

PROMOTING INNOVATION IN PROSECUTION

PROSECUTOR'S GUIDE
TO
CASE MANAGEMENT



JEFFERSON INSTITUTE FOR JUSTICE STUDIES

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Hon **Henry Valdez**, Santa Fe, NM

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TABLE OF CONTENTS

| | |
|--|----|
| Section 1. Self-Assessment | 2 |
| Section 2. Case Management and Disposition Strategies | 5 |
| Scene 1. Frontloading Dispositions..... | 6 |
| Scene 2. Plea Offers | 9 |
| Scene 3. Discovery..... | 11 |
| Scene 4. Managing Continuances..... | 12 |
| Section 3. Resource Allocation Strategies | 14 |
| Scene 1. Aligning Resources to Workload..... | 15 |
| Scene 2. Changing Management Cultures..... | 18 |
| Section 4. Monitoring Attorney Case Management | 20 |
| Scene 1. Monitoring Attorney Case Management..... | 21 |
| Scene 2. Monitoring the Office's Reputation..... | 23 |
| Contact and Reference Sheet | |
| Comments and Suggestions | |

PROSECUTOR'S GUIDE TO CASE MANAGEMENT

INTRODUCTION

This guide is for prosecutors. It is designed to help them look at case management in their office and identify areas that might be changed or improved. It also is designed to help them think about different ways of doing things. Although the guide may not necessarily solve specific problems, it should, at least, help prosecutors ask the right questions.

In this guide, we assume that every prosecutor faces the common problem of disposing of cases at the earliest possible time, using the fewest resources, and with acceptable results. This is the task of case management.

How the prosecutor manages cases is usually decided by his policy towards prosecution, his resources and coordinating procedures with the courts and other agencies, especially the police.

ORGANIZATION OF THE GUIDE BOOK

This guide views case management as a set of strategies, that are used to produce acceptable dispositions at the earliest possible time with the least resources. The very nature of strategies is that they are dynamic -- constantly changing because of they include a wide variety of tactics that may achieve the same goal. Therefore, the mix that works in one jurisdiction may not work in another. The case management strategies presented in this guide should offer something of value to every prosecutor. It is up to the prosecutor to pick and choose those pieces that can improve his present case management, limited only by his need, creativity, and imagination.

The first section is a self-assessment. It asks the prosecutor to assess the state of case management in his office and jurisdiction and answer the question, "Do you really need to manage your caseload?"

The second section presents **case management and disposition strategies** that focus on processing cases with a goal to early dispositions. This section looks at four powerful aspects of case management, frontloading the system, plea offers, discovery and continuances.

The third section views case management strategies from a **resource allocation** perspective. It examines how resources in your office can be realigned to maximize productivity and even how changes in your management culture can have a substantial impact on productivity.

The fourth section discusses strategies for **monitoring the performance of attorneys** in managing their own caseloads.

READING THE GUIDE BOOK

There is no single answer, no best approach to achieving good case management and meeting the goals of early, efficient and acceptable dispositions. There are only a series of different ways of doing things which, alone, represent good approaches and, in combination, may even produce successful results for the entire office.

The technique used to present materials in the guide is to contrast typical ways of doing things with other alternatives that accomplish the same goals. The assumptions upon which the strategies are based are suggested in boxes labeled "If the truth be known".

A typical setting presents a scenario that unfortunately all too often exists and which contains elements that need to be changed. Alternative approaches to problem areas are offered in the form of questions starting with the phrase "why not". The technique of offering alternatives as a series of "why not's" is used to let the prosecutor know that he can accept or reject any alternatives as he sees fit.

Each of the alternatives is followed by suggestions as to how they may be implemented. The descriptions are based upon reality. They have been observed in practice in at least one of the offices that participated in the innovation project. Where appropriate, site examples are presented to give a richer context for the suggested directions the prosecutor may want to pursue. A contact and reference sheet provides you with more detailed information for follow-up in these areas.

At the end of the guide, we have attached a form which we hope you will use to provide us with feedback, questions, corrections and additions. It is important that this guide be maintained and updated as new tactics and strategies prove successful. Your input and reactions become a valuable part in making this happen.

We hope that after using the guide, you will be able to identify areas of interest to you and start the task of making change. You may still need help from others in the form of advice, technical assistance or training. But you should be able to seek this assistance with a better understanding of the dimensions of the problem that you are addressing.

SELF-ASSESSMENT

ONE

Why should I

be concerned about

case management?

