretion to initiate the charge, the rights of the individual may be violated.

This question is also important because the prosecutor's discretion may also effect the criminal system. The police officer, the defense attorney, and the judge are all involved in the criminal process. These three individuals may rely on the prosecutor's actions when structuring their opinions. If the prosecutor makes his decisions arbitrarily, then the criminal process is upset. The police officer may base his arrests on the charging behavior of the prosecutor. He does not want to waste the time of the individuals in the process, if the prosecutor does not follow through. The defense attorney also plans his strategy on the behavior of the prosecutor. If the prosecutor enforces certain offenses rigidly, the defense attorney needs to adjust his tactics in order to best represent his client. The judge may also take into account the prosecutor's charging habits when making his decisions. If the prosecutor tends to charge certain offenses rigidly, the judge may conclude that the prosecutor is not preparing the case on its merits. Thus, the judge may determine a lighter sentence or find the defendant not guilty. Hence, the actors in the process rely on the prosecutor's actions when making their decisions.

When the state's attorney exercises his discretion, he must follow the legal standards of due process. Due process is defined in the Fourteenth Amendment of the Constitution: "nor shall any State deprive any person of life, liberty, or property without due process of law." The prosecutor is under the obligation to follow procedures. If the prosecutor charges arbitrarily, the individual's right of due process may be violated. The question at hand suggests that the prosecutor follow a structured decision-making process. It is especially important because the prosecutor has control of an individual's liberty. If the prosecutor follows a process like that of the system's model, the individual will have a better chance at being afforded his rights.

THEORETICAL FRAMEWORK

The major purpose of this study is to determine if the prosecutor follows a decision-making process like that which is set up in a system's model. This study will be placed within the context of an exchange system. The purpose of the exchange system study is to link the actors together in the whole decision-making process. The traditional assumption is that the agencies are run solely on statutory authority. This view recognizes the fact that the organization consists of many clients who interact with each other. These organizations depend on this interaction for certain resources. As units within the larger system, the organization and its clients participate in exchanges across the limits of the departments (Cole, p. 332).

Long defines the legal system "as a set of interorganizational

exchange relationships" (p. 142). The actors in the system interact because their position demands that they have contact with the others in the process. This interaction between the actors may have an influence on the decision-making process (Cole, p. 332). Taking into consideration the interaction between the organizations, it is obvious that these other agencies have an effect on the decision process.

These exchanges within the system occur in various forms. Some of the exchanges occur directly between the clients. They exchange information openly in hopes of persuading the other actors to comply. Other exchanges are handled in a nondirect manner. These exchanges occur when the clients observe the behavior of the other actors in the system. In both means of exchange, vital information is passed along to the actors in their process of decision-making. Within the individual organizations, the actors utilize the information in order to achieve the best results.

When determining the actors and their relationships within the exchange system, it is important to the question at hand because it sets up a means of comparison between the actual practice of the prosecutor and the system's model. The relationships between the actors determine a basis for which the the prosecutor uses discretion within the system.

In the exchange system, "power is largely dependant on the ability of an organization to create client relationships which will support and enhance the needs of the agency" (Cole, p. 333). When applying this exchange system to the actors in the criminal process, the state's attorney emerges as the authority figure.

He has the power to decide what to charge, who to charge, whether to charge, whether to drop charges, and whether to recommend a change in the charge. However, as explained in the exchange system, the prosecutor also depends on the other actors in the system.

The actors that effect the prosecutor's decision to charge are the police officer, the judge, and the defense attorney. These actors are involved within the criminal system. However, the prosecutor may also be effected by the community.

First, the procecutor is dependant on the police. The police provide inputs into the system in the form of cases and evidence (Cole, p. 334). Before direct interaction begins between the two agencies, the police act as the initial screening body. The police also exercise a certain amount of discretion in their decision to arrest. The need for the police to maintain order is justification for their use of discretion (Friedman and Percival, p. 25). The police do not necessarily have to make an arrest in order to enforce the law. Under some circumstances, justice can be reached without making the arrest. On the other hand, although the arrest is made, the police have the discretion to decide whether or not to turn the case over to the prosecutor. This discretion that the police have in deciding to arrest may also involve the prosecutor indirectly. When making the arrest, the police may take into consideration how the prosecutor treated similar cases. If the prosecutor charged the individual, the police may conclude that he will also charge in this instance. In the decision-making process of arrests, the police may develop a

particular method of screening cases. Not all police departments develop the same criteria. Basically, the police when deciding to arrest consider five factors:

1. External Characteristics
This factor includes the type of area the station is located--middle class, lower class, rural, or urban.
2. Police Characteristics
This factor includes the training and experience of the officer and the way he perceived the situation. For example, the officer looks at the suspiciousness of the suspect.
3. Nature of the Offense
This factor is representative of the seriousness of the offense--misdemeanor or felony.
4. Attributes of the Suspects
This factor includes the background of the suspect and his behavior toward the police.
5. Complainant's Characteristics
This factor includes the behavior of the complainant and his willingness to cooperate with the police. (Goldman and Sarat, p. 51)

Another instance in which the prosecutor and the police officer exchange information is in the obtaining of warrants. The police officer directly contacts the prosecutor in order to secure a search or an arrest warrant (Kah Zemans, p. 45). Upon the receiving of the information, the prosecutor reviews the evidence that is available and decides whether this information is sufficient to initiate the process. At this point, the prosecutor either returns the case for review if he feels that the case is not strong enough or he refuses to continue with the case at all (Cole, 334). In this stage, this exchange of information is vital because an arrest without probable cause

is a violation of the individual's right of due process. However, the prosecutor is under no obligation, no matter what he decides, to reveal the reasoning behind his decision. Therefore, under this system, the prosecutor and the police officer exchange information in order to continue with the charging process.

Although the police play an important role in the apprehension of a criminal, they have little or no influence in the charging process. The prosecutor uses his own discretion when deciding to prosecute. In this process, he may take into consideration the advice of the police, but he is under no obligation to respond to their opinion (Cole, p. 335). Although the prosecutor and the police officer use the same penal statutes, each can apply these statutes to the case in a different manner (Stanko, p. 396). In most situations, the prosecutor fails to charge an individual for three reasons. First, the prosecutor is a regulator of cases not only for his jurisdiction but also for the rest of the legal system. Because of the way the legal system was established, the prosecutor has the power to move the cases through the court and into the next level of review. If the system backs up at this entry level, the other courts will also be effected. Second, the prosecutor also looks at his public exposure. He does not want to charge an individual when the case will leave him in a compromising position. Third, the prosecutor may return the case to the police as a check on the quality of the police work (Cole, 335). In these three situations, the prosecutor acts as a regulator for the criminal system. His job as a public officer includes

maintaining the reputation of the office.

