

**Summary of the Proceedings:
Findings and Discoveries of the Harvard University
Executive Session for State and Local Prosecutors
at the John F. Kennedy School of Government (1986-90)**

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I. The Origin of the Prosecutors' Executive Sessions

In 1986, several leading state and local prosecutors approached faculty at the John F. Kennedy School of Government, interested to discover whether the latest research findings could enhance their operations and strengthen their enforcement efforts. In response, the Program in Criminal Justice Policy and Management brought several elected district attorneys to Cambridge to discuss specific areas of interest, to get some sense for the current strategic issues facing prosecutors nationally, and to determine how Kennedy School faculty and staff could help. Among those who attended were the elected district attorneys of Minneapolis, Los Angeles, Detroit, Chicago, Brooklyn, Seattle, Montgomery (Alabama), Indianapolis, and Cambridge (Massachusetts), as well as several appointed prosecutors and Harvard faculty and staff.

The Program in Criminal Justice Policy and Management was pleased to consider the opportunity to engage leading prosecutors in this fashion. To do so would be consistent with the school's interest in working with practitioners to develop strategic conceptions of important public industries, and in helping public chief executives to develop purposeful strategy for their own agencies.

The school's interest in strategy was predicated on the view that having invested important "capital" such as resources and authorities in government, the public had a right to expect that its officials would see to a maximum return from its use. It was the agency executive's job to discover what expenditure would be most valuable to make. He would use strategy to realize that value, reaching the limits and possibilities of his organization in action, and policy analysis to reveal the costs and benefits of the various options and outcomes before him.

Indeed, the school's perspective on public management stressed a concern not just for the efficacy of programs, nor alone for the value being produced by institutions, but also for the important role politics played in informing the agency about what would be worth doing from the community's perspective. Politics was viewed as a vital instrument for mobilizing outside agents on behalf of problems which could not be solved within the boundaries alone of one's own organization.

As public managers, law enforcement executives, and elected officials who commanded important public resources and authorities, prosecutors were of keen interest to the school and to the Program in Criminal Justice Policy and Management. As a result of the initial meeting, the participants resolved to establish an Executive Session for State and Local Prosecutors at Harvard. The Executive Session is a consulting technology developed at the Kennedy School to provide the leaders of public professions and "industries" such as law enforcement with structured opportunities to examine and revamp current industry strategy. Working with Harvard faculty and staff, the Executive Session engages representative high-level practitioners in confidential dialogue over a period of years, supported by research papers, case studies and reports from the field on strategic issues nominated by its members. The Session makes available to industry leadership a valuable forum in which to assess its current operations and to fashion new strategy.

Since 1985, the Kennedy School's Program in Criminal Justice Policy and Management has convened executive sessions in juvenile justice and community policing. In 1986, with the support of the Smith Richardson Foundation, Harvard convened the first meeting of the Executive Session for State and Local Prosecutors. Under the leadership of Prof. Mark H. Moore, Guggenheim Professor of Criminal Justice Policy and Management at the Kennedy School, and Professor Philip Heymann of

Harvard Law School, the prosecutors' Session has since met five times. It now includes a core group of America's principal elected prosecutors, as well as civic leaders, judges, researchers, and university scholars from several Harvard faculties.

Among its initial purposes, the prosecutors' Executive Session was to explore recent crime-related policy analyses and empirical work and its office applications. Working with these practitioners, Harvard faculty and staff soon discovered, however, that prosecutors' offices confronted a broader, more troubling set of strategic issues.

It appeared, for example, that for all the public's support and funding, prosecutors were making only limited headway against neighborhood crime and disorder. As chief executives of public law offices which sometimes comprised hundreds or thousands of lawyers, prosecutors were often disturbed that so few cases occasioned significant investigations or ever came to trial, and that fewer still drew substantial sanctions. Even after hundreds of thousands of arrests, convictions and plea negotiations, the sum of their efforts and those of the police seemed to some to have left neighborhoods not much safer, the vulnerable and weak no less fearful, relationships broken by crime no more restored, and to have created few new bonds of citizenship.

