THE ASSISTANT DISTRICT ATTORNEY:

A PARTICIPANT OBSERVATION PERSPECTIVE

by

MAX WILLIAM DIX, JR.

S. B., MASSACHUSETTS INSTITUTE

OF TECHNOLOGY

(1967)

SUBMITTED IN PARTIAL FULFILLMENT

OF THE REQUIREMENTS FOR THE

DEGREE OF MASTER OF

SCIENCE

at the

MASSACHUSETTS INSTITUTE OF

TECHNOLOGY

June, 1973

Signature of Author.................................
Alfred P. Sloan School of Management, May 11, 1973

Certified by.......................................
Thesis Supervisor

Accepted by...
Chairman, Departmental Committee on Graduate Students

Archives

ABSTRACT

THE ASSISTANT DISTRICT ATTORNEY:
A PARTICIPANT OBSERVATION PERSPECTIVE

Max William Dix, Jr.

Submitted to the Alfred P. Sloan School of Management on May 11, 1973 in partial fulfillment of the requirements for the degree of Master of Science.

This thesis focuses on the organizational careers of assistant district attorneys in an urban New England city. It addresses three research questions:

1. What of significance can be learned about the career patterns of assistant district attorneys by studying the office structure of the district attorney's office?

2. What of significance can be learned about assistant district attorneys attitudes and behavior by studying their career patterns?

3. What of significance can be learned about the administration of justice by studying assistant district attorney's attitudes and behaviors?

The methodology for this study was participant observation based on field research. The author spent approximately 250 hours observing activities and interviewing officers of the superior court.

The office structure of the district attorney's office has two salient characteristics -- prosecutors are paid low salaries and allowed to develop a part-time civil practice on the outside. As a result attorneys enter the office for only one reason -- to gain trial experience. When they have had this experience they leave the office. This career pattern leads to a preoccupation with trying cases, and has an adverse effect on the quality of legal administration.

Thesis Supervisor: John Van Maanen
Title: Assistant Professor of Manager

TO KAREN

TABLE OF CONTENTS

	PAGE NUMBER
TITLE PAGE	1
ABSTRACT	2
ACKNOWLEDGEMENT	3
TABLE OF CONTENTS	4
LIST OF FIGURES	5
INTRODUCTION	6
CHAPTER I - Previous Work On Public Prosecutors	17
CHAPTER II - Organizational Career Theory	25
CHAPTER III - Office Struture and Organizational Careers	31
CHAPTER IV The Influence of Career Patterns On Assistant District Attorney's	52
CHAPTER V Concluding Comments on the Administration of Justice	56
BIBLIOGRAPHY	61
APPENDIX A - Notes On Methodology	65
APPENDIX B - The Criminal Courts	76

LIST OF FIGURES

PAGE NUMBER

FIGURE I -
Schein's model of Business Organization 29

FIGURE II -
Schein's model of the District Attorney's Office 43

INTRODUCTION

I. Personal Statement

> BLACK AUTHOR SLAIN BY 'EXECUTION SQUAD' IN ROXBURY
>
> A leader of the Malcolm X Foundation, Hakim A. Jamal, 34, was assassinated in his Roxbury home at 11 p.m. last night by what police termed an execution sqad.
>
> Jamal, author of a biography of slain Muslum leader Malcolm X, was cut down by fire from pistols and automatic weapons in an apartment at 113 Townsend Street.
>
> At least 12 shots were fired, police said. The ceiling and walls of the apartment were riddled with slugs. (Boston Globe, May 2, 1973)

In our mass media today this and similar stories are more the rule than the exception. The responses to crime are apparent everywhere. Armed guards stand in public schools. Shopkeepers keep their doors locked. Bus drivers don't make change. The cities bristle with new security devices, snarling guard dogs, added police squads, and voluntary citizens' patrols. Violent crime has become more an oppressive state of mind than a soaring set of criminal statistics. In fact, the statistics may reflect changes in the reporting of crimes rather than dramatic increases in crime itself.

The federal government has responded to crime by pouring hundreds of millions of dollars into the coffers of local police, courts, and prisons. Yet dispite the added resources our criminal justice system has been ineffective in ameliorating public fears. Quite often these institutions have responded with iron-fisted techniques, such as invasion of property without search warrants, mass arrests, or roughing up prisoners in the paddy wagon. A recent example occurred in Collinsville, Illinois:

> It is a quiet little law-and-order town. Victorian houses with cool shadowy parlors line the pleasant streets; dogwood trees shade the lawns; and the noise and sin of St. Louis are a safe 15 miles off to the west, beyond the Mississippi River. But the humid indolence of Collinsville, Ill., evaporated abruptly one night last month. As the story emerged last week, two squads of Federal narcotics agents - brandishing pistols and shotguns, but notably lacking search warrants - descended on two suspected dope dens, and got the wrong house both times. "I used to have nightmares when I was a little girl," shudders Mrs. Evelyn Giglotto, 28, one of the victims of the monumental blunder. "But never like this."
>
> The nightmare started not long after dark. Mrs. Giglotto, a pretty young woman, and her husband, Herbert, a 29-year-old construction worker with a cheery beer belly, were asleep in their apartment on the outskirts of Collinsville when the narcs arrived. Disguised in beards and the tattered vestments of the counter-culture, the raiders crept past the tulips in the yard, kicked down

> the front door and streamed into the the Giglottos' apartment. "They threw me down on the bed on my stomach, put handcuffs behind my back, pointed a pistol at me and said: 'You s.o.b., you move, you're dead'," Giglotto recalled later. "I thought, these goddamned hippies are going to kill us."
>
> While Mrs. Giglotto, dressed in a green negligee, looked on in horror, the raiders stormed through the apartment for half an hour. They battered the bedroom furniture, yanked down bookshelves, scattered clothes in the closet, overturned the television set, smached a Polaroid camera and shattered a prized plaster-of-Paris dragon in the hall. "Where's it at?" the leader of the raiding party bellowed at Giglotto. "Who's this whore in the bed?" (Newsweek, May 14, 1973)

The raiders finally left when they discovered some insurance papers indicating the "narcs" had raided the wrong house.

Given this state of affairs, it isn't surprising that the current popular scene is divided into two warring camps. On one side are those who view policemen, prison guards, and judges as brutal and fascist individuals. They feel the main problem lies in protecting individual rights and due process. The other side views criminals as cancerous growths who must be removed from society. They feel the main problem lies in making the criminal justice system more effective in deterring crime. President Nixon supported the latter view when he recently spoke to the nation. He blamed

crime on "permissiveness" in general, and "soft-headed judges" intent on "coddling" criminals in particular.

I feel that both groups have neglected what I call the "organizational perspective". Each of the three elements in the criminal justice system has its own culture which largely determines the actions of the people who work within its boundaries.

Schein (1970) proposed the following working definition of an organization:

> An organization is the rational coordination of the activities of a number of people for the achievement of some common explicit purpose or goal, through division of labor and function, and through a hierarchy of authority and responsibility.

An important point in this definition must be noted -- it is activities which are coordinated. From the organizational point of view, it is sufficient to spell out these activities or "roles" which must be fulfilled in order to achieve the goal. To a large extent it is the organization which determines the actions of individuals, and not the individuals themselves.

Perhaps the most startling example of this phenomenon occurred in an experiment conducted by Philip Zimbardo at Stanford University in the summer of 1971. He selected a homogeneous group of middle-class white males for the experiment, then randomly selected half

the group to be "prisoners" and the other half into "guards". Then he systemmatically created the structure and climate of a prison. Within a matter of days the prisoners became a submissive slouching set of individuals without organization or leadership. The guards, in contrast, grew into swaggering dominant brutes reminiscent of Nazi concentration camp guards.

In this experiment the actions of individuals were clearly dominated by the roles assigned to them by the institution represented by Professor Zimbardo. After five months of observation in the superior courts, it is my strong feeling that the actions of the assistant district attorneys are controlled by the structure of the organization they work in.

II. Methodology

I adopted the naturalistic methodology of participant observation. Denzin (1970) explains the goals of participant observation as:

> ...the avowed commitment on the part of the investigator to participate as intimately as possible in the experiences of those he studies. This demands that he learn their language and understand the actions surrounding their valued social objectives. The meaning of their styles of dress and modes of gesturing must also be grasped. The observer must, to the

> extent of his abilities, learn to view the world of his subjects from their perspective. Preconceptions and stereotypes must be forsaken; a flexible and relativistic stance must be adopted.

From October 1972 until May 1973 I visited the superior courts of an urban industrialized New England city. During this time, I spend between 200 and 250 hours watching court proceedings and talking to court personnel. At 9:30 a.m. on October 26, 1972, I entered the superior courts as a complete stranger. I introduced myself as a student trying to learn how the courts worked. I observed the court at work and noted what was said and where people stood. I asked questions about what I saw happen and as people explained the events to me, I took notes of their comments. I attempted with varying degrees of success to absorb all the data flooding my senses. Soon people began to give me pamphlets and books describing things they felt I should know. At night I typed my notes and read the materials I was given. The next day I would ask questions I developed the night before. Soon I became a well-known fixture in the courts.

My intent was to study the entire court system. I wanted to identify key actors, and then find out what motivated their actions. In this process I talked at length to everyone I met -- judges, clerks of court,

probation officers, public defenders, prosecutors, defense attorneys, policemen, county sheriffs, court stenographers, secretaries, and defendants. At first I spent most of my time in the "assignment session". This court functions as a switchboard -- assigning some cases to "trial sessions" for an actual trial, while postponing others. It also handles arraignments, preliminary motions, and guilty pleas. Later I visited trial sessions.

As I visited the courts the district attorney's office began to take on particular interest. Defense attorneys told me, "The district attorneys really run this place." Public defenders complained about sentences from plea bargaining, "The recommendations are consistently high. In fact, you could say insane." A judge told me that except for the high crime rate, "inefficiency in the district attorneys office" was the main reason for growing case backlogs. And a probation officer told me, "Part-time defenders of the public concern is simply not a proper way to run the district attorney's office."