Because of the nature of the exchange between the police and the prosecutor, the prosecutor's discretion still is the authority. The only restraint on the prosecutor in this exchange between the two agencies is the fact that the police have the initial decision to arrest. The prosecutor controls the rest of the process.

The second agent that exchanges information with the prosecutor is the judge. The judge also has an important function in the criminal process. The judge applies the "established legal standards to particular cases" (Goldman and Sarat, p. 111).

The exchange between the prosecutor and the judge is important in the legal process. The initial exchange is usually indirect. The judge's prior decisions act as signals to the prosecutor. The prosecutor looks at the sentencing history of the judge. The judge's behavior may indicate how the prosecutor must charge in order to obtain a conviction. If the judge's behavior is consistent, the prosecutor adjusts his charging techniques to accommodate the judge's biases (Cole, 337).

The prosecutor and the judge do not have formal interaction in which they discuss the initial charge that is imposed on the defendant. However, when the prosecutor files for a warrant, he may observe the behavior of the judge at this time. The prosecutor may also discuss possible alternatives with the judge. Any indication of how the judge perceives the case may alter the prosecutor's decision to charge.

This informal contact between the judge and the prosecutor is continuous. Basically, both agents are housed in the same building. They both frequent the courtroom each day. In casual conversation, either party may mention the case. The prosecutor notes certain biases and opinions of the judge. These indications of the judge's behavior may influence the prosecutor's decision.

Although the judge and prosecutor are both trying to "maintain existing order," they are two separate branches in the criminal process (Goldman and Sarat, p. 111). The judge in administering the rules in the criminal process is supposed to be a nonbias arbiter (Goldman and Sarat, p. 117). If their interests become similar, then the process becomes predictable. Basically, this interaction between the judge and the prosecutor is a way for the prosecutor to predict the judge's behavior in order to decide what charges to file.

The third actor in the criminal process that interacts with the prosecutor is the defense attorney. This relationship may be beneficial to both parties. Cole determines that the "exchange relationship between the defense attorney and the prosecutor is based on their need for cooperation in the discharge of their responsibilities" (p. 340). Most of their interaction occurs in the plea-bargain stage. This exchange usually occurs at the informal level. The two attorneys may meet in passing and either party strikes up a conversation about the case. In this confrontation, if they reach an agreement, both parties are relieved of the case work. The prosecutor and the defense attorney benefit from the outcome.

The prosecutor gains a conviction and the defense attorney establishes a relationship for using successful bargaining tactics (Cole, p. 339).

Corruption may develop from this relationship between the two agents. The defense attorney may rely on his friendship with the prosecutor in order to strike bargains or reduce charges. This type of interaction flaws the exchange system. A free flow of information characterizes the exchange system and biased actions by any of the actors will cause a breakdown in the flow of information.

A fourth factor that may have an influence on the prosecutor is the public pressure. The community may voice their opinion about how the office should be run. The prosecutor as a public officer must be responsive to the people but his first duty is to uphold the law. Basically, two groups of citizens interact with the prosecutor. First, the general public tend to voice their opinion on the value of law enforcement within the community. Second, the leaders who have interest in the politics of the office also try to influence the prosecutor (Cole, 341). The prosecutor must screen these opinions and first represent those interests which are within the law. Because the role of the prosecutor includes public official, he is in constant contact with the people. Therefore, his decision to prosecute is more than likely a reflection of some of the public's interests.

FOCUS ON THE PROSECUTOR

For our purposes, the focus in the system's model will be the prosecutor. His role is the most important in the criminal process because by law, he is under the authority to enforce the law by prosecuting the offender. The prosecutor is given a wide discretionary power within the criminal process. In Illinois, the court has confirmed the discretionary power of the prosecutor. At first, the role of the prosecutor was established in Wilson v. County of Marshall 1930, 257 Ill. App. 220. The court declared that the state's attorney has absolute control of criminal prosecutions. Because this ruling gave a vague interpretation of the prosecutor's role, other cases developed. In People v. Goltz 1977, 11 Ill. Dec. 461, the court ruled that the prosecutor has a broad range of discretion and it is a necessary and proper function of the office in the criminal system. This power was expanded when the court declared in People v. Brynes 1975, 34 Ill. App. 3d 983, that the prosecutor has the authority to dismiss the charges prior to the trial. Under People ex. rel. Carey v. Cousins 1979, 34 Ill. Dec. 137, the court again more narrowly defined the prosecutor's power of discretion when declaring that the prosecutor has the right to choose the charges brought against the offender. In People v. Lewis 1979, 25 Ill. Dec. 436, the court reviewed the power that the prosecutor has to charge the defendant. They ruled that the state's attorney has the sole discretion when deciding whether or not to prosecute the offender. Again, in People v. White 1980, 41 Ill. Dec. 74, the court confirmed their decision that the state's attorney has the discretion to prosecute.

The question raised in White was whether or not the jury should share in the responsibility of charging the offender. The court determined that the prosecutor has the sole discretion to prosecute. In summarizing the opinions of the court, one may conclude that the prosecutor is given the power to exercise discretion in order to carry out the functions of his office.

Because of the role the prosecutor plays in the criminal system, it is necessary that the prosecutor use discretion. Discretion has been defined as the power of "free decision" (Lundquist, 486). The prosecutor uses this discretion when deciding to prosecute an offender. There are several reasons why this use of discretion is important to the prosecutor. First, it is unreasonable to believe that all criminal laws are to be enforced through criminal prosecution. There are too many cases that occur. Second, full enforcement of criminal laws would put an enormous strain on the criminal system. The cost of full enforcement would be too large for taxpayers to finance. These would be a need for outside funding. The process of expanding the system would include the hiring of more lawyers, judges, and personnel and the enlarging of office and building space (Goldman and Sarat, 50). Third, the demand for the services are growing because crime is on the increase. There is no sign of the crime rate leveling off (Goldstein, 146). On the other hand, discretion may also cause problems within the system. It is a basic assumption that "discretion breeds corruption" (Goldstein, p. 144). This misuse of discretion stems from the authority's desires for personal gain. Because the state's :

attorney is a public officer, he must be in some way responsive to the public if he wants to continue in office. Many times, the prosecutor is under the intense pressure to process a large number of cases. However, he is also compelled by this duty to provide a system of "due process" (Nardulli, p. 104). Another problem with discretion is that boundaries are hard to mold. If criteria was written, an expert draftsman would be needed in order to develop all the concepts of discretion. This remedy does not guarantee that the prosecutor will limit his discretion because the prosecutor may interpret a separate meaning from the criteria. Hence, discretion would almost be impossible to control even if the prosecutor's discretion was bridled.

