


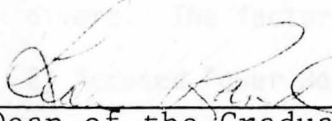
IMPLEMENTING THE DIVERSION PROCESS:
DETERMINANTS OF PROSECUTORIAL DISCRETION

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ABSTRACT

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In the past fifteen years Pretrial Diversion has been introduced into the court structure to deal more effectively with the internal problems of the Court. The decision to divert the alleged criminal offender from the court system has historically been made informally, and officially can be made at all stages of the criminal justice process.

Currently, little is known about the factors, both legal and extra-legal, which influence the prosecutor in administering pretrial diversion. Thus, the present study investigates those extra-legal factors which influence the prosecutor's decision to divert. The factors investigated are: 1) Community Pressure, 2) Accused Power Resources, 3) Lawyer, 4) Economic Factors, 5) Police, 6) Court and 7) Diversion Program. Based on these factors a causal model was developed and analyzed.

In order to investigate and evaluate this model, a questionnaire was administered to one hundred and eighty four (184) prosecutors across the United States. A similar questionnaire was administered to one hundred and forty eight (148) last year law students from Capital Law School, Columbus, Ohio. The law students acted as a comparison group. The results of the survey showed that the variables identified

by the literature were positively correlated with the prosecutors' decision to divert. The relationships, although positive, were observed to be weak (i. e., pressure/prosecutor, .09, power/prosecutor, .20, lawyer/prosecutor, .11, money/prosecutor, .06, and police/prosecutor, .17). Although found in the literature, these variables did not explain the prosecutor's decision to divert to a sufficient degree. Thus, all hypotheses subsequently were rejected.

Further investigation between the two groups on the effect of the treatment (the effect caused by the extra-legal factors on the prosecutor group) revealed that there is no significant difference between the two groups. By using the "t" test, it was shown that the difference between the two groups had a high degree of probability ($P=.320$) of it happening by chance alone. Thus, to sufficiently explain the prosecutor's decision to divert, a need arises for further investigation.

In further investigating this phenomena, the researcher made three suggestions that would possibly better explain this decision. These three suggestions were: 1) implementing other survey techniques to attain a better response from those surveyed (i. e., interview or observation), 2) researching other variables that interact with the prosecutor and 3) re-examining the literature of the variables used in the present study. Therefore, by implementing these three suggestions, a more profound explanation of the influence on the prosecutor will be observed.

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CHAPTER I

STATEMENT OF THE PROBLEM

Traditionally, the judiciary was held in high esteem such that even conflicts between different branches of the government were entrusted to judicial rather than political resolution.¹ However, currently the American judiciary has been declining in esteem due to its less than efficacious processing of criminal cases.

Due to the vast overload of cases, the criminal courts have been forced to emphasize administration rather than the justice and as a result have become inefficient. The wheels of justice creak with deliberation because 1) procedures are so complex that the system is not the effective tool it was created to be, 2) the cumbersome appeals process, and 3) the overburdened caseload of the total judicial system. It is evident that the magnitude and structure of our modern judicial system is not adequate to serve our modern needs.

The inadequate judicial system causes participants in the process (e. g., defense counsel, complainants, witnesses and prosecutors) to alter their roles. The defense counsel is tempted by the adversary process to the point of litigiousness, gamesmanship and other legal tricks. Complainants and witnesses are placed in positions of undue hardship. The prosecutor also has a difficult time in keeping his cases factually sound.

¹Robert H. Jackson, The Struggle for Judicial Supremacy (New York: Alfred A. Knuff, 1941), p. 312.

Perhaps the most serious consequence caused by this inadequacy is that the alleged offender becomes more entangled with the judicial process. The criminals become stigmatized and the longer their involvement, the more difficult it will be for them to regain their life of lawfulness. A quicker, less burdensome, and less expensive procedure must be developed and utilized by the judicial system.

The National Advisory Commission on Criminal Justice Standards and Goals expended a great deal of effort in trying to find ways to reduce the caseload of the courts and provide a better correction service to offenders. The Commission developed two methods that would alleviate these two problems: screening and diversion. Diversion is based on the premise that the criminal justice process has already been started but is being stopped in an effort to utilize alternative to continue processing through the cycle. The primary benefit of the diversion concept is its capacity to offer services to the offender without placing the stigma of further criminalization on him. Over-criminalization, usually a result of too many antiquated laws remaining on the books, is one of the major reasons why so many cases are on the dockets.²

The American Bar Association made implementation of diversion possible with providing funds for demonstration programs. In the past fifteen years, this alternative method which deals more effectively with the internal problem of the criminal justice system, has been introduced to the court structure. Diversion addresses several, if not all of the

²Donald R. Ford, Judge's statement to the Niles Daily Times concerning Pre-Trial Diversion, September 1976.

existing inadequacies of the system. The decision to use this concept of diverting the alleged criminal offenders from the court system has historically been made unceremoniously and unofficially at all stages of the criminal justice process.³ The diversion concept formally acknowledges the attempts made to utilize an alternative means to the initial or continued criminal justice processing of alleged offenders.

Within the diversion process, the offender is offered a substitute means of restitution for his anti-social behavior. The use of the diversion process in the court structure will afford a person a chance to solve his problems and break the chain of events which have led him to criminal activity. The diversion process attempts to transform an individual's negative experience of arrest into a positive occurrence in his life: a movement toward becoming a more productive citizen. Diversion is a realistic approach to the problems of an overburdened court system, and provides for closer supervision of the alleged offender.

The main goal of any Pretrial Intervention Program (Diversion) and all Pretrial Intervention programs in general, is to have a criminal justice system which is balanced in terms of caseloads and resources. If this goal were not met, there would be little, if any, need for a pretrial intervention process whose purpose arose from a desire to alleviate inadequate court facilities, thus reducing court delay.⁴

It must be remembered that to assure a lasting mark on society, the diversion concept must be based on the desire to help the individual,

³Report on Correction, Pretrial Criminal Justice Intervention Techniques and Action Programs, Chapter 3 (1975), p. 147.

⁴Ohio Criminal Justice Supervisory Commission's Task Force on Prevention, Diversion and System Development (1975), The Diversionary Process for Adults in Ohio, p. 24.

rather than as a substitute for inadequate judicial facilities and resources. Diversion gives society the opportunity to consider the possibility of reallocating existing resources to programs that promise greater success in bringing about correctional reform and social restoration of offenders.

The implementation of diversion depends heavily on the role of the prosecutor. The prosecutor generally an elected position within the hierarchy of local government, is expected to act as a liaison between the various components of the criminal justice system, as well as an effective check on the police. Based on an evaluation of the facts presented to him, the prosecutor is faced with deciding 1) whether there is sufficient evidence to sustain a conviction, 2) whether he has sufficient to warrant prosecution, 3) whether he would accept a plea, 4) whether to reduce the charges against the defendant or 5) to implement the diversion process. The prosecution has a very wide latitude in applying prosecutorial discretion. This use of discretion is firmly established in American legal tradition.⁵ This prosecutorial power may be understood as the privilege to "act in certain conditions or situations in accordance with an officials . . . own considered judgement and conscience".⁶

⁵Harry W. More, Principles and Procedures in the Administration of Justice (Canada: John Wiley & Sons, Inc., 1975), Chapter 4.

⁶George Cole, "The Politics of Prosecution: The Decision to Prosecution," Diss. University of Washington 1968, Chapter 2.

In the diversion system, the prosecutor is the key member of the diversion mechanism and is at the center point of the administration of justice. His office interjects the main thrust into the diversion system by controlling which cases go into its program. The prosecutor, however, is subject to societal pressures because of his elected office, although there are laws that explicitly require the prosecutor to use his power for the betterment of the judicial system. There have been times, however, when the prosecutor has let outside influences aid or determine his decision.⁷

Thus, the prosecutor, along with the outside elements, (e. g., Community Pressure, Accused Power Resources, Lawyer, Police, Economic Factors), which have been identified and labeled extra-legal factors, have set up an exchange process. This exchange process will have an effect, to a degree, on the prosecutor's decision to divert. As Selznick (1953) has said, "All formal organizations are molded by forces tangential to their nationally ordered structures and stated goals".⁸ Informal systems, such as diversion, operate in conjunction with the formal court system. Both systems have the need for survival which must be fulfilled.

Therefore, it is the purpose of this paper to investigate the extra-legal factors that influence the prosecutor in his role in the diversion process. Such knowledge will afford the criminal justice field a better understanding of these extra-legal factors and their causal or contributing effect on the prosecutor's decisions.

⁷Roscoe Pound, "Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case," New York University Law Review, Vol. 35, 1960, p. 925.

⁸Philip Selznick, TVA and the Grassroots (Berkeley: University of California Press), 1953, p. 250.

CHAPTER II

REVIEW OF THE LITERATURE

Within criminal justice literature, there is a multitude of information concerning the role of the prosecutor. This material focuses on the prosecutor's discretionary power and his decision to prosecute. The practice of Pretrial Intervention is an "emerging area of study" and has not to date been adequately investigated. The literature, as such, introduces many concepts and implicit hypotheses regarding the diversion concept. This literature gives a direction in which to seek materials referring to diversion and the role of the prosecutor.

Of major importance in the literature concerning prosecutor's decisions is George Cole's dissertation, "The Politics of Prosecution: The Decision to Prosecute", which identifies the extra-legal variables (i. e., elements outside the normal system of operation, community, economics and attorneys) that effect the decision to prosecute. The major concern of this study was the use of discretionary powers by the prosecutor. By selecting variables from the literature and combining them to those of Cole, the independent variables will be created and investigated in this study.

The presentation of the literature has been divided into four time frames. This was done for two reasons: 1) the logical order of influence between variables indicate four frames of time (i. e., community court program prosecutor) and 2) to enhance the

understanding of the material. Time one (T-1) consist of five extra-legal factors: 1) Community Pressure, 2) Accused Power Resources, 3) Lawyer, 4) Economic Factors and 5) Police. Time two (T-2) consists of one extra-legal factor which is subject to T-1 influences before T-3 factors. The factor in T-2 is Court/Judge. Finally, time three (T-3) consist of one extra-legal factor which is subject to influences from factors in T-1 and T-2. Each variable in the model will either directly or indirectly effect the prosecutor: T-4.

In order for the researcher to explain the relationship between the variables to demonstrate how the influence is created and maintained, exchange theory is used. Social exchange maintains that people must undergo psychological cost to get psychological rewards. Cost refers to any type of loss to the prosecutor or the independent variable character (i. e., lawyer, police, etc.) or any experience undergone that is perceived as a loss to them in an exchange. Reward, on the other hand, is anythin the prosecutor or independent variable character receives, or any activity directed at them that is of value to them. In their interaction, they try to maximize rewards and minimize cost to obtain the most profitable outcomes. They choose one activity or situation instead of another if one is more advantageous or less costly the them than the other.⁹

⁹Richard L. Simpson, Theories of Social Exchange (New Jersey: General Learning Press, 1972), p. 2.

In a given situation, the likelihood that an actor will perform a given behavior is increased or maintained by a stimulus which is contingent upon both that act and the situation. Thus, the judge, program, and the prosecutor will act in certain ways when a stimulus (i. e., Community Pressure, Accused Power Resources, Lawyer, Police, and Economic Factors) is encountered. They will strive to keep their cost to a minimum, while trying to gain rewards.

In discussing the exchange model and the cost/reward relationship, the concepts of power and dependency come into play. To better explain this, Thibaut and Kelley state, "If B is dependent on A for good outcomes, A can influence B's behavior as B tries to act in ways that will lead A to reward B. This is what it means to say, A has power over B. A has power over B to the extent that B is dependent on A for good outcomes.¹⁰ The roles of A and B can be interchanged. For example, in certain situations the extra-legal factors (A) have power over the court/judge, program and/or the prosecutor (B).

Two methods have been explained by the researcher which will aid in the discussion of the literature, 1) time frames, and 2) the exchange theory. By using these two methods, the researcher will keep the literature in a logical format and explain the variable influence via the cost/reward relationship, thus, making the study much more understandable.

¹⁰Simpson, p. 12.

The next section will present the literature broken down into time frames and by variables. The literature will explain each variable and the relationship it has with the other variables.

The first five variables (Community Pressure, Accused Power Resources, Lawyer, Economics, and Police) are in the first time frame. These independent variables apply influence, through the exchange process, on the variables in T-2, T-3 and T-4. In reviewing each variable, emphasis will be placed on which other variables interact with that particular variable, what time frame is it in, gives exchange theory, and how the variables interrelate.

Community Pressure

Today, the criminal justice field is undergoing changes caused by the behavioral revolution.¹¹ Cole states that the judicial system's rules of control should give the prosecutors the freedom to make decisions for the good of the accused, as well as for society.¹² Many factors and considerations affect the prosecutor's decision. However, the bottom line is, "What will best serve the public interest?"¹³

¹¹George Cole, "The Politics of Prosecution: The Decision to Prosecute," Diss. University of Washington 1968, Introduction.

¹²George Cole, "The Politics of Prosecution: The Decision to Charge," (Ann Arbor, Michigan: Xerox University Microfilms, 1968), p. 158.

¹³Richard Mills, "The Prosecutor: Charging and Bargaining," University of Illinois Law Forum, Vol. 3, Fall 1966, p. 512.

The prosecutor is the representative of the people, not just of the complaining party.¹⁴ He is a public prosecutor, not a private prosecutor. Therefore, his role is continuously changing.

Joan Jacoby, in her monograph, "The Prosecutor's Charging Decision: A Policy Perspective", states:

Each prosecutor's office must operate within an external environment. Before any examination is made of the prosecution function, distinction must be made between what the prosecutor can be held accountable for and what is a response to an environment over which he has little or no control. This external environment can be described by four major factors that influence both the mandatory and discretionary activities of the prosecutor. These are: (1) the characteristics of the community or jurisdiction, (2) the workload, (3) the judicial system, and (4) the resources available to the office. The prosecutor can do little about the geographic, demographic or socio-economic characteristics of the community that he represents. Yet the character of the community bounds, constrains and determines the work and to what extent the policy of the prosecutor is implemented.¹⁵

Since society creates the norms by which it lives, and the prosecutor is a public servant, the prosecutor must conform to these norms. He enforces the laws that violate current social norms and thus serves society. In other words, he does not serve the law, he serves society. For example: today's prosecutor would concern himself with a case involving child abuse or theft rather than simple drug abuse or harassment. Thus, the prosecutor will be perceiving social conditions, and making his decisions based on these conditions.

¹⁴Mills, p. 513.

¹⁵Joan E. Jacoby, The Prosecutor's Charging Decision: A Policy Perspective (Washington D.C.: U.S. Government Printing Office, 1977), p. 1.

The study of influence in communities has been a main pursuit of social scientists for the last half century.¹⁶ Since 1953, with the publication of Hunter's Community Power Structure, controversy has raged between competing groups of scholars over the concepts, methodologies and results of these studies.¹⁷ Sociologists have tended to find an elitest structure where a small group of leaders are able to make the major decisions affecting the community and the judicial system. These small groups can be identified as political parties, unions, business, and social organizations, and referred to as community interest groups.

These interest groups deal with three time frames within the study, T-2, T-3 and T-4. Each area is affected by different interest that the interest groups hold (e. g., crime reduction, correctional treatment, recidivism). The community, who make up the interest groups, feel that the criminal justice system should be constructed in such a way that it will be able to handle the accused criminals at the pre-trial stages. In addition, the criminal justice system should handle the person who has gone through the judicial system and has received the social stigma "CRIMINAL" in an effective manner; that is, a manner that will be the quickest, less costly and which produces best results (i. e., low recidivism).

¹⁶Nelson W. Polsby, Community Power and Political Theory (New Haven: Yale Press, 1963), Chapter 2.

¹⁷Floyd Hunter, Community Power Structure (Chapel Hills: University of North Carolina Press, 1953), Introduction.

Cole points out, the community is interested in seeing that the laws, which were created by the legislature, suppress crime, effectively enforce laws, and properly treat offenders.¹⁸ The pressures the interest groups apply will evolve around three areas: 1) crimes which are harmful to the public, usually those of violence or of great property loss, 2) community boosters (i. e., businessmen, doctors, bankers) who may want either a crackdown or a hands-off policy towards a certain crime, 3) areas where crime is minor and possibly the leaders of the community have run afoul by violating this type of law.

