

THE EFFECTS OF LEARNING AND POLICY TRANSFERENCE
ON PROSECUTORIAL DECISIONMAKING

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INTRODUCTION

This paper is one of a series of reports resulting from
the LEAA Sponsored Research on Prosecutorial Decisionmaking.
The purpose of this research is to examine the factors affecting
prosecutorial decisionmaking and to measure the differences that
occur in decisionmaking within an office and among offices.
Within offices, the research focuses on a separate but related
issue; namely, the causes of disagreement in decisions among
individual prosecutors themselves and in relation to their
organizational leaders.

A rich data base was collected from the Kings County (Brooklyn)
District Attorneys office where 282 assistant prosecutors participated
in the testing. This number included 65 brand new employee-trainees
who were tested during their first week in the office while undergoing
orientation and training. For the most part, these attorneys had
just passed the bar. They had not been exposed to prosecution,
the District Attorney's office policy, or the socialization that
occurs during the training and learning period. Testing them
at this time established a baseline against which all of these

effects could be measured to determine how their decisionmaking processes had changed and in what ways. The group was tested during the first week of their employment, and retested 7 1/2 months later with the same instruments. The results of the effects of learning and policy transference are reported here.

Methodology and Data

A quasi-experimental design employing a before/after test was used, the identical instrument was employed on both occasions. This instrument consists of 30 criminal cases with accompanying arrest records that were distributed uniformly over a range of seriousness from the trivial to the serious. Each case has three basic parts. The first describes the defendant, and the charges for which he was arrested. The second summarizes the circumstances of the case and the evidence that is available -- both physical and testimonial. The third provides the arrest record of the defendant including the age at each arrest, the offense for which arrested and the disposition.

Each attorney was asked to respond to 6 primary questions. He was asked to: (1) rate the case on a scale of 1 to 7 in terms of its overall priority for prosecution; (2) decide whether to accept or reject the case for prosecution; (3) note how he would dispose of the case, by plea or trial; (4) estimate where during the processing it was likely that the case would exit, before arraignment, after arraignment but before trial, and/or after trial; (5) anticipate whether the original charge would prevail or whether it would be reduced at disposition; and (6) state what sanctions should be imposed

if the defendant was convicted, particularly if he would be incarcerated.

In the analysis presented in Part I we will examine how these 6 decisions were made grouping all 30 cases together to note major changes over time. In Part II, we will examine each of the cases individually to determine, if possible, some of the factors that effected changes. Summaries of the results of the analysis follow.

NOTES

1. Supported by LEAA Grant No. 79-N1-AX-0034

The view and opinions expressed here are those of the authors and not necessarily the U.S. Department of Justice, LEAA or the Institute of Justice.

2. For the preliminary analysis and testing of this subject, see Transmitting Prosecutorial Policy: A Case Study in Brooklyn, N.Y., Research Report No. 2, J. Jacoby, L. Mellon. E. Ratledge, S. Turner and S. Greenberg, BSSR, 1979 and "Measuring the Transmission of Prosecutorial Policy: A Case Study in Brooklyn", E. Ratledge and S. Greenberg, Paper presented to American Society of Criminology Annual Meeting, November 1979.

Summary: Overall Test Results

In summary, it is clear that the assistants learned a great deal in the first 8 months of their work experience. Their ability to make decisions selectively from a wide range of alternatives and choices increased immensely. They became less extreme in evaluating the priority of cases for prosecution and their judgements tended to move toward the mean, suggesting an adoption of a sense of what the "average" case is. They became more sensitive to the office policy of what should be accepted for prosecution and what should be rejected, and as a result, their acceptance rate became more restrictive. Stated differently, they were better able to decide what cases did not belong in the system as evinced by the increased rejection rates.

The effects of becoming more familiar with the criminal justice process are indicated by the tests. The selection of different forms of dispositions other than pleas is demonstrated by the expectations of either a conviction on one side or an ACD* on the other. This also indicates better understanding of the factors involved in attaining the various types of dispositions.

The most pronounced changes occurred in specifying the case exit point in the process. Since the trainees had little operational knowledge about the system, this is not unexpected. In general, they learned how to distribute cases over the entire prosecutorial range and to refine their predictions about which were to be disposed of early and which would go to trial. This same shifting occurred with the level of disposition. Mostly the changes overtime reflect the adoption of a more conservative and harsher position with respect to reductions, trials and sentences. Along with this was a loss of

*Adjournment and Contemplation of Dismissal

uncertainty. The confidence of the assistants is shown most clearly in their optimistic approach to failures (dismissals, acquittals, etc.) and their unwillingness to accept a "Can't predict" response as legitimate. Clearly, after 7 months of misdemeanor trial experience the decisionmaking processes of the new assistants changed. It will be interesting to see whether they change again after they have been subjected to the complexities of felony prosecutions.