As I began to examine the district attorneys office in early February several things stood out. Most of the district attorneys I saw in the courts were young. In the space of a month, two of the men left the office.

One joined his father's firm, while the other signed on with a prestigious civil trial firm. I was told a number of defense lawyers I saw in court daily had formerly been assistant district attorneys. One assistant district attorney told me, "Most assistants are only in the office from two to five years, and come here directly from law school." It soon became clear that "career" was a powerful parameter in thinking of the assistant district attorneys.

After some thought I began to wonder if there might not be a link between the problems people told me about, and the assistant district attorneys' career patterns. To examine the possibility closer I interviewed eleven assistant district attorneys during the month of March. During April and early May I examined the interview data, read material on organizational careers, conducted a literature search on district attorney's offices, and wrote this document. See Appendix A for a more complete view of this process.

To what extent have I been able to capture, "Truth" in these descriptions and analyses? As Orne (1962) has shown fairly conclusively the subjects of a carefully controlled psychological experiment respond not only to the experimental design, but also to the biases and involuntary cues that the experimenter gives. Sub-

jects respond to the demand characteristics of the experiment and do things that they would not otherwise do. For reasons not quite clear, Rosenthal (1967) has suggested that subjects alter their behaviors so as to confirm the hypotheses the experiment expects to be confirmed. Given this aspect of human nature, why should we believe the results of field experiments?

Howard S. Becker (1958) has suggested at least two reasons why field studies are reliable. First, since the observer is participating in a natural setting, the people there are subject to organizational demands which cannot be ignored. As a result the actions taken by these being studied will tend to be "honest", even if they explain those actions in a somewhat biased manner. Second, since the field observer is present over a long period of time, it is possible for him to continually test his initial assumptions and hypotheses. A third reason lies in the setting of this specific study. I came to the courts without any preconceived theories or hypotheses to test. All of the descriptions and analysis I present were developed from conversations or actions I witnessed in the field. Since I had no hypothesis to prove, the assistant district attorneys had no way of knowing how they were "supposed" to react.

III. Research Questions

This thesis will examine the district attorneys office in order to address three questions:

1. What of significance can be learned about the career patterns of assistant district attorneys by studying the office structure of the district attorneys office?

2. What of significance can be learned about assistant district attorneys' attitudes and behavior by studying their career patterns?

3. What of significance can be learned about the the administration of justice by studying assistant district attorneys' attitudes and behaviors?

Chapter I reviews the literature to find relevant research that has previously been done on public prosecutors.

Chapter II brings to light previous work on organizational career theory.

Chapter III analyzes the structure of the district attorney's office in my study, and documents the effect of the structure on the assistant district attorney's organizational careers.

Chapter IV reports the influence that one particular organizational career pattern has on prosecutors attitudes and behaviour -- a preoccupation with trying cases.

Chapter V indicates the adverse effect that this preoccupation has on the quality of legal administration.

CHAPTER I - PREVIOUS WORK ON PUBLIC PROSECUTORS

This chapter will acquaint the reader with typical research in the literature on public prosecution. Material that is particularly relevant to my study will be noted. Most of the previous work in the field has not been focused on the district attorney's office. Instead the work has followed one of three main approaches. Some researchers have concentrated on a problem area, the most common one being plea bargaining. Others have described the entire court system of which the prosecutors office is one part. The third focus has been on the top official, the district attorney.

Alschuler (1968) and Vetri (1964) have singled out plea bargaining for their attention. Alschuler first examined the prosecutors' basic motives in granting concessions during plea bargaining. He cites a 1964 study showing that the strength of the case is the most often mentioned reason for reducing charges (mentioned by 85% of the prosecutors in the survey). Other important factors are the volume of work (37%), the prosecutors' feelings that the law is too harsh (32%), and sympathy for the defendant (27%). Then he discussed the problem of overcharging by the prosecutor. In order to grant

concessions, the prosecutor must be able to reduce the charges to less serious crimes, or eliminate some of the crimes filed. This dynamic leads the prosecutor to file extra charges or more serious charges against the defendant, this "overcharging" him. Alschuler also discusses the strategy of bluffing and compromise from the perspective of the defense attorney as well as that of the prosecutor. As his final analysis of plea bargaining, he feels that it does not merit sweeping condemnation as either too harsh or too generous. It is as irrational in its mercies as in its punishments. It is simply inconsistent.

In a section of Alschuler's work relevant to my thesis, he relates the experience of Richard Kuh, former Administrative Assistant to the district attorney in Manhattan. Reflecting on his experience, Kuh notes that a trial assistant's bargaining concessions may be influenced by his own career objectives in two ways. First, most prosecutors have taken their position in a district attorney's office in order to gain the necessary trial experience to move into private practice. As a result, the position as a trial assistant in a felony court is among the most prized assignments young prosecutors can

secure. The competition for these assignments is therefore fierce, and felony trial assistants fear that losing many cases may result in replacement. This possibility is not a strong factor in the district attorney's office studied in this thesis. The individual assistants here do not bargain in their cases; plea bargaining is done by only a few assistants. Second, Kuh states that few prosecutors plan to make a career out of the district attorneys office. Most will become defense lawyers. As a result good relations with defense attorneys and judges become a vital building block for a future career. This fact reinforces a prosecutor's natural desire to be liked Both considerations may lead to unwarranted generosity.

The second approach has been to examine the entire court system and see how the district attorney's office fits in. Warner (1936) studied the Suffolk County Superior Courts in Boston. He noted that cases are seldom adequately prepared for trial and felt that this resulted from the increasing caseloads. He provided some crude statistics showing an inverse relationship between caseloads of the prosecutors and the percentage of convictions obtained.

Blumberg (1967) describes the municipal criminal court in which the district attorney's office is one part. His approach suggests that the criminal court is

one part of the "community screen" which sifts out and "labels" deviants. During Blumberg's case study he noted that politics is much less an integral part of the district attorney's office than it once was. The chief prosecutor there has furthered the public service image of the office by recruiting assistant district attorneys from among graduates of leading law schools. He is recruited for his scholastic ability and not his political connections. He is wholly dependant on his superiors for employment recommendations when he moves on -- whether he moves into private practice or on to another political office. As in any other bureaucratic setting, the rewards are dispensed only to those who have played the game by conforming to the desires of their superiors.

The need for employer recommendations in this setting would be an important reward, which could then be used as a means for socializing the young attorney into office norms. One could also examine the district attorney's office functioning as an employment bureau. Neither of these two possibilities appeared relevant during my research on this thesis.

The office in Blumberg's study was is divided into six bureaus. Each assistant must file a daily report on any plea bargaining proceedings. Each case must be

accounted for as a "unit of production." As Blumberg states, "At the annual office banquet it is customary for the district attorney to praise his staff in glowing terms, especially for their "batting average", which is an omnipresent standard of performance.

Blumberg also notes that most assistants only stay for three to five years until they make a connection or take some other appropriate step upward in their career. This career pattern also describes the situation in the district attorney's office in my work. As Blumberg said, "Usually it is the 'failures' who remain behind to become bureau heads in the office or assume other supervisory functions."

Nedrud (1960) followed the third approach of concentrating on the chief officer in the office. He examined the district attorney by analyzing the statutes providing for the office of public prosecutor in the first 48 states. As a former prosecuting attorney, he was interested in collecting information along these dimensions: jurisdiction, methods of selection, employment basis -- part-time or full-time, salary, and selection of assistants. Primarily because of salary he concludes that "... very few, if any, state statutes give any incentive to a lawyer to become a 'Career Prosecutor'.

Nedrud's work strongly influenced the _Task Force Report: The Courts_ (1967). The Task Force examined the problems caused by district attorneys and their assistants who are only part-time employees. They felt that a part-time practice outside the office will naturally lead to some conflicts of interest. The Task Force also felt that the political orientation of the office was an obstacle to effective prosecution. As a result they recommended that each jurisdiction support a full-time district attorney and staff whenever possible.

Although the foci of the previous studies were not career patterns, they do shed light on the "typical career" of an assistant prosecuting attorney. Most assistants have recently graduated from law school, and view the prosecutor's office as a necessary first step in his legal career. He will stay in the office between three to five years before moving into private practice. In addition, Alschuler indicated how career pattens could influence the manner in which an assistant prosecutor goes about his business.

One final study, has taken an approach different from any one of the three approaches mentioned above. The American Bar Foundation in conjunction with the National District Attorneys Association conducted research in 1968 and 1969 with an interesting orienta-

tion. They utilized experienced prosecutors to analyze and describe another prosecutor's office of comparable size, but whose policies and organization were different from their own home offices. In this exchange format, the prosecutors from Baltimore and Houston examined each other's office, while Brooklyn and Los Angeles prosecutors did the same. One year was scheduled for the exchange. Five months were spent observing and collecting data with the remaining seven months writing up the major findings. Working with the prosecutors was a sociologist who brought the perspectives of his discipline.

These reports appeared in The Prosecutor (1969). David Lippman, the sociologist involved in this research summarized the findings as follows:

> Independently, each of the four assistant prosecutors have isolated two problems which they feel are of overriding importance: (1) the control of a criminal case from arrest through conviction, and (2) the maintenance of the professionalism of assistant prosecutors. At first glance, these two topics appear to have little in common, but actually they comprise two sides of the same dilemma -- that is, the conflict of the professional operating in a bureaucratic organization. Criminal law based on the common law tradition believes that each case should be decided on its own merits. This is also the tradition upon which the professionalism of the bar is based. Two conusel, acting as adversaries, seek to obtain the best possible disposition of the case for the interests that they represent. However, this tradition is not

> easily amenable to the operation of large organizations which characterize urban criminal justice administration. Large organizations develop levels of authority, divide duties in the most efficient manner, and attempt to standardize (rationalize) their practices through directives from the top. They need systems to train new members into the organization, to handle paperwork and keep records, and to evaluate and rate the performance of employees. These necessary bureaucratic elements of an efficient office all oppose what lawyers consider to be professional conduct. Bureaucracies seek to diminish conflict while the lawyer views himself as an adversary in a situation which has as its major characteristic, conflict.