The effects felt at each time frame will vary because: 1) the level may be at a strategic position which determines the outcome of that particular case, 2) the level may receive pressure concerning more than one interest area (i. e., correction or recidivism), 3) it may also receive additional influence from one or both of the other levels, all of which strive for a desired outcome in the prosecutor's decision.

The court/judge, T-2, deals with community pressure by their reviewing his contribution to crime reduction, reducing recidivism and to having better correction programs. The judge is an elected official so he must satisfy the public. Since he is a public servant and in the political arena, he is faced with dealing with these problems. To cope with them the judge can effectively use alternative methods (Diversion) with the help of his prosecutor and has discretionary powers. This can be enhanced by applying his influence on the prosecutor to use the diversion concept.

¹⁸Cole, p. 141-149.

The program, T-3, reacts similarly to community pressure. The community is interested in effective handling of the alleged offenders and the reduction of recidivism. However, the community applies additional influences that are visible. They are 1) the return of better citizens back into their community and 2) the effective use of tax dollars. If the program does not meet these expectations, the community can force the program to be discontinued (i. e., removal of tax dollars).

The program can return better citizens to the community through internal adjustments or training. The tax dollars can be saved by creating a better cost/benefit ratio. This will create influence or pressure on the prosecutor to refer cases to the program for services, thus, an increase in cases and a lower cost per case.

The prosecutor, because of his position, can work in the above mentioned problem areas. The prosecutor is concerned with all phases of the judicial system.¹⁹ He operates in the "twilight zone between law and morals".²⁰ His power of discretion can effectively deal with the community influences.

The prosecutor is often influenced by the clientele group that is linked to his position. In any bureaucratic system, decisions are made not only through formal channels, but more importantly, through the informal relationships.²¹ These informal systems can sway the

¹⁹Cole, p. 17

²⁰Rosco Pound, "Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case," New York University Law Review, Vol. 35, 1960, p. 925.

²¹Cole, p. 13.

decision to divert.

The pressures that the community uses on the prosecutor are numerous. They differ from case to case and from jurisdiction to jurisdiction. The prosecutor must use his resources and produce results in accordance with the interest of the community in order to survive. Then in short, the community, in an extra-legal context, affects the prosecutor's decision to divert.

Accused Power Resources

The second extra-legal variable in the first time frame (T-1) is accused power resources. This variable is an influence on the prosecutor's decision to divert. It deals with two time frames within the judicial system, T-2 (Court/judge) and T-4 (prosecutor). The power resources of the accused are divided into three areas and listed in their order of importance as found in the literature. They are 1) political affiliations (i. e., political party worker, strong party supporter or close tie with party supporter office holder), 2) community figure (i. e., union official, business figure or a member of the social hierarchy), 3) accused characteristics (i. e., race, sex, SES, etc.). The accused will implement these means, or any single one, to reduce his chances of receiving the maximum fine or sentence from the judicial system.

The influence that is created by the accused may be direct or indirect. Depending on the situation, the accused may have to apply his influence in either way. Roscoe Pound, in his Cleveland crime survey, pointed this out very clearly. He found that interest groups,

as well as individuals, played an important role in the criminal prosecution process and concluded that the court system had been infected with political corruption and influence that determined many outcomes within the courts. There have been many articles written on this subject, but observation of everyday life within the system has the greatest impact on the finding of Pound. The criminal justice system is "political" since it is engaged in the formulation and administration of public policies where choices must be made among such competing values as the rights of defendants, protection of persons and property, justice and freedom.²²

Keeping in mind what Pound discovered and the atmosphere of the system, the accused may then approach the judge and/or the prosecutor directly to ask for a favor. If the accused is a strong person politically, his status will be known by the judge, prosecutor or their staff's. If the judge or prosecutor is approached directly, the accused will have a chance to discuss the incident with them directly. However, there are times when the judge or prosecutor do not know of the accused and his political ties. Therefore, the staff may approach their boss (judge or prosecutor) and inform him of the accused's background politically. Judicial personnel are engaged in the "authoritative allocation of values" in the same sense as governmental decision makers whose positions are generally perceived as political.²³

²²Cole, Chapter 3.

²³Cole, Chapter 3.

The accused may also approach the judge and/or the prosecutor indirectly by having a friend who has a good relationship with the judge and/or prosecutor. This friendship, political in nature, will influence the judge and/or prosecutor in behalf of the accused. This influence will cause the judge, or the prosecutor, to search out alternatives to aid their political friends. Thus, the diversion system may be the best alternative available. This method will keep the process in the guidelines of the judicial system and still serve as an escape for the judge and/or prosecutor from the political influence.

The second resource that the accused has deals with his position within the community (labor leader, bank officer, business executive, etc.). The judge, himself a community figure, may be influenced directly by the accused. This position within the community is a status role. This role tends to cause a closely knit group. Members of this group tend to perform favors (exchange) for each other when the opportunity arises or there is a need for their specialized services. To remain in that social group and be held in high esteem, each member will have to go through a number of cost/reward exchanges. For example, the judge may want to get jobs for member of his family, within the group there is a union official, the judge may discuss the matter with him and because of this reward (jobs from the union official), the judge will attain a cost (leniency in cases involving union officials). It then can be assumed that the judge may be influenced to apply the diversion process in certain cases. It may also be assumed that the accused may approach the judge indirectly. The accused may have a friend or a relative in this type of position, who can influence the judge because

because of the cost/reward exchange. Thus, the same results, certain cases being diverted.

The accused may also approach the prosecutor. However, the prosecutor usually is not on the same social level as the judge. This can effect the prosecutor in two ways. The first being, the prosecutor perceives the member (accused) or a relative of the elite social group asking him for a favor. This alone may influence him because of his perception of a power figure's position within the community. Secondly, the prosecutor may perceive this as being a stepping stone into that social class. Thus, the influence upon the prosecutor can bias his decision to divert.

The third, and final, resource that the accused draws on is his characteristics. The accused characteristics will affect both the prosecutor and the court/judge. Sociologists and other researchers have focused their attentions on the deprivation and social disabilities of such variables as race and social class, both of which can be a source of an accused person's defeat in a criminal court.²⁴ Justice may have a blindfold, but it may also have a price, a complexion, a location, and even an age and sex. Those with enough money, the right complexion in the proper court, and even sometimes, the right age and sex, can often receive better treatment.²⁵ In 1956, the Supreme Court stated

²⁴John Hagan, Transactions in a Prosecutor's Office: A Study of Bargain Justice (Alborta: University of Alborta Press, 1974), p. 7.

²⁵Stuart Nagel, "Disparities in Criminal Procedures," UCLA Law Review, Vol. 14, 1967, pp.1272-1305.

there can be no equal justice where the kind of trial or treatment a man gets depends on the amount of money he has.²⁶

The accused's socio-economic status (SES) impinges on a prosecutor as well as the judge's decision. A poor person is usually appointed a lawyer; a rich person hires the best; and the middle-class person struggles and must use most of his life's savings to hire a lawyer, or go undefended. A court-appointed lawyer, usually just out of law school and receiving experience in order to move on and receive rich clients, would be inclined to spend less time and energy on his case than would a private lawyer. He will be less apt to ask for delays to provide better representation for his client, but tend to end the case as soon as possible.

The studies show 90% of the poor are found guilty.²⁷ Not only are the poor more often found guilty, but they are much less likely to be recommended for probation by the probation office, or be granted probation or suspended sentences by the judge. Similarly, poverty of the accused affects the prosecutor in his decision to divert by creating an atmosphere that will cause the prosecutor to feel sorry for the accused or make the prosecutor rationalize the crime and rationalize dropping or diverting the case (i. e., a poor person may have been charged with petty theft, because of his status the prosecutor may, in his own mind, justify diverting the case because of the accused being poor).

²⁶Nagel, Disparities in Criminal Procedures," pp.1272-1305.

²⁷Stuart Nagel, The Tipped Scales of American Justice - The Politics of Local Justice (New York: Little, Brown and Company, 1966), p. 120.

The sex of an individual can influence the court system. What differences there are between men and women seem to be in favor of women, especially in sentencing of an individual. It is assumed that women cannot endure as much as men. It is possible that women can be persuaded to give up their rights more easily, and that procedures with them tend to be less formal. "In trial, women are more likely to be found innocent, and if guilty, more likely to be put on probation or given suspended sentences."²⁸ The dominating male judge, or prosecutor, will, the majority of the time, be more lenient with women.

A person's race can influence the court's or prosecutor's decision. If the person is black or white; if the court is in a predominantly white town or predominantly black town; if the town shows feelings of racial prejudice; if the judge and/or prosecutor harbor racial feelings, the accused may be judged differently.

Thus, the accused power resources, has an influence on the prosecutor (T-4) as well as on the court/judge (T-2). The influence is created and maintained by the exchange that exist between the accused and court/judge and the prosecutor. The accused, because of his resources (i. e., political affiliations, community status or ties, and characteristics of the accused) creates a cost for T-2 and T-4. Since the majority of this influence is directed towards the prosecutor, he will act or perform in ways to lessen his cost (in this case, implementing diversion), thus, the accused will receive a reward (diversion). By

²⁸Nagel, *The Tipped Scales of American Justice: The Politics of Local Justice*, p. 120.

implementing diversion, the prosecutor will reduce his cost and attain a reward (i. e., lower caseload, money saved, etc.). Therefore, the influence caused by the accused resources affect the prosecutor's decision to divert.

Lawyer

In 1963, the Supreme Court held (Gideon vs. Wainwright)²⁹ that a man is entitled to legal representation whether he can afford a lawyer or not. The high court reasoned that any person brought into court who is financially unable to provide a lawyer cannot be assured a fair trial unless counsel is provided for him. Lawyers primarily engage in the defense of persons accused of criminal violations and may be viewed as the most influential governmental group dealing with the prosecutor's office on a continuous basis.³⁰

Defense lawyers see political office as professionally helpful and a possible personal goal. By engaging in political life, either in official or unofficial capacities, they are strengthening their attorney power in the community. By doing so, they increase the service power to their clients. Thus, the attorney increases his power to be influential and is able to attain better bargains in the judicial process.

This extra-legal factor only affects the prosecutor. This level influenced to receive the best outcome for the defense lawyer's client (e. g., lesser charge, lower sentence, or diversion). "When the

²⁹Nagel, *The Tipped Scales of American Justice: The Politics of Local Justice*, p. 121.

³⁰Cole, p. 114.

prosecutor functions by 'reasonable compromises' the defense lawyer is obligated by his professional status to meet the compromise, if it appears to be in his client's interest."³¹

In the judicial system where bargaining is a primary method of decision making, it is not surprising that defense lawyers find it essential to make and maintain close personal ties with the prosecutor and his staff.³² The decision making of the prosecutor is generally made outside the eyes of the public. For example, a decision may result from a verbal agreement between a prosecutor and a defense attorney conducted over a cup of coffee, or in the hall outside the courtroom. Such agreements are the result of bargaining in behalf of the accused. The results from bargaining may be diversion, reduction in charges, or other legal consideration.

The defense attorney's skill in selling his product (the accused) may be more important than his proficiency in the law. A defense attorney with skill and contacts with various court officials may be known as the "fixer" in the local court system. Because of inside knowledge of the procedures of the prosecutor and the friendships made with court officials, he has an advantage over other criminal defense attorneys.

The defense attorney may influence the prosecutor by exposing the weaknesses of the case. He may also convince the prosecutor of

³¹Richard Wells, Lawyers and the Allocation of Justice: The Politics of Local Justice (New York: Little, Brown and Company, 1966), p. 150.

³²Cole, p. 122.

the futility of processing the case through normal court procedures. He may also attempt to use an alternative approach by pointing out all the strong points of the accused so they may receive a lesser charge or be diverted.

There is a universal law which creates an atmosphere of communication between lawyers, whether they be judges or prosecutors. Therefore, the lawyer can obtain more information or receive greater favors from the prosecutor, rather than a person outside the legal system. Lawyers have a close knit professional organization with a built-in unwritten code of ethics which is inherited when one becomes an attorney and part of the judicial system.³³

Any person who has a defense lawyer with any one, or combination of the following traits: 1) political strength, 2) power in the community structure and/or 3) a close relationship with prosecutor or court officials, will have a greater chance of receiving a better end result. The accused with an influential attorney stands a better chance of being diverted from the judicial system.

Economic Factors

The fourth variable in T-1 is the economic factor. Economic factors are the cost of maintaining the operation of the judicial system. This extra-legal factor influences T-2 (court/judge) and T-4

³³Robert Finger, Winning Through Intimidation (Conn: Fawcett Publications, 1976), Section 2, pp.78-79

(prosecutor) into implementing methods to conserve money.

The judge and prosecutor possess a desire to conserve the limited resources (i. e., money, jail space, probation, caseloads) of the criminal justice system. Because of their role, and since their offices operate as a branch of governmental agency (i. e., city, county, state, etc.) money, or lack thereof, is considered very important. Therefore, the desire to save money may cause the prosecutor not to charge an offender who would otherwise be prosecuted. On the other hand the judge may dismiss cases on the same ground. However, this could only take place with trivial cases (i. e., trespassing, menacing, telephone harrassment, etc.) because of community review of judicial procedures. Thus, the prosecutor and judge do not have to use such drastic measures because of the diversion process.

The accused, if knowledgeable of this fact, and with the aid of his attorney may bargain for diversion. A "bargain" exists only when it involves actual or apparent advantages to both parties. Prosecutors and judges bargain to save time and expense attendant on hearings and trials; accused bargain for 1) reduced charges, 2) less severe sentences, 3) conviction of fewer offenses, and 4) avoidance of the stigma attached to conviction of certain crimes.³⁴ Therefore, to alleviate the economic factors, the judge and prosecutor enter into an exchange with the accused. They must put out (their cost) items one through four listed above to gain their reward of time and money saved.

³⁴Donald J. Newman, "Pleading Guilty for Consideration: A Study of Bargain Justice," Journal of Criminal Law, Criminology and Political Science, 46 (1956) No. 6.

Diversion programs with both adequate staff and proper resources have been producing results that are very positive. The main result is a reduction in the caseload of the prosecutor, and ultimately the judge, ranging from 10% to 15% reflecting many dollars saved.³⁵ The decision to divert requires comparing the expected cost to the activity (program) with its expected benefits.³⁶

Advocates, including the National Advisory Commission on Criminal Justice Standards and Goals, have seen the potential reallocation of resources as one of the benefits of diversion.³⁷ Diversion programs have revealed that deferred prosecutor cases can be two-thirds less costly than a sentence of six months of incarceration. The programs are also one-third less costly than a sentence of eighteen months of probation. These are dispositions which are the usual alternatives for handling the type of defendants generally accepted by diversion programs.³⁸

The amount of money saved by the judicial system is important. Three treatment types can be evaluated: 1) incarceration, 2) probation and 3) diversion, in terms of cost of processing and treatment through the court system. Diversion programs are for the most part limited to

³⁵National Pretrial Intervention Service Center, Pretrial Criminal Justice Intervention Techniques and Action Programs, Dade County, Florida, Second Edition, 1975, pp.17-25.

³⁶Ann Watkins, "Cost Analysis of Correctional Standards: Pretrial Diversion", Vol. 1, 1975, p. 19.

³⁷IBID

³⁸NDAAs, Deferred Prosecution, Pamphlet 74.