Summary: Individual Case Analysis Results

The use of the individual case analysis to identify changes that have occurred in the Assistant District Attorney's decision processes as they moved from trainee status to prosecutors with almost 8 months experience is beneficial from a number of perspectives. First and foremost, it shows that the attorneys become more discerning in their assessment of the cases with respect to certain decisions. These decisions focus on whether to accept cases for prosecution or reject them; the mechanics and strategies most likely to produce dispositions by plea or trial; the policy of the office and the characteristics of the cases with respect to whether they will be disposed of at a reduced level or on the original charge; and, to some extent the level of disposition, whether felony or misdemeanor, to be sought.

Second, the analysis of the individual cases confirms preliminary findings that some decisions are relatively policy-free and are normative. These are the case assessments for their priority for prosecution and the imposition of the most severe sanction of all -- incarceration. In both of these areas, even at the individual case level, the assessments placed initially before training and policy transference are remarkably constant 8 months later.

Third, the cases have an obvious utility for the training and management functions in the office. This is because they address specific decision processes and the issues that are unique to them; and they identify and permit the selective use of cases for actual training purposes.

The cases have been designed to range from the most trivial to the most serious, some with evidentiary problems, some without. Since they represent a range of characteristics they increase the likelihood of picking up issues or factors that need further explication or policy and procedures development. If one views the responses of the assistants as "votes" on a question, the priority training and management effort should be given to finding out why those cases that were originally voted one way later changed to another. These cases clearly show where training and experience sharpened or refined the decision processes of the assistants. Hence, they can be used as training tools without waiting for time and experience to accomplish the task.

For example, with respect to the accept/reject decision, in case 58, 75% of the assistants voted to accept it initially, but only 50% voted for its acceptance on retest. For case 16, 87% voted to dispose of it by a plea, upon retest only 48% preferred this route. With respect to the policy-defendant question of whether the case should be disposed of at a reduced level, case 6 originally had the support of 71% of the assistants and upon retest, it garnered only 36% of the votes.

The same approach can be taken to those cases where there is a great deal of uncertainty. The logic used here is that if the assistants are not in substantial agreement about the decision, then it should be subjected to review. A number of circumstances may apply. Either the case is ambiguously stated, or some assistants missed some important facts, or there was not enough information given to them;

or too much information which confused them; or there is genuine disagreement about the value of the case, policy or procedures; or the disagreement simply is a function of their organizational placement, and experience. Uncertainty is as much if not more a problem than a change in responses. Those cases where the agreement levels hover above the 50% mark clearly are also candidates for staff conferences and management review.

I. Results of Before and After Testing

This section compares the responses of the trainee group before they were assigned prosecutive duties to those obtained 7 1/2 months later. During this period most of the trainees had gained experience in the Criminal Court trying misdemeanor cases and conducting felony preliminary hearings. As we will note later, some of the responses are clearly affected by their lack of felony case preparation and trial experience.

1. Priority for Prosecution

Priority for prosecution is generally considered to be a universal variable -- that is, the value scale it takes should be relatively constant regardless of the assistants' experience, and it is. Although the difference in the before/after test is significant, the significance occurs not necessarily with a change in values but rather with a closing in on the mean. Using regression analysis to predict what the "after" rating (P_A) should be (based on the prior rating, P_B), Table 1 shows that cases that were originally considered to be more extreme (the 1's and 7's) now are less startling -- 7's tend to be reduced to 6's and 1's increased by half in their importance. The regression equation displayed at the foot of the table is highly significant.