That's the

court's responsibility!



If the truth be known!

There are a number of symptoms for impaired case management that can be treated by prosecutors.

TEST 1: HOW MANY SYMPTOMS OF INADEQUATE CASE MANAGEMENT DO YOU HAVE RIGHT NOW?



If you checked number 1, "Little control over screening", give this activity top priority before you even consider other changes.

Refer to the *Prosecutor's Guide to Intake and Screening* for help in this area.

Check all that apply

- Little control over screening
- Pretrial diversion or treatment programs not available or not used
- Too many plea bargains to lesser charges
- More than 15 percent of felony cases plead guilty on the day of trial
- Few felony guilty pleas taken or set for plea at probable cause hearings or arraignments
- Dismissal rates too high for your liking
- Limited discovery to defense counsel, late in the process
- Too many witness no-shows
- Court backlogged, too many continuances
- Can't keep track of cases in your own office

_____ **Total number of checks**

If the truth be known!

The court can only process a limited number of cases in any given time period.

TEST 2: CAN YOU HANDLE THE CASELOAD THAT ALREADY IS IN YOUR OFFICE?



An exercise

1. How many cases do you have pending right now? _____
2. How many cases did you dispose of last year? _____
3. How many years will it take you to dispose of the pending cases even if you get no new ones? (*divide 1 by 2*) _____
4. What is the chance that you will not get any new cases? _____

Is the work in your office backlogged? Yes _____ No _____

If the truth be known!

There is a limit to the number of jury trials that a judge can conduct in a year.

The average number of felony jury trials that one judge will conduct is 25 — or about two a month.

TEST 3: DO YOU HAVE ENOUGH COURT CAPACITY FOR JURY TRIALS?



Another exercise:

1. How many felony jury trials can you expect to conduct in your jurisdiction this year? (*Hint: use last year's figures*) _____
2. Multiply the number of full-time felony trial judges by 25. _____

Do you lack trial court capacity (*Is line 1 greater than line 2*)? Yes _____ No _____



RESULTS

DO YOU HAVE CASE MANAGEMENT PROBLEMS?

| | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| Test 1: Did you check more than 3 items? | | |
| Test 2: Is the work in your office backlogged? | | |
| Test 3: Do you lack trial court capacity? | | |
| Total | _____ | _____ |



DIAGNOSIS

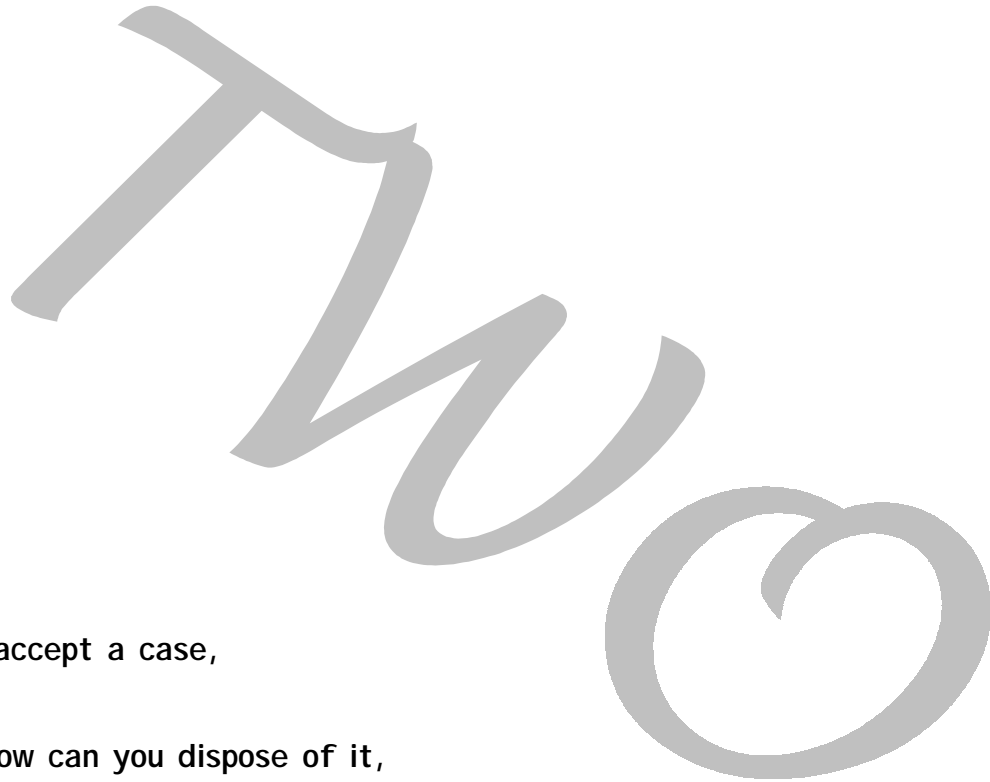
Test 1: More than three symptoms indicate the need for substantial changes in case management.