As already established, the state's attorney has the power to use discretion in the charging procedures. The prosecutor applies this discretion in many ways. He usually first intercepts a case after an arrest has already been made. The exception to this procedure occurs when a more serious felony is under investigation by the police. The posecutor may be contacted before the arrest for the purpose of approving a warrant or obtaining legal advice. Basically, he follows a series of decision patterns. Because there is no statutory guidelines, the prosecutor determines his own criteria for deciding to charge. Many prosecutors follow a similar pattern in their decision-making. A model of this process follows:

1. Police forward the report of the arrest to the state's attorney.

2. The state's attorney screens the case for possible prosecution.
3. Most often, a criminal investigator will be sent to gather more information.
4. The state's attorney will decide to follow-up the case or dismiss it.
5. The state's attorney tries to gather more information.
6. The state's attorney will decide if there is enough information for an arraignment.
7. If the arraignment is successful, the prosecutor will proceed with prosecuting the offender. (Rauma, p. 325)

The screening process requires the prosecutor to utilize his power of discretion. First, he must consider whether defendant is guilty (Lundquist, p. 495). After reviewing the facts, the prosecutor may be able to determine whether the defendant is guilty or not. But, if he can not tell by looking at the facts, then he may determine this after more information is available. Either way, the prosecutor has to determine if he has enough information to convict the defendant. Therefore, when deciding to prosecute the case, the prosecutor looks at the information that is available and determines if it is adequate to prepare a case for trial.

A standard of criteria that may be helpful in deciding to prosecute has been developed by the President's Commission on Law Enforcement and Administration of Justice. This task force has developed several factors that may be weighed when deciding to prosecute (Lundquist, p. 492). These factors include:

1. the seriousness of the crime;

2. the effect upon the public sense of security and justice if the offender were to be treated without criminal conviction;
3. the place of the case in effective law enforcement policy where deterrent factors may loom large, e.g., tax invasion, white collar crime, first conviction juvenile offenses;
4. whether the offender has medical, psychiatric, family, or vocational difficulties;
5. whether there are agencies in the community capable of dealing with his problem;
6. whether there is reason to believe that the offender will benefit from the cooperate with a treatment program;
7. what the impact of criminal charges would be upon the witnesses, the offender, and his family. (President's Commission, pp. 25-41)

These factors along with the offender's past criminal record come into play when the prosecutor selects the appropriate charge, decides to plea bargain, and recommends a sentence (Vennard, p. 22). However, these factors do not necessarily determine if the offender is to be charged (Lundquist, 492). The prosecutor decides to prosecute because of several factors. He weighs these factors before making a final decision.

In making his decision, the prosecutor may also keep in mind several questions;

1. Is there sufficient evidence to win the case?
2. Is there sufficient evidence to prove the case beyond a reasonable doubt that the defendant committed the crime charged?
3. Will the witness be available and cooperative?
4. What is the strength of the defendant's case?
5. What will be the probable result based on the knowledge of or expectation of the judge or jury?

6. Are there alternative remedies available?
(Lundquist, 493)

This pattern of decision-making is important to the screening stage of the case.

In continuing to screen the case, the prosecutor must also take into consideration the behavior of the judges, the juries, and the defense attorneys (Lundquist, 495). This behavior may help the prosecutor to decide what offense to charge the offender. The prosecutor may devise a preliminary standard and test this against the attitudes of the defense attorney and judge. He may informally bring up the case in conversation with either or both of the parties. This situation may develop into a bargaining process. Even if it does not, the prosecutor has insight into the problem. This information will help him to decide how to charge the offender.

At this point, one may conclude that the prosecutor bases his decision on a number of factors. Also, this decision-making process is characterized by unbridled discretion. Nissman and Hagen stress that unbridled discretion is afforded to the prosecutor because "no other branch has the power to charge or review the decision to charge" (p. 2). They also state that this decision to charge is "perhaps the single greatest factor the prosecutor performs" (p. 2). Thus, the prosecutor should take special care to see that the appropriate charge is given to the offender. Because of the prosecutor's unbridled discretion, there is a potential for an abuse of powers. He must keep into consideration that he has an ethical duty when charging the offender. He is never to overcharge to obtain a favorable

plea bargaining position. An abuse of powers would also occur if the prosecutor undercharged the offender. However, the prosecutor is under no obligation to present all charges that might be supported by the evidence. Although the prosecutor is an elected official, he must never make political considerations as an important factor in his decision process. If the prosecutor fails to remain objective, he does not live up to his duty to uphold all the principles in law.

It is in the hands of the prosecutor to use his discretion in the best interests of the parties involved. Because there is no set guidelines for the prosecutor to use, he must use his own ethics and morals in deciding to prosecute. Although this power is manifested in the law, the prosecutor utilizes his discretion as he sees that it is necessary.

PREDICTIONS ON THE INVESTIGATION

A basic assumption is drawn between the systems model and the investigation. This assumption is that the system's model is the preferred way of handling the decision to charge. Thus, the investigation results can be compared to the model.

In comparing these two entities, one may determine three basic predictions on the outcome of the investigation. First, the prosecutor is influenced in his decision-making process by the actors in the system--the defense attorney, the police officer, and the judge--and the public's interests. Second, the prosecutor has a certain number of biases that cause him to charge cases with certain prejudices in mind. Third, the prosecutor effects

the behavior of the other actors in the system in such a way that they alter their decision-making processes to accommodate the prosecutor's charging habits. These three predictions outline the basic purpose of an exchange system. The focus of this investigation is to determine if the prosecutor actually follows the system's model when deciding to prosecute.

METHOD

This paper is based on a study of the Office of the State's Attorney, DeKalb County (Sycamore), Illinois. This investigation has involved interviews, observations, and research. These three components of the investigation are used by the author to determine a method by which the state's attorney decides to prosecute.