Lippman has articulated the tension which exists when professional norms conflict with bureaucratic needs. His statement appears just as applicable to professors in a university or doctors in a hospital. As will be shown in Chapter V, a lawyer's professional norms do adversely affect the quality of legal administration.

CHAPTER II - ORGANIZATIONAL CAREER THEORY

This chapter will acquaint the reader with organizational career theory relevant to this study on one district attorney's office. Glaser (1968) explains the difference between organizational career and occupational career:

> An occupational career is a very general category referring to a patterned path of mobility wherever it may take people geographically, organizationally, and socially while following a certain type of work. An organizational career, in contrast, is a specific entity offered by an organization to people working in it, using its services, or buying its goods."

Glaser goes on to suggest that the properties of organizational careers are prime determinants of the behavior of the people within the organization. Although this assertion appears valid for one district attorney's office, the topic of careers is a neglected one in most sociological analyses and descriptions of organizations.

Many career articles take a social-psychological or social-interaction perspective. For example, Hughes (1937) indicates that career patterns is one of the means a person uses to shape his self-perceptions along such dimensions as his competence, his responsibility, his station in life, and his identity.

> Subjectively, a career is the moving perspective in which the person sees his life as a whole and interprets the meaning of his various attributes, actions, and things which happen to him. This perspective is not absolutely fixed either as to point of view, direction or destination.

By the same token, a person's career allows others to appraise him along those same attributes.

Wilensky (1960) emphasizes the efficacy of careers in structuring a persons view of himself, and argues it has implications for the society at large. He refers to Riesman, et al. (1959) and Whyte (1956):

> Consider three dimensions of careers -- number of ranks, career curve, organizational setting. Given Riesman and Whyte a sympathetic reading and putting their observations in this context, we may state the Organization Man theme as follows:
>
> Certain attributes of a class of large, complex organizations and of one type of career shape the work behaviour and life style of middle managers and technicians.
>
> At work, these men play it safe, seek security, cultivate smooth human relations. In the community they put down many but shallow roots; they pick up and drop friends the way they buy and trade cars and homes -- speeding up the obsolescence of both.
>
> This is a life style which is active, group-centered, conforming and fluid -- a pseudo-community pattern, unguided by stable values. Behavior both at work and off work is characterized by expedient conformity ("If I don't do this, I'll get into trouble")and by other-direction, or conformity as a way of life whatever the content of values and norms conformed to ("A man should get along with the gang").

This thesis does not attempt to examine such a broad societal context, but Wilensky's interpretation indicates that "career" is a conceptually powerful tool.

Hughes propsal for self-appraisal via careers relies heavily on the way a person moves through the organizational structure. Becker and Strauss (1956) focus on several aspects of this mobility within the organization, which they term "Career Flow":

> An ideally simple model of flow up through an organization is something like the following: recruits enter at the bottom in positions of least prestige and move up through the ranks as they gain in age, skill, and experience. Allowing for some attrition, due to death, sickness, and dismissal or resignation, all remain in the organization until retirement. Most would advance to top ranks.

They also note that there may be a number of streams which lead to positions of prestige and responsibility. They think of these routes metaphorically as escalators.

Needless to say, the simple model they describe depends largely on the shape and size of the organization. A multi-billion dollar conglomerate offers a much wider assortment of escalators than the local sporting goods store.

Roth (1963) is concerned with the speed of the escalators. He asserts that people will not accept uncertainty, but will try to organize it into some framework.

> One way to structure uncertainty is to structure the time period through which uncertain events occur. Such a structure must usually be developed from information gained from the experience of others who have gone or are going through the same events. As a result of such comparisons, norms develop for entire groups about when certain events may be expected to occur. When many people go through the same series of events, we speak of this as a career and of the sequence and timing of events as their career timetable.

Thus far we have discussed three topics which have particular relevance to the district attorney's office: (1) the influence of career movement in shaping one's self perceptions, (2) movement of the individual through the organization, and (3) the existence of career timetables.

Schein (1971) proposed a model which is helpful in tying these ideas together. He conceives of the organization as a three dimensional cone, and movement within the organization can occur in any one of the three dimensions:

1. Vertical Movement -- corresponding roughly to the notion of increasing or decreasing rank in the organization.

2. Radial Movement -- corresponding roughly to the notion of centrality, being "on the inside."

3. Circumferential Movement -- corresponding roughly to the notion of changing division in the organization.

Corresponding to the three types of movement, one can also identify three types of boundaries dividing an organization: Heirarchy boundaries, Inclusion boundaries, and Departmental boundaries. The diagram below represents a three dimensional model of a business organization.

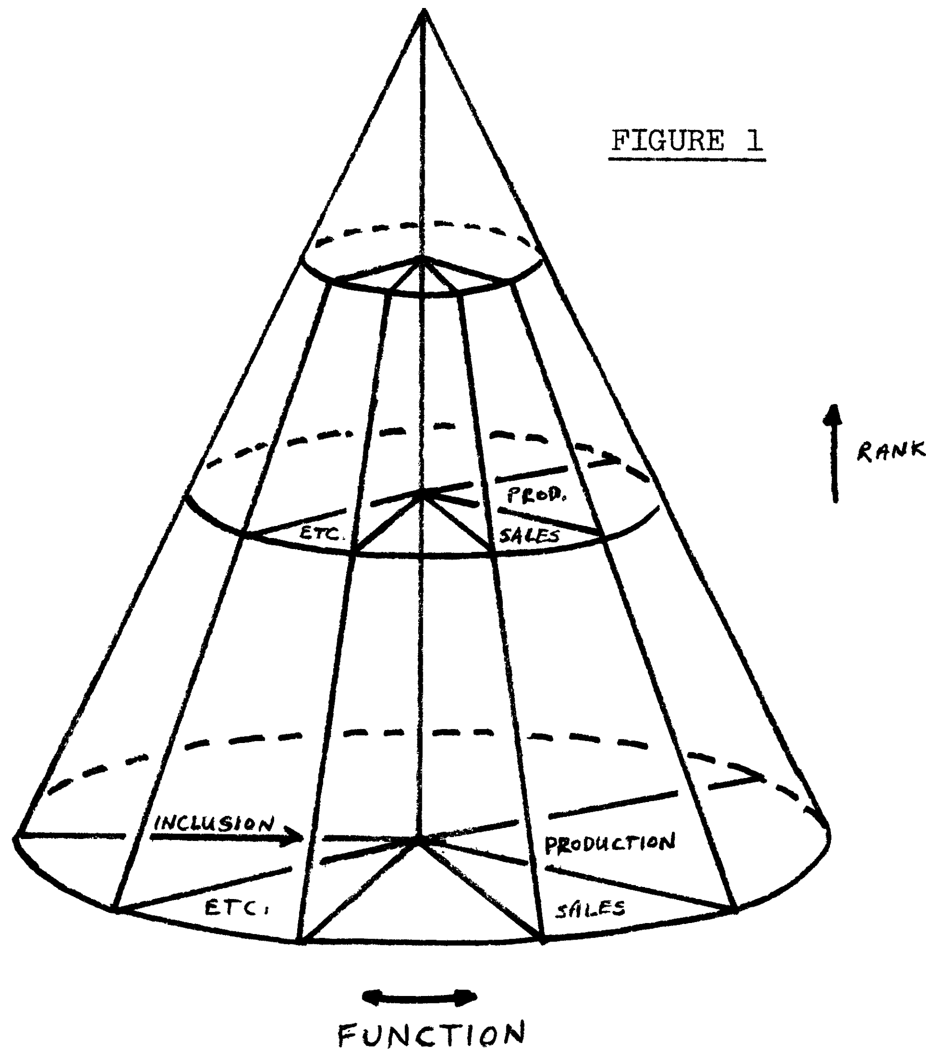

FIGURE 1

The thoughts of the preceding people are central to the work in the rest of this thesis. The next chapter will deal with organizational structure (Schein) and its impact on career movement within the organization (Becker and Strauss) and career timetables (Roth). The following chapter will discuss the influence of a particular organizational career on the attitudes and behaviors of people who take the role of assistant district attorney.

CHAPTER III - OFFICE STRUCTURE AND ORGANIZATIONAL CAREERS

This chapter will explore the link between organization structure and the organizational career offered to assistant district attorneys. After describing the office structure, I will build a model of the organization based on Schein's work discussed in the previous chapter. Then I will document the effect on prosecutor career patterns.

I. District Attorney's Office

Three governmental jurisdictions fund positions in the district attorneys office: the state, the county, and a federal agency, the Law Enforcement Administration Agency (LEAA).

State Government	County Government	LEAA Government
3 at $13,700	5 at $8,000	13 at $12,000
10 at $11,400		1 at $11,400
2 at $10,000		

These personnel work in three functional areas, each of which is run by an assistant district attorney at the $13,700 level. 1) The first is the district court prosecutors program, which involves thirteen attorneys who try cases in the district court. It is entirely funded by the LEAA. 2) The second functional

II. Salaries

The salaries that the assistants make are extremely low. A new member of the office makes only $8,000 per year even though he has gone to law school for three years and has passed the bar exam. Only one of the assistants earns more that $11,400. The pay is extremely low because the legislature and the county government pay for only "part-time" prosecutors. As one member of the staff told me:

> The legislature sets up the structure of the office, and will pay for only part-time lawyers. Every year a rumor goes around that we will be going to work for twelve months, but we know we are still on for ten. We get two months off in the summer. Since we are only part-time we can leave at 1:00 when we're not on trial. For example ______ just told me a few minutes ago he was going over to his office.

Another said:

> They pay us so little because they say that we're only part-time attorneys, but I don't have any time for private practice when I go home. When I'm on trial I'm so tired at the end of the day that I just want to go home and go to sleep. I can't go back to my office.

Another said:

> It's almost insulting now the poor wages they pay. It's such a joke because they claim its only a part-time job, but its really full-time. The caseloads are too heavy for this to be a part-time job.