Test 2: A “yes” in this test suggests two diagnoses:

1. Your case processing procedures could be made more efficient. Processing delays need to be reduced.
2. The volume of work in your office is increasing or experiencing a change in its complexity. If you are receiving more serious violent felonies, for example, even without an increase in the number of cases, your workload has increased substantially.

Test 3: It is possible to treat this problem even though you have little control over the number of judges available to you. Look at how your plea bargaining procedures, discovery, and disposition strategies could reduce the number of jury trials sought by defense.

CASE MANAGEMENT AND DISPOSITION STRATEGIES



Once you accept a case,

how can you dispose of it,

at the earliest possible time,

using the fewest resources

and still get acceptable sanctions?



Why not speed up the dispositions of pleas so they don't crowd the courts or the jail?

- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
- **Site Example:** □
- In Smithfield NC, two Monday's □
- a month are set aside as □
- "disposition days". Approximately □
- 60 percent of the misdemeanor □
- cases plead out. The rest of the □
- cases are set for trial. Police □
- officers are not required to be □
- present. □
- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Why not dismiss cases early on that have no prosecutive merit and only clog the court's docket?

- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
- **Site Example:** □
- In Colorado Springs, the District □
- Attorney mans a first □
- appearance center. It provides □
- video advisements, instant □
- written plea offers and □
- agreements, and the presence of □
- the Clerk's Office personnel to □
- collect fines. Court time is □
- reserved for non-waivable cases □
- and trial demands. □
- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Identify cases for deferred prosecution or pretrial diversion before the first court hearing. Have defendant acceptances ready for court if needed.

Take the first steps for negotiating cases with defense counsel as soon as police reports are available.

If the lower court judges cannot take a plea to a felony at preliminary hearing, work with the court to have some judges cross-designated so they can.

Work with court to establish formal pretrial conferences that require defense, defendant and prosecutor to negotiate pleas and schedule sentencing dates.

Work with probation to set up separate PSI schedules for those cases that can be disposed early on.

Look carefully at your misdemeanor dispositions. With the court's help, you can make substantial reductions in the number of court hearings, reduce police costs, and free up attorney time for other cases.

If cases are old, have deteriorated, or even should not have been allowed through the gate, dismiss them!

Help reduce the pending caseload and leave you with a better idea of your real workload.

Scene 2. Plea Offers

If the truth be known!

*Roughly 95 percent of all cases are disposed by guilty pleas.
Only 5 percent go to trial!*

Why not facilitate the process?

Why not concentrate on negotiating pleas early on?

Why not save your valuable resources for those cases that will go to trial?

Someone has to get the ball rolling. You know your case. Why not send plea offers over with discovery or earlier?

As an old sage once said,



"There are two sides to every pancake".

You have only seen the state's case.

Typical Setting

It's like buying a house. The prosecutor asks for more than he expects to get, defense counter offers, prosecutor counters and so on . . . until an agreement is reached or the case goes to trial.



Alternatives

Make plea offers based on reality.

Don't look at the *best* you can possibly get. Determine what you *probably* will get. Then give defense counsel an incentive to plea early on.

For example, even though you could charge a case as 2nd degree murder, you know that in all likelihood it will be disposed as manslaughter.

If the defense counsel are reluctant to communicate offers to defendants, use the court hearings (like docket settings) when the defendant is present to make your offer known.



Remember!

If you have sentencing guidelines, or structured sentencing, the range of your charging and sentencing negotiations is already restricted. Why waste time negotiating over known outcomes?



Why not create an environment that facilitates the discussion of pleas?

Why not open up communication so you can discuss the state's case?

Why not give defense incentives to discuss their case?

Why not find out how strong the defense's case is during plea negotiation rather than being embarrassed in the middle of a jury trial?

Typical Setting



Prosecution and defense play cards close to their chests.

Plea offers are not responded to quickly.

Attorneys on both sides are slow to make decisions.

Surprising the other side in trial is more fun than negotiating.