The interviews were conducted with various individuals in the criminal process who may have an effect on the prosecutor's decision to prosecute. The key interview was with the DeKalb County State's Attorney, Phil DeMarzio. This interview was used as a resource in determining who else within the system has an effect on the prosecutor's decision to prosecute. These individuals are also involved with the various stages of the process. There were three purposes to the conducting of the interviews. First, the interview was to determine what interaction occurred between the individual and the prosecutor. Second, the interview was to determine if the individual has an effect on the prosecutor's decision to prosecute. Third, the interview was used for comparison purposes with DeMarzio's interview. The interviews were held with Randy Cook, first assistant to the state's attorney; Lt. Richard

Moudy, DeKalb Police Force; Judge Leifheit, DeKalb County Circuit Court; Sheriff Roger Scott, DeKalb County Sheriff's Police; and Francis C. Mays, defense attorney and public defender. These five interviews are important to the investigation because they help to determine what kind of exchange system occurs in DeKalb County.

This investigation also included observations of the day-to-day operations of the criminal process. These observations include court watching and the observing of the flow of work coming into the offices of the actors. The purpose of these observations was to determine if the interview data was accurate.

The research portion of the investigation had several phases. First, background material was gathered from journals, books, and law reviews. The purpose of using these sources was to develop the model of the exchange system. Second, the offenses that were charged in DeKalb County were tallied. This information is important in determining if the prosecutor has biases in charging. Third, the number of arrests for certain offense was gathered from the Annual Reports of the DeKalb Police Force and the Sheriff's Police. This purpose of gathering this information was to compare it with the charges that were filed in DeKalb County. This information helped to determine if the prosecutor has biases and if the police adjust their arresting procedure to accommodate these biases. Fourth, data was gathered from the Uniform Crime Reports. This information was used to compare the arrests in DeKalb with the rest of Illinois. This data also determined the biases of the prosecutor.

In this investigation, the data that has been compiled on

structure of the DeKalb exchange system should reflect that of the system's model. The accuracy of this data is reliable only to a certain extent. The interviews contain biases opinions of the actors. The observations only tell the surface of the interaction. The numerical data is accurate in the case of the Annual Report's of the two police departments and in the case of the Uniform Crime Reports. However, the data of the charges is only a hand-tallied attempt at gathering the data. The DeKalb County Clerk does not keep statistics on the charges within the county.

DATA

THE INTERVIEWS

The first interview with Phil DeMarzio was the key to the exchange system in DeKalb County. In this interview, DeMarzio layed out the key factors that he uses when charging the defendant. DeMarzio stated that this decision process in certain instances may begin before the actual arrest. He said that in cases of serious felonies, the police are encouraged to contact the prosecutor for advice. In misdemeanor offenses, the prosecutor is contacted through a copy of the police report that is forwarded within a few days after the arrest. In felony cases, the prosecutor is contacted immediately because a bond hearing is held as soon as possible.

Once the prosecutor is contacted about the offense, he looks at the facts as the police know them. He matches the facts to the elements of the offense that are outlined in the Illinois Criminal Code. If the elements are missing, the prosecutor will return the case to the police for further investigation. Second, the prose-

cuter takes a look at the evidence to see whether it is admissable in trial. This step also forces the prosecutor to reexamine the elements of the offense and determine if a sound case can be developed. Third, the prosecutor determines what are the possible defenses. He examines the events in the incident and decides if possible aternative explanations are available. This step also acts as a check on the police work. In these next three steps, DeMarzio contended that ^{the} decision-process was based on the idea that these factors distinguish borderline cases. The fourth step in the decision process is when the prosecutor takes into account the age of the offender. Fifth, the prosecutor may look at the prior criminal record of the offender when deciding to prosecute. Sixth, the prosecutor may consider the nature of the offense when determining the charge that is to be filed. Finally, the prosecutor looks at all the factors in the offense and uses his discretion to decide whether to file charges.

DeMarzio stated that the prosecutor uses his discretion most in borderline cases. At this point, the prosecutor weighs the information that is provided and makes his decision based on the facts. DeMarzio declared that he believes outside influences should not interfere with the prosecutor's decision. He declared that the prosecutor should not always go for the high conviction rate. He felt that the charge should reflect the elements of the offense. The prosecutor should charge accordingly.

In continuing this prosecution process, DeMarzio stated that the prosecutor has to always keep the important factors of the case in mind. He suggested that the prosecutor take into account whether or not the crime is a violent act or a sex offense.

Next, DeMarzio remarked that the age of the offender is a definite factor when deciding to file charges. If the age of the defendant is looked at, it is because there could be a chance for rehabilitation. If the offender is repeatedly arrested, then the chances for rehabilitation are not as good. Therefore, the prosecutor will charge the offender with the offense that meets the requirements of the Criminal Code. Another factor that DeMarzio said was important is the prior record of the defendant. The prosecutor may take into account the number and types of offense that were charged in the past. The prosecutor then uses his discretion in order to file the appropriate charge. Another factor that DeMarzio mentioned was the defendant's willingness to cooperate. Occasionally, the defendant may work with the prosecutor in producing evidence for other cases. All these factors may be used by the prosecutor when deciding to prosecute.

DeMarzio remarked that pre-trial conferences are an important aspect of the criminal process. DeMarzio contended that the purpose of the pre-trial conference is to reduce the charges. DeMarzio stated that the only purpose of the conference should be to reduce charges because the defense attorney could use the conference to prejudice the judge.

According to DeMarzio, the judge and the prosecutor only come in contact during the court appearance and the pre-trial conference. For the most part, DeMarzio believed that the judge will accept a request for a plea bargain. However, there are certain cases of controversy that the judge will refuse to allow a bargain. DeMarzio stressed that the judge is not necessarily influenced by the prosecutor when making his decision. He felt

that the judge does not consistently refuse to accept certain plea bargains.

In referring to the exchange between the prosecutor and the defense attorney, DeMarzio stated that the defense must initiate a plea bargain. DeMarzio stressed that the prosecutor makes the initial offer. He contended that only one bargain is offered and if the defense refuses, then the case will continue with the original charge. The prosecutor does not accept a counteroffer or change his initial offer.

DeMarzio stressed that all the sis staff attorneys make discretionary decisions. However, only he and his first assistant handle the felony charges. According to his philosophy, like cases should be treated similarly. Also, when making these decisions, the prosecutor should keep his values and virtues out of the decision process. DeMarzio also stated that the prosecutor should not have biases towards friends or relatives. He also stated that he does not feel responsive to the public demands. His duty to prosecute the offender comes first.

