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CAREER CRIMINAL PROSECUTION: POTENTIAL OBJECTIVES

Peter W. Greenwood

A Rand Note

prepared for the

U.S. DEPARTMENT OF JUSTICE



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PREFACE

During the past four years, Rand has been conducting a number of studies on criminal careers under the sponsorship of the Law Enforcement Assistance Administration's (LEAA) National Institute of Law Enforcement and Criminal Justice. This Note describes three distinct objectives that can be served by career criminal prosecution programs: crime reduction, symbolic justice, and innovation in prosecution procedures. It has been prepared for presentation at an LEAA-sponsored conference on career criminal research and should be of interest to those involved in the operation or evaluation of career criminal prosecution units.

SUMMARY

This Note reviews an issue that has plagued career criminal prosecution projects (CCPs) during the five years of their existence--namely their long-term objectives.

There appears to be a general consensus that the immediate goals of these programs are to increase conviction and incarceration rates; to increase sentence lengths; to increase pretrial detention; and to reduce disposition times--fairly standard prosecution objectives. The difficult question is whether the accomplishment of these goals is supposed to lead to any longer term impacts, on crime or the system itself. This Note describes three plausible objectives that CCPs might fulfill: crime reduction, symbolic justice, and innovation in general prosecution procedures.

Crime reduction can be achieved through the mechanisms of deterrence or incapacitation. The deterrent effects of sanctions are their inhibiting effects on the criminal activities of potential offenders other than those sanctioned. Incapacitation effects are those crimes that are prevented by the physical restraint imposed on offenders who are actually incarcerated. Theoretically, both deterrent and incapacitation effects should increase with increasing conviction rates, incarceration rates, or sentence lengths. Although scientific studies have not been able to estimate the magnitude of either effect, or even to prove the existence of deterrent effects, the findings to date are not inconsistent with the theories. Furthermore, recent studies are generating estimates of incapacitation effects which are increasingly consistent and therefore probably reliable.

This Note discusses several reasons why crime reduction effects may not be readily observed, or even present, even though the immediate goals of increased sanctions are apparently being met. These include:

1. Incorrect definitions for conviction rates.
2. The small number of offenders which CCPs may handle.

3. Delays in the timing of the impact.
4. Negative spillovers to non-career criminal cases.

Under the objective of symbolic justice, the Note describes how CCP can increase respect for the criminal justice system among various audiences, even though its crime reduction effects may be small.

Finally, under the topic of innovation, the Note reviews the specific policy changes incorporated in CCP that may be applicable to the prosecutor's regular caseload.

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I. INTRODUCTION

The concept of career criminal prosecution (CCP), which involves concentrating prosecutors' resources on repeat offenders with serious criminal records, is now more than five years old. More than 50 projects have been initiated utilizing federal or state Law Enforcement Assistance Administration (LEAA) grants, and some of the original projects have been picked up on local funds when their LEAA grants finally ended. These programs have been immensely popular among practitioners and the popular press. They are routinely praised as being one of the most significant innovations that LEAA has produced to date. Nevertheless, when practitioners sit down to take a hardheaded look at what these programs accomplish, there is some uncertainty as to their ultimate impact.

There is no confusion about CCP's immediate goals. Once the prosecutor has specified his local definition of who is to be considered a "career criminal," it is generally accepted that the CCP should strive for:

1. Increased conviction rates and higher conviction levels.
2. Increased incarceration rates and longer terms.
3. Higher bail and increased use of pretrial detention.
4. More speedy disposition of cases.

The real issue is not whether these immediate project goals are desirable, but whether their achievement will result in longer term positive impacts on crime or on the system itself.

The purpose of this Note is to describe a number of longer term effects which CCPs might attempt to achieve. In doing so, we will attempt to show how this choice of ultimate objectives should influence such program decisions as the selection criteria for including defendants in the program or tradeoffs in performance with other parts of the prosecutor's office.