If the defense has strong evidence, like four nuns who can provide an alibi for the defendant, they wait until the day of trial to present it.

Courts find it easier to continue cases than to take pleas

Alternatives



Create an open communication climate so defense counsel will reveal their case without waiting for a trial.

Encourage your assistants to explain the strength of their case during plea negotiation.

If some of your attorneys are reluctant to discuss the state's case with defense counsel, have their supervisor sit in on plea discussions and train them.

Have your attorneys develop a schedule for meeting with defense counsel to discuss the merits of the defense's case.

Do not let your attorneys avoid communication with defense counsel.

Change your policy about plea offers and make it known to others.

Hold meetings with the court and public defender to discuss the value of more open case discussions.

Notify police and victims of your new plea offer policy.

Scene 4. Managing Continuances

If the truth be known!

Continuances are expensive, Prosecutor offices can lose the work of 1 to 6 attorneys a year because of continuances.

Why not reduce the number of times your attorneys waste their time preparing for court because the case is continued?

Why not identify the reasons why continuances occur and tackle the easiest ones first?

Why not test different strategies to mitigate the problem?

Why not free-up resources wasted on continuances so other work in the office can be performed?

As an old sage once said,



“Every time there is a court appearance, it ought to advance the case.”

Typical Setting



Continuances are routinely granted by the court for a number of reasons:

poor calendar control, problems with notifications, defense counsel not appointed or prepared, delays in receiving forensic evidence, plea negotiations still underway, delays in receiving criminal histories or presentence reports.

Some continuances are almost automatically granted especially at first appearance and appointment of counsel.

Since most calendars are full, continuances are easy to accept.

Continuances have little value associated with them. Thus they are rarely monitored by prosecutors.

Alternatives



Identify where continuances are occurring in the adjudication process and why so you can develop a plan of action for reducing some of them.

If you keep a count of the number of cases set for a court hearing each day, the number that were continued for any reason except for a plea, and the reason why, you will quickly learn where continuance problems are occurring.

Some continuances may be easily controlled, especially those that involve police and witnesses. Reducing other continuances may be outside of your control such as those granted for defense counsel conflicts. Unless you collect some basic information, it will be difficult to understand the magnitude of your continuance problem.



Why not test different strategies to mitigate the problem?

- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
- **Site Example:**
- In Kalamazoo, MI , the Victim-
- Witness staff telephone
- witnesses and give them all the
- information on the subpoenas.
- The witnesses pick up the
- subpoenas from court when they
- arrive to testify. Three people
- handle about 100 subpoenas
- daily, and save \$8,000-10,000
- monthly in subpoena fees and
- court costs.
-
- Police subpoenas are served to
- the commanding officers or to
- the substations. Police are
- provided voice mail pagers. Last
- year, about \$18,000 in overtime
- was saved.
-
- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Why not free up wasted attorney time by working with the court and defense counsel to reduce delay?

Explore using new strategies to solve problems.

Not all continuances are under your control, but delays due to police appearances and witness notifications, discovery, and responding to motions certainly can be reduced by your efforts. Creative thinking will often yield positive results.

- For example:
- Subpoena witnesses by mail or telephone.
 - Use pagers to notify police when they are needed in court.
 - Establish priorities for crime lab testing and give the lab expected due dates for results.
 - Provide case and defendant information to probation early on.



Establish project teams with the court to find other ways to reduce continuances.

Some continuances are systemic and require long-term solutions. For those continuances that are essentially outside your control, the use of project teams is valuable. If the teams include court personnel and defense counsel, they should be able to produce more comprehensive solutions to long standing problems.

Working with the court and probation to speed up pre-sentence investigation reports or to delay scheduling sentencing until they are ready will also reduce unnecessary continuances.

Develop new procedures with the court to reduce delays in the misdemeanor case process by giving incentives to the early resolution of cases through mediation or diversion.

Remember!
Don't forget misdemeanors!
Misdemeanor cases account for almost half of the total continuance costs in prosecution.

RESOURCE ALLOCATION STRATEGIES

FAIRNESS

Good case management

depends on how you use

your own resources.



Why not identify the areas where most staffing problems and backlogs occur?

Identify the most troublesome staffing problems in your office.

The best source of information about staffing problems and issues is your staff. Your staff know best where work is backlogged. Tap into their knowledge both to identify the most troublesome areas and to provide suggestions for solutions. Use your staff to rank problems in order of importance.