Interview with Randy Cook, the first assistant to the prosecutor

The second set of data collected in the interviews comes from the State's Attorney's first assistant, Randy Cook. Cook gave his view on how a prosecutor should decide to prosecute.

The prosecutor begins by reviewing the elements of the offense. If the case does not have the elements of the offense that are outlined in Chapter 38 of the Illinois Criminal Code, he automatically sends the case back to the police and refuses to prosecute. Second, if the case has the required elements, Cook

declared that he determines if the facts support the charge. This step involves the matching of the facts to the circumstances surrounding the offense. Third, the prosecutor uses his discretion when deciding whether or not to continue with the case. He draws on his experience of evaluation. He looks at the offender and the offense and compares them to prior cases. The prosecutor then determines if the charging of the prosecutor is appropriate. Fourth, although the prosecutor uses his experience in deciding to prosecute, he must also treat the case as being individual in nature. Because no two cases are exactly the same, the prosecutor must filter out the discrepancies of the previous case. Cook contended that the final step of the decision process is linked to police judgement. The prosecutor may take into account what the police feel should be charged. The advice of the police is important because the police are on the scene of the crime. They give insight to the prosecutor that he may not be able to determine from a written report.

Cook believed that the police have a large part in the decision to prosecute. When conducting an investigation, the police are encouraged to seek the counsel of the prosecutor. By working together, they may exchange information that is important to each other's role in the criminal process. Cook stated that the relationship between the police force in DeKalb County and the office of the State's Attorney is an open exchange of communication and this system works well in view of the county situation.

Cook also stated that the prosecutor has a priority system when deciding to charge. Felonies are given first priority. Cook

stated that the negotiating of charges are initiated by the defense attorney. He stressed that he relies on the mitigating factors when reducing the charge or deciding to plea bargain. The mitigating factors that are most important are: indication of remorse by the offender, compensation for the plaintiff, restitution (if at all possible), rehabilitation possibilities, physical condition of the offender, and the number of the offender's dependants. This confrontation between the prosecutor and defense attorney is important to the charging process because the prosecutor has another chance to review for possible defects in the case strategy.

According to Cook, the judge is brought into the process in the pre-trial conference and the trial. In the pre-trial conference, the prosecutor may determine how the judge stands of the issue. During this process, the judge is encouraged to add input into the case. However, Cook stressed that this conference does provide a free flow of communication between the judge and attorneys. Cook declared that the attorneys have a chance to look at the judge's behavior. Cook also commented that if the prosecutor always relied on the judge's behavior, then sex offenses would never be charged in DeKalb County. Hence, although the prosecutor may take into consideration the strength of the case he wishes to present, he also charges cases that do not fit the judge's behavior pattern in order to change the norms. (Jury trials are not common in DeKalb County.) Cook also stated that if the prosecutor disagreed with the court's prior decisions, he should file the case regardless of the pattern.

In defining the role of the prosecutor, Cook declared that a system is most effective when it represents the interests of the public. He said that in deciding to prosecute, the prosecutor must look at the public's interests for which he is bound to represent. However, he also stated that when making decisions, he tried to keep his own biases out of the decision process. The prosecutor has to look at the situation and derive a conclusion for the facts that are available. He also felt that obtaining a conviction is an important part of the decision process. When obtaining a conviction, he felt that justice is the outcome.

Interview with Richard Moudy, Lieutenant for the DeKalb Police

The third interview was with Lt. Richard Moudy of the DeKalb Police. This interview was used to determine the relationship between the prosecutor and the police.

Moudy stated that the interaction with the prosecutor usually occurs after the arrest has already been made. In misdemeanor offenses, the police officer sends a report of the incident to the prosecutor. Traffic cases are the exception because they are usually handled on a pay-by-mail basis. In felony cases, if there is not a prior investigation, the prosecutor is contacted immediately after the arrest. When there is a felony investigation in progress, the prosecutor is contacted before the arrest. This contact secures the prosecutor's backing on the arrest. The police are then sure that they have enough evidence to charge the offender. Moudy stressed that the prosecutor encourages the police to take advantage of the twenty-four hour call system. This way, the police make seek the advice of the prosecutor before an arrest is made.

Moudy believed that this contact between the prosecutor and the police is essential to complete the criminal process. First, when the police check with the prosecutor, they may determine if all the elements of the offense are present. This review of the case helps to determine if enough evidence is gathered to initiate charging procedures. Second, Moudy stated that when seeking the counsel of the prosecutor, most of the responsibility for the arrest is the prosecutor's.

When charging processes are initiated, Moudy believed that the prosecutor usually charges the harshest offense. He commented that by looking at the sexual assault offense that occurred in DeKalb County, one can determine that this strict charging policy is upheld.

Moudy claimed that the arrest is the central factor in the use of the police's discretion. In most cases, the police do not consult with the prosecutor when making the arrest. Most cases are handled by the individual police officer. Traffic cases and domestic disputes are the most common type of police interaction. Moudy stressed that without the police's screening function, there would be an overload of cases. Moudy contended that when making this decision to arrest, the police also take into account the behavior of the prosecutor. This method of screening saves time for both the police and the prosecutor. Moudy also stated that he felt the police officer did have some influence on the prosecutor's decision to prosecute. However, he felt that the prosecutor has more experience in deciding whether or not to prosecute.

Interview with Judge Leifheit, DeKalb Circuit Court

The fourth interview was with Judge Leifheit of the DeKalb circuit court. This interview was used to determine how the exchange between the prosecutor and the judge occurred.

Leifheit stressed throughout the interview that the prosecutor and the judge have very limited contact. He confirmed the fact that there is no intermediary stage between the prosecutor and the judge that screens cases. Even though all offenses that are charged are sent directly to the court, he stated that interaction only occurs in the courtroom. These situations include the securing of warrants and the trial. Leifheit also stated that because of the small size of the county, judges do not specialize in criminal or civil cases. The one exception to this rule of no specialization is the one judge that handles traffic violations.

Leifheit declared that the prosecutor and the defense attorney engage in plea bargains. He said that most of the time he is willing to accept the bargain if the parties come to an agreement. However, he also stated that the law is important in the deciding of the case. The law must properly be applied to the case or he will rule against the bargain.

Leifheit stressed that the judiciary and the office of the State's Attorney are two separate branches in the criminal system. The judge is supposed to review the facts of the case and apply these facts to the law. He declared that the judge does not decide the case on the prosecutor's recommendations. He decides the case on its merits.