TABLE 1

Expected Priority Rating Using First Rating to Predict Second

<u>Priority Rating</u>	
<u>Before</u>	<u>After</u>
1	1.6
2	2.4
3	3.1
4	3.8
5	4.6
6	5.3
7	6.0

Regression Equation: $P_A = 0.897 + 0.732 P_B$

$F = 1598.4$ $R = .48$

TABLE 2

Distribution of Changes in Responses with
Respect to Priority of Case for Prosecution

<u>Priority Before</u>	<u>Percent of Responses</u>		
	<u>Same</u>	<u>Differ by one point</u>	<u>Differ by 2 or more points</u>
1	56	26	18
2	33	48	19
3	27	51	22
4	42	35	23
5	33	48	19
6	40	36	24
7	58	27	15
Total	38	40	22

Table 2 shows that with the exception of the extremes, most of the responses were shifted by one point from the original. For all the cases, 78% were either unchanged or moved one point, higher or lower, 16% increased the level of priority by one point and 23% decreased the level by one point. The remaining 22% reflect decision changes of two or more points and this distribution is relatively constant independent of the priority of the case. Although it is difficult to interpret these findings with certainty, the data do suggest that the significant changes in the priority rating of cases are probably due more to refinements in knowledge, than major changes in values.

2. Accept/Reject Decision

In examining the decision of whether to accept the case for prosecution or reject it, we see a tightening up on the acceptance standards. Table 3 shows that only 11% of the cases were rejected originally, but that this figure jumped to 18% after the assistants gained experience. Of the 89% originally accepted, 11% were rejected by the assistants almost 8 months later, while 4% of those originally rejected were subsequently deemed acceptable for prosecution. It appears that the assistants have better knowledge of what should be accepted for prosecution even after limited work experience.

TABLE 3

Percent of Cases Accepted or Rejected
Before and After Training and Percent Change

<u>Percent</u>	<u>Training</u>		<u>Percent of Responses Identical</u>
	<u>Before</u>	<u>After</u>	
Accepted	89	82	88
Rejected	11	18	63
Total	100	100	-

3. Type of Disposition

The responses to the expected type of disposition shows that the original expectation of the assistants was to a disposition by plea (66%), followed by a smaller percent of trials (22%). (Table 4). After work experience, the assistants were still generally plea oriented (54%), however, the decrease in this rate and the increase in the "other" disposition category (from 2% to 12%) reflects an increased knowledge of the justice system, the office policy and the existence of an "adjournment in contemplation of a dismissal" (ACD). This is an important disposition in Brooklyn because it permits the case to be adjourned at arraignment for 3 months at which time, if the defendant has not been rearrested, the case is dismissed. (It is coded "other" and probably explains most of the increase in this category). Of interest is the decrease in the percent of responses that originally couldn't predict an outcome (down from 5% to less than 1%). Uncertainty apparently diminishes over time.

The interesting analysis of this question lies in comparing the original responses with those given after misdemeanor trial experience had been attained. Table 5 presents some rather revealing insights into the dynamics of learning and experience. The major shift that occurred in the initial plea category was to move 22% of the pleas to a trial-convict status and 11% to the other (ACD) category. The assistants appear to be better able to discern between those cases that will be more likely to go to trial and those that will be disposed of by means other than a plea. On the other hand, only 10% of the cases that were initially expected to be acquitted by trial

TABLE 4

Percent Distribution of Expected Dispositions
of Cases Over Time and Percent Changes

<u>Expected Disposition</u>	<u>Percent Responses</u>		<u>Percent Responses Unchanged</u>
	<u>Before</u>	<u>After</u>	
Plea	66	54	60
Trial (Convict)	22	28	53
Trial (Acquit)	3	1	10
Dismiss	1	4	29
NTB	0	0	0
Can't Predict	5	0	0
Other	2	12	0
Total	100	100	19

survived the second testing. Eight months later, the assistants were far more optimistic, seeing 49% plead out, 17% convicted and 22% disposed of by other means. Similarly for each of the other initially "unfavorable" decisions -- dismissals, no true bills -- the proportion of them surviving in this category decreased remarkably over time. Even for those cases in which they felt they could not predict an outcome as trainees, the assistants, 8 months later had no doubts about their outcome. The table is revealing in providing a measure of the degree of confidence and certainty that the assistants gained during their actual work experience.

Given that, as new employees, the assistants should not have been able to predict where cases were likely to exit in the adjudication process, it is not surprising to see major shifts in their responses as their knowledge of the system increased. Table 6 shows that most of the changes occurred in the accusatory and pretrial processing periods. It appears that more operating experience with the system produced a better discernment between what could be disposed of on the arraignment date (mostly pleas negotiated prior to arraignment) and those cases that could be disposed of prior to trial. Thirty six percent of the cases were originally expected to be disposed of in the pretrial period after arraignment. On retesting, only 14% were still expected to go out at that point.