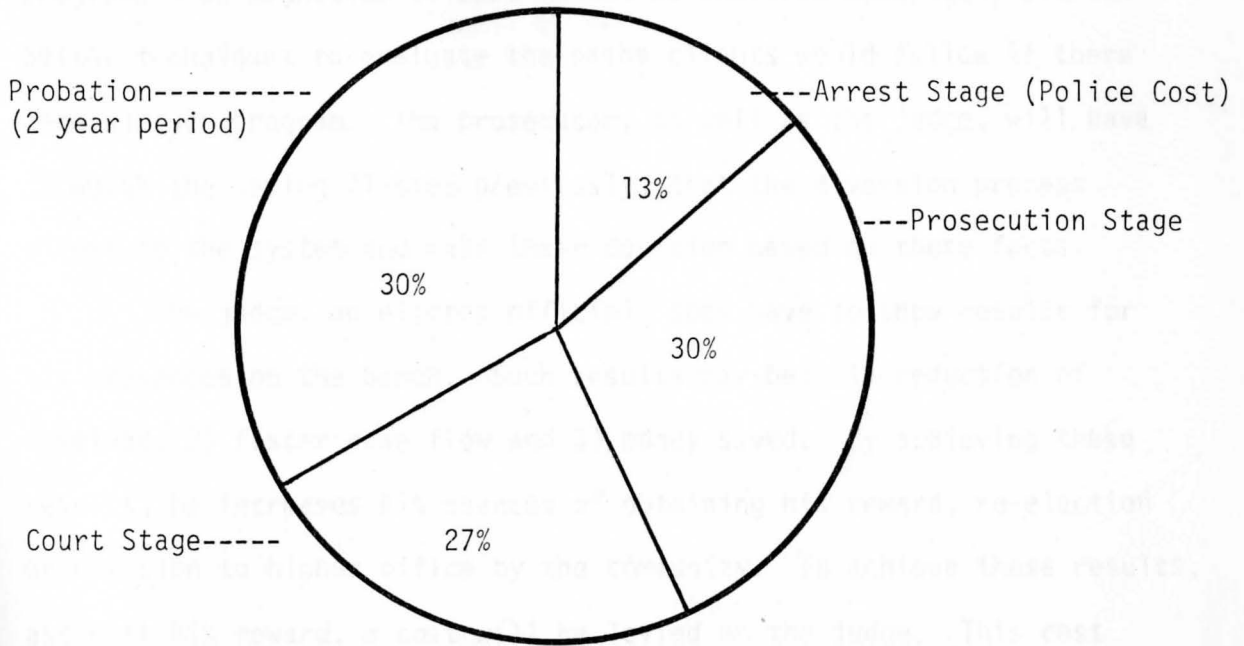
first offenders, while probation and incarceration cannot and do not select their intake. Comparison of these three approaches to rehabilitation in terms of recidivism are misleading. However, the three approaches can be evaluated in terms of cost of processing through the judicial system.

The diversion program eliminates such costs as:

1. Clerical preparation of the case.
2. Filing of the case by the clerk.
3. Assignment office duties.
4. Court costs:
 - a. Judge
 - b. Bailiff
 - c. Court Recorder
 - d. Prosecutor
 - e. Court Police Officer
5. Defense cost.
6. Witness, complainant and police officer cost
 - a. At arraignment
 - b. At trial
7. Cost of incarceration.
8. Cost of probation.
9. Loss of wages.
10. Possibility of tax payer family support (welfare).³⁹

³⁹Ann Watkins, "Cost Analysis of Correctional Standards: Pretrial Diversion," Vol. 1 and 2, 1975.

Total Cost of One Person Through Normal Court System



Total Cost of One Person Through Pretrial Intervention Program

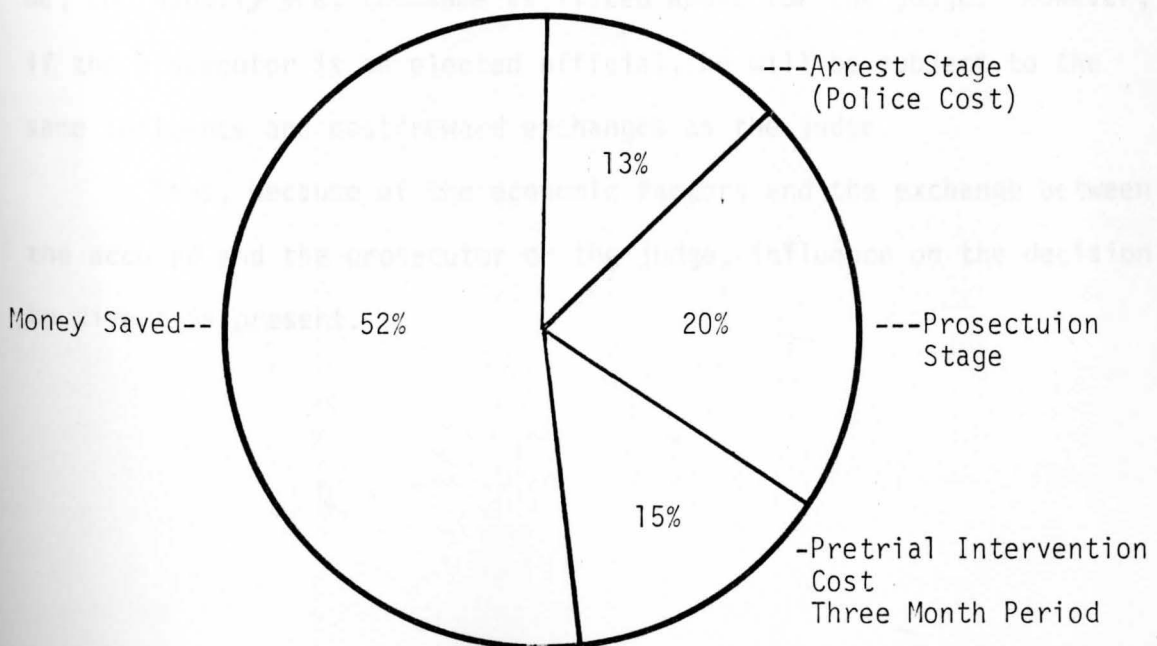


Fig. 1 - Percentage breakdown of money spent in judicial system

Figure 1 illustrates the percent breakdown of money spent in each area. It also illustrates the percent saved by using the diversion program. The magnitude of cost cannot be analyzed adequately without better techniques to evaluate the paths clients would follow if there were no such program. The prosecutor, as well as the judge, will have to weigh the saving (listed previously) that the diversion process offers to the system and make their decision based on those facts.

The judge, an elected official, does have to show results for his presences on the bench. Such results may be: 1) reduction of caseload, 2) faster case flow and 3) money saved. By achieving these results, he increases his chances of obtaining his reward, re-election or election to higher office by the community. To achieve these results, and gain his reward, a cost will be levied on the judge. This cost will be to use the diversion program and allow cases to be processed by the program. On the other hand, the appointed prosecutor is prone to being replaced if he does not produce results. These results can be, and usually are, the same as listed above for the judge. However, if the prosecutor is an elected official, he will be subject to the same influence and cost/reward exchanges as the judge.

Thus, because of the economic factors and the exchange between the accused and the prosecutor or the judge, influence on the decision to divert is present.

⁴⁰ *Schooling of Criminal Cases*, School of Law, Southern Illinois University, 1975, p. 2.

⁴¹ *Pretrial Criminal Justice Intervention: Techniques and Action Plans*, American Bar Association, 1975, p. 147.

Police

The police are the entry point to the criminal justice system. The total judicial picture is largely shaped by the decisions made by the officers and police officials as to the allocation of resources and their perception of the level of enforcement desired by the courts and the community. Thus, the police have their input into how the systems operates.

Police arrests set the outer limits of the prosecutor and his duties.⁴⁰ Therefore, this influence is directed at one lever, (T-4) the prosecutor. The prosecutor is generally limited by those cases which are actually presented to him by the law enforcement officers within his jurisdiction. Since police use discretion in their arrests, the cases which come to the prosecutor's attention have been selectively determined by the police. Therefore, the police, charged with making decisions concerning the apprehension of suspects, interact with the prosecutor when presenting evidence and recommending possible charges.

Police discretion to enforce laws have rarely been recognized by statutes, primarily because of the lack of visibility by the system. "Diversion has been used informally and unofficially at all stages of the criminal justice system. When such deviations have been recognized, they have been called discretion, screening, selective enforcement or minimizing penetration."⁴¹

⁴⁰Screening of Criminal Cases, School of Law, Southern Illinois University, 1970, p. 2.

⁴¹Pretrial Criminal Justice Intervention Techniques and Action Program, American Bar Association, 1975, p. 147.

The police and the prosecutor may disagree on the criteria for deciding not to invoke the criminal process. The prosecutor may best be equipped to make the policy decision. The police have difficulty distinguishing between factual and legal guilt. Once they have made the assessment of the accused's factual guilt the legal protections, evidentiary requirements, and the presumptions favoring the accused are seen primarily as obstacles to efficient law enforcement.⁴²

The police are on the streets day in and day out, and face the problems people pose to them. Jerome Skolnick emphasizes that people may not always be affected by the court process. He uses this example of a prostitute:

Policemen may have enough evidence to book a women for solicitation or prostitution, unless she is held for a venereal disease check, it is possible for the defendant to bail out immediately after being booked. The defendant is given the right to have one call, usually to raise bail. Some prostitutes will have the sergeant call their pimp or a steady trick. Others, who have been on the street for a long time, have formal credit arrangements with a bail bondsman. Under these circumstances, an experienced prostitute can be back on the streets within several hours after arrest.

The ease with which a prostitute is able to return to illegal activity is frustrating to the policeman. In his opinion, if the community wants to keep criminals off the streets, a system permitting them to return within a few hours after arrest is irrational. Thus, to a policeman, pretrial methods are basically an irrational right.⁴³

⁴²Brian Grosman, The Prosecutor (Toronto: MacMillan of Canada, 1969), p. 45.

⁴³Jerome H. Skolnick, Justice Without Trial (New York: John Wiley & Sons, Inc., 2nd ed., 1971), pp. 186-187.

In light of this example, police are generally skeptical of any pretrial alternatives once they have used their discretion and made an arrest. Because of their job, the police are very knowledgeable of what is going on in the streets. Therefore, the police have a good idea of what citizens are trouble makers and are constantly a problem. Even though these same people are not arrested because of police discretion or lack of evidence, the police know that these people are the causes of many crimes. Therefore, when the police work hard on a case and the person is arrested, the police feel that that person should be prosecuted to the full extent of the law. If, however, this person is brought into the prosecutor's office and gets diverted, the police feel they have wasted their time and efforts. Thus, they possess a negative attitude towards diversion. On the other hand, police also feel positive toward diversion when trivial cases are diverted. This process can save the officer time and possibly end the problem so that the officer may not have to come back to a future problem.

The police, being the investigative element as well as the major input source of the prosecutor office, have a strong working relationship (exchange) with him. This interaction can and often does influence the prosecutor in his decision to divert. Since the police are the ones who bring in the facts of the crime for the prosecutor, they have the opportunity to make their feelings or beliefs of the incident known to the prosecutor. In fact, it is possible for the officer to inflate the facts to support this feeling concerning the case. The inverse can also be true, where as, if the police officer feels the person should be diverted, the facts may also be inflated

in the person's behalf or the facts of the incident being deflated. Therefore, influence is present, directed, and caused by the police. Thus, it may then be hypothesized that the police have influence on the prosecutor, and depending on the reward the police are seeking (i. e., case going or not going to trial), the influence will be applied accordingly.

Court

This extra-legal variable operates in the second time frame (T-2). Being in T-2, it has received influences from those variables in T-1, but still allowing T-2 to influence the prosecutor in his decision to divert. Through reviewing the literature, the researcher formed the time frames for this research study.

The influence of the court on the decision to prosecute or divert is very real.⁴⁴ This is the level which this extra-legal factor will be relating to. Since the judge has a close working tie with the prosecutor, the judge's beliefs on prosecuting and diverting will be well known. The sentencing history of the judge gives the prosecutor an indication of the treatment a case may receive in the courtroom. The prosecutor's expectation as to whether the court will find the accused guilty may limit the prosecutor's discretion over the decision to prosecute or divert. Under these conditions, it could be expected that the prosecutor would respond to the judge's actions accordingly by reducing the inputs to the court either by diverting or not proceeding

⁴⁴Cole, p. 337.

with prosecution or plea bargaining a case to receive guilty pleas. Thus, there is an amount of influence placed on the prosecutor by the judge.

Population increase, greater urbanization, and technological change have made society far more complex and more demanding in law and legal institutions than it was in the rural past.⁴⁵ The courts have had to devise adaptive measuring to deal with this problem. The ways used by the court to dispose of cases are a vital influence on the judicial system. Under such conditions, the prosecutor might respond to the actions of the judge by reducing the input to the court system, either by not preferring charges or increasing the use of diversion.

Of more direct influence on the diversion decision is the specific request or suggestion of the judge. The judge may ask the prosecutor to screen his cases more closely, or to invoke the habitual criminal statute. He may also request that the prosecutor not bring forward any cases that may be classified as petty in nature (e. g., shoplifting, simple assaults, harrassment, or property crimes). The reasons are relatively complex, but they ultimately come down to a combination of two factors: 1) general awareness of the need for accommodation by each court official to meet the needs of other court officials in the justice system; and 2) a realization that with judicial power to dismiss in appropriate cases as well as sentencing discretion, it would be futile to refuse to meet these requests. Therefore, it is clear that in many situations the prosecutor agrees with the judge.

⁴⁵Harry W. Jones, The Courts, The Public and the Law Explosion (New Jersey: Prentice Hall, 1965), p. 2.

The judge's influence is evident because the prosecutor is able to regulate the flow of cases to the court. He controls the length of time between accusation and trial, and holds cases until an investigation is completed which will help him convict the accused. Thus, the prosecutor controls the court structure and is instrumental in deciding which cases go to court. He can possibly bog down court operations or divert the cases to lighten the court caseload. Therefore, the judge concerns himself with the prosecutor's operations.

The court is basically striving for a low cost, efficient and proficient system. In striving for this goal, the court must interact with the prosecutor. This interaction causes an exchange process. Although, in this relationship the prosecutor controls the flow of cases into the system, the judge controls the function of the court, which is basically, the whole judicial operation. Therefore, in order for the prosecutor to attain high conviction rates, lighter caseloads, and to maintain a strong working relationship with the courts (rewards), he will service the judge or courts requests (cost). This is done by diverting factually weak cases from the courts, implementing better screening procedures, and keeping the court's caseload to a minimum to allow the courts to spend more time on important cases (i. e., theft, assault, robbery, etc.). Thus, the court/judge has an active voice in the prosecutor's operations. In other words, there is an influence trait possessed by the court which may come into being in the prosecutor's decision to divert.

Program

This extra-legal variable operates in the third time frame (T-3). Being in T-3, it has received influence from one variable in T-1, and no influence from the variable in T-2. However, because of the variable's position within the judicial system, it does not receive a great amount of influence from the other variables but does have an influential role that effects the prosecutor and his decision to divert. Therefore, the variable program is placed in the third time frame.

Diversion programs give the judicial system, especially the prosecutor, an opportunity. The program does not offer a solution.⁴⁶ It offers the judicial system a developed schema that systematically and effectively screens the accused out of the court system. This is done according to their real danger to society, rather than the prejudices of individual members of the judicial system.

In the literature that has been presented, the benefits that diversion programs offer the judicial system, especially the prosecutor, have been discussed and evaluated on their merit. The literature has closely observed the ways that the diversion process saves time, money, and size of caseloads. However, the problem of corrections or rehabilitation has not been discussed to any great extent.

The variable program does not influence the prosecutor in the same methods as the variables in T-1 and T-2. The influence is the fact that the program is "there", "operational" and very much "functional".

⁴⁶National Pretrial Intervention Service Center, Pretrial Criminal Justice Intervention Techniques and Action Programs, American Bar Association, 2nd ed., 1975, p. 151.

The actual influence is created by the other variables demanding certain actions by the prosecutor. The program simply offers the alternative means in which the prosecutor may implement to respond to the pressures.

In reviewing what influences were placed on the prosecutor, and for what reasons, diversion seems to be the most likely alternative to be used by the prosecutor. In considering what the diversion process has to offer: 1) individualized counseling, 2) supportive services, 3) supervision, 4) rapid case turnover, 5) motivation for self improvement, 6) lower caseloads, and 7) money saved, the influence to use the diversion program will be overwhelming.

The prosecutor has searched for ways to maximize his efficiency to better protect and serve the public, and utilize his broad discretion to advance the ends of justice.⁴⁷ But with many extra-legal factors influencing him, a prosecutor in today's society has a difficult time doing an effective job. The prosecutor would like to serve the people and offer better services, but in reality, his concern may just be on the surface to please the common people.

Diversion, then, may be seen as a product of community pressure, accused power resources, lawyers, economics, police, courts, and the diversion program. These elements interact with the prosecutor and apply their influences on him to implement or not to implement the diversion process. Thus, the prosecutor's reward may be viewed as the summative total of all reward relationship with the variables in T-1, T-2, and T-3. His costs may also be viewed as the summative total if, in fact, he does not divert cases.