Briefly, the three long term objectives to be considered are: (1) crime reduction, (2) symbolic justice, and (3) improved office performance. We will show how crime can be reduced, through incapacitation or deterrence, depending on the screening criteria and the success of the program in achieving its immediate goals. We will argue that the CCP can fulfill a valuable symbolic role for the community, regardless of its ultimate effects on crime. Finally, we will attempt to demonstrate how CCP can lead to long term improvements in the performance of the entire office by introducing or testing a host of innovations that can later be adopted officewide without significant additional costs.

II. CAREER CRIMINAL PROSECUTION AS
A CRIME REDUCTION TECHNIQUE

*The career criminal is a one-man crime wave. If we can bring him to a speedy trial, and make sure that, if found guilty, he is sent back to prison, we can give the streets back to the people. Our job is to put the career criminal out of business.** --- President Gerald Ford, 1974.

The crime reduction effects of CCP may not be quite as dramatic as former President Ford predicted, but nevertheless most of us expect them to be there. In fact, the failure of existing projects to demonstrate perceptible impacts on crime, given their claims of improved performance, is one of the most critical issues faced by the program to date.

The two methods by which we expect CCP to reduce crime are incapacitation and deterrence. The incapacitation effects of the system are those crimes that are prevented by physically separating offenders from the community while they are incarcerated. They are the crimes that would have been committed if the offender had not been restrained.†

The deterrent** effects of the system are the inhibiting effects that sanctions have on potential offenders. These are the crimes that would have occurred if potential offenders had known they would not be punished.

In theory, increases in any one or combination of conviction rates, incarceration rates, or sentence lengths should result in increased deterrence and incapacitation effects. However, we will examine how

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

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

**Analysts distinguish special deterrence as applying only to the offender who is sanctioned while general deterrence applies to all potential offenders.

a number of practical problems such as how conviction rates are defined, the number of offenders handled by the program, the selection criteria, the timing of the crime effects, and the effects of the program on other parts of the office can all affect our ability to observe impacts on crime. But before we do, we will summarize what a recent study had to say about the scientific evidence in support of incapacitation and deterrence theories.

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

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

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

In sum, research to date cannot assure us that increases in sanctions will lead to significant reductions in crime, although the evidence points in that direction. We are each left to our own interpretations of the available evidence to decide what magnitude of effects can realistically be expected.

A more practical problem is that many CCP projects interpret their conviction rate as the percentage of cases *filed* by the unit that result

^{*}Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, National Academy of Sciences, 1978, p. 6.

[†]Ibid., p. 9.

in conviction. This definition is inconsistent with incapacitation and deterrence theories, which are concerned with the probability that an arrest (or even better, a crime) will lead to conviction. By focusing only on those cases filed by the prosecutor's office, the impacts of case screening become completely confounded with those of prosecution effectiveness. Specifically, if a prosecutor increases his conviction rate by tighter case screening, without changing the probability of conviction given arrest, there will be no deterrent or incapacitation effect.* For there to be an effect, the actual risk of sanction (conviction, incarceration, or sentence length) associated with particular types of crime must be increased.

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

Furthermore, whatever reduction in crime had occurred would not be observed immediately. The deterrent effects would take some time for potential offenders to adjust to the new sanctions. The incapacitation

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

effects would not be felt until four or five years after the program had started, which is when the extended terms for CCP defendants would begin to take effect. Remember, the targets of CCP are defendants who would usually have been incarcerated anyway. CCP just results in a somewhat longer term.

Finally, if an increase in CCP sanctions is achieved at the expense of lower sanctions for other defendants, because of more dismissals or greater plea bargaining to reduce case backlogs, the overall deterrent or incapacitation effects could be further reduced.

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

To some degree, the selection criteria adopted by a CCP project can limit the amount of impact it can expect to achieve. The principal ingredient that CCP has to offer is more thorough and effective prosecution--a characteristic that should result in higher conviction rates and tougher sentences for marginal cases that could not be properly prepared under routine procedures. Yet, many CCPs exclude this type of case from consideration. By concentrating instead on sure-winner, dead-bang cases, where the results of increased prosecution effort may not be readily felt, they may be limiting severely the amount of improvement they can ever achieve.