Another explained:

> Of course, lawyers have always started at pretty low salaries. That's because when a person gets out of law school he knows nothing about being a lawyer. He is just ready to start learning the law and needs someone to pay him to learn it. A young attorney needs experience, and there is always someone there to exploit him.

Each of the eleven people interviewed felt their salary was much too low. During one interview the assistant district attorney complained about salaries as he read through the vote of the state legislature which had just defeated a bill to increase prosecutors' salaries. He was taking a mental note of the legislators who voted against the bill.

III. Civil Practice Outside the District Attorney's Office

Because their jobs are only part-time, most attorneys in the office also maintain an outside practice. Nine of the eleven have some civil work. They are not allowed to do any criminal work. One of the two who doesn't have any civil practice just passed the State Bar Examination in March, so he could not be expected to have an outside practice. As one assistant district attorney explained:

> Most of us in the office have a private practice on the outside, and I write some

briefs in my small civil practice. I get this work through the man who was my attorney.

Another said:

> My private practice includes some bank work and some corporate work, but mostly it is probate and general practice. I do all the work at night.
>
> (Where do the cases come from?)
>
> Most of them are referred from associates.
>
> (From people you met through the office?)
>
> No, that is against the rules of the office. Mostly from attorneys I have met socially. I have only a small practice since I don't have much time to work on it.

Another conversation went like this:

> Working here is tough on us because we are only supposed to be part-time.
>
> (Does this mean you have a practice outside the office?)
>
> Yes. Most of the people here in the office also have some outside work in areas like probate, land court, adoption, titles and bank work. The rules we work under stipulate that you can't pick up a client here in the district attorney's office. It's also illegal to take a referral from here. I always ask clients when they come to me where they got my name, just to make sure they don't come through this channel. Typically they know my family or they have met me somewhere else so its O.K.

The referral process mentioned here also helped five attorneys get their jobs in the district attorney's office. Usually a fried of both the applicant and the district attorney put the two of them in touch. The process works like this:

> My own attorney introduced me to the district attorney. I guess they have a connection through a judge or something. This doesn't happen to everybody, though, because I know _______ walked in off the street and got a job.

This last statement agrees with comments others made. Four assistnats did not get their jobs through a referral process. They were accepted through the public application procedure.

IV. The Attractiveness of Trial Experience

So far we have seen that the salaries for the assistants are low and that they develop an outside practice to help make ends meet. Given these facts, why would anyone come to the district attorney's office? There is a plum in the otherwise lean pudding -- trial experience. As one staff member said:

> I was graduated from law school last June and tried to find a job in a small firm. I was interested in trial work, although entirely on the civil side. I had three opportunities: one in a small firm, one in a firm doing general litigation, and one here. I took this position, because

> I had a chance to do quite a bit of trial work, and that's important to me. Most of the work I want to do is in the civil trial area, and the strategy I learn here will be applicable in that field as well. I was afraid if I had gone into a small firm I would never get into court to try cases. I'm here to do trial work and not primarily to practice criminal law.

Another assistant said:

> (If the salaries are so bad why did you come here?)
>
> Trial experience. That's the only reason anyone is here. It certainly isn't for the money. I'm here for the experience and the esprit de corps (subject laughed). Trial experience is the toughest thing to get as an attorney, but you really need to get it early. When you learn how to run a criminal trial most of this carries over into civil law. For example, how to pick a jury, what kinds of arguments are important in opening and closing statements, and general procedures.

Two of those interviewed are in other functional areas (one in appellate and one in the districe court prosecutors program) and one performs a specialized non-trial task in the office. The remaining eight assistant district attorneys came to the office primarily for trial experience. This is also true for those who have been members of the Bar for five or ten years before coming to the district attorney's office. In these two cases it appears that they wanted to change their legal speciality to trial work.

area is handled by two attorneys who deal with all appeals arising from trials in the superior court. This includes writing briefs, and presenting oral arguments to the state supereme court. 3) The personnel in the third area handle the preparation and trial of all cases in the superior courts of the county. Cases may come to the superior court from the district court or by direct indictments from the grand jury. This division is managed by the first assistant district attorney, who also oversees the other two functional areas. It is this division of the district attorney's office that was studied.

The first assistant manages a group of nineteen assistant district attorneys who handle all the trial work in the superior courts. He has responsibility for controlling the budget, assigning cases to individual assistants, and general office management. He also does a large part of the plea bargaining while delegating the rest to a few assistants. One of the assistants in the office handles most of the work with the grand jury, and another tries only murder cases. The two people in this division paid by the LEAA handle specialized work -- expediting trial dates, and insuring that all the superior court sessions are kept busy. The remaining fourteen assistant district attorneys try cases.

As one said:

> I had ten years of general practice before I came here. I came here because of the opportunity I would have to do a lot of trial work. In general practice you seldom get into court, but in this office you try cases all the time.

My impression of public defenders indicates that they also want trial experience. One district attorney explained the difference.

> I wouldn't want to be a public defender. All they do is plea bargain, while we try cases.

There may also be some ideological differences, but this is a moot point. Two of those interviewed denounced President Nixon's draconian attitude toward crime. One said:

> I don't like the basic philosophy he is using. You can punish an addict all you want, but they will still shoot up. Even if you told them you would eloctrocute them tomorrow they still wouldn't kick the habit.

On the other hand, two members of the office expressed different opinions. One experieced hand felt that criminals had been treated too leniently:

> President Nixon is right, we have just been too permissive in the past. Until these people (criminals) learn their lesson we're going to send them back until they're in prison forever.

Among the newer district attorneys I found no ideological reason for selecting the district attorney's office in preference to the public defenders office -- only practical reasons like trial experience.

V. Advancement In The District Attorney's Office

In any event, most attorneys come to the office to gain trial experience. As one might expect, the kind of case an assistant tries changes with experience. One explained the process as follows:

> When a young fellow comes in we send him across the street to try misdemeanors. The district court judge over there is pretty informal, so the atmosphere isn't as tense as it is here in the superior courts. This gives him a chance to get his feet wet before he starts doing serrious felony cases.

Another assistant explained this process in greater detail:

> (How does promotion occur within the district attorneys office?)
>
> If by promotion you mean pay raises, then those are limited by the statutes. When there is a vacancy everyone moves up a step. It is sort of moving up by attrition.

(Does that imply that there are other kinds of promotions besides pay raises?)

Yes, but promotion is really not the right word -- the word is really greater responsibility. I'm not thinking of anyone in particular, but if someone had been here for three years and only tried misdemenors, then you would know that people don't feel that he was responsible.

(What are the levels of responsibility?)

Well in the beginning you work in the six-man jury in the district court, and then after a while you move up to the superior court. Here at first you start trying larceny and breaking and entering cases. Then after a while you get assigned more serious cases -- armed robberies, rapes and murders. You may also get involved in a major investigation. In these complex investigations your judgement is crucial everyday.

(How long does it take for this to happen?)

There is no set time for getting more responsibility, it depends more on the individual. Somwhere along the line the decisions are made and you either are given more responsibility, stay where you are, or go down hill.

(How are the cases assigned?)

The first assistant district attorney assigns all the cases.

When I asked the first district attorney how he assigned the cases to people he replied:

It all depends on the way they conduct the cases they do handle. Of course,

> I personally can't watch everything, but word does get back about how an assistant handles trials. We get reactions from judges, and other people in the court room. Misdemeanors are important just as well as the felonies and can be just as technical and more difficult to try than heavy cases. In an uttering case, which is basically forgery, you may have to call in some technical specialists as witnesses. It can be very tricky. Then as that fellow moves up, we bring in someone to fill in behind him.

The assistant district attorneys said that the rate of advancement depends on experience and ability. Its hard to understand precisely what "ability" means. The first assistant, who makes the assignment decisions, indicates that it is not just winning or losing the case. The fact would imply that an extremely broad interpretation may be used. "Ability" could also include attitudes towards the office or towards crime. One would expect that such a reward system would be linked to the process of socialization -- getting new members of the office to accept office norms. In any event there appears to be an "average" progression. One assistant explained it like this:

> (How long does it take to try important cases?)
>
> About 1 1/2 years although it depends on ability. Usually its about six months to one year working on misdemeanors, and then a year to a year and a half working on felony misdemeanors. After that you get to work on the big ones.

IV. Structural Model Of The District Attorney's Office

At this point we should return to Schein's model of an organization discussed in Chapter II. In order to diagram this district attorney's office one needs to define all three dimensions. Rank and function and relatively straightforward. Schein indicates that measuring centrality is difficult to do because the very existence of inclusion boundaries usually remains implicit. This observer contends that the proper measurement of centrality is simply the kind of trial an assistant district attorney can try. The prosecutor who tries murders is more central than one who tries breaking and entering. The prosecutor who tries B & E is more central than one who tries driving under the influence of alcohol. With this perspective, a diagram of the district attorney's office would appear as follows:

DISTRICT ATTORNEY

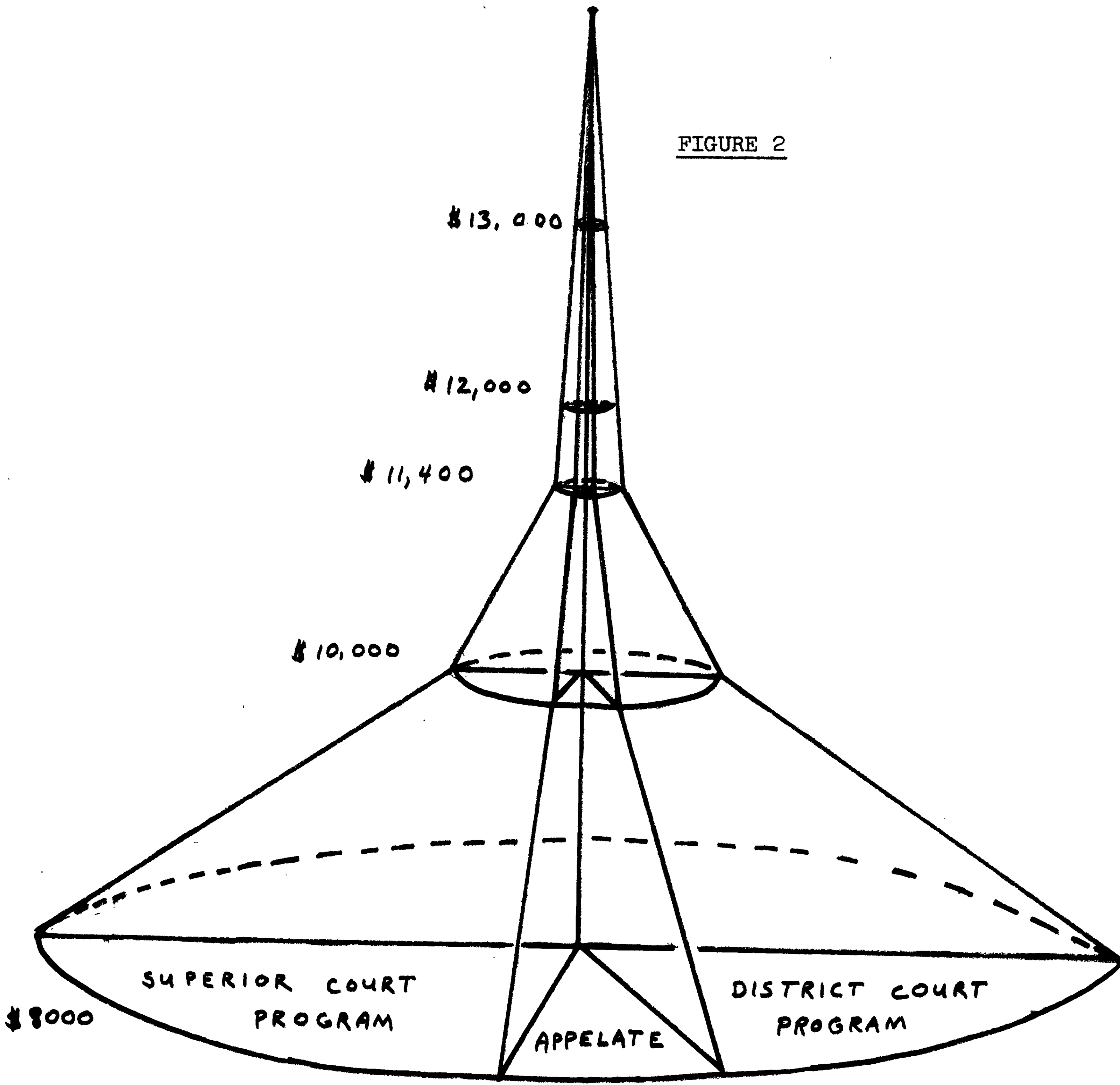

FIGURE 2

43

The structure has a wide base which then turns into a sharp narrow peak similar to a funnel. When a new assistant district attorney enters the organization he earns only $8,000, but he has much experience to gain. After two or three years, he is trying "heavy" cases and making only $11,400. By comparison an engineering graduate with a bachelor of science degree and no experience can expect ot make the same salary. The prosecutor has nothing else to gain -- he can't expect any increases in salary, and there are no higher levels of trial experience. He is caught in the narrow mouth of the organizational funnel.

The attorney could adapt in either of two ways. He could view the job of assistant district attorney as a guaranteed source of income, and make this one part of his professional practice. For example, he could allocate 50% of his time to this job and spend 50% elsewhere. The second method of adapting would be simpler -- leave the office completely. This method would be preferable if he were offered an outside position, or felt his current civil practice would support him.

VII. Career Patterns

Most assistant district attorneys prefer to leave. Few of them think of the office as a career opportunity. Instead they view the prosecutor's office as an excellent step towards reaching their ideal -- going into practice for themselves, or joining one of the excellent firms in the area. As a result the turnover in the office is high -- during the last year six men left. As one assistant said:

> When _______ left he reached the pinacle of what all of us here want to do -- go to work for a good law firm or have the opportunity to work for yourself. In my mind having your own practice is second only to being a judge. If the district attorney's office paid like they do in Westchester County there would be some sort of a future, but there isn't now.

Another said:

> I'm planning on staying about two years. I think thats about how long _____ was here before he made first assistant and then he stayed another two years after that. People usually leave because of money pressure. As soon as they can build up a good enough civil practice they are gone. _______ hated to leave but he only made $13,700 and he had three children and a house to support.

Another conversation went like this:

> (Do you see the office as a career or a stepping stone?)
>
> I see this as a stepping stone for my private practice. I want to do trial work, so I'm picking up experience and meeting people here. My private practice is really developing and, in fact, I work four nights a week and all day Saturday. It would be a mistake for me to get locked in here. I guess the average length of stay is about two and a half to three and a half years before young attorneys move on. In fact, I almost left last September after a year in the office, but I got into some interesting work.

Two of the eleven prosecutors interviewed are career men, of the other nine only one was interested in making a career out of the office. He said:

> I want to be as good a trial lawyer as I can, because trying cases is just plain fun. I wouldn't like any other kind of work. Most of the attorneys who come to the district attorney's office are here up to five years, and then they leave. But my attitude now is to stay. It is true that the money is bad, but I'm sure they will be more realistic and the pay will get better.

Everyone gave the same reasons for leaving the the office. An assistant district attorney leaves when the outside opportunities he has -- primarily measured

by income -- are greater than those provided by the organization. This conversation was typical:

> (Do you think of the district attorney's office as a career?)
>
> I would like to but there are some problems involved. There is no great increase in salary for the assistants, you know what the pay scale is. We need some sort of step pay so that it becomes reasonable. Another problem is that you serve at the pleasure of the district attorney. If he retires or gets beaten in an election we are out of a job. Not many of the assistants stay for those reasons.
>
> (Why do the assistants leave?)
>
> The salaries are simply too low. Most of the assistants are here to get some experience and then make it on their own. I'm not as anxious to leave as most. I don't do outside work to speak of and I'd like to stay. But I would need some sort of step pay and employment security.

A different assistant said:

> (What would induce you to leave?)
>
> It depends on what you were trying in the office, and what is available in job opportunities on the outside. If someone asked me to come and work for him tomorrow for $100,000 I'd have to give it serious consideration, but they're not.

The pay in the office is low because the jobs have been structured by the state legislature as part-time work. As a result all the assistants are expected and encouraged to develop civil practices to help support themselves. One of the career assistant district attorneys told me.

> I really harp at all the young guys to get out and start their own practices at night Sure it's hard to do, but if they don't do it they will be forced to leave.

He indicated they will be forced to leave because the salaries increase much slower than their families economic needs. Without outside support they will have to find a higher paying job.

The successful development of a part-time practice puts further tension on the assistants. They need the civil practice to support themselves, but when they do develop an outside practice it may well provide the opportunity needed to leave the office. As they become more experienced their practice on the outside begins to sustain them. When that happens they are in the position to leave.

Despite the desires and pressures for district attorneys to move on, a number of assistant district attorneys do make a career out of the office. In this office three men had been there about 15 years. The

younger assistants don't understand why the older stay on. When the pattern of leaving became apparent I asked one of the young assistants why some of the older men stayed, and the reply was, "I don't know, but tell me if you find out." From interviews with the senior district attorneys at least two reason for staying at the office became apparent -- an investment of time and a belief that working in the criminal justice system is an important task.

I asked one of the assistant district attorneys why he had remained with the district attorney's office. In the process of answering the question he said:

> ...In any event, you get to the point where you have made a hell of an investment. When I've had 30 years experience I will receive one-half my salary plus one percentage point every year I stay over 10 years. I get such a good deal because, I'm a veteran. That's 70% of my current salary. In addition, my family gets some great benefits in case I died. You have to take these things into consideration.

He went on to say:

> If I were younger, had fewer kids, and didn't have any medical problems, I would probably leave the office. But if you look at the long stayers the pension benefits become particularly important, expecially for ______ (another assistant district attorney) and me.

In this situation the investment of time is a powerful force inducing some to stay with the office.

Another reason that an assistant district attorney may make a career out of the district attorney's office concerns their feelings about the importance of crime. I asked one assistant district attorney why he had stayed with the district attorney's office and he replied, "I enjoy the work here, if I didn't like it I would leave." After this statement he went on to describe the current state of criminal justice. He clearly felt that crime is a serious problem, and he planned on working to curb it.

Becker and Carper (1956) interviewed three groups of graduate students at a major university: engineers, physiologists, and philosophers. They discovered that different mechanisms induced the students to identify with their occupation. Among the processes they noted were (1) the development of a problem interest and pride in new skills, (2) the acquisition of professional ideology, (3) investment, (4) the internalization of motives, and (5) sponshorship. In this district attorney's office at least two of these mechanisms lead lawyers to identify themselves as assistant district attorney's -- investment and the acquisition of professional ideology.

VIII Conclusions

The state legislature created the structure of the district attorney's office. Its salient features are low pay and part-time employment. These features induce a prosecutor to develop an outside practice. The primary drawing card the office has for recruiting new members is the excellent trial experience a prosecutor gets. After two to three years in he office, however, an assistant district attorney has gained as much trial experience as possible. In addition he cannot expect to get any raises in pay. The attorney finds himself in an organization which can no longer meet his financial needs or professional needs. There are no "heavier" cases to try. The office structure strongly encourages the prosecutor to leave. It is no surprise, therefore, that very few attorneys view the office as a career opportunity. Instead they will leave within three to five years after joining the office. It is in this manner that the organizational structure is closely linked to the career patterns of the assistant district attorney.