⁴⁷NDAAs, Deferred Prosecution, Pamphlet 74.

From the preceding review of the literature, the prosecutor is subject to many interactions with the variables. These variables may be T-1, T-2, T-3 or a combination of any part. The following recursive model shows which variables influence the prosecutor or other variables. Thus, the theoretical model may be specified as:

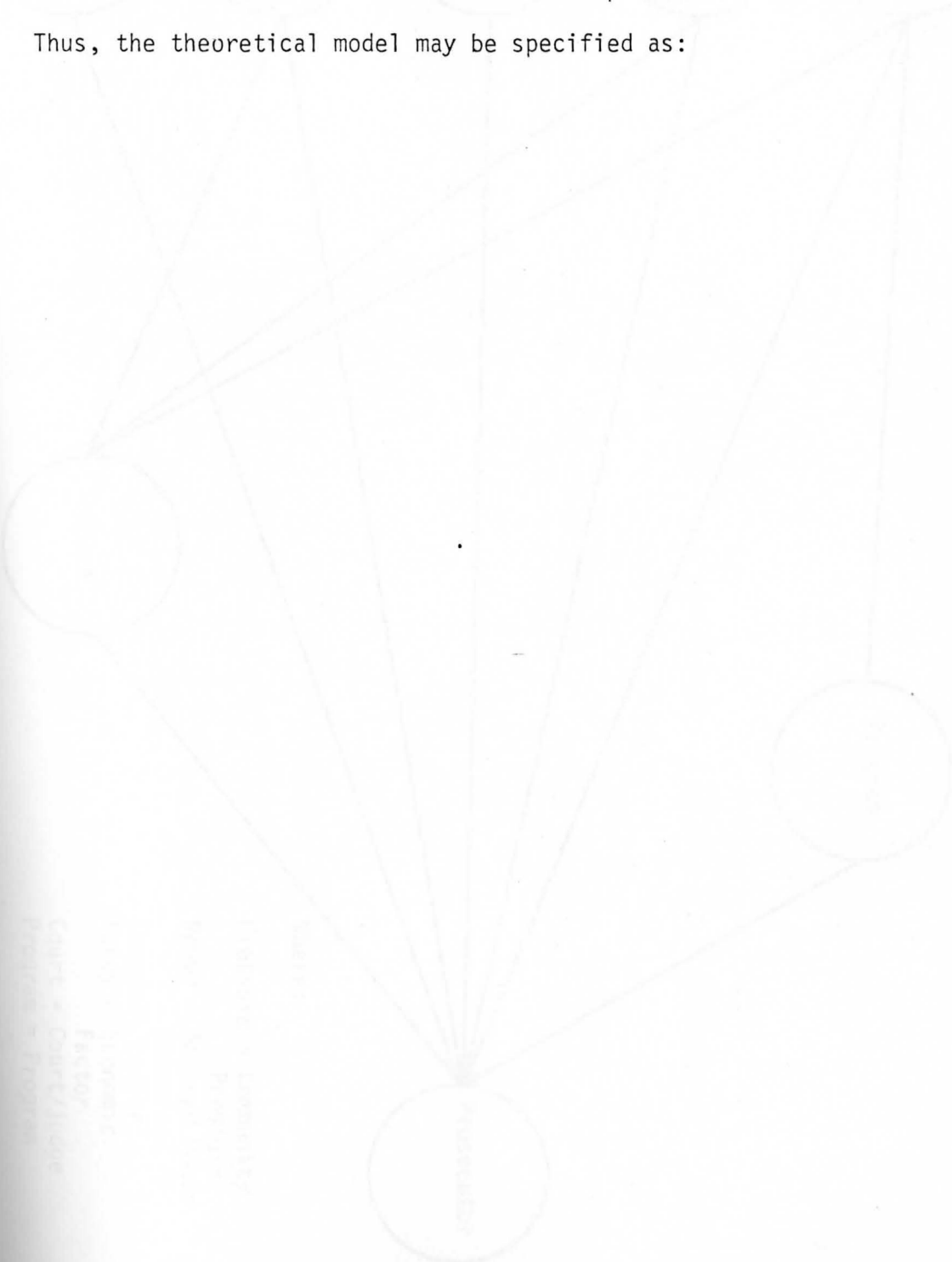
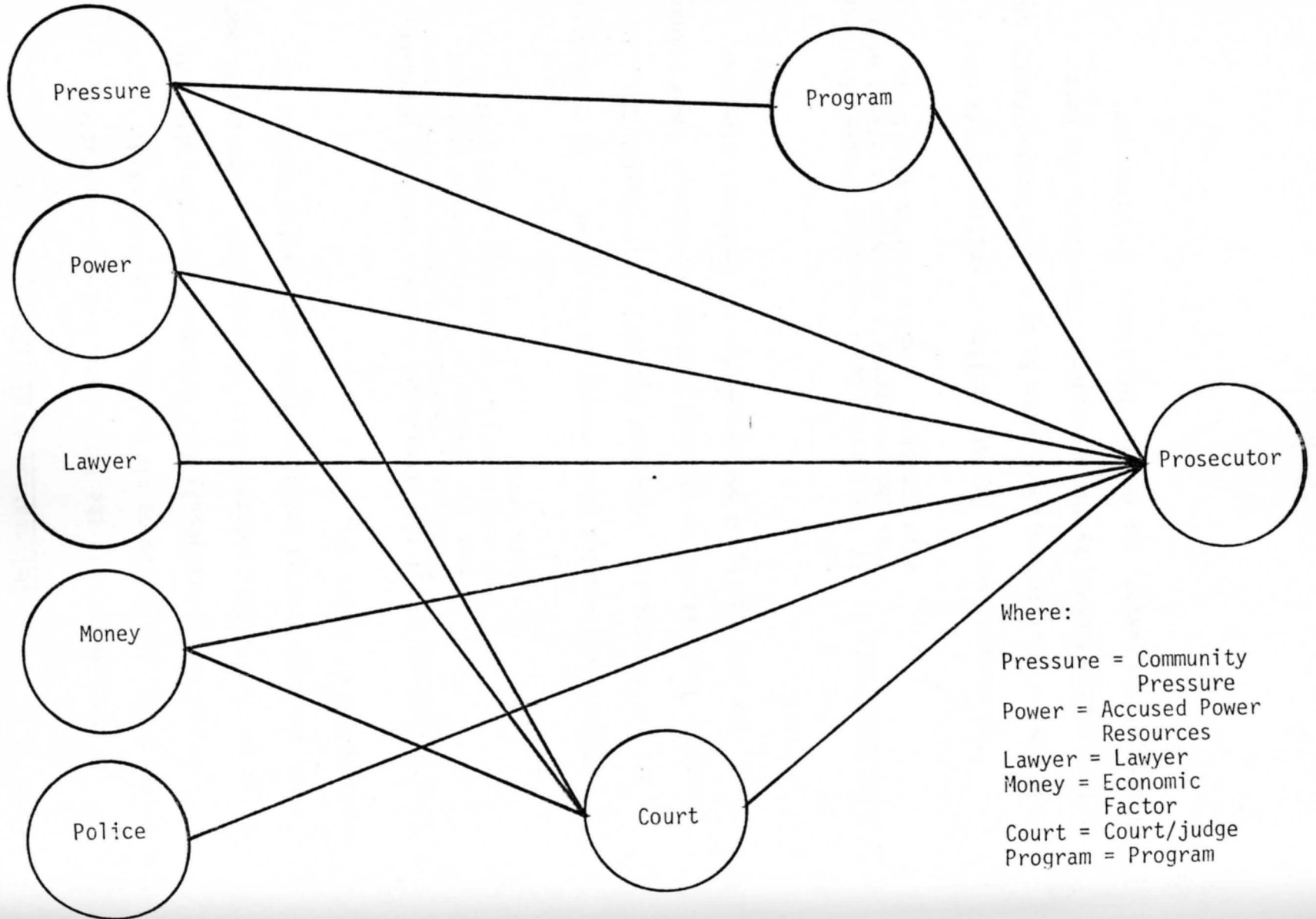


Fig. 2. Exchange Between Variables



Delineation of Hypotheses

In concurrence with the literature, and the constructed recursive model, the following six hypotheses are presented.

It was stated previously that members of the community both directly and indirectly, interact with the prosecutor. The prosecutor perceives the community as being favorable or negative towards the implementation of diversion. Thus:

Working Hypothesis 1: If the extra-legal factor, community pressure, (Pressure), increases in favor of diversion, then the prosecutor's decision to implement diversion will also increase. The inverse is also true.

The element accused power resources was shown to be characteristic of an accused person, and when used properly can influence the prosecutor. Thus, it may be reasoned that as the accused power resources increase, the possibility of the prosecutor to implement diversion will increase:

Working Hypothesis 2: If the accused power resources (Power) increase, then the prosecutor's decision to divert will also increase. The inverse is also true.

The element lawyer, (as his ability of getting things done within the judicial system), was shown to be a contributing factor on the influence perceived by the prosecutor. Therefore, the more influential the lawyer, the greater the chance for diversion:

Working Hypothesis 3: If defense lawyer competency increases then the prosecutor's decision to divert will also increase. The inverse is also true.

The amount of money the judicial system can save was viewed as an influential factor in the prosecutor's eyes. Thus, if money increases, so will the influence on the prosecutor.

Working Hypothesis 4: If economic, (Money), pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

The element police was shown to be a contributing factor on the influence perceived by the prosecutor. Therefore, if police influence increases, the greater chance for diversion:

Working Hypothesis 5: If police pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

It has been shown through literature that the prosecutor received pressure from many areas. A combination of elements will have a joint effect on the prosecutor's decision.

Working Hypothesis 6: The prosecutor group, given the treatment, will differ significantly from the comparison group.

The preceding hypotheses discuss the influence placed on the prosecutor in his decision to divert. The influence, in each hypothesis, is based on the rate of exchange (cost vs. reward). The prosecutor will be striving for maximization of his rewards and minimization of his cost. Each variable enters into this role of exchange and creates a situation that will influence the prosecutor to divert a case or not.

Summary

The empirical investigation that will be conducted will center around the questions that the hypotheses posed. The foregoing chapter has reviewed the appropriate literature dealing with the decision to implement the diversion process. The ensuing chapter will expound on the research methodology used to pursue the evaluation of the hypotheses.

CHAPTER III

METHODS

In the preceding chapter, six hypotheses were generated from the literature. This chapter will address the proper method in the collection of data and a method of analysis to properly evaluate these hypotheses. In addition, this chapter will also discuss the experimental research design, sampling technique, instrumentation and research procedures employed in the study. Finally, a discussion of methodological problems encountered in the research study will be presented.

Research Design

This study attempts to ascertain the variables that influence the prosecutor in his role of the decision maker. To investigate this to a greater degree, a research design will have to be selected. The basic issue in the selection of the proper design is one of fitting the research design to the purpose of capabilities of the study.⁴⁸

Research design models, which are presently used in the majority of social science research, must be reviewed to seek the proper design for this thesis. Because of the nature of this thesis, random assignment to treatment or control groups is not possible. Due to this factor,

⁴⁸Carol H. Weiss, Evaluation Research (New Jersey: Prentice-Hall, Inc., 1972) p. 66.

the choice of design will be limited and must employ a comparison rather than a control group.

Investigation of the causal influences on the prosecutor's decision warrants a design in which one group has experienced the treatment (prosecutor) and another group which has not (non-prosecutor). In choosing a comparison group, the group must resemble the treatment group in all aspects except exposure to the treatment. Thus, for the purpose of establishing the effects of the treatment, a "static-group comparison" design was chosen. In viewing other designs (i. e., one-group pretest posttest, one-shot study, separate-sample pretest-posttest and nonequivalent control group) the best fitting design was chosen for this thesis. This design compares the treatment group with the comparison group.

The design can be visualized as:

$$\begin{array}{ccc} X & & 0 \\ \hline & & 0 \end{array}$$

In this illustration, "X" represents the exposure of treatment (i. e., community pressure, accused power resources, lawyer, economics, police, court and program) to the group identified as prosecutors.

The symbol "0" represents a process of observation or measurement.

The observation or measurement takes place "after the fact" the treatment was induced, thus, the observations is performed in an EX POST FACTO fashion.

Threats to Validity

The static-group comparison design is the most viable method possible in the present study, but it does contain several limitations. Factors exist, as in most designs, which jeopardize the validity of the research. Validity is defined as the degree to which the researcher has measured what he set out to measure.⁴⁹ Validity may be characterized by two different types: 1) validity of findings and 2) validity of measurement.⁵⁰ In the discussion of the design, the validity of the findings will be of major importance. The validity of the findings may be divided into two areas, they are internal and external validity. Internal validity is the basic minimum without which any experiment is uninterpretable: did in fact the experiment treatments make a difference?⁵¹ External validity asks the question of generalizability: to what populations, settings, treatment variables, and measurement variables can this effect be referred to?⁵² The primary emphasis in this section will focus on the operative internal threats to validity.

Smith discusses nine threats which may jeopardize the internal validity of the experimental findings. Three of these threats affect the interpretation of the findings if they are unaccounted for in the design which was chosen.

⁴⁹Donald T. Campbell and Julian C. Stanley, Experimental and Quasi-Experimental Designs for Research (Chicago: Rand McNally and Company, 1963), pp. 5-6.

⁵⁰Herman W. Smith, Strategies of Social Research: The Methodological Imagination (New Jersey: Prentice-Hall, Inc., 1975), p. 61

⁵¹Campbell and Stanley, p. 5.

⁵²Campbell and Stanley, p. 5.

The first threat to internal validity operative in this design is labeled "differential selection of subjects."⁵³ This threat is based on a biased selection of subjects which may lead to a spurious interpretation of the findings. For instance, questionnaires may only be sent to prosecutors that would respond to them. Thus, a higher response rate and confound interpretations. Random selection and random assignment are the keys to overcoming differential selection of respondents. Since this study had non-random selection, this threat is operative. Thus, the systematic differences, which are typically introduced through the non-random selection of subjects, is of great concern to the researcher. Also, non-random assignment to the treatment or comparison group was implemented. Therefore, this threat may confound this study's results and must be taken into consideration by the researcher in the interpretation of the findings. Otherwise, differences between groups on the dependent variable may be due to subject selection procedures rather than to the independent variable.

The second threat that is operative in the design is "experimental mortality."⁵⁴ This threat relates to the loss (mortality) of respondents in the study. Any time subjects drop out of the study or fail to respond to the instrument, effects on the dependent variable might be accounted for by these mortality rates rather than by actual effects of the independent variable. The question relevant to whether or not

⁵³Smith, p. 64.

⁵⁴Smith, pp. 64-65.

there is something in common about those subjects who choose not to respond to the instrument must be examined. Mortality might present a problem in this study if a large portion of prosecutor or non-prosecutor choose not to respond, (i. e., self-selection of participants). Therefore, since 28% of the prosecutor group and 61% of the non-prosecutor group chose not to respond to the questionnaire, mortality can be a very serious threat to internal validity. That is, comparison on the dependent variable might be accounted for by these differential "mortality" rates rather than by actual effects of the independent variables.

The final threat to internal validity operating in this study is labeled "selection-maturation interaction effects."⁵⁵ This possible confounding factor can be operational when differential sample selection work in conjunction with mortality and can produce a spurious result. For example, because of a differential sample, the subjects involved may not, because of their position, have taken the time to respond or spend the proper time to give the questionnaire due consideration. Perhaps the groups involved may have taken a number of surveys concerning this subject or of a subject with similar emphasis. This could affect their responses or lack thereof. Although both samples appeared to be genuinely concerned about filling out the questionnaire, because of their additional comments, some doubt still remains that both groups perceived the survey as being beneficial to the field of criminal justice.

⁵⁵Smith, p. 68.

All these threats, which have been pointed out in the foregoing are very important to the researcher who will attempt to investigate the causal analysis of a particular problem. If these limitations are not recognized, a false, (quick) interpretation of the data is highly likely. This can then lead to an incorrect explanation of the causes of the problem area.