III. CAREER CRIMINAL PROSECUTION AND SYMBOLIC JUSTICE

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

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

In this era of restricted local budgets, it is inevitable that the workload thrust upon the criminal courts will far exceed their ability to do each case justice, in any real sense of the word. Assembly-line processing and nine-month backlogs were the normal reality even before municipal government discovered fiscal constraints. They can only get worse.

Aside from their budgetary problems, criminal courts find themselves faced with a crisis of self-doubt and lack of public confidence. Should their emphasis be on punishment or redemption of the wrongdoer? Should all offenders be punished according to their crime, or is the best approach in most cases radical nonintervention as some labeling theorists would suggest? What evidence can we give to the public--and to victims in particular--that their victimizations are taken seriously and efforts are being made to protect them?

The CCP provides an answer to some of these problems. By concentrating its resources on a small group of defendants who have repeatedly flouted society's rules--a group that empirical studies have shown represents the highest risk of recidivism--the criminal justice system has a reasonable target for carrying out its symbolic functions as they

*Ernest van den Haag, Punishing Criminals, Basic Books, New York, 1975.

†Charles Silberman, Criminal Violence; Criminal Justice: Criminals, Police, Courts, and Prisons in America, Random House, Inc., New York, 1978, p. 256.

were intended to be performed, without undue concessions to haste or expediency. The wide acclaim received by CCPs to date is testimony to the fact that they have the ability to convince both cynical deputy prosecutors and skeptical victims that sometimes the system can work. These benefits may be achieved, regardless of whatever effects the CCP has upon crime.

Furthermore, by zealously prosecuting those who have made a career of victimizing society, CCP provides a visible expression of society's outrage at their behavior and the damage it has caused.

IV. AS A SPUR TO INNOVATION

The most significant effects of CCPs may not be their immediate effects on crime or victim perceptions but on the overall functioning of the prosecutor's office. In many cities, criminal prosecution procedures have become bogged down under the weight of growing caseloads, increased procedural safeguards and tired tradition to the point where the cases run themselves. The prosecutor files what the police bring in. In those cases with cooperative witnesses or other strong evidence, defendants expect some type of deal as a concession for pleading guilty. Defendants with weaker cases know they will be dismissed if they can delay things long enough.

In many offices the instigation of CCP procedures has demonstrated that the prosecutor can systematically affect the outcome of cases. Through the use of police liaison officers or early participation of prosecutors in complicated investigations, the quality and responsiveness of police work can be upgraded. Extra attention devoted to securing the cooperation of witnesses can result in fewer dismissals or plea bargain concessions. Sentence bargaining and charge bargaining can be restricted without increasing trial rates. Early case screening can avoid unproductive efforts on marginal cases. The benefits of vertical representation^{*} can be achieved without completely upsetting the efficiency of an office. Case monitoring can assist supervisors in ensuring that their policies are carried out and that important cases do not slip through cracks. Criminal history systems can be made more responsive so that the prosecutor is not forced to make critical decisions without knowing the characteristics of the defendants with whom he is dealing.

In summary, the operation of CCP units can provide a testbed for the introduction of a variety of procedures and techniques which will eventually improve the functioning of an entire office. While the short term benefits may be difficult to assess, the longer term benefits in terms of responsiveness to public concerns may be considerable.

* Each case is handled by a single prosecutor rather than passed along to different prosecutors.

V. CONCLUSION

Career criminal prosecution, and the activities it encompasses, is apparently a self-declared success. Most prosecutors who have established such units will defend their merits. Nothing the evaluators say is likely to change these sentiments.

However, as time goes by, the CCP concept will continue to evolve. Selection criteria will be modified. New procedures will be tested. It would behoove those prosecutors who are involved to be able to articulate the longer term objectives of their CCPs, both to guide their subordinates and to defend their program.

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