CHAPTER IV - THE INFLUENCE OF CAREER PATTERNS ON ASSISTANT DISTRICT ATTORNEYS

We have seen that assistant district attorneys enter the office in order to gain trial experience. They do not view the office as a career possibility. The natural result of their perspective is a complete preoccupation with "trial". The following conversation is a good example:

> Have you see any of my trials?
>
> (Yes, I saw the rape case you tried upstairs.)
>
> That was a bad one. The girl just wouldn't say that the defendant did it. She qualified everything, she said. I love trials. I'm just like an actor, in fact, I was a salesman before I went to law school. I love to work on my feet. I really come alive when I go on trial. When I'm trying a case, I go home and don't need any sleep. This also gives me a chance to see the best attorneys in the state at work, so I can improve my skills. I have the confidence now that I can do a good job in trying any case.
>
> For some reason the attorneys up north seem to be the aggressive type. There is one fellow up there who always starts his plea to the jury, 'In my forty years in the Bar, I have never seen such a poor case as the district attorney's office has brought against this defendant. In my forty years, I've never seen such flimsy arguments.' Another ploy this fellow uses is to stand between his defendant on the stand and me, but right in front of the jury. Then he points at me, and says to the defendant, 'You just tell him the mistake he made.' Yes, I

> really love to try cases. Although I do quite a bit of research, and read all the Supreme Court and state supreme court decisions, the thing I really love is to try cases.

Another assistant district attorney explained:

> All of us take on more or less the same work -- ranging from initial paper work to final disposition. There is such a heavy work load, however, that we can't do it all. I spend most of my time thinking about how to try cases. For example, when I'm on a five day trial, I think over the case at work, at home and even when I'm sleeping. Often times I'm too busy here at work to figure out my final arguments and my opening statements, so I do them at home. I am here because I get the maximum amount of experience in the shortest amount of time. The thrill in this job is winning a case, although it is true I learn more when I lose. When I lose a case, I go back over it and analyze it carefully so I don't make the same mistake again.

The sentiments in these statements are common to all the assistant district attorneys. All nine of the prosecutors in the superior court division told me about cases they had tried. When I sat in discussions among prosecutors, they continually trade stories about trials.

Most of them learn how to try cases through their own experiences in the courtroom; however, other methods are also used. One method is sitting in the courtroom and observing. Invariably there was an extra prosecutor or two in the assignment session when I was

there, and often someone observing in trial sessions too.

Another learning method they use is sharing experiences. One assistant explained it like this:

> The relationships in this office are not one of competition, but rather one of helping. We spend a lot of time discussing cases. For example, someone will ask, 'can you do such and such on a motion?' Often I just hang around to learn whats going on. In our office we almost have to sit on top of each other, which I think is a good practice. It is going to ba disaster next fall if we move into a new building and everyone has their own separate office.

During one interview we were interrupted by an attorney just returning from trial:

> He (defense attorney) just keeps asking the same questions over and over. He kept giving me some trouble because I refused to let him enter some information. He would say to the jury, 'I'm just trying to get at the truth in this matter, but the district attorney won't let me.' So I did the same thing to him. I brought up something that was obviously inadmissable and when he objected I said, "I'm just trying to get at the truth in this matter." He was furious, and I had to laugh. I don't like to do things like that because I'm trying his kind of case, but I had to do it because the judge won't stand up to him.

This vignette scored an obvious educational point. Improving the learning process also interests a few of the prosecutors. One said:

> I think one of the things that could really help around here is if we had a more efficient operation for information on the new laws. For example, we could set up a

> loose leaf notebook that would have all the important cases that come in from this state, other states, and from the Supreme Court.

My observations indicate that attorneys new to the office are more influenced by this preoccupation with "trial". They do not yet have the trial skills they desire. Yet after acquiring the skills in about two years, economics dictate that they must begin to look for work outside the office. Their part-time civil practice begins to take up more time. As this happens the focus of their professional energies may shift outside the district attorney's office. These comments are "educated speculation" since my work only touched this topic. The process of exit would be an excellent future study.

Assistant district attorneys come to the office to try cases, so the trial becomes the most important part of the assistant's work. The prosecutors, particularly new ones, spend their time thinking about the cases they are trying, observing others try cases, and listen to the experiences of others. This preoccupation with "trial" filters the way they view their world -- events related to "trial" are important, events unrelated are unimportant. This perception affects the administration of justice as the next chapter will point out.

CHAPTER V - CONCLUDING COMMENTS ON THE ADMINISTRATION OF JUSTICE

We have seen in the preceding chapter that "trial" is the primary concern of assistant district attorneys. The career patterns of the prosecutors reinforce one norm of the legal profession stated in Chapter I, by Lippman (1969):

> Two counsel, acting as adversaries, seek to obtain the best possible disposition of a case for the interests that they represent. However, this tradition is not easily ameanable to the operation of large organizations which characterize urban criminal justice administration.

The structure of the district attorney's office creates an environment which nurtures a three to five year term of service. During this time an assistant district attorney first focuses his energies on trying cases, and later on building an outside practice. They become skilled court room practitioners. Thus, the structure of the office strongly reinforces the professional legal norm of relying on trial as the only means to administer justice.

Unfortunately the district attorney's office must be a bureaucratic organization to handle the placed on it. Several problems came to light while I was visiting the assignment session of the superior court. Summons

to court were mailed to out-of-date addresses by the office, even though the probation office had the up-to-date addresses. Then when the defendant didn't appear in court, an order for his arrest was issued. I was told that policemen were warned to use discretion in arresting defendants who had defaulted. Since the problem was really incorrectly addressed mail, a person could easily spend a night or a weekend in the cooler without having done anything wrong.

Prisoners were brought into court from correctional instititutions without receiving prior notice. If the district attorney's office knew the prisoner's lawyer, the office would contact him directly and inform him to appear in court. On several occasions, however, the prisoner had a lawyer the office didn't know about, but was unable to contact because of the short notice. Without a lawyer, no business could be done and the prisoner made the trip for nothing.

Each of the assistant district attorneys had over 100 cases at any one point in time. As a result it was often impossible for him to be in the assignment session when pre-trial motions came up; however, the prosecutor reading the trial list was seldom informed about the particulars of the case. As a result, it was impossible for him to make any guiding recom-

mendations to the court.

In this office there were only a few assistants who were empowered to plea bargain with defense lawyers. Usually it was difficult to find an assistant who had the authority to plea bargain. Several experienced court observers also felt that the sentences recommended after plea bargaining were inconsistent.

One judge discussed the growing backlog of cases. He explained it was partly due to the high urban crime rate, but this was a factor other courts were able to deal with. This court couldn't handle the proble due to "inefficiencies in the district attorney's office." He felt that cases were added to the trial list by the office just to see what would happen. If things were run better, he felt fewer cases would come into the assignment session daily, and each case would be better prepared.

Schein (1970) descibes three types of professional careers. _Custodianship_ is characterized by total acceptance of the currently existing norms of the profession and by basic acceptance of the current levels of knowledge and skill in that profession. _Content Innovation_ is characterized by acceptance of the traditional norms of the profession pertaining to practice, but by dissatisfaction with existing levels of knowledge and

skill. <u>Role Innovation</u> is characterized by rejection of some of the norms which govern the practice of the profession, combined with an interest in discovering the ideal role of the professional in society. The role innovator questions the traditional professional norms in these ways: who is the legitimate client; who can or should initiate the contact between client and practitioner; what constitutes an appropriate setting for conducting professional activities; and what are the legitimate boundaries of the professional's area of expertise.

In my view the role innovator in the district attorneys office would see that his professional duties would include management of cases as well as trying them before a judge and jury. He would think of prisoners as his "client", and not have them transported into court without adequate preparation. He would discover a better method of contacting accused persons and bringing them to court. He would consider visiting the prisons to get information on defendants held there. He would expand his area of expertise to include relevant parts of management and public administration.

There are two major forces restraining the emergence of role innovators -- professional norms and office structure. The office structure influences assistant district attorneys to view the office as only a short

run career opportunity. A three to five year tour of duty necessitates that a prosecutor expend his energies trying cases and charpening his trial skills. It is this myopic preoccupation with "trial" that directly discourages role innovation. An assistant district attorney does not view the problems previously mentioned as important ones -- they have noting to do with the trial of cases. In the reverse of the words of Frank Lloyd Wright, "Function Follows Form". Both professional norms and office structure must be altered if we are to improve the quality of legal administration.

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APPENDIX A - NOTES ON METHODOLOGY

The impetus for this study came from a meeting I had with Professor John VanMannen late in September, 1973. Although I was primarily interested in the courts, I heard that John had done some work with the police, another important institution of the criminal justice system. My previous study of the courts had occured only in readings in the library and were of a managerial and analytical bent. I had done quite a bit of previous reading, but at this stage I was perplexed about what I could do in a Masters Thesis. When I spoke with John, he told me about participant observation studies of the type he had previously done with the police. He also warned me that a large amount of time that would have to be invested if any work of this nature were to be useful. This was a completely new tactic from anything I had read about. I was intrigued because John's description of participant observation made it sound similar to the work I was doing in organizational development. This link to other work I was doing and John's boundless enthusiasm brought me onboard.

What Am I Doing?

When I first started visiting the courts in late October, I didn't know specifically what I was doing.

I went into the courts with the general notion of taking notes, which I could then use to carve out a thesis. At this stage there were two things that bothered me about what I was doing. First, I had no hypothesis to test. The feelings I had from my science/engineering background indicated that the proper procedure was a thorough literature search to generate a conceptual framework. Then one tested this framework against the real world. Isn't this the "scientific method"?

During the period of my initial visitation to the courts, this feeling manifested itself in a strong need to focus on a specific problem. With John's encouragement I resisted this temptation and concentrated on what was happening around me. I collected information once or twice a week during November and December, and then spent the entire month of January in the courts. Finally in early February 1973 I began to narrow down the breadth of this work. In mid-February I selected the assistant district attorney as my focal point. Although it is necessary to postpone narrowing your work -- one must first find out what the important aspects of the institution -- I felt an inner complusion to focus from the very beginning.

A second source of uneasiness arose because I was unsure if the participant observation study would provide a sociological perspective or a dianostic perspective. I was keenly interested in understanding the work culture of the court officials, and the constraints they have to deal with. These are vital in determining key leverage points. At the same time I wanted to do some work which would help the courts do a better job. As I am writing these pages, this is still a live issue but I feel that a participant observation stance probably allows one to do both.