On examining the shifts in more detail (Table 7) we see that the changes have been substantial and that it varies by the process steps. The intake and accusatory steps show a strong reliance on the arraignment as an exit point followed by the first appearance. Even

TABLE 5

Percent Distribution of Changes in Response by Type of Disposition

	<u>No.</u>	<u>Percent</u>	<u>Pl.</u>	<u>Conv.</u>	<u>Acq.</u>	<u>Dis.</u>	<u>NTB</u>	<u>C.P</u>	<u>Other</u>
Plea	918	100	(61)	22	1	6	0	0	11
Trial (Convict)	309	100	35	(53)	1	1	0	0	10
Trial (Acquit)	41	100	49	17	(10)	0	2	0	22
Dismiss	14	100	50	0	0	(29)	0	0	21
No True Bill	1	100	100	0	0	0	(0)	0	0
Can't Predict	68	100	52	27	3	4	0	(0)	15
Other	31	100	65	10	0	3	3	0	(19)

TABLE 6

Percent Distribution or Expected Location of Disposition
For Cases Over Time and Percent Change

<u>Location</u>	Percent Responses		<u>Percent Unchanged</u>
	<u>Before</u>	<u>After</u>	
First appearance	12	17	35
Preliminary Hearing	12	7	7
Grand Jury	3	2	5
Arrest	9	30	48
After Arrest Before Trial	36	14	18
First Day of Trial	2	1	5
End of Bench Trial	1	2	0
End of Jury Trial	26	29	53

those cases initially expected to be disposed of later in the process, on retest, are now being moved to the accusatory and pretrial parts of the system. This suggests that the trainees better understand the uses of preliminary hearing, what will stand up in court and what will not. Only 7% of the cases that were originally destined to go out at preliminary hearing are still there after the retest. Approximately 1/2 of the cases that were originally destined to go out at the grand jury level now exit at the end of a jury trial. The high frequency of the selection of jury trials as a disposition point is suspect. One can assume that it results from little exposure to this end of the process and a lack of familiarity about what moves cases to this time, and resource, consuming point.

4. Location of Disposition

Clearly the shifts in the location of disposition demonstrate the ability of the assistants to learn parts of the process in a relatively short period of time. The fact that cases are shifted both back and forward further indicates that the assistants' expectations can change even without actual experience in its different parts. A powerful communication must exist in the organization, most likely, transmitted by the bureau chiefs. (Table 7).

TABLE 7

Percent Distribution of changes in Responses by

by Location of Disposition

	<u>No</u>	<u>%</u>	<u>F.A.</u>	<u>P.H.</u>	<u>G.J.</u>	<u>Arr.</u>	<u>AABT</u>	<u>FDT</u>	<u>EBT</u>	<u>EJJ</u>
First Appearance	153	100	(35)	7	0	46	8	1	1	3
Preliminary Hearing	150	100	31	(7)	2	33	9	1	3	15
Grand Jury	42	100	7	5	(5)	21	12	0	0	50
Arraignment	113	100	24	9	0	(48)	8	2	3	7
After Arraignment Before Trial	476	100	14	6	1	32	(18)	1	2	26
First Day of Trial	19	100	21	16	5	16	0	(5)	5	32
End Bench Trial	13	100	0	8	0	23	8	0	(0)	62
End Jury Trial	343	100	6	5	2	15	15	0	3	(53)

5. Level of Disposition

One of the policy-dependent dynamics of the prosecution process is the extent to which cases are disposed of at a reduced level (usually the result of plea negotiation). Since the trainees were unaware of office policy and practices in this area, their original responses and the subsequent differences should reflect the amount of change that can be attributed to policy transference. Table 8 presents the basic information about the anticipated levels and shows where significant movement occurred after the retest. On the whole, there does not appear to be much change in the responses. There were increases in the percent of responses indicating dispositions as charged (from 22% to 30% for felonies and 6% to 11% for misdemeanors) and concomitantly, decreases in reductions. (Felonies down from 28% to 21% and misdemeanors, from 34% to 30%). But the more interesting insights are in the movement of these changes.