Why not rethink staff positions and work to increase productivity?

Change how you use your staff to increase case processing output.

Don't have some staff overworked and others with free time. Think about your office as a paper flow process and use your staff to make the flow more efficient.

- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
- **Site Example:** □
- In Pueblo, CO, the District □
- Attorney has his attorneys do all □
- support activities one day a year. □
- They answer phones and do the □
- exact same work as the clerks. □
- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Reduce some case preparation time for felony assistants by using victim-witness personnel to handle problems that would affect witness availability. For example, child care, transportation, fear, etc.

Let grand jury assistants train younger attorneys in this part of the process.

- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
- **Site Example:** □
- In Santa Fe, NM, the District □
- Attorney receives faxes of lists □
- of releases and escapes from □
- the DOC and parole forwarded □
- by the State Administrative □
- Office of District Attorneys. □
- The DA notifies victims in his □
- jurisdiction. □
- □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Shift a large volume of subpoena service work away from investigators by using telephone and mail subpoenas. Give responsibility for notifications to support staff and/or victim-witness staff.

Let investigators or victim advocates screen citizen complaints depending on type of complaint and reduce the number of complaints referred to attorneys. This reserves attorney time for the most difficult citizen complaints.

Let support staff establish alternative procedures for police notifications that reduce court appearances and police overtime pay.

Let support staff, victim-witness personnel and attorneys work as a team to process the work handled by courtrooms.

Scene 2. Changing Management Cultures

*If the truth be known!
Most offices are run by directives from on high, hurled down like thunderbolts,*

Why not change your management culture?

Why not take a “bottoms up” approach like participatory management?

Why not hold all persons accountable for their work and the reputation of the office?

Why not let all staff participate in planning and problem solving?

Why not create partnerships and team efforts?

Why not experiment with grant funds?

Typical Setting



The District Attorney makes policy.
Policy is transmitted through an organization that is hierarchical.
Authority for implementation is delegated down and operational aspects are dispersed among many.
Accountability is difficult to determine when mistakes occur.
Communication is too often based on gossip.
Mid-level staff are not aware of budgetary constraints that affect their work.
Innovation and experimentation are discouraged.
Grant funds are not actively sought.
New ideas and questioning of old procedures are discouraged.
All power and authority flow from the top down.

Alternatives



Involve all staff in problem identification and problem solving.

Special project teams can be created to look at targeted priority areas such as intake and screening, notifications, police reporting, docketing, automation, etc.

When the project teams are staffed with all persons who will be affected — attorneys, support, victim-witness, investigators, clerical, legal assistants, etc. — their recommendations are more likely to be comprehensive and to succeed.

Remember!

As chief prosecutor, your role is to receive staff reports and recommendations — not direct the fact-finding or solution process.



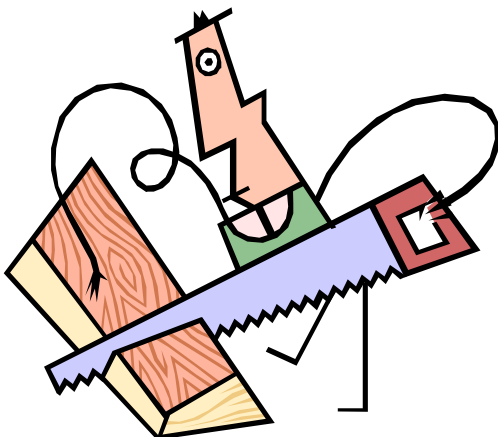
MONITORING ATTORNEY CASE MANAGEMENT

FOUR

At any time, you should know

how attorneys are handling their caseloads

and the reputation of your office.



Scene 1. Monitoring Attorney Case Management

*If the truth be known!
Most attorney performance is judged on win/loss rates and the number of trials conducted.*

Why not develop a system for monitoring attorney performance that takes quality of work into consideration?

Why not judge attorneys by how well they manage their caseload?

Why not look at the quality of dispositions achieved by attorneys?

Why not survey juries to evaluate the quality of your evidence and trials?

Typical Setting



In small offices the prosecutor sees all the staff daily, unless housed elsewhere.
Communication is open, staff relationships are basically collegial.
Attorneys arrive each day to process the daily calendar, prepare for the next day's calendar and go home, only to repeat the process every day.
Evaluating attorney performance is based primarily on personal contact and complaints or praise received from judges, defense counsel and others.
Prosecutor does not know the status of each attorney's inventory.
Prosecutor does not know the quality of case dispositions.
Prosecutor typically does not even know what indicators to look at.