In discussing the charging function of the prosecutor,

Leifheit believed that the prosecutor tends to overcharge. He felt that "justice is better served" when a conviction is the result. Therefore, he believed that the prosecutor should charge the offense that would result in a conviction.

Interview with Sheriff Roger Scott, DeKalb County Sheriff's Police

The fifth interview was with Sheriff Roger Scott of the DeKalb County Sheriff's Police. This interview was for the purpose of determining the interaction that occurs between the police force and the office of the prosecutor.

Scott declared that the prosecutor and the police work together in only a few cases. In handling misdemeanors, the police officer forwards a copy of the report to the prosecutor. The decision-process in misdemeanors is handled by the police officer. In felony cases, the officer is capable of making the decision to arrest. Scott believed that the officer is well-trained in making the initial decision to arrest. However, Scott did admit that in some felony investigations, the officer asked the advice of the prosecutor. He also stated that when he asks for advice from the prosecutor, he will follow it.

Scott said that the prosecutor usually takes a firm stand on DUI cases. Scott felt that these cases are rigidly enforced by the prosecutor. Within the county, burglary and theft tend to be widespread.

In discussing the charging function of the prosecutor, Scott said that the police's advice is usually accepted by the prosecutor as long as the elements of the offense are present.

One disagreement that takes place between the prosecutor and the police is the charging of aggravated battery cases. The police generally feel that the cases should be charged more strictly when aggravated battery has occurred. However, the prosecutor tends to file only misdemeanor charges. Scott felt that he could do nothing to change this because the prosecutor has the sole discretion to charge.

Scott brought up the point that the officer usually takes into account the prosecutor's charging habits when deciding to arrest. Scott felt that the public's interests do not usually enter into the decision to arrest. The duty of the law enforcement is to "protect and serve." However, by giving in to the demands of the public, the law would not always be upheld.

Interview with Francis C. Mays, defense attorney and public defender

This final interview was with Francis Mays, defense attorney and public defender. The purpose of this interview was to determine how the exchanges between the two agencies occur.

Mays complained that the communications between the prosecutor and the defense attorney are almost impossible. First of all, most of the felony cases are handled by Randy Cook. DeMarzio does not handle many of the cases. Both of these men are hard to reach. Interaction usually occurs in passing. Second, Mays stated that he had trouble making appointments with the prosecutor. The secretary refuses to interrupt the prosecutor if he is in conference. On the other hand, when the defense attorney does have a conference with the prosecutor, many interruptions occur. Mays felt that this lack of communication causes tension between the

two agencies.

In his second complaint, Mays declared that the prosecutor has backed down on several plea bargains. Because the defense attorney can not make an appointment with the prosecutor, most of the deals occur in passing. These bargains may be initiated by either party. Many times the prosecutor has overcharged the offender but later the charges are reduced. A problem with this plea bargaining occurs because of the Illinois statutes. The police report for a felony case is not released to the defense attorney until the preliminary hearing. Thus, bargains are not considered until after the case has gone before the judge.

Another complaint that Mays raised was that the prosecutor tends to concentrate on sex crimes and DUI violations. When trying to initiate a bargain on a sex offense or DUI, the defense attorney finds that the prosecutor will stand rigid. However, the prosecutor is more flexible on burglary offenses. Mays felt that this policy was due to the fact that most burglary in DeKalb occurs with individuals between the ages of 16 and 25.

When planning the strategy of the case, Mays stated that he looks at the strength of the case. He complained that the state's attorney has the definite advantage when putting together a case. He cited three advantages that he believed destroys the balance in the criminal process. First, the police do most of the legwork. Second, the police have better access to information and evidence. Third, witnesses tend to speak to the police more openly. Because of the interaction that occurs between the police and the prosecutor, the prosecutor is more receptive to the information of the case.

In DeKalb, Mays stated that most of the cases are bargained before going to court. There is an occasional trial, but for the most part, the prosecutor drops the charges because the complaining witness withdraws his statement.

Analysis of the Interviews

The purpose of interviewing the individuals in the criminal process was to distinguish the discrepancies in DeMarzio's interview. Therefore, a model of how the system in DeKalb operates may be drawn from the interview data. This information will be compared with the system's model and conclusions will be drawn.

DeMarzio contradicts himself in his interview. He states that he does not enforce one crime over another. Yet, he declares that one criteria he uses to help in his decision to charge is whether it is a violent act or a sexual crime. This distinction of a sex crime was also mentioned by Mays and Moudy in their respective interviews. This is the first indication that public pressure does play an indirect role in the prosecutor's decision to prosecute.

Another discrepancy in DeMarzio's interview surfaces through Randy Cook's interview. Cook contended that the prosecutor has the obligation to serve the public and their interests. However, DeMarzio strongly states that the prosecutor does not rely on outside influences when deciding to prosecute. This is the second indication that public pressure does have an effect on the prosecutor's decision to prosecute.

Another discrepancy between the Cook and DeMarzio interviews

comes in their views on the police's influence in the decision process. DeMarzio states that the police are encouraged to contact the prosecutor in a felony arrest because the police do not have the training to make sure that the arrest is legal. However, Cook contends that although the police are encouraged to contact the prosecutor in felony arrests, the police do have an influence on what is charged in the case. Cook's argument is also backed by the Moudy and Scott interviews. Moudy and Scott both believe there is an open system of exchange between the two agencies. They feel that their experience adds to the prosecutor's decision to charge.

In DeMarzio's interview, he states that a high conviction rate does not necessarily mean justice. He feels that the charge should fit the offense. On the contrary, Cook states that the conviction is an important aspect when deciding to charge. If a conviction is possible, then the case should be continued. In determining whether he should charge, Cook declares that he takes into account the behavior of the judge. Judge Leifheit backs Cook's contentions. He states that the conviction is the important matter in the case. He believes that any conviction is better than no conviction at all.

A discrepancy crops up in Cook's and DeMarzio's beliefs about how the plea bargain is reached. DeMarzio states that he waits for the defense attorney to ask for a bargain. He, then, offers the alternative proposal. If the defense refuses the offer, no counteroffer is accepted or no offer is rediscussed. However, Cook contends that either party

may offer a plea. He also states that counteroffers are considered. Mays declares that Cook's interpretation of the plea bargain is - correct. He states that most cases are ^{plea}plead before going to court. In other words, the plea bargain is an essential component in the prosecutor's decision to prosecute.