The Basic Mechanics

Because the first few months of the thesis provided the time for understanding what was going on around me in the courts, I wasn't faced with any conceptual problems. I did have a great deal of difficulty, however, in dealing with the basic mechanics of the methodology. I didn't know anything about note taking -- when to take notes, how much data to record, how to combine note taking and interviewing. It wasn't until later that I discovered the book by Schatzman and Strauss, Field Research: Strategies For Natural Sociology. This book provided a valuable prospective in the mechanics of the situation. I took notes everywhere I went, except in some of the trial sessions. In the assignment session,

I had no difficulty from the very beginning; however, in the trial sessions it became necessary to obtain advance permission from each judge ahead of time to take notes. The judge sometimes felt it would bother the witnesses if they noticed me taking notes during the trial. In many of the informal conversations it was impossible to take notes, so I would write some brief reminders about what went on in my daily journal. Often I could only take down a few phrases, but after two months one word in my journal would be enough to generate at least a paragraph or more when I typed in the evening. There were also certain situations in which it would be unthinkable to take notes, for example, when I sat in on plea bargaining sessions. In these situations I had to also rely on my memory.

The first few days in court where times when I was inundated with data. Unfortunately, my field notes did not reflect the richness of what I had been exposed to. As a result, when I began going over my field notes, I remembered many things which had not been recorded. John pointed out that without better notes I could loose much of the information. I also discovered that I had the tendency to build quick and simple models about what was happening around me. Although these models where based on assumptions which should have been validated.

I could build much better models in the evenings by carefully examing all of the information over and over again. One of the great problems I had to face was whether or not I should type my notes in the evening or dictate them. At first I typed them myself, but I soon discovered it was much easier for me to dictate them and cajole my wife, Karen, to transcribe them for me later. Although this was the path of least resistance it is also the more troublesome of the two. It can take quite a while to peck out my nightly ten to fifteen pages, but when I finished typing I immediately had the pages to examine for implications. I also discovered that the process of typing my notes often remined me of vignettes that occurred during the day which I had forgotten. As a result, typing yielded better information in quicker time, although it is painful and tedious to do. In actual fact, however, I dictated more of my notes than I typed. This process was aided immeasurably when a friend loaned me an extra Norelco Dictating machine he had in his office. Although it is nearly impossible to type off a small cassett recorder -- Karen had to use her fingers simultaneously to type and to run the tape recorder -- it is quite easy to do it from a professional dictating machine. I also wrote out some of my notes in long hand, which Karen

typed. The process of typing the notes daily was a tremendous chore. A typical day in January would include eight hours of concentrated note taking in the courts, which would leave me exhausted. When I came home at night I would sit for another three to four hours taking care of the dictating or typing. Often I was simply too exhausted to do both, so a large amount of the typing was done on the weekends.

The Problem of Access

I discovered the richness of the information I collected in the courts depended almost entirely on the interaction I had with the people who worked in the courts. Although I did receive informal approval from several of the judges in the assignment session, at no point did I get formal approval to do this study. As a result, the only access I had to any information was the access people were willing to give me. There would probably be few participant observation studies except for the fact that people are naturally willing to talk, particularly to someone who comes under the rubric of student. A lot of what happens depends on luck. For example the very first day I walked into the court, I came early and asked a man in the court room how I could learn about the courts. I explained that I was a student

and told him what I was trying to do. It turned out that he was the judge sitting in the assignment session. He gave me a tremendous amount of encouragement and help. On the other hand, the relationship can be very fragile. One day there was obviously something going on between the court officers and a new person who was moving in and out of the judge's chambers. When I asked one of the court officers what was happening, he looked at me as if to say, 'What the hell business is it of yours!' and turned away from me. I was crushed.

Eventually I was able to overcome these obstacles because I became a farmiliar face. I visited the courts daily and soon got to know all the people in the court room on a first-name basis. Once I gained access to one part of the court room, no one denied it to me again. For example, the gate keeper for the district attorney's office got to know me because I picked up the trial list every day from him. After a while, I began going into the district attorney's office almost daily with one of the assistant district attorneys. When the gate keeper saw this happening, he soon began to let me in whether or not I was with anyone. This is how I gradually gained access into offices that were out-of-bounds to the general public.

Time was in my favor here, but it can also work

against you (especially in a study which is of short duration, like mine). Feeling that my thesis deadline was beginning to press in on me, I asked for information from the district attorney's personnel records sooner than I would have normally. Since I was not well-known to the person in charge of these records at the time, he denied my request. This denial then became the general policy. I was unable to get the information that I needed from this source.

Analysis

When I began to feel time pressure in mid-February, I started to analyze the data I had collected. First, I read the chapter, "Strategies For Analyzing" in Schatzman and Strauss (1973). They indicated that the most important step in analyzing participant observation data is to discover classes (things, person, and events), then describe the properties which characterize them. During this process, which they indicated should continue throughout the research, the analyst gradually comes to develop his own linkages between classes.

After reading this chapter, two topics jumped into my head: the first relating organizational careers and office structure, and the second examining the nature of the linkage between the district attorney's office and

police. I wrote a brief outline of these two alternative studies and showed them to John. Although both looked extremely interesting, the career study appeared to be the most productive in the time allowed.

I immediately began three simultaneous operations. I turned the focus of my court visits on the assistant district attorneys. I started interviewing them around seven general topics:

1. personal history
2. recruitment into the office
3. reasons for coming to the office
4. career opportunities in the office
5. what causes people to leave the office
6. life in the office
7. part-time work outside the office

The second operation was an immersion in work on organizational careers. The third operation was conducting a literature search to find previous studies on the district attorney's office.

In mid-April I began work on the initial draft. A major step in this process was the generation of nine alternative perspectives I could use in writing up this thesis. The nine are listed below:

1. the organizational career
2. the process of promotion
3. one day in the life of an assistant district attorney
4. how a case gets to trial
5. the trial of one case
6. the assignment session
7. plea bargaining
8. the district attorney's office structure
9. problems in the administration of justice

Although many of these alternatives are only peripherally related to careers, I had gathered quite a bit of information on them as well. John and I agreed that the organizational career alternative would be the most interesting given the data I had collected.

While writing this thesis there were many times when I wished I could go back into the interview and ask additional questions. Unfortunately, my wish was impossible due to time constraints. This difficulty relates to my major criticism of the methodology I used. Not enough time was spent analyzing the extensive data I had collected in order to devise new observational strategies. As a result my analysis occurred in lumps -- in mid-February and late April -- instead of continuously throught the study. If I had consciencouly analyzed my data every day, I feel a much more productive study would have resulted in the same amount of time.

Time! Do Not Pass Go . . .

Many students may be afraid of doing a participant observation theis because of the time involved. I spent at least 250 hours collecting information on the courts, and at least 250 additional hours typing, thinking, reading and writing about the courts. This was done in a time period in which I was taking six courses for

credit and auditing one course in the Fall, and three courses in the Spring. Although it did take quite a bit of time, I enjoyed doing this research. It is an exciting learning experience -- you come into a situation cold and nine months later you're an expert. The conceptual material I read became much more meaningful to me once it was grounded in the data of the courts. The readings were not just an academic exercise, but needed theory on an exciting topic.

To alleviate time problems, one solution would be to begin a participant observation study during the summer. If one didn't have to work and could maintain contact with his thesis advisor this would be an excellent alternative. The extra time available would probably lead to much more valuable work.

Another possibility lies in writing a two-person thesis. Besides having twice as much time available to observe, the sharing of experiences and ideas would speed the process of analysis. To some extent Karen filled this role, but she never had a chance to visit the courts. In any event, it was an extremely enjoyable experience.

APPENDIX B - THE CRIMINAL COURTS

This section describes the operation of both "superior" and "district" criminal courts, thus providing the framework in which the district attorney's office is located. It focuses on the disadvantages of being poor. Although it doesn't fit neatly into the focus on the district attorney's office, it provides the perspective I took into the superior courts in the fall.

According to the Presidents Commission on Law Enforcement and The Administration of Justice (1967), also known as the Crime Commission:

> The criminal court is the central, crucial institution of the criminal justice system . . . The activities of the police are limited or shaped by the procedures of the court. The work of the correctional system is determined by the court's sentence.

Because of it's primary role, we should begin with an examination of the levels and processes in the criminal courts. The courts are divided into two levels. The Lower Court disposes of petty crimes -- "misdemeanors" -- and process the initial stages of felony cases. The Superior Court accepts those charged with felonies, and tries them in a court of law. In addition there is the separate Juvenile Court which processes juveniles on an informal non-advocacy basis.

After booking, the police bring the suspect to the Lower Court for his "initial appearance". At this appearance the judge serves the defendant with formal notice of the charge, and advises him of his rights. If the offense is a minor one, it is usually tried immediately with further processing. If the defendant is charged with a felony, however, the judge sets bail.

The next step is a "preliminary hearing". In most urban courts the initial appearance includes a preliminary hearing. At this point, evidence against the defendant is given a preliminary test. If the charge is reduced to a minor one by the prosecutor, the case will go straight to trial. In a case where the judge finds probable cause for a felony charge, the defendant will be bound over to the prosecutor or grand jury for an "indictment". The defendant who raises bail is set free to await indictment and a date for his "arraignment" before the Superior Court. The defendant who cannot raise bail goes to jail.

During arraignment the defendant makes his plea. If he pleads not guilty, counsel is appointed for the "indigent", the defendant elects trial by judge or by jury, and the judge sets a trial date. If he pleads guilty, the judge immediately pronounces sentence.

Although there are unique differences among criminal courts in different cities, counties and federal jurisdictions all generally follow these guidelines.