This preceding section has described the design that will be used to investigate the prosecutors decision to implement diversion and the influences that might lead to this decision. Methodological limitations of the design have also been pointed out and discussed to allow for their interpretation in the findings. The following section will point out 1) the samples used in the study, 2) the justification for the samples, and 3) the limitation of using those groups.

Sample

Sampling is a procedure by which we infer the characteristics of some group of objects (a population) through experience with less than all possible elements of that group of objects (a sample).⁵⁶ Sampling permits the researcher to cut cost, reduce time, gather information more quickly, obtain more comprehensive data and most important of all, provide a good cross-section of the total population without actually studying the total population. Therefore, a main concern of the researcher is selecting a sample of the population which will truly represent the group being studied.

⁵⁶Smith, P. 105.

This study deals with two distinct populations: Prosecutors and non-prosecutors. The following section addresses that concern.

Prosecutor Sample

The researcher viewed the total population of prosecutors that use or have at their disposal a diversion program. This list is immense and the total list of names are not recorded. The reason for this is 1) different funding sources, which do not allow for centralized listings, 2) starting and ending of new or old programs, which do not keep the present list accurate, 3) new prosecutors not listed, 4) listed prosecutors not remaining with governmental agency and 5) agencies or prosecutors not filling out reporting forms to place their names in a directory. Therefore, the prosecutor sample was taken from the Directory of Criminal Justice Diversion Programs 1976. The sample was derived from first choosing all the diversion programs listed in the directory. This encompassed selecting the diversion programs from bail bond diversion, pretrial release and juvenile diversion programs. The total number of programs that were qualified in the directory were one hundred and ten. This number covered forty-seven states and two territories of the United States.

Secondly, letters were written to all one hundred and ten programs. The letters were directed to the program directors. In this letter, a form was attached requesting all prosecutor names, addresses and telephone numbers that made referrals to their program. (See Appendix A-1). Next, a two week period passed and a follow-up card was sent to those program directors that did not respond. The card was to serve as a reminder to send the information requested

(See Appendix A-2). Finally, after two additional weeks passed, another letter, with an additional form, was sent to the directors asking them for their assistance once more (See Appendix A-3). A total of ninety-seven programs (88%) responded and a list of one hundred and eighty four prosecutor's names were compiled. This was to serve as the total population to be studied.

This population was chosen as the treatment group because of 1) they had received the treatment, (influence on prosecutor) because of their position, 2) researchers interest to perceive if in fact other prosecutors function as those he is accustomed to, 3) accessibility to use the field of diversion (being a program director of a diversion program).

Restricting the sample to the prosecutors listed in the directory may effect the generalizability of the findings. This study is concerned with the testing of theory, that is, do the extra-legal elements discussed in Chapter II influence the prosecutor in his decision to divert? Since the results will be generalized back to the group surveyed, it would not seem problematic. To go outside the population in the generalization would be incorrect, since they did not have the opportunity to be surveyed.

Law Student Sample (non-prosecutor)

Investigation into the effects of extra-legal variables (treatment) on the prosecutors warrant the comparison of a similar group of individuals who have not been exposed to those treatments. This was determined by the model chosen and delineated earlier in this chapter. Last year law student were chosen for several reasons.

First, the students have had the same educational understanding of how the criminal justice system operates. By the last year of law school, the students have received the criminal law and criminal procedure portion of their education. In comparing the two groups in education (Prosecutors = 8 = L.L.B, 120 = J.D. and 4 = other; Students = all last year, first quarter of law school) and supporting it with age (Prosecutor mean = 33.2 years; Students' mean = 29.1) there seems to be no major difference. Thus, the two groups can be deemed similar in education and age. Therefore, the students have a knowledgeable concept of how the prosecutor functions and there is no major age difference which may cause bias in methods of perceiving matters resulting to prosecutorial discretion.

Secondly, they have not been exposed to the influences because of their position as a student. Next, the particular school chosen has a requirement that all students, before graduation, must work in the local diversion program. In this case, the Columbus Night Prosecutor Program. This factor gives the law students a working knowledge of diversion. Finally, the researcher's accessibility to use the students for a comparison group. However, the researcher must realize the limitations of using such a group, and take this into consideration when interpreting the findings.

The law student sample was composed of all last year law students numbering one hundred and forty eight who were enrolled in Capital Law School, Columbus, Ohio

By using the law students as a comparison group, there are some limitations that may lead to a misinterpretation of the data if not taken into consideration. First, the law students may perceive

the extra-legal factors differently than the prosecutor. Thus, their responses may reflect those perceptions. Secondly, the lack of experience may lead to naive perceptions. Surprisingly, most law students said they held from 1 to 3 positions prior to this survey, while the prosecutor group showed 2 to 4 positions being held to the present survey. Of course, quality and length of job must be taken into consideration when making the comparison. Therefore, the law students show somewhat limited experience which may effect their responses. Finally, the lack of interest of the student might cause rash responses because of time limitations. Therefore, the researcher must take these facts into consideration when interpreting the data.

The preceding section has described and discussed the two sample groups used in this study. The selection of these groups were justified on theoretical grounds. The following section will present the instrument of the study: variable dimensions, scaling and the formation of the questionnaires.

Instrumentation

There are various forms of instruments that exist and the use of any one of them is based on restrictions of research setting, finances, time and accessibility. In this research setting, non-accessibility to the study groups had the major influence on which method was chosen. Using one hundred and eighty four prosecutors across the United States and a comparison group that was located a great distance from the researcher, a survey technique was chosen over the other data collection techniques. Other methods would be impractical because of the inability to interview, and attitudes are not recorded for archival data gathering. Therefore, questionnaires were the simplest, most direct and would collect information the researcher wanted to gather.

In using the survey technique a few questions concerning the validity of measurement are raised. The basic interest of these questions is, how valid is the instrument which will be implemented in gathering the data. To improve that validity, the researcher must explore all techniques that address this question. The following strategies were used to increase the instrument's validity.

The first step taken was formulating the right questions for the questionnaires. By having good, logical, and well-planned questions, the researcher can be reasonably sure that the questionnaire will measure what it attempted to measure. In accordance with the literature, each extra-legal variable (community pressure, accused power resources, lawyer, economics, police, courts and program) was divided into dimensions. It should be noted that the process of combining a number of areas to measure a single variable is scaling. Thus, a greater reliance that the questionnaires will measure what it is intended.

The first scale created from the literature was for the community pressure variable. The dimensions that covered the most representative aspects were 1) crime reduction, 2) treatment/handling of offenders and 3) recidivism. The operational definitions of the three dimensions are as follows. The community concerns itself with the reduction of crime present in the community. The community seeks involvement with the proper treatment/handling of offenders to reduce court system cost and speedier procedures with keeping proper rehabilitation processes in view. Recidivism refers to the amount of people recommitting crime in the community.

The second scale created from the literature, accused power resources, consist of three dimensions. They are 1) political affiliations, 2) community figure and 3) accused characteristics. These three dimensions relate to the accused person's position and how he is perceived. Political affiliation refers to the accused having influences on decision makers in the political setting (i. e., judge and prosecutor). The accused may be an important figure within the community also, or have strong ties with such people. For example, "When it comes to choosing a person for a responsible position in the community, I prefer a person whose family is well-established in the community?" Finally, the characteristics (i. e., sex, race, SES) of the accused may be taken into consideration when the prosecutor makes his decision. For example, "Some prosecutors covertly stereotype offenders when using their discretionary powers?".

The third scale, lawyer, also consist of three dimensions. The dimensions that covered the most representative aspects are 1) politically influential in the courts, 2) powerful in the community structure and 3) friendships with the prosecutor. Political influence in the courts refers to the amount of influence or pull the lawyer has within the judicial system. For example, "Defense attorneys with the same political affiliations as the judge receive better considerations in the court in your jurisdiction?". Power with the community structure relates to the social position of the lawyer and his ability to draw in these resources to aid client. Friendships with the prosecutor relates to a working relationship that the lawyer has with the prosecutor.

The fourth scale, economic factors, consist of one dimension or it may be referred to as being unidimensional. The dimension is 1) total time and money saved. Time and money saved refers to ways and alternative methods present that will save the judicial system time in court and its procedure, and/or the amount of money saved in implementing alternative procedures. For example, "The present traditional court procedure is too costly?".

The fifth scale, Police, consist of two dimensions. The first dimension of this scale is disagreement of criteria used in the selection process for diversion. The remaining dimension is the perception of police responses to diversion. As pointed out by the literature, the first dimension refers to the amount of disagreement the police have in the selection criteria used by the prosecutor in the diverting of a case. An example of this is, "Police believe first time offenders should not receive special consideration?". The second dimension reflects the attitude of the police toward diversion and how the prosecutor perceives this attitude. For example, "As a prosecutor, police encourage me to strive for strong penalties?".

The sixth scale created from the literature, court/judge, also consist of two dimensions. They are 1) re-emphasizing influences that are placed on it, and 2) caseload size of the court system. Re-emphasizing influences refers to a response to the influence that was placed on itself. For example, "As being the prosecutor, the courts in your jurisdiction are under pressure to be efficient in their performance?". This question relates to re-emphasizing the first extra-legal factor, community pressure. The caseload size refers to the

overburdened court system. For example, "The judges which you work for, constantly worry about their administrative docket backing up?"

The seventh scale is program. There are two dimensions for this scale. They are 1) re-emphasizing influences that are placed on it, and 2) presences of the program. Re-emphasizing influences refers to a response to the influence that was placed on itself. For example, "Diversion programs strive for bettering its services to the community?". This question relates to re-emphasizing the first extra-legal factor, community pressure. Presences of the program reflects the opportunity of the alternative method to be implemented.

The final scale, treatment, is undimensional and has been created to measure the willingness of the prosecutor to divert. The prosecutor's use of diversion will be measured to see if, in fact, he does use this alternative method. For example, "In your jurisdiction, the Diversion process enables the court system to operate more efficiently?", and "I normally divert cases that meet the general criteria of the diversion program?"

The next step taken to ensure the reliability and validity of the questionnaire was to perform a pretest. Many criticisms of a questionnaire are based on 1) poorly designed questions, 2) format and 3) appearance. Therefore, the time was taken to pretest the questions to see if the researcher and the respondent corresponded in the same frame of reference. If there are any areas which do not correspond, the researcher must reword the questions or eliminate those from his questionnaire. The questions were pretested by using the prosecutors in Trumbull County, Ohio, who use the county's diversion program. The logic for using this group was 1) knowledge of the diversion concept,

2) subject to those influences which the researcher is investigating and 3) accessibility to that particular group.

After submitting the pretest to these prosecutors, several adjustments were made upon their feedback concerning the questionnaire or the actual questions (i. e., "the questionnaire is too long", "the questions are too negative" and "I feel you can express question () better"). The researcher also used a computer to search out questions that were highly correlated within each dimension. This was done to use only the most powerful questions and to keep the questionnaire short as possible to reduce the chance that length might have effected the response rate. The correlations varied but the researcher kept the correlation at the highest possible level. For example: the questions used in the pressure scale average .67, the average in the power variable was .71, and the average in the lawyer variable was .80. These averages determine which questions may scale that variable the best. However, the researcher may use other questions if he feels that that particular question can measure that factor better.

The same questions were used for the comparison group, with the exception of two. Those two questions pertained to the function of the prosecutor and would be misleading to those in the comparison group. For example, "I normally divert cases that meet the general criteria of Pretrial Intervention (Diversion)?" . Thus, the comparison group answered two less questions that pertained to the variables. There were also two questions that were altered by crossing out one or more words. This was done to make the question applicable to the comparison group without altering the question's meaning.

Both questionnaires began with an introduction to the study and an explanation of the procedures to be used by the participant. Following this were several demographic questions, (i. e., sex, race, age, education, etc.). In this area there were a few changes between the prosecutor group and the comparison group. To avoid confusion for the comparison group, eight demographic questions were eliminated. For example: "Number of years as an attorney?", and "Year as prosecutor or on prosecutor's staff?".

Aside from this type of question, the "Likert Summated Rating Method"⁵⁷ was implemented. Only four responses to each statement were allowed: 1) strongly agree, 2) agree, 3) disagree and 4) strongly disagree.

The next step was to give each question a variable name and place it in a "codebook"(See Appendix B and C). Numerical ratings were given to all questions in the questionnaire. For example: 1 = (1) strongly agree, 2 = (2) agree, 3 = (3) disagree, 4 = (4) strongly disagree, 1 = yes, 2 = no, 1 = white, 2 = black, etc. All questions in the questionnaire were given equal weight. The researcher's reasoning was attributed to 1) questions were directed to the same level of import, and 2) the high correlation of questions from the pretest. Thus, all questions were weighted at their assigned numeric value.

The final step was to ensure a professional appearance of the questionnaire. By having a professional printing company print the

⁵⁷Smith, p. 147.

questionnaires, a professional appearance was achieved (See Appendix D for prosecutor questionnaire and Appendix E for comparison group questionnaire). Thus, an attractive, professional looking questionnaire would increase the probability of responses from the participants. The results on one hundred and thirty two responses out of one hundred and eighty four support this case.

There are two major problems encountered in the instrumentation utilized in this research.

There are two major problems encountered in the instrumentation utilized in this research. The first problem is "testing".⁵⁸ This problem relates to the method used, "does the method affect the subject?". Anytime the instrument procedures are not part of the subject's normal environment, it may be considered reactive. Thus, anytime the subject, or subjects, know they are being observed or tested, there is a chance that their behavior or attitudes may be modified by the measuring instrument. Therefore, causing the data to be biased.

Secondly, because of the position of the person (i. e., prosecutor) and of their political setting, the responses may not be their true expressions. This may be caused by 1) fear of tracing responses back to the responder, 2) fear of being evaluated on the responses and 3) not wanting to express their actual feelings for a personal reason. Therefore, the researcher must take these problems into consideration when making his interpretation of the data.

The preceding section has described the methods implemented in the formation of the questionnaire. Also discussed were the methods

⁵⁸Smith, p. 63.

used to increase reliability and validity of the questions and questionnaires. The following section explains the implementation of administering the questionnaire.

Procedure

Administration of questionnaires is a point to be concerned with since improper procedures can effect personal acceptance, as well as the response rate. This section addresses those considerations which have an important role in the administration of the questionnaires implemented in this study.

Administration of Prosecutor Questionnaire

The procedures in which the names of the prosecutors were attained has been delineated in the sample section. At this point, the researcher has a list of one hundred and eighty four prosecutor names which use a diversion program.

The researcher's first step was to have three address labels typed per prosecutor. Their name and address was typed on each. After completion of this phase, the researcher had to develop a cover letter which gave an introduction, reason for the study, directions and assurance of confidentiality of the questionnaires (See Appendix F).

Upon completion of this letter, it was then sent to a professional printing company to render an attractive appearance. Once the researcher received the printed letter, they were placed along with a questionnaire in an envelope and mailed. A self-addressed stamped envelope was enclosed to increase the probability of responses. Under each stamp of the return envelope, a number was placed in black ink. This number corresponded with the list of names and was done to determine who

responded and who did not respond. This was not done to match responses with names, but to have a list of names to send the follow-up letters to.

The researcher instructed the prosecutors to return the questionnaire within 3 days. This was done to assure a quick response and not allow the prosecutor to place the questionnaire on the side and the possibility of it being misplaced. The researcher received 68 responses, or 37% of the total received after the first ten days. After those ten days passed, the researcher sent a follow-up card to those who did not respond to serve as a reminder. Ten days was chosen because, 1) three days to receive questionnaire, 2) three days to fill out the questionnaire, 3) three days to receive the responses and 4) one day grace period for the Sunday that fell during the nine days. Prior to these ten days, the researcher developed a follow-up card and sent it to the printing company (See Appendix G). The second address label was used at this time. The response to the follow-up card was 29 responses for 16% of the total responses.

The researcher waited approximately ten more days before taking further action. The number of days had the same logic as stated above. A third and final letter was developed during this waiting period and printed to maintain an attractive appearance (See Appendix H). Also enclosed was another questionnaire in case of misplacement of the first. A return envelope was also provided, but this time the Department of Criminal Justice, of Youngstown State University provided the envelope. This was done for three reasons: 1) higher response rate is possible with a return, postage-free provided envelope, 2) to show cooperation of Youngstown State University in the study

(in the introduction of the questionnaire it states a combined effort of the researcher and Youngstown State University) and 3) lack of funds by the researcher to provide a return envelope. The response rate of the final attempt improved over the second attempt (35 or 19% of the total responses were received). Providing a self-addressed, stamped envelope may have had input on this final response rate.