OBSERVATIONS

The use of observations in the investigation is to collaborate the testimonies of the interviewees. Although these observations only give a surface picture of the exchange, one may draw several conclusions about the system. These observations include a court watch and a look at the judge's and state's attorney's office.

The court watch included observations of how the prosecutor and defense attorney handled the case in court. Most cases were disposed of quickly, apparently, because of an agreement that was reached before the trial. Several cases were continued because of the lack of preparation by the attorney or failure for the defendant to show up. Most of the cases were taken care of by the judge within a few minutes. Several times the prosecutor recommended a sentence and the judge usually complied.

In front of the courtroom, several attorneys were discussing the cases. This informal confrontation seemed to run smoothly and above all very informally.

A second observation was made in the office of Phil DeMarzio. During the interview, DeMarzio received a call from an individual asking him to make an appearance before some students. DeMarzio, in reply, referred to several other engagements that also included

involvement with
students.

Another observation was made during Cook's interview. Cook received a call from a police officer who was asking advice about a fleeing suspect. Because the offense was only a misdemeanor, Cook advised the officer to let the warrant stand but not follow in pursuit. This scene describes the interaction that occurs between the prosecutor and the police in daily interaction.

After the interview with Judge Leifheit, the author noted that a defense attorney entered the Judge's chambers. The attorney asked for the advice of the judge in how to handle the situation. This scene describes an exchange of information.

Analysis of the Observations

The purpose of the observations is to determine how the criminal system runs. Because of the restricted access that is on the public, this data only describes a very small portion of what occurs in the criminal process. The reliability of this information is minimal. The author only noted the events from a distance. The discrepancies of the observations are drawn from a comparison with the interviews. This information will later be used in order to determine the differences that crop up in the DeKalb model and the system's model.

The discrepancy in the court watch is that in DeMarzio's interview he contends that the prosecutor and the defense attorney do not interact very often in plea bargains. Yet, in front of the courtroom several attorneys were discussing the cases.

In DeMarzio's interview, the author observed that DeMarzio was in contact with instances of public interaction.

In his interview, DeMarzio contends that the public pressure is not an influence on his decision to prosecute. However, he is widely exposed to the public.

During the Cook interview, Cook received a phone call from a police officer. The interaction between the two was two-sided. Cook's decision was not based solely on his own discretion. The police officer was an influence on the decision process. This situation contradicts DeMarzio's contentions. DeMarzio declares that the police do not influence the prosecutor's decision.

The observance of the communication between Judge Leifheit and the defense attorney depicts the judge's role as an advisory position. Both, Leifheit and DeMarzio state that the judge does not hold the role as an advisor. Hence, this discrepancy depicts influence of the judge as having an effect on the attorney.

STATISTICAL DATA

Table I

This table represents the number of arrests in DeKalb City 1984 and 1985, Illinois Rural Cities 1984, Illinois Cities 1984, and Illinois Rural Counties 1984. The sixth section of the table represents the number of charges in DeKalb County 1985. The importance of this information is to collaborate the testimonies of the interviewees. The two years--1985 and 1984--are chosen because DeMarzio took office at the end of 1984 and had his first complete year in office in 1985. The data on DeKalb City comes from the DeKalb Police Annual Report. This information

TABLE I

OFFENSE	DEKALB CITY ARRESTS '85	DEKALB CITY ARRESTS '84	IL RURAL CITY ARRESTS '84	CITY ARRESTS '84	RURAL COUNTY ARRESTS '84	DEKALB COUNTY CHARGES '85
HOMICIDE ATTEMPT	1	0	20	9141	1155	0
SEXUAL ASSAULT	7	6	62	19924	2005	13
AGGRAVATED ASSAULT	20	12	717	163167	16366	67
ROBBERY	0	3	56	88628	2100	2
BURGLARY	76	27	4371	232777	25307	67
THEFT	133	139	7300	798152	36198	207
MOTOR VEHICLE THEFT	9	7	513	67068	5921	0
ARSON	4	0	0	10145	1129	0
TOTAL	250	194	13039	1389002	90181	356
VIOLENT	28	21	855	280860	21626	82
NONVIOLENT	222	173	12184	1108142	68553	274

is reliable. The information on Illinois is taken from the Uniform Criminal Code. The information gathered in the Code is reliable and accurate. The information of the DeKalb County charges is tallied by hand. Although this information is not accurate, it is a reliable source of information.

Analysis of Table I

The table shows that inferences made by the interviewees are accurate in nature. First of all, Mays contends that the prosecutor tends to more rigidly handle sexual assault cases. When comparing the DeKalb City arrest with that of rural cities, the number of arrests in DeKalb is a higher percentage. Also, when looking at the number of charges that are made by the prosecutor for all of DeKalb County, one may see that the percentage of charges is almost the same as the number of the arrests. This information also corroborates the testimony of Moudy. He said that the police take into consideration the charging habits of the prosecutor. Since the pattern shows a high percentage of charges as compared with arrests, the police may decide that an arrest of a sexual assault will lead to prosecution.

Second, the police may look at the percentage of theft charges and, therefore, concentrate on arresting the offenders. The police may also look at the percentage of aggravated assault charges and decide to make an arrest based on the high concentration of charges for aggravated assault. The table shows that the police adjust their arresting procedures to a certain extent.

TABLE II

$p = .01$
 $Z_c = -2.575$

Proportion
of
DeKalb City Arrests

OFFENSE	1985	1984	Difference of Proportions
HOMICIDE ATTEMPT	.004	0	1
SEXUAL ASSAULT	.03	.03	0
AGGRAVATED ASSAULT	.08	.06	.82
ROBBERY	0	.02	-2.53
BURGLARY	.30	.14	4.01 **
THEFT	.53	.72	-5.26 **
MOTOR VEHICLE THEFT	.04	.04	0
ARSON	.02	0	2.23

**denotes significant change

Table II

This table represents the change in the ~~arresting~~ pattern of the police in DeKalb City between the years of 1984 and 1985. This information is used to determine if the police changed their pattern of arrest significantly when DeMarzio took office. If there is a significant change, it will show that the police adjust their arresting behavior to the prosecutor's charging behavior. The test used to determine the significant change in the number of arrests is the difference of proportions. The ~~critical value~~ chosen was a one percent change. This information for the table was taken from the DeKalb Police Force Annual Report.

Analysis of Table

The table shows that the police have significantly changed their arresting patterns in the areas of theft and burglary. Looking back to Table I, one can determine that the change in the theft arrests was due to the lower percentage of charges in the theft offense. The change in the burglary arrests does not seem to stem from the prosecutor's charging behavior.