Some comments are in order here about the personnel who staff these courts, particularly the Lower Court. These are taken from the Crime Commission Reports (1967):

> There are judges, prosecutors, defense attorneys, and other officers in the lower courts who are as capable in every respect as their counterparts in the more prestigious courts. The lower courts do not attract such persons with regularity, however. Judging in the lower courts is often an arduous, frustrating and poorly paid job that wears down the judge. It is no wonder than in most localities judges in courts of general jurisdiction are more prominent members of the community and better qualified than their lower court counterparts. In some cities lower court judges are not even required to be lawyers.
>
> In a number of jurisdictions the State is represented in the lower court not by the district attorney but by a special prosecutor or by a police officer. Part-time attorneys are sometimes used as prosecutors to supplement police officers. In jurisdictions where assistant district attorneys work in the lower courts, they usually are younger and less experienced men than the staff of felony court. The shift of a prosecutor from a lower court to a felony trial court is generally regarded as a promotion. Movement back to the lower courts by experienced men is rare.

The Crime Commission may have been overly generous. The possibility of being tried by a judge who isn't even a lwyer may come as a shock to many, but former Senator Joseph Tydings (1971) explains that even in the federal lower courts two of every seven judges did not attend law school. According to Howard James (1967):

> There are more than 15,000 men and women presiding over lower courts and at least 10,000 are non-lawyers.

In the opening chapter of his book James characterizes may lower court judges as "hacks", "retirees", "failures", "inattentive", "misfits", "incapacitated", "inexperienced" , "lazy", "weak", and "prejudiced". He also suggests that half the lower court judges are not fit for office.

The central problem of all courts, and particularly the lower courts, is the tremendous caseload compared to the facilities and personnel avialable to handle the caseload. The Crime Commission (1967) reported that in 1966, for example, the District of Columbia Court of General Session had four judges to process the preliminary stages of more than 1500 felony cases, 7300 serious misdemeanor cases, 38,000 petty offenses and an equal number or traffic cases. The situation in Chicago is hardly any better. Oaks and Lehman (1968) report:

> In 1964, the (twenty-two) courts now comprising the Circuit Court of Cook County terminated almost 1,900,000 criminal or quasi-criminal cases . . .

> the Municipal Department disposed some 204,000 misdemeanor and ordinance violation cases, over 800 per working day. In addition it handled almost 17,000 preliminary hearings, about 50 per working day.

The inevitable consequence of this volume is a total preoccupation with the movement of cases. In effect this problem creates the necessity of assembly line justice. Guilt is not determined in detailed examination of the facts in a trial, but rather in hallway administrative decisions. The Crime Commission (1967) notes:

> Partly in order to deal with volume, many courts have routinely adopted informal, invisible, administrative procedures for handling offenders. Prosecutors and magistrates dismiss cases; as many as half of those who are arrested are dismissed early in the process. Prosecutors negotiate charges with defense counsel in order to secure guilty pleas and thus avoid costly, time-consuming trials; in many courts ninety percent of all convictions result from the guilty pleas of defendants rather than from trial.

Often the decision on negotiated pleas are carried out under severe time constraints and not on the bases of systematic procedures. Negotiations are conducted privately between the prosecutor and the defendant or his counsel. As a result there is no judicial review of the process, the justice is determined by the relative bargaining abilities of the prosecutor and the defendant or his counsel. The judge usually rubber stamps the plea and the sentence recommended by the prosecution.

The most important sessions of most cases are conducted in informal, hidden places away from the glar of due process.

Skolnick (1967) suggests that the proper model of criminal justice is not the adversary or competitive model, but rather the cooperation model.

> While the adversary system contemplates an agressive defense, the 'cooperative' system alters the nature of the services that the defense attorney is capable of performing. He may often act less as an advocate than as a "coach" preparing his client to meet the behavioral and attitudinal standards of officialdom . . .
>
> Under such circumstances, adjudication does not define the adversary system, but is instead the outcome of the failure of pretrial negotion. . .

Skolnick concludes:

> Moreover, in large cities the criminal bar is small and tends, along with the Public Defenders Office . . . to constitute a closed system. Given the pressure of the system to process vast numbers of cases, cooperation and accomodation are highly valued, with the result that most cases are negotiated on the basis of informatal norms developed in response to administrative needs rather than legal principles . . .

The inherent administrative bias of Skolnick's cooperation system is immediately apparent for the "indigent". Since counsel is appointed for the "indigent" by a judge, the attorney who makes his livelihood could hardly be expecte/ to rock the boat. The number of

attorneys who do a significant amount of trial work is so small -- according to James (1967) -- fifty-five lawyers in Cleveland try 82.3% of the criminal cases. They quickly become part of the team. As a result there may be less of a desire to stand up for his client's rights in any single case, because retribution is bound to occur on the next one.

Oaks (1968) provides information in Chicago that tends to support this contention. In 1964 the Public Defenders Office attorneys had 82% of their clients plead guilty, while retained or other appointed counsel had 68% of their clients plead quilty. Even these figures may hide the true facts because retained and appointed counsel are lumped together. Most appointed counsel would probably follow the same patterns as the Public Defenders Office.

Administrative justice may even more directly prevent a defendant from receiving due process under the law. Since counsel is not appointed in the preliminary hearing defendants who plead guilty have not had the opportunity to consult an attorney. Skolnick (1969) states:

> For the many who have been inadequately advised of their right to an attorney,

> their first appearance in court is also likely to be their last. Most plead guilty without consultation, often under the implied threat of an additional stay in jail if a further hearing for a plea is required.

The defendant may also waive his rights to a jury trial if he's smart, according to James (1967):

> Just as there is a penalty for going to trial rather than pleading guilty, there is also a penalty for choosing the more expensive and time consuming trial rather than a bench trial. In one case the judge stated on the record that he would have sentenced the defendant to one year to life in the penitentiary, but because the defendant had put the state to 'the trouble of calling a jury . . . it will cost you nine years additional because the sentence is now ten to life in the penitentiary.'

Another major obstacle preventing the "indigent" from obtaining the same trial as the more affluent is the question of bail. Although bail is recognized in the law solely as a method of insuring the defendant's appearance at trial, it is clearly used for other reasons It is used to "break" crime waves, pretrial detention, or punishment. Inability to make bail clearly falls with heavy bias on the indigent. Foote (1954) shows that 68% of the defendants in Philadelphia failed to make bail at $1,000.00 while more recent studies reported in the Crime Commission (1967) showed 45% fail at $1,500.00 in New York City.

There are at least five reasons why inability to make bail is a serious difficulty:

1. the forced isolation of jail, especially where detention facilties are worse than penitentary facilities for convicted criminals.

2. detention hinders the preparation of the defense - Foote (1958) states that defendants who make bail are three times as likely to recieve probation as those who do not.

3. a defendant who is unable to work is also unable to support his family or more easily pay for his defense.

4. a defendant may lose his job.

5. the defendant cannot settle his case out of court or get it dropped.

Experiments in Chicago, New York and Washington, D. C. have shown that defendants released on recognizance have a "skip" rate as low or lower than conventional rates for those who post bail. This information coupled with the work of the Vera Institute in New York City and the District of Columbia Bail Project, indicate that the entire system of bail as it is currently practiced in most criminal courts should be completely reworked.

Opposition to "easier bail" comes from those who feel that society is endangered by all the criminals (defendants) who would be released to walk the streets. The Presidents Commission on Crime in the District of Columbia (1966) has linked the length of time a defendant

is out of jail to the probability of further crimes being allegedly committed. The person simply has fewer chances to commit crimes. Seven percent of all defendants released committed crimes within the first month of freedom. These figures indicate the solution may lie in speedy trials rather than preventive detention. Foote (1958) states:

> The fact is that we do not afford such speedy trials today, but the failure of the state to provide machinery for rapid adjudication of criminal cases hardly gives the same state clean hands in arguing for pre-trial imprisonment to mitigate against risks which it could mitigate.

The process of sentencing those found guilty creates the last major problem for defendants. There are three reasons why this poses a serious difficulty. First, statutory regulations for sentencing often appear to be full of anomalies. Frankel (1973) notes these examples from recent state statutes:

1. A Colorado statute providing a ten year maximum for stealing a dog, while another prescibes six months and a $500 fine for killing a dog.

2. In Iowa, burning an empty building could lead to as much as twenty year sentence, but burning a church or school carried a maximum of ten.

3. Breaking into a car to steal from the glove compartment could result in up to fifteen years in California, while stealing the entire car carried a maximum of ten.

The second reason why sentencing is difficult relates to the extremely long maximum sentences provided in the laws. The Crime Commission (1967) stated:

> The statutory lengths of sentences are reflected in the sentencing practices of the courts. More than one hald of the adult felony offenders sentenced to state prisons in 1960 were committed for a maximum term of five years or more. Almost one third were sentenced to terms of at least ten years. And more than one half of prisoners confined in state institutions in 1969 had been sentenced to maximum terms of at least ten years. There is a substantial question whether sentences of this length are desirable or necessary for the majority of felony offenders.

The third difficulty in sentencing lies in the enormous discretion left to judges in fixing the actual term of imprisonment. Judge Frankel notes a few example from federal law. The federal kidnapping law authorizes "imprisonment for any term of years or for life." Rape leads to "death or imprisonment for any term of years or for life." Robbing a federally insured bank "not more than 25 years." Even more common crimes such as driving a stolen car across state lines may result in a term of "not more than five years".

These statutory regulations result in sentences dominated by individual judges. Judge Frankel underscores this point by citing the experience of Prison Director James V. Bennett who states:

> Take for instance, the cases of two men we received last spring. The first man had been convicted of cashing a check for $58.40. He was out of work at the time, and when his wife became ill and he needed money for rent, food, and doctor bills, he became the victim of temptation. He had no past criminal record. The other man cashed a check for $35.20. He was also out of work and his wife had left him for another man. His prior record consisted of drunk charges and a nonsupport charge. Our examination of these two cases indicated no significant differences for sentencing purposes. But they appeared before different judges and the first man received 15 years and the second man 30 days.

This section of the appendix lays out the framework for the administration of justice. It also points out where the system in practice departs from a normative model of the system. The district attorney's office can influence the legal administration in a number of crucial points: bring initial charges, plea bargaining, bringing final charges, trying the case, and recommending sentence. The improved functioning of these areas is the ultimate goal of this thesis.