Only two types of cases -- felonies to be disposed of at the level of the original charge and misdemeanors that should be disposed of at a reduced level -- appeared to be most clearly discernible to the trainees (59% and 48%, respectively of the responses remained unchanged over time). The other changes that are reflected here indicate refined knowledge about misdemeanor prosecutions as reflected by considerable changes in their responses and relatively limited experience with felonies as reflected by less drastic breakdowns or shifts. Although 48% still considered the misdemeanor disposed at a reduced level to be the appropriate disposition level on retest, some 28% of these lesser misdemeanors are moved up to felony status and an additional 16% are upgraded to a misdemeanor as

TABLE 8

Percent Distribution of Level of Disposition

<u>Disposition Level</u>	<u>Over Time and Percent Change</u>		<u>Percent Unchanged</u>
	<u>Percent Responses Before</u>	<u>After</u>	
Felony as Charged	22	30	59
Misdemeanor as Charged	6	11	16
<hr/>			
Felony Reduced	28	21	32
Misdemeanor Reduced	34	30	48
Other	10	8	10

changed status. Similarly a spread is observed with felonies originally expected to be disposed of at a lesser charge. After the retest, 36% were upgraded to felony-originals and 28% downgraded to misdemeanor status. (Table 9).

An important change in the responses concerns the use of reductions, Table 10 shows that there is an overall stiffening in the expectations of the assistants after they gain experience. The percent of cases expected to be disposed of at the same level as charged jumps from 28% in the original test to 41% in the retest. One could assume that either some initial attitudes about the need to rely on plea bargaining as a dispositional vehicle disappeared over time; or, more likely, that the policies of the office with respect to reductions were made clear and that these policies were more restrictive than originally anticipated. It nevertheless shows a rather remarkable shift in expectations.

TABLE 9

Percent Distribution of Changes in

Dispositions by Level of Charge

Percent of Dispositions

<u>Initial Disposition Level</u>	<u>No.</u>	<u>%</u>	<u>Percent of Dispositions</u>				
			<u>Felony Orig.</u>	<u>Felony Lesser</u>	<u>Misd. Orig.</u>	<u>Misd. Lesser</u>	<u>Other</u>
Felony-orig	285	100	(59)	27	3	11	0
Felony-lesser	359	100	36	(32)	10	18	3
Misd.-orig	81	100	12	28	(16)	40	4
Misd.-lessor	436	100	16	12	16	(48)	8
Other	131	100	0	0	15	41	(35)

TABLE 10

Percent Distribution of Changes
in Level of Dispositions

Trainee-Assistants

<u>To Be Disposed of:</u>	<u>Before</u>	<u>After</u>
Total Number	1,292	1,292
Total Percent	100%	100%
As Charged	28	41
Reduced	62	52
Other	10	7

6. Imposition of Sanctions

In this same value/expectation area, the assistants' attitudes toward sentencing were also tested to examine whether they took a harsher stance on the imposition of sanctions. The question asked of them was value-oriented. It asked, "If convicted, what in your opinion, would be a reasonable and appropriate sentence?" The pattern that emerges is generally that of the imposition of more severe penalties. Table 11 shows that most of the movement with the exception of the incarceration penalties was to harsher ones. For example, not one of the original 19 respondents who initially selected no punishment as appropriate and reasonable did so on retest. It is only in the area of conditional release and probation that one sees some shift back to lesser punishments. This would indicate that as the assistants became more knowledgeable about the justice system, they were better able to assess cases with respect to an entire range of punishments and selectively choose those that appeared more

TABLE 11

Percent Distribution of Changes

by Level of Sanction

Sanctions Selected After Retesting

Sanctions Initially Selected

No. Percent

None

Fine

Conditional Release

Probation

Jail

Penitentiary

None

100

(0)

5

53

32

11

0

Fine/Restitution

100

2

(16)

34

28

19

1

Conditional Release

100

12

6

(43)

27

19

1

Probation

100

3

3

21

(32)

36

6

Jail

100

2

1

7

10

(61)

19

Penitentiary

100

0

0

2

5

45

(48)

suitable. For example, only 43% of the cases that were initially designated as being eligible for a non-probation conditional release program, remained in that category after experience in the courts. The initial group was instead spread over the entire range of sanctions possible from none (12%) to incarceration (20%). Clearly there is both a refinement in the judgment processes that occurs as the job experience is achieved and a clearer understanding of the range of sanctions available. It is also interesting to note that with respect to incarceration (both jail and penitentiary), there was the least amount of shifting in opinion. Most of those who initially selected some form of incarceration opted for it again on the retest. The shift from penitentiary to jail bears noting. One can speculate that the assistants became more familiar with the sentencing practices of the court and the charging policies of the office that they noted the increased reliance on jail sentences rather than the state penitentiary sanctions. If both categories of incarcerations are grouped together, then the lack of change in the decision to impose the harshest punishment of all is impressive. Of those who initially opted for some form of lock-up, 85% did not change their decision.