Table III

This table represents the change in ~~arrest~~ing patterns between the City of DeKalb and Illinois rural cities. This table indicated the difference of proportions in the arrests. The information on DeKalb City is from the DeKalb Police Force Annual Report. The information on the Illinois rural cities is from the Uniform Criminal Code. A significant change in the

TABLE III

$$p = .01$$

$$Z_c = -2.575$$

Proportion
of
City Arrests

Offense	DeKalb 1985	Rural 1984	Difference of proportions
HOMICIDE ATTEMPT	.004	.002	.7
SEXUAL ASSAULT	.03	.005	5.55 **
AGGRAVATED ASSAULT	.08	.05	2.06
ROBBERY	0	.004	-.99
BURGLARY	.30	.34	-1.33
THEFT	.53	.56	.91
MOTOR VEHICLE THEFT	.04	.04	0
ARSON	.02	0	3.14
VIOLENT CRIME	.11	.07	2.45
NONVIOLENT	.89	.93	2.45

** Denotes significant change

TABLE IV
ADULT AND JUVENILE ARREST TREND FOR DEKALB CITY

OFFENSE	ADULT ARRESTS			JUVENILE ARRESTS		
	1985	1984	%change	1985	1984	%change
HOMOCIDE ATTEMPT	1	0	+100	0	0	0
SEXUAL ASSAULT	7	6	+17	0	0	0
ROBBERY	0	2	-100	0	1	-100
AGGRAVATED ASSAULT	18	11	+64	2	1	+100
BURGLARY	31	21	+48	45	6	+650
THEFT	94	117	-20	39	22	+77
MOTOR VEHICLE THEFT	4	7	-43	5	0	N/A
ARSON	0	0	0	4	0	N/A
SUBTOTAL	155	164	-6	95	30	+216

proportions indicates a change in the arresting patterns. This change may indicate that the prosecutor concentrates on a certain offense. Moudy and Scott both determined that the prosecutor's charging habits have an influence on their decision to arrest.

Analysis of Table III

The significant changes in the proportions are in the sexual assault and aggravated assault offenses. This data confirms Mays' contention that the prosecutor concentrates on sexual assault offenses. Moudy and Scott have already contended that their decision to arrest is influenced by the prosecutor. Hence, this table confirms the contention that the prosecutor focuses on the sexual assault offense.

Table IV

This table represents the break down in the arrest for the adults and juveniles of DeKalb. This information was taken from the DeKalb Police Force Annual Report. The significance of this information is to determine if the prosecutor takes into consideration the age of the defendant when charging.

Analysis of Table IV

DeMarzio contended that when deciding to charge he looks at the age of the defendant. When comparing the breakdown of the arrests, one can see that the burglary charges have a significant number of juveniles. Comparing this number to the number of charges in Table I, one may determine that the prosecutor does indeed look at age when prosecuting the individual.

The number of burglary charges differs significantly from the number of arrests.

DISCUSSION OF DATA

When comparing the data from the investigation with the system's model, it can be determined whether or not the DeKalb State's Attorney's office fits with the system's model.

The major discrepancy in the investigation was Phil DeMarzio's testimony. He declared that the prosecutor does not let outside sources interfere with his decision to prosecute. The system's model is based on the idea that an exchange system develops between the prosecutor's office and the other agencies in the criminal system. These other agencies are suppose to help determine if the offender should be charged. The other actors in the DeKalb system declared that other members of the system influenced the prosecutor's decision. The only other actor that did not believe he was an influence on the system was Judge Leifheit. However, the observations of his behavior contradicted his statement. Cook, Moudy, Scott, and Mays felt that the prosecutor looked at other aspects of the case. The facts were not the only factor that the prosecutor bases his decision to prosecute. Therefore, the data from the interviews supports the theory that the prosecutor's office is run on an exchange system.

Other indications in the interviews supported the theory of the exchange system. Cook declared that an open system of

communications existed between the prosecutor's office and the police department. This contention was confirmed by Moudy and Scott. Also, the author observed Cook receiving a phone call from an officer who was asking advice about a case. Within an exchange system, this interaction determines how the police influence the prosecutor and how the prosecutor influences the police. This exchange is constant between the two agencies. The testimonies of Scott, Moudy, and Mays support this theory.

The exchange between the prosecutor and the defense attorney is also important to the system's model. The prosecutor may take into consideration the behavior of the defense attorney when making his decision to prosecute. The interviews of DeMarzio, Mays, and Cook are inconsistent with each other. Mays declared that the exchange between the two agencies was consistent and was initiated by either party. Cook stated that their interaction was consistent but the defense attorney initiated the exchange. DeMarzio felt that the exchange was limited to the defense attorney's initiation of a plea bargain. Mays' testimony determined that the DeKalb system is the same as the system's model. However, this information can not be confirmed because there is no collaborating testimony or evidence to support the contention. Therefore, it has been established that the exchange does occur between the two agencies but the DeKalb system does not follow exactly with the system's model.

The exchange system also depicts the judge as a determining factor in the decision to prosecute. Leifheit declared

that he was not an influence on the decision to prosecute. However, Cook declared that he took into account the behavior of the judge when making the decision to prosecute. This means of exchange is also outlined in the system's model.

The data in the tables are also a source of support for the exchange system being a part of the DeKalb criminal process. The system's model determines that the police alter their arresting patterns when the behavior of the prosecutor is predictable. The behavior was shown to be predictable in cases of sexual assault. This concentration on sex crimes was confirmed by Mays. He stated that the prosecutor charges rigidly on sex offenses.

All this information leads to the conclusion that the DeKalb system of criminal prosecutions is based on an exchange system with the key figure being the prosecutor. This model fits that of the system's model that was developed earlier.

CONCLUSIONS

This investigation confirms the initial question at hand:

Does the state's attorney when exercising his discretionary power follow a structured decision-making process like one that is explained in the system's model?

The purpose of this investigation was to determine if the prosecutor used a structured pattern in deciding to prosecute. If the prosecutor is using an arbitrary decision process, then the individual's due process rights may ^{be} in violation. It has been determined that the criminal system in DeKalb follows a structured pattern. Even though DeMarzio contends that he does

not allow outside influences to effect his decision, the data in the investigation supports the theory that the prosecutor's decision is influenced by the other actors in the process. This exchange system has also proved to work both ways. The other actors in the system alter their decisions on account of the prosecutor's influence.

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