The administration of the questionnaire was completed after waiting fifteen days after the mailing of the third letter. The final response rate was 132 responses or 72% of total number of questionnaires mailed out. Letter of gratitude for assistance were sent to those who aided the researcher in his data collection (See Appendix I, J, and K).

Administration of the Law Student Questionnaire

In a telephone conversation with the Dean of Capital Law School, Mr. Robert Goostree, the researcher explained the study and reasons of wanting to use the last year law students as a comparison group. Dean Goostree stated that he would be glad to assist in any way possible. A date was scheduled for the researcher to visit and administer the questionnaire. However, since there was a tight classroom schedule, the researcher would be unable to go into each class. Therefore, a letter explaining the study, directions for completion, confidentiality and an expression of gratitude had to be developed and printed (See Appendix L). The questionnaires were altered before administering them. The reasoning was stated in the "Sample" section. The questions were altered by using a black marker to cross out question numbers or words within the question. There was also a self-addressed stamped envelope

enclosed to ensure the highest possible return. In dealing with student's finances are of major importance and the possibility of them having an extra stamp to mail back a questionnaire is highly unlikely.

Thus, the researcher provided the stamp to make it easier on the student and increase his willingness to respond.

Upon arriving at Capital Law School, the researcher met with the dean to explain the study in detail. The dean received a copy of what the students were to receive. He then went over the questionnaire with the researcher and questioned his methods and hypotheses. Mr. Goostree then took the researcher to his secretary, who in turn took the researcher to the student mail box section of the school. She instructed the researcher which boxes belonged to the last year law students. The researcher then placed one envelope containing all proper materials in each box. This ended the administering of the questionnaire. No direct follow-up was performed because of 1) expense, the researcher's funds could not support second and third follow-ups, 2) time limitations, because of the researcher's time frame, proper follow-up could not be performed correctly, 3) student time limitations, because of tight student scheduling, the researcher could not do a proper follow-up and 4) accessibility to perform follow-up, the location was a great distance and restricted the researcher from driving to the school on a regular basis. However, the researcher did call Dean Goostree ten days after administering the questionnaire and asked him to place a notice on the student memo board reminding them of the questionnaires. He stated he would do so and asked if there was anything else he could do to help the researcher.

Upon the study's completion, the dean and a local attorney who introduced the researcher to the dean, received letters of gratitude (See Appendix M).

Limitations of Procedure

In the administration of a questionnaire, there exists limitations to which the researcher must be concerned. The fact that the prosecutors may feel "threatened" to express their actual attitudes because of being confronted at a later time, will cause them to answer the questions the way they perceive the researcher wants to receive them. Thus, responses are not of true meaning. This may be true of both groups, since law school is demanding, leaving the student for little spare time to get involved with the study. Therefore, responses that are not well thought of, causing untrue responses.

The structure of the questionnaire may cause bias responses, or cause no responses. The prosecutor or student may read into the questionnaire and determine the hypothesis and not wish to respond because of the hypothesis. Of course, the questionnaire was constructed to guard against this, but there is no foolproof way possible to eliminate it altogether.

The last concern can be identified as a participant having no interest in the study. This can be caused by the follow-up card and letter or in the case of the student, no follow-up card or letter. The prosecutor might feel pressured because of the follow-up and respond just to satisfy the researcher and not think about the questions. There is also a possibility of someone on the prosecutor's staff answering it to satisfy the researcher's request. Another possibility

related to this is, the prosecutor's secretary might not have given the prosecutor the questionnaire or any of the follow-up attempts. Thus, either a response for "response sake", or no response.

On the other hand, the student may have needed a follow-up to remind him to fill out the questionnaire. Thus, no response because of not following up the students in the comparison group.

Summary

This chapter has dealt with the design, sampling, instrumentation and procedures utilized in evaluating the hypotheses generated in the previous chapter. Limitations of each section was discussed at the conclusion of that particular section. Interpretation of the findings must consider these limitations that were pointed out.

The next chapter will deal with these methodological considerations and how they are applied to the data and the evaluation of the hypotheses.

CHAPTER IV

FINDINGS

This chapter will concentrate on the analysis of the data which has been collected in the methods prescribed in the previous chapter. This chapter will also evaluate the interations between the extra-legal elements, community pressure, accused power resources, lawyer, economic factors, police, court and program and the prosecutor. This interaction indicates an influence caused by the extra-legal elements on the prosecutor and his decision to divert. In addition, the analysis procedure will evaluate the theoretical model which has been presented in Chapter II. To reiterate, the six working hypotheses regarding the model and found in the literature are listed below:

- Working Hypothesis 1: If the extra-legal factor, community pressure, (Pressure), increases in favor of diversion, then the prosecutor's decision to implement diversion will also increase. The inverse is also true.
- Working Hypothesis 2: If the accused power resources (Power) increases, then the prosecutor's decision to divert will also increase. The inverse is also true.
- Working Hypothesis 3: If defense lawyer competency increases then the prosecutor's decision to divert will also increase. The inverse is also true.
- Working Hypothesis 4: If economic, (Money), pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

Working Hypothesis 5: If police pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

Working Hypothesis 6: The prosecutor group, given the treatment, will differ significantly from the comparison group.

In order to facilitate evaluation of the preceding working hypotheses, this chapter will be divided into six parts; one for each working hypothesis. Each section will begin with the respective working hypothesis, followed by a description of the analysis implemented to evaluate that particular working hypothesis. Finally, each section will present the findings and evaluate the conclusions.

Working Hypothesis 1: If the extra-legal factor, community pressure, (Pressure), increases in favor of diversion, then the prosecutor's decision to implement diversion will also increase. The inverse is also true.

The first working hypothesis is derived from the theoretical model and concerns the relationship between the variable pressure and the dependent variable prosecutor. In order for the researcher to evaluate this relationship, he must review methods of measuring correlations. In measuring the correlation, a single figure will be attained which summarizes, for the researcher, the relationship which is present between two variables. The following are the reasons why the "Pearson r" was chosen and the other methods rejected. The Pearson r is similarly referred to as "Pearson's product-moment correlation".⁵⁹ This type

⁵⁹John H. Mueller, Karl F. Schuessler, Herbert L. Costner, Statistical Reasoning in Sociology (Boston: Houghton Mifflin Company, 1970, p. 315.

of analysis acts as a measure of association indicating the strength of the "Linear relationship"⁶⁰ between the variables. This method provides the researcher with a single figure which summarizes that relationship which is present between the two variables, pressure and prosecutor. This figure represents the degree which is present in the change in one variable as it relates to a change in the other.⁶¹

Therefore, Pearson's correlation coefficient is represented by "r" and is also known as the sample correlation coefficient.⁶² This method of measuring is very useful to a researcher in determining the degree of strength of the relationship between variables.

Three assumptions must be met, however, before employing this measure of association. They are: 1) data must be "interval level data", 2) data must be "homoscedastic" and 3) data must be "linear".⁶³ Interval level refers to equal units of measurement. Homoscedastic refers to a normal distribution of the values around the least square line. Finally, linear refers to the bivariate relationship holding throughout the spectrum of value. Since the researcher weighed all methods and viewed them as to which one would best fit the present study, the Pearson "product-moment correlation" was deemed a viable measure. The other methods would not adequately serve the research setting or create problems by not accurately measuring the association between variables.

⁶⁰H.T. Hayslett, Jr., Statistics Made Simple, (Garden City: Doubleday & Company, Inc., 1968), p. 108.

⁶¹Hayslett, Jr., p. 107-108.

⁶²Hayslett, Jr., p. 108.

⁶³Hayslett, Jr., Chapter 9.

The value of the correlation coefficient is always between -1 and +1. A value of r equal to -1 indicates a perfect negative relationship between the two variables. That is, as the value of one decreases, the value of the other increases. Also, a value of r equal to a +1 indicates a perfect positive relationship. Larger values of one variable are associated with larger values of the other: and smaller values of one are associated with smaller values of the other. If there is no relationship between the variables, the r will have a value zero. As r increases from 0 to +1 (or decreases from 0 to -1) the relationship between the variables becomes stronger.

By squaring the Pearson r , the statistic (r^2) is formed. The two measure, r and r^2 , respectively focus on two separate but interrelated aspects of covariation. r^2 measures the overall proportion of the total variation of one variable that is associated with, or explained by, the other.⁶⁴ Contrarily, r measures the dynamic aspect of this relation, measuring the rate of change in one variable relative to the other. Because of this distinction, r is primarily a predictive device to forecast the expected level of performance on one variable from observed performance on another. r^2 , therefore, is a summarizing measure weighing the influence exerted by one variable on the other.⁶⁵ The question arises as to what amount of variance explained is substantively significant. The researcher may set the acceptable percent of explained

⁶⁴Mueller et al., p. 318.

⁶⁵Mueller et al., p. 318

variance at any level. In this case, the researcher will set the level at five percent (5%). According to social science studies, five (5) percent of explained variance is considered high enough to justify further investigation of the hypothesis.⁶⁶ With these thoughts in mind, working hypothesis 1 is evaluated.

The first hypothesis is predicting the relationship between pressure and prosecutor. That is, the element of pressure will influence the prosecutor's decision to divert. By using the Pearson correlation, a coefficient of ($r=.0941$) was observed. This also can be interpreted as, pressure accounts for 1% ($r^2=.0088$) of the variance in the decision to divert. This can be stated as, one percent (1%) of the time, knowledge of pressure will allow prediction of the decision to divert a case by the prosecutor.

Taking this correlation and looking at working hypothesis 1, it seems to explain a very small portion of the variance in question. The explained variance in this case 1%, is less than the 5% requirement that the researcher set previously. Therefore, based on these findings, working hypothesis 1 may be rejected and deemed unresponsive of hypothesis 1.

Working Hypothesis 2: If the accused power resources (Power) increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

The second working hypothesis concerns the relationship between the element of power and the prosecutor. That is, the element of power will influence the prosecutor's decision to divert. In analysis, a coefficient of ($r = .2005$) was observed, explaining 4% ($r^2 = .0402$) of

⁶⁶Mueller et al., p. 401.

the variance in the prosecutor's decision.

Although these findings suggest a positive relationship the variance explained "Power" fails to meet the set acceptable level. Therefore, this working hypothesis will also be rejected.

Working Hypothesis 3: If defense lawyer competency increases then the prosecutor's decision to divert will also increase. The inverse is also true.

This working hypothesis deals with the effect of the defense lawyer's competency on the prosecutor. To determine the influence the defense lawyer has with the prosecutor in making his decision to divert; Pearson's correlation was, again, employed. A coefficient of ($r = .1055$) was observed. It was found that 1% ($r^2 = .0111$) of the variance could be explained by the variable lawyer.

The above value does not meet the minimum level of 5%. Therefore, further investigation of the hypothesis is not justified and the working hypothesis is rejected.

Working Hypothesis 4: If economic , (Money), pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

The fourth working hypothesis concerns the pressure economics create on the prosecutor and his decision to divert. It is hypothesized that as the degree of influence caused by "Money" increases, the prosecutor's decision to implement diversion will increase. The Pearson product-moment correlation was, again, used and correlation coefficient of ($r = .0610$) was observed. Although a positive relationship was observed, the proportion of variance explained by the variable "Money"

was ($r^2 = .0037$). Based on this, the variance was not large enough to accept the working hypothesis.

Working Hypothesis 5: If police pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

The fifth working hypothesis concerns the relationship between the element of police and the prosecutor. It is hypothesized that as the degree of police influence increases, the prosecutor's decision to divert will also increase. To determine this, the Pearson "product-moment correlation" was once again used. A correlation coefficient of ($r = .1748$) was found, which also denotes a relationship which is positive. The proportion of variance explained by the variable "Police" is ($r^2 = .0301$, 3%) which does not meet the criteria for retention.

The above five working hypotheses, in relation to the three assumptions in determining the use of the Pearson r , have met the following assumptions. First, the data was interval throughout the study, since the study implemented the "Likert Summated Rating Method". Secondly, the researcher can assume the values were homoscedastic. Although a scattergram was not used, the distribution shows a normal distribution. Finally, the values all had a positive relationship. Thus, the assumptions made in determining the use of the Pearson r were not violated. However, the implementation of a scattergram would have supported these conclusions.

Working Hypothesis 6: The prosecutor group, given the treatment, will differ significantly from the comparison group.

Hypothesis six concerns itself with the effects of the treatment (pressure, power, lawyer, money, money, police, court and program) on the dependent variable (prosecutor's decision). So that the hypothesis may be tested, a comparison between the two groups is necessary. In this study, a comparison was made between prosecutors who use diversion programs and last year law students.

To determine if the treatment (X) had any effect on the prosecutor, a comparison between the two groups will be performed. The statistical test selected to perform this analysis was the "t" test for pooled estimates of the standard error. The researcher's reasons for selecting this test was: 1) this selected test is the most appropriate test when dealing with a small sample size (prosecutor group 97 and study group 48), 2) the pooled estimate of the standard error corrects for unequal sample size and 3) since analysis will consist of comparing two group means, the "t" test was the most powerful parametric test that could be used in this study. The goal then of the "t" test is to establish whether or not the difference between the two samples is significant. Significance means the probability of the difference between the groups is caused by something other than mere chance. For example, the decision to divert a person by the prosecutor does not happen by chance, that there is a cause (which the researcher is hypothesizing is treatment) for it.

However, before implementing the "t" test, the hypothesis must be transformed into the null (null hypothesis). The symbol for the null hypothesis is H_0 . The null hypothesis usually states the value of the difference between two populations. Basically, the null simply states that there is no difference between the groups being studied.

If the null hypothesis is rejected, the researcher may accept the initial hypothesis as being an alternative (H_G).

The next step was to determine if the researcher was going to use a one-tail or a two-tail test. In this study, the researcher did not attempt to predict the direction which the sample result should deviate from the null hypothesis. With the two-tail test, there are two rejection zones, one in each tail of the normal distribution, with the level of significance divided equally between them. For example, if the researcher chose the .10 level of significance, the zones of rejection will be .05 at each end of the normal distribution. The level of significance chosen by the researcher was .05.

The level of significance refers to the probability of rejecting the null hypothesis when it is true.⁶⁷ The level of significance gives the researcher the basis to reach a conclusion whether or not to reject the null hypothesis. In addition, by setting such a level, the researcher is lowering his chances of erroneously rejecting the null hypothesis. The researcher is attempting to determine if the statistic happens by chance alone. Thus, for the researcher to reject the null hypothesis at the .05 level, (it is common in social science research to use the .05 level of significance), the statistic must fall beyond that level. In other words, that statistic, if it falls beyond that .05 level, will happen by chance 5 times out of 100 or less. Thus, if the statistic does fall beyond that level, the null hypothesis will be rejected. If however, it does not, the researcher will fail to reject the null.

⁶⁷Mueller et al., p. 400.

In setting the zone of rejection for a two-tail test, the degree of freedom must be calculated ($n_1 + n_2 - 2$). Using the table for "t" distribution and the pre-determined level of significance (.05), the degree of freedom equals 143.

In this study, the hypothesis stated in the null form and is presented below:

H_0 : The treatment will cause no significant difference between the prosecutor group and the student (comparison) group.

The "t" test was calculated and a value of .9972 was found. In other words, the probability of the prosecutor differing from the comparison group by chance alone is $P = .320$.

The researcher observed that $t = .9972$ was not significant beyond 1.96. The researcher can assume that the "t" value of .9972 is considerably outside the zone of rejection. In fact, the "t" value of .9972 indicates that it is very close to the actual mean of the study. Thus, the researcher is unable to reject the null hypothesis. Since the null hypothesis has not been rejected, the original working hypothesis, H_G , may not be accepted. Whereas, the working hypothesis claims that there is a difference between the two groups caused by the treatment.

Reviewing the hypotheses, it was shown that the variables were positively related. However, all working hypotheses were rejected. Considering this, the researcher can assume that the treatment had little or no effect on the prosecutor group. This, in turn, supports the null hypothesis which states that there is no significant difference between the groups caused by the treatment. In essence, both groups come from the same population.