Alternatives



Develop a system of case reporting that is attorney-based and lets you compare the case management abilities of the attorneys.

Whether manual or automated, design case files to record each court transaction identifying: courtroom, trial attorney, defense counsel, case status, next court date, type of hearing, results of hearing and finally disposition.

Design a system to give you monthly reports by attorney about the number of times a case did not advance to the next court hearing and the reasons why.

Set "speedy" case management rules. Give special counseling or assistance to attorneys who are most prone to promoting delay. You cannot afford delay.

Remember!

Some attorneys want to plead everything out. Some attorneys do not like to make good plea offers; others just can't.



Why not use solid management information to monitor the work of your office.

Why not use this information as a basis for improving the quality of prosecution statewide?

Why not use this information for introducing legislative changes?

Why not use this information to justify budget requests?

Why not use this information to evaluate the success of grant funded experiments?

Why not use this information to establish a model prosecutor's office?

Typical Setting



Reports issued by the court are used for statistical counts of caseload and some disposition data. Little information is available about large parts of the prosecutor's workload, like cases referred, screening decisions, misdemeanors, juveniles, and other areas. Even when information is available, the prosecutor does not necessarily know what to look for.

Alternatives



Refer to the *Prosecutor's Guide to Management Information* for a detailed discussion of this subject.

This guide is designed to show what information is important to you, how it can be interpreted and how it can be used by you for variety of purposes - from planning and budgeting to management audits, office assessments and program evaluations.

The
~~End~~ Beginning

Information

Management

Next
Step:



Contacts and References

Colorado

Hon. Gus F. Sandstrom, Jr.
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REFERENCES AND ADDITIONAL READINGS

For studies about case backlog and court capacity

The Justice System Journal, Volume 17 No. 1, 1994, published by the Institute for Court Management of the National Center for State Courts is a Special Issue about "Swift and Effective Justice: New Approaches to Drug Cases in the States".

The articles in this volume directly address "Frontloading the System", the use of special programs for the expedited processing of cases, and how the prosecutor, defense counsel and the courts can handle their caseload in different, more effective ways.

For demographic information about prosecution

The Bureau of Justice Statistics conducts a survey of a representative sample of chief prosecutors who handle felony cases in state courts. The survey provides information on employees, staff size, case volume and closing. Sources of funding and other areas of prosecution interest. The latest survey has been published as a BJS Bulletin, *Prosecutors in State Courts, 1994* (NCJ 151656). Information about state court prosecutors handling of juveniles are available in *Juveniles Prosecuted in State Criminal Courts* (NCJ 164265).

For workload and cost information

In 1983, the National Institute of Justice funded a complex and comprehensive National Baseline Information (NBI) project designed to estimate the costs of processing adult offenders through the criminal justice system, from police response to calls through parole.

Prosecution and public defender workload and costs were derived from logs completed by attorneys in four jurisdictions. See *National Baseline Information on Offender Processing Costs*, Jefferson Institute, December 1987.

As part of the NBI project a separate study was undertaken to determine *Some Costs of Continuances: a Multi-Jurisdictional Study*. Also produced by the Jefferson Institute in 1986.

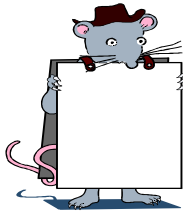
For prosecution policy and performance

In 1980, Joan Jacoby authored a book, *The American Prosecutor, A Search for Identity* that described the effects of population and the criminal justice system on prosecution and ended with four chapters describing four types of charging and prosecution policies operating in 4 jurisdictions.

With a grant from the National Institute of Justice, Jacoby published a report, *Basic Issues in Prosecution and Public Defender Performance* in 1982.

Both of these documents address the implications of policy on measures of performance and discuss the dynamics of prosecution in terms of its functions and decisions.

Finally, in 1982, the National Institute of Justice published *Prosecutorial Decisionmaking: A National Study*. This report authored by Joan Jacoby, Leonard Mellon, Edward Ratledge and Stanley Turner presents the results of the first comprehensive examination of prosecutor decisionmaking using a standard set of cases based on a statistically designed range of cases and defendants to measure uniformity and consistency in decisionmaking. Tests were conducted in 9 offices. Later the standard case set was tested by 21 offices and formed the basis for an international study of prosecutor decisionmaking.



We would like to hear from you!

Please send us your comments
and corrections



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