Summary

The findings of the six hypotheses, that were generated from the literature, has been presented in this chapter. The findings show that all working hypotheses were rejected. Although the correlation coefficients for each variable relationship was positive, the variance explained was extremely low (1%, 4%, 1%, 1%, 3%). These values did not meet the set level of acceptance, thus, there is no need for further investigation.

The researcher feels the theory, as presented and operationalized, did not offer support for the model. The problem, the lack of relationship, could have been caused by faulty operationalization of the variables, or the invalidity of the measure or possibly the invalidity of the model itself. It is very clear that there is a need for further research in the field concerning the variables that influence the prosecutor in his decision to divert.

This study has investigated the effects of community pressure, accused power resources, lawyer, economics, police, court, and program on the prosecutor and his decision to divert. The investigation centered around the 1) Diversion programs listed in the "1976 National Directory" and 2) those programs that submitted prosecutors to the researcher. Therefore, the researcher, because of the non-random samples and the incomplete list of names, generalization of the findings is extremely dangerous.

CHAPTER V

SUMMARY AND CONCLUSIONS

This research examined the variables which affect the prosecutor's decision to divert. The variables selected for this study were based on prior research into the area of prosecutor's decision making. The investigation indicated a relationship between the influence of extra-legal factors on the decision to divert. Based on the literature, six working hypotheses were generated. These hypotheses (Hypothesis 1 through 5) evaluated the affect each extra-legal variable (Community Pressure, Accused Power Resources, Lawyer, Economic Factors, and Police) had on the prosecutor's decision to divert (dependent variable). In addition, hypothesis 6 dealt with evaluating the effect of all the treatment (extra-legal factors) on the prosecutor's decision to divert. The six hypotheses that were generated are as follows:

- Working Hypothesis 1: If the extra-legal factor, community pressure, (Pressure), increases in favor of diversion, then the prosecutor's decision to implement diversion will also increase. The inverse is also true.
- Working Hypothesis 2: If the accused power resources (Power) increases, then the prosecutor's decision to divert will also increase. The inverse is also true.
- Working Hypothesis 3: If defense lawyer competency increases then the prosecutor's decision to divert will also increase. The inverse is also true.
- Working Hypothesis 4: If economic, (Money), pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

Working Hypothesis 5: If police pressure on the prosecutor increases, then the prosecutor's decision to divert will also increase. The inverse is also true.

Working Hypothesis 6: The prosecutor group, given the treatment, will differ significantly from the comparison group.

The above six hypotheses were evaluated by evaluating data collected from two separate groups, prosecutor and non-prosecutor. The first group's population was one hundred and eighty four (184), (as stated in the 1976 Pre-Trial Diversion Directory). The researcher received one hundred and thirty two (132) responses from across the United States. This equaled a seventy two (72) percent response rate.

The second group consisted of a sample of one hundred and forty eight (148), (enrollment of last year law students, Capital Law School, Columbus, Ohio). The researcher received fifty seven (57) responses which equaled a thirty nine (39) percent response rate. This was substantially lower than the prosecutor group. However, the researcher did not use the same follow-up procedure as in the prosecutor sample. The student sample was selected because of their knowledge of the law and of their non-exposure to the treatment (extra-legal factors).

The researcher administered a professionally printed, pre-tested questionnaire to measure the dimensions of the variables defined in the literature. The questionnaire collected the respondent's responses to their perception of extra-legal influences. The questionnaire consisted of a number of closed-ended questions and a number of demographic questions, (i. e., sex, age, race, etc.). The subjects were asked to respond to these questions by marking one of four responses (Likert Scaling Process), (1) strongly agree, (2) agree,

(3) disagree, (4) strongly disagree. These responses were then used to develop the data to evaluate the hypotheses.

The Pearson "product-moment correlation" was used in the analysis of the data concerning Hypothesis 1 through Hypothesis 5. The Pearson correlation (Pearson r) was selected in the analysis of the hypotheses because it was felt to be the most appropriate measure of association. Hypothesis 6 however, was evaluated by using the "t" test with pooled estimates of the standard error. This procedure was deemed the most appropriate because; 1) the analysis consisted of comparisons between two means, 2) the pooled estimate compensates for unequal sample size, and 3) the two groups used were small and of unequal size. Thus, the use of the Pearson r and the "t" test were implemented to evaluate the hypotheses.

A review of the findings indicate that the extra-legal factors, as defined in the literature, did not explain the variance in the decision to divert. The literature that was reviewed in this research study stated that the variables Community Pressure, Accused Power Resourced, Lawyer, Economics, and as well Police have a degree of influence on the prosecutor's decision-making process. However, the relationships examined were shown at best to be weak (.09, .20, .11, .06, and .17 respectively). In addition, the maximum amount of variance being explained was found to be 4%. Because of this fact, hypothesis 1 through 5 were rejected. In addition, hypothesis 6, which was concerned with evaluating the treatment, was evaluated by testing the null hypothesis of no difference between the two group means. The "t" test, which was the test chosen to evaluate the two groups, revealed that the difference was very likely to occur by chance alone. Therefore, the researcher failed to reject the null hypothesis.

The researcher feels that the findings from this study indicates a strong need to further the research into the variables affecting the prosecutor's decision to divert. If the investigation is to be pursued, the researcher suggested two methods that increase the explanation of this phenomenon. First, re-examine the variables investigated in this study. By re-examining these variables, other researchers may interpret the literature differently or more informative literature on the influence present in the prosecutor's decision making-process may be found. Secondly, other variables may be discovered and investigated, either legal or extra-legal. By doing this, new avenues of investigating and evaluating the influences may be developed. For example, influences created by city officials of the local bar association. Thus, taking these two approaches may prove to be beneficial in sufficiently explaining the prosecutor's decision to divert.

The researcher must now look at the total study to see if there were any effects operative and what they were. The first point that comes into view is quite obvious. Due to the low relationships of the variables, the study did not single out any one variable that would be a good predictor of a prosecutor's decision. Due to the lack of a good predictor, the study cannot point out what influence, if any, makes a prosecutor divert a case. From the data collected, the researcher can justifiably state that the prosecutor does, in fact, divert cases; but as to the reasoning, there are no indications of why. However, the researcher makes note that the study measured the prosecutor's self-reported perception of influence. This point should

be considered in further investigations. The major problem tied with this is the prosecutor may not perceive influence as does the researcher or he may not perceive these influences legitimately. Thus, causing a low relationship between the variables and the prosecutor. More so, the prosecutor may not perceive that there is influence placed upon him. This also causes low coefficient results.

To eliminate the possibility of this problem recurring in further research, the researcher feels the questionnaire can be developed to more adequately top the variable and its dimensions. In addition, the questionnaire probably would be more productive if implemented via an interview. By implementing this procedure, there would be an additional expense of money and time. However, the response would give a better representation of the prosecutor's perception of the influence present in his decision to divert. In addition, to make the study more productive, random assignment of treatment and comparison groups should be initiated. This can be done by first obtaining a list of all prosecutors who use a diversion program in the United States. Second, by using a table of random numbers, a random sample can be attained. A comparison group can be obtained by first listing all law schools in the United States. Secondly, by using a table of random numbers again, a random sample can be obtained. Finally, last year students may also be randomly selected in the same process. Thus, changes such as these will possibly reveal much more productive results.

In conclusion, this present study leaves little hope for increasing the knowledge of influencing factors on prosecutors and their decision to implement diversion. However, if this phenomena

were to be re-investigated, several adjustments must be made.

The researcher believes that "random selection" of the subjects would be the most important adjustment that could be made. This adjustment would increase the capability of making generalizations to the total population of prosecutors who divert cases. In addition, by randomly selecting law schools, coupled with the random selection of law students, an increase in the study's viability would occur.

The researcher also believes that the extra-legal factors, (Pressure, Power, Lawyer, Money and Police) that were used in the present study are the most influential factors that interact with the prosecutor and his decision. However, the explained variance found in the study, by investigating the above variables, did not denote one or any combination of extra-legal factors that explained the prosecutor's decision to divert. Therefore, understanding this phenomena must be researched, developed and pursued in order to benefit the field of Criminal Justice.

TRUMBULL COUNTY
PRELIMINARY DIVERSION AGENCY

APPENDIX A-1

Referral of Prosecutors

The purpose of this document is to provide information regarding the referral of prosecutors to the Trumbull County Preliminary Diversion Agency. This document is intended to be used as a guide for the agency's staff and to provide information to the public regarding the agency's operations. The agency's staff is responsible for the referral of prosecutors to the agency and for the processing of cases. The agency's operations are designed to provide a fair and efficient process for the referral of prosecutors to the agency.

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Robert J. [Signature]
Robert J. [Name]
Program Director

TRUMBULL COUNTY PRELIMINARY DIVERSION AGENCY



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

ear

being the program director of a Pretrial Intervention Program, I would like to ask for your cooperation in research that might contribute to our increased ability to deliver diversion services. Towards this end, I am interested in the perception of the prosecuting attorneys across the United States who use our diversion programs.

This research attempts to determine what elements affect prosecutors in their decision to divert cases to our Pretrial Intervention Programs. To effectively carry out this research, the NAMES, ADDRESSES, and TELEPHONE NUMBERS of prosecutors who refer our cases will be needed. I would like to ask for your cooperation in supplying me with a list of ALL the prosecutors that make referrals to your program.

Please complete the attached form and return it in the enclosed self-addressed envelope. Upon receiving this information, a questionnaire will be sent to the prosecutors.

I would like to thank you in advance for your assistance and cooperation in this mutual endeavor.

Sincerely,

Robert Zastany
Program Director

ESS: _____

PHONE NUMBER: AREA CODE _____ EXT. _____

ESS: _____

PHONE NUMBER: AREA CODE _____ EXT. _____

ESS: _____

PHONE NUMBER: AREA CODE _____ EXT. _____

ESS: _____

PHONE NUMBER: AREA CODE _____ EXT. _____

ESS: _____

PHONE NUMBER: AREA CODE _____ EXT. _____

LONGSTON CIVIL SERVICE

APPENDIX 4-1

May 2, 1977 Final Request Letter

Dear Director:

In reference to the letter I sent to your office on March 16, 1977, I am concerned with research that will enable our programs to deliver better service to the judicial system. To perform this task, I need a response from you. Please return the form sent to you last month within the next three days so I may continue this research.

Respectfully,

Robert Zastany
Robert Zastany, Director

TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

APPENDIX A-3

May 2, 1977 Final Attempt Letter

Dear _____

I am writing to you regarding the Pretrial Diversion Program. We have reviewed your application and the information provided. We are sorry that we cannot offer you a position in the program at this time. We will be glad to re-evaluate your application if you wish to re-apply. Please call the law office within three (3) days if you will find a copy of the letter. The event of this letter has been mislaid.

Thank you, once again, in advance for your cooperation in this matter.

Sincerely,

Robert J. [Signature]
Robert J. [Name]
[Address]

TRUMBULL COUNTY JAIL OFFICE



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

May 2, 1977

Dear Director:

This is my third attempt to obtain the information from you, in which I feel is very essential to our present research study. As stated in my previous correspondence, this research might contribute to our increased ability to deliver diversion services. I urge your participation in this study and ask that you please take a few minutes from your busy schedule to cooperate. To hasten the process, please mail the form to me within three (3) days. Enclosed you will find a copy of the form in the event the previous form has been misplaced.

I would like to thank you, once again, in advance for your assistance and cooperation in this mutual endeavor.

Sincerely,

A handwritten signature in cursive script that reads "Robert Zastany". The signature is written in black ink and is positioned above the printed name.

Robert Zastany
Program Director

/cm

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: AREA CODE _____ EXT. _____

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: AREA CODE _____ EXT. _____

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: AREA CODE _____ EXT. _____

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: AREA CODE _____ EXT. _____

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: AREA CODE _____ EXT. _____

CODE BOOK
DECISION TO DIVERT

APPENDIX B

Code Book - Decision to Divert 1977

Variable	Description
Age	Age in years
Race	Race
Education	Education level
Experience	Years of experience
Years	Years to university or on staff
Time	Time spent per week

CODE BOOK
 DECISION TO DIVERT
1977

ACCESS CODE:

COLUMNS:

1-3 = Subject number
 4 = Card number
 5 = Geographical area
 1 = Northeast United States
 2 = Northwest United States
 3 = Southeast United States
 4 = Southwest United States

DEMOGRAPHICS:

6 Sex = Sex of prosecutor
 1 = Male
 2 = Female

7-8 Age = Age (absolute number in years)

9 Racial = Ethnic Background
 1 = White
 2 = Black
 3 = Oriental
 4 = Native American (Indian)
 5 = Mexican American (Chicano)
 6 = Other

10 Education = Education of prosecutor
 1 = L.L.B.
 2 = J.D.
 3 = L.L.M.
 4 = S.J.D.
 5 = Other

11-13 Experience = Years as an attorney
 =(absolute months)

14-16 Years = Years as prosecutor or on staff
 = (absolute months)

17 Time = Hours spent per week
 1 = 5-13
 2 = 14-22
 3 = 23-31
 4 = 32-40
 5 = 41-49
 6 = 50 & over

APPENDIX A-2

March 16, 1977 Follow-up Card

Dear Director:

In response to your letter of 10/27/76, I am pleased with the research that will be conducted in order to deliver to you a copy of the contract. I will perform the task of the contract and will provide you with the results of the work. I will provide you with the results of the work as soon as I am able to do so.

Sincerely,
[Signature]

- 18 Youroc = Number of previous occupations
 1 = student
 2 = student + 1 occ.
 3 = student + 2 occ.
 4 = student + 3 occ.
 5 = student + 4 occ.
 6 = student + 5 occ.
- 19 org = Number of organizational memberships
 1 = zero
 2 = 1
 3 = 2
 4 = 3
 5 = 4
- 20 Hours = Hours spend at organization
 1 = zero
 2 = 1-5
 3 = 6-10
 4 = 11-15
 5 = 16-20
 6 = 21 & over
- 21 Levels = Level of office
 1 = city
 2 = county
 3 = district
 4 = state
 5 = Federal
- 22 Position = Position attainment
 1 = Politically appointed
 2 = Elected
- 23 Supervisor = Supervisor position (elected)
 1 = yes
 2 = no
- 24-26 Referral = Percent of referred cases
 = (absolute number)

- 27 CIG 3 = Community Pressure
 1 = SA
 2 = A
 3 = D
 4 = SD
- 28 LAW 1 = Lawyer
 (same as above)
- 29 EF 3 = Economic Factor
 (same as above)
- 30 PS 1 = Prosecutor Scale
 (same as above)

31	APR 4	= Accused Power Resources (same as 27)
32	PS 6	= Prosecutor Scale (same as 27)
33	APR 5	= Accused Power Resources (same as 27)
34	PS 2	= Prosecutor Scale (same as 27)
35	POL 1	= Police (same as 27)
36	CIG 2	= Community Pressure (same as 27)
37	POL 3	= Police (same as 27)
38	PIP 1	= Pretrial Intervention Program (same as 27)
39	PS 4	= Prosecutor Scale (same as 27)
40	EF 2	= Economic Factor (same as 27)
41	POL 4	= Police (same as 27)
42	CIG 1	= Community Pressure (same as 27)
43	EF 1	= Economic Factor (same as 27)
44	PIP 2	= Pretrial Intervention Program (same as 27)
45	APR 2	= Accused Power Resources (same as 27)
46	CT 3	= Court (same as 27)
47	APR 1	= Accused Power Resources (same as 27)
48	LAW 3	= Lawyer (same as 27)
49	PS 3	= Prosecutor Scale (same as 27)
50	POL 2	= Police (same as 27)
51	APR 3	= Accused Power Resources (same as 27)
52	LAW 2	= Lawyer (same as 27)
53	CT 2	= Court (same as 27)
54	CT 1	= Court (same as 27)
55	CT 4	= Court (same as 27)
56	PS 5	= Prosecutor Sample (same as 27)
57	LAW 4	= Lawyer (same as 27)

APPENDIX C

Code Book - Decision to Divert 1977
(Law Students)

CODE BOOK
 DECISION TO DIVERT
 (LAW STUDENTS)
1977

ACCESS CODE:

COLUMNS:

1-2 = Subject Number

DEMOGRAPHICS:

3 Sex = Sex of Law Student
 1 = Male
 2 = Female

4-5 Age = Age (absolute number in years)

6 Racial = Ethnic Background
 1 = White
 2 = Black
 3 = Oriental
 4 = Native American (Indian)
 5 = Mexican American (Chicano)
 6 = Other

7 Youroc = Number of previous occupations
 1 = Student
 2 = Student + 1 occ.
 3 = Student + 2 occ.
 4 = Student + 3 occ.
 5 = Student + 4 occ.
 6 = Student + 5 occ.

8 Org = Number of organizational memberships
 1 = zero
 2 = 1
 3 = 2
 4 = 3
 5 = 4

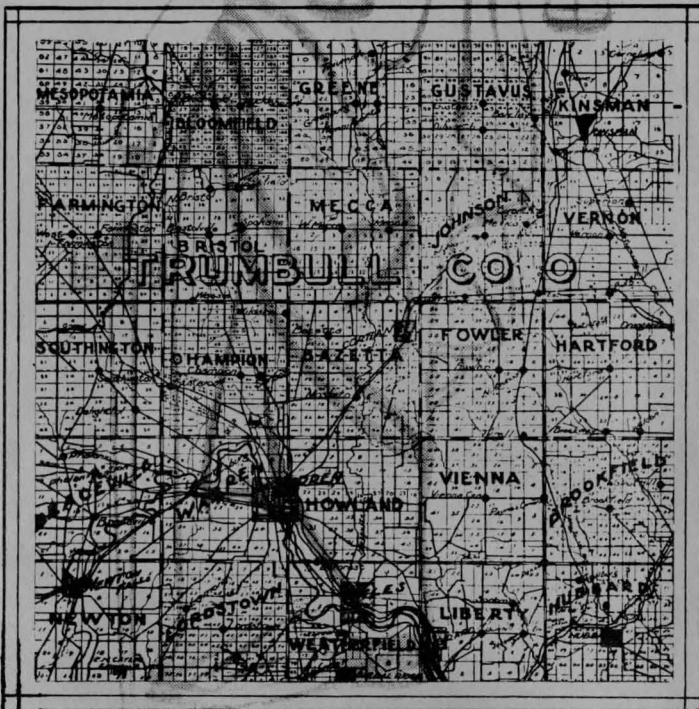
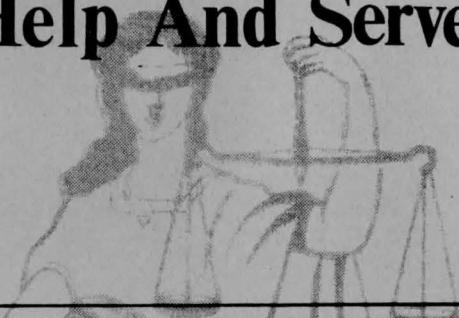
9 Hours = Hours spent at organization
 1 = zero
 2 = 1-5
 3 = 6-10
 4 = 11-15
 5 = 16-20
 6 = 21 & over

10	CIG 3	= Community Pressure 1 = SA 2 = A 3 = D 4 = SD
11	LAW 1	= Lawyer (same as above)
12	EF 3	= Economic Factor (same as above)
13	PS 1	= Prosecutor Scale (same as above)
14	APR 4	= Accused Power Resources (same as 27)
15	APR 5	= Accused Power Resources (same as 27)
16	PS 2	= Prosecutor Scale (same as 27)
17	POL 1	= Police (same as 27)
18	CIG 2	= Community Pressure (same as 27)
19	POL 3	= Police (same as 27)
20	PIP 1	= Pretrial Intervention Program (same as 27)
21	EF 2	= Economic Factor (same as 27)
22	POL 4	= Police (same as 27)
23	CIG 1	= Community Pressure (same as 27)
24	EF 1	= Economic Factor (same as 27)
25	PIP 2	= Pretrial Intervention Program (same as 27)
26	APR 2	= Accused Power Resources (same as 27)
27	CT 3	= Court (same as 27)

APPENDIX D

Prosecutor Questionnaire

We Are Here To Help And Serve...



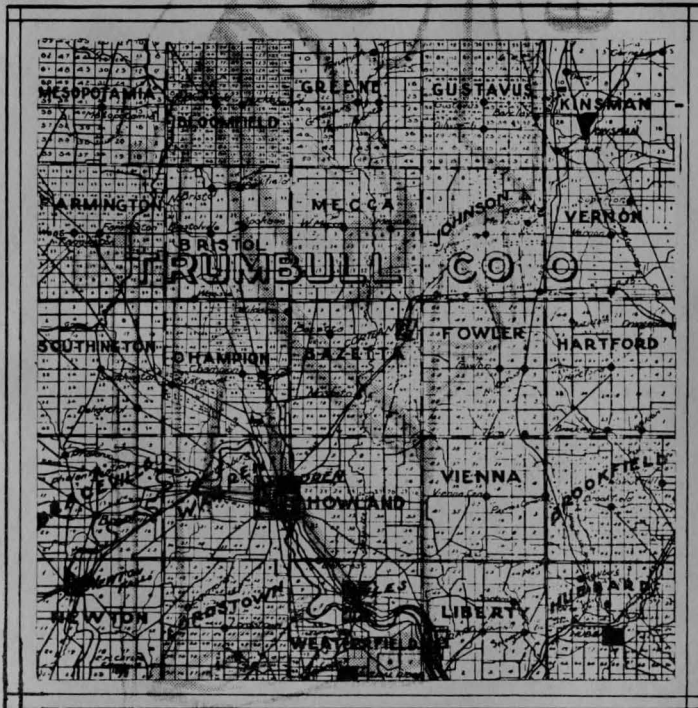
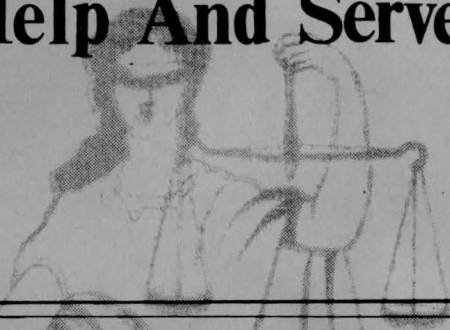
**TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY**

**A
PROSECUTORIAL
SURVEY**

APPENDIX E

Comparison Group Questionnaire

**We Are Here To
Help And Serve...**



**TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY**

**A
PROSECUTORIAL
SURVEY**

TREMBULL COUNTY
PRETRIAL DIVERSION AGENCY

221 West Market Street, Suite 4000, Troy, Michigan 48060
Telephone (313) 255-1111

APPENDIX F

Letter to Accompany Prosecutor Questionnaire

Dear Mr. [Name]:
I am Robert Eastany, Director of the Trembull County Pretrial Diversion Agency. I would like your cooperation in research which I am conducting. I would like to contribute to an increase in the use of Pretrial Diversion Programs (Diversion) by the professional staff of the Judicial System. I would appreciate if you answer the following questions. It is very important that you answer all questions the way YOU really feel. Please take time and you will all your answers.

Please complete this questionnaire and mail it within the next three (3) days in the enclosed envelope, which requires no postage. Do not put your name on the questionnaire. Your answers are confidential and will be used only as data in the research report.

NOTE: I recognize that in some cases you may wish to qualify your answers. So, please discuss with the person in charge of a separate sheet of paper. Your ideas will be used and accounted for.

I would like to thank you in advance for your assistance in this crucial endeavor.

Sincerely,

Robert Eastany
Robert Eastany
Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

My name is Robert Zastany and I am the program director of the Trumbull County Pretrial Diversion Agency. I would like to ask for your cooperation in research, which I am conducting, that might contribute to an increased ability of Pretrial Intervention Programs (Diversion) to deliver more professional services to the Judicial System. I would appreciate if you answer the following questions. It is very important that you answer all questions the way YOU really feel. Please take time and consider all your answers.

Please complete this questionnaire and mail it within the next three (3) days in the enclosed envelope, which requires no postage. Do not put your name on the questionnaire. Your answers are confidential and will be used only as data in the research report.

NOTE: I recognize that in some cases you may wish to qualify your answers. If so, place comments in the margins or on a separate sheet of paper. Your ideas will be read and accounted for.

I would like to thank you in advance for your assistance and cooperation in this mutual endeavor.

Sincerely,


Robert Zastany
Program Director

APPENDIX G

Follow-up for Questionnaire

[Faint, illegible text, possibly a letter or form header]

[Handwritten signature]

APPENDIX B

Final Follow-up Letter



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481 Telephone (216) 394-1546

Dear Prosecutor,

Recently you received a questionnaire concerning your attitudes toward Pretrial Intervention (Diversion) Programs. We have not yet received your response. It is of the utmost importance that you reply. Without your cooperation, we will be unable to determine how to deliver better professional services to our Judicial System. Please take the time now to complete and return the questionnaire.

Respectfully,


Robert Zastany
Program Director

TRUMBULL COUNTY
 PRETRIAL DIVERSION AGENCY

APPENDIX H

Final Follow-up Letter

Although I realize your time is very limited and your schedule is very busy, it is of the utmost importance that I request your contribution to this research study. As stated in my previous correspondence, this research will contribute to the development of pretrial diversion services, an increased ability to protect the public and provide better services. I ask that you fill out a few minutes from your busy schedule to complete and return the questionnaire. Enclosed you will find a copy of the questionnaire. In the event the previous one has been misplaced, I would like to thank you in advance for your assistance and cooperation in this research endeavor.

Sincerely,


 Robert Lantz
 Program Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

Although I realize your time is very limited and your schedule is very busy, it is of the utmost importance that I receive your participation in this worthwhile study. As stated in my previous correspondence, this research will contribute to Pretrial Intervention (Diversion) Program's increased ability to deliver more proficient professionalized services. I ask that you take a few minutes from your busy schedule to complete and mail the questionnaire. Enclosed you will find a copy of the questionnaire in the event the previous one has been misplaced.

I would like to thank you in advance for your assistance and cooperation in this research endeavor.

Sincerely,

A handwritten signature in cursive script that reads "Robert Zastany". The signature is written in black ink and is positioned above the printed name.

Robert Zastany
Program Director

TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

APPENDIX I

Letter of Appreciation to Professor Lawrence Cummings

Professor Lawrence Cummings
Department of Criminal Justice
Youngstown State University
Youngstown, Ohio 44681

Dear Professor Cummings:

I would like to take this opportunity to thank you for
troubly assisting in the collection of data for my research
on Criminal Justice. Your cooperation was excellent and certainly
appreciated. Upon the completion of the study, I will be happy
to forward you a copy of the results.

Again, I thank you for your assistance.

Sincerely,

Robert Tustany
Robert Tustany
Program Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

September 30, 1977

Professor Lawrence Cummings
Department of Criminal Justice
Youngstown State University
Youngstown, Ohio 44503

Dear Professor Cummings,

I would like to take this opportunity to thank you for recently assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,


Robert Zastany
Program Director

TREMBULL COUNTY
PRETRIAL DIVERSION AGENCY

105

APPENDIX J

Letter of Appreciation to Dr. Michael Wroblewski

Dr. Michael Wroblewski, President
Criminal Justice Institute of Pretrial Services
105
44308

I would like to take this opportunity to thank you for
your assistance in the collection of data for my research
on pretrial diversion. Your cooperation is appreciated and certainly
valued. Upon the study's completion, I will be happy to
send you a copy of the results.

Again, thank you for your assistance.

Respectfully,


Robert ...
Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

October 28, 1977

Dr. Michael Wroblewski, President
Ohio Association of Pretrial Services Agencies
207 South Broadway
Akron, Ohio 44308

Dear Mike:

I would like to take this opportunity to thank you for recently assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,


Robert Zastany
Director

RZ/cm

TRUMBULL COUNTY
 PRETRIAL DIVERSION AGENCY

APPENDIX K

Letter of Appreciation to Professor Robert Corrigan

Professor Robert Corrigan
 Department of Criminal Justice
 Trent State College
 Trenton, New Jersey 08640

Dear Professor Corrigan,

I would like to take this opportunity to thank you for your assistance in the collection of data for my research on Pretrial Diversion. Your cooperation is vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Sincerely,

Robert Vassany
 Robert Vassany
 Program Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

September 30, 1977

Professor Robert Corrigan
Department of Criminal Justice
Stockten State College
Pomona, New Jersey 08240

Dear Professor Corrigan,

I would like to take this opportunity to thank you for recently assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,


Robert Zastany
Program Director

TRUMBULL COUNTY
 PRETRIAL DIVERSION AGENCY

APPENDIX L

Letter to Accompany Law Student Questionnaire

I am the program director of the Trumbull County Pretrial Diversion Agency. We would like to ask for your cooperation in a research project. The project will be to evaluate the ability of the pretrial intervention program to deliver case management services to the public system.

You are ready to graduate from law school and to join the judicial system. Most of you will have the opportunity to work on the program's staff and provide case management services. I would appreciate if you answer the following questions. It is very important that you answer all questions the way you really feel. Please take time and consider all your answers.


I would like you to think of yourself as giving a questionnaire when completing your answers. Taking into consideration this questionnaire was given to prosecutors across the United States, if you being a graduate law student, please DO NOT answer the questions which are crossed out.

Please complete this questionnaire and mail it within the next three (3) days in the enclosed envelope, which requires no postage. Do not put your name on the questionnaire. Your answers are confidential and will be used only as data in the research report.

NOTE: I recognize that in some cases you may wish to qualify your answers. If so, please comment in the margins or on a separate sheet of paper. Your ideas will be read and appreciated for.

I would like to thank you in advance for your assistance and cooperation in this study. I would like to wish you the best of luck in your school year and in your professional future.

Sincerely,


 Robert Zastrow
 Program Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

Dear Student,

I am the program director of the Trumbull County Pretrial Diversion Agency and would like to ask for your cooperation in a research project. The project will contribute to an increased ability of Pretrial Intervention Programs (Diversion) to deliver more professional services to the Judicial System.

You are ready to graduate from Capital Law School and go into the Judicial System. Most of you will have the opportunity to work on a prosecutor's staff and possibly use the diversion process. I would appreciate if you answer the following questions. It is very important that you answer all questions the way YOU really feel. Please take time and consider all your answers. I would like you to think of yourself as being a prosecutor when considering your answers. Taking into consideration this questionnaire was given to prosecutors across the United States, and you being a graduate law student, please DO NOT answer the questions which are crossed out.

Please complete this questionnaire and mail it within the next three (3) days in the enclosed envelope, which requires no postage. Do not put your name on the questionnaire. Your answers are confidential and will be used only as data in the research report.

NOTE: I recognize that in some cases you may wish to qualify your answers. If so, place comments in the margins or on a separate sheet of paper. Your ideas will be read and accounted for.

I would like to thank you in advance for your assistance and cooperation in this study. I would like to wish you the best of luck in your school year and in your professional future.

Sincerely,



Robert Zastany
Program Director

TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

APPENDIX M

Letter of Appreciation to Dean Robert Goostree

Dean Robert Goostree
Captain
2192 East Main Street
Columbus, Ohio 43208

Dear Dean Goostree,

I would like to take this opportunity to thank you for graciously assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and greatly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,


Robert Zastany
Program Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

September 30, 1977

Dean Robert Goostree
Capital Law School
2199 East Main Street
Columbus, Ohio 43209

Dear Dean Goostree,

I would like to take this opportunity to thank you for recently assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,



Robert Zastany
Program Director

TREMULL COUNTY
PROBATION DIVERSION AGENCY

APPENDIX N

Letter of Appreciation to Attorney William Biviano

Attorney William Biviano
215 W. Market Street
Warren, Ohio 44149

Dear Attorney Biviano:

I would like to take this opportunity to thank you for your assistance in the collection of data for my research in Probation Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,



Robert Zastany
Probation Director



TRUMBULL COUNTY
PRETRIAL DIVERSION AGENCY

123 West Market Street Warren, Ohio 44481

Telephone (216) 394-1546

September 30, 1977

Attorney William Biviano
255 E. Market Street
Warren, Ohio 44481

Dear Attorney Biviano,

I would like to take this opportunity to thank you for recently assisting me in the collection of data for my research on Pretrial Diversion. Your cooperation was vital and certainly appreciated. Upon the study's completion, I will be happy to forward you a copy of the results.

Again, I thank you for your assistance.

Respectfully,

Robert Zastany
Program Director

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