As the Executive Session discovered, this plateau was especially puzzling since the possibilities for gain seemed so apparent. Prosecutors found themselves literally on the cutting edge of some of society's gravest problems. They possessed extraordinary authorities to confront them, and more power than most to devise and impose solutions. They could influence other agencies' priorities and actions, and as elected officials and law enforcement executives their views helped to shape and to gather moral force around important public issues. Their staffs comprised some of the nation's brightest, most energetic and publicly-spirited young professionals. If ever there were a recipe for making a difference, a prosecutor's office seemed to be it.

II. The Prosecutors' Challenge

Could prosecutors reposition their agencies and gain some greater and more lasting leverage over disorder and crime? Or had they, in fact, reached their limits? The evidence from the Executive Session suggested that, at the very least, rapid changes in their operating environments were already pressuring prosecutors to accommodate and adapt. The mounting press of arrest cases and workloads, the complex challenge of drugs in communities, the impairment and collapse of important mediating institutions around them such as schools and families, the falling price of crime and the declining value of arrest, and the insolvency or bankruptcy of key social service and criminal justice agencies were causing fundamental shifts in prosecutors' operating styles and strategies to develop.

During its five meetings the Executive Session has sought to distill these shifts and to recognize common and emergent themes. Among them were prosecutors' recognition of their important role in stimulating criminal justice system innovations; in providing speedy and just dispositions, and assuring the right conduct of other public officials, especially law enforcement; in controlling crime by setting its price during plea negotiations; in regulating the disordered relationships of offenders and communities; in brokering new arrangements among neighborhoods' public and private institutions; in fashioning strategic responses to crime and disorder which directed the concerted actions of several agencies; in adding service capacity to over-stressed justice systems; and in taking problem-oriented approaches to

the control of street crimes and disorder as well as complex conspiracies.

Among the most important themes to emerge, finally, was prosecutors' role in reducing the pressures of crime and disorder on key mediating institutions of neighborhoods. This included an emerging view of the strategic asset value of these local public and private institutions, and a recognition of a new set of managerial responsibilities for prosecutors to provide for their defense.

Each of these images of the prosecutor represented a different picture of what the prosecutor felt responsible for, and what kinds of action he was authorized to take. The Executive Session discovered at least six such distinct prosecutorial strategies to be current among the nation's prosecutors' offices.

III. The Varieties of Prosecutor Strategy

A. Case Processors: Pure Jurists

With respect to the vast majority of cases prosecutors have often been satisfied to move cases quickly and to treat like cases and defendants alike. Case value is determined by the strength of the evidence, the heinousness of the act itself, and the depravity or future dangerousness of the defendant. As **case processors** pursuing a nearly **pure jurists'** strategy of efficient and equitable processing, prosecutors (and judges) have, over time, come to count well-managed caseloads as constituting at least a bare-bones "job well done." Over time, the mere production of efficient and equitable outputs may come to be viewed as legitimate ends, the best that can be hoped for, rather than as the byproducts or traits of a well-run system pursuing larger social purposes such as crime control.

This is especially true where systems are overburdened, and where prosecutors and judges have few checks on their performance other than quadrennial elections or peer review. Under such circumstances, and with nearly perfect information at hand about the speed and equity of processing, less visible or as easily measured outcomes of prosecutor policy may count for little in assessing the value of a prosecutor's efforts over time. Such attenuated (but discounted) outcomes might include, for example, the impact of various prosecutorial policies on orderly school environments and the prospects for education, or on the vitality of local commerce districts, or on the safety and integrity of public housing projects.

B. Case Processors: Sanction Setters

Most prosecutors believe in the value and propriety of rehabilitation, retribution and deterrence as legitimate aims of punishment. The **sanction setter** notices that he can use his powers to achieve these purposes by, for example, setting the effective price of crime during plea negotiations in order to increase crime control. He is also led to wonder to what extent punishment is actually achieving these things, and turns increasingly to program evaluation and other outcome measures to find out.

Like the **pure jurist** case processor, the **sanction setter** is constrained by concerns for efficiency and equity in processing like cases and defendants. He adds, however, a strategic concern

for achieving particular outcomes for the defendant, victim and community, and a tactical interest in the use of sanctioning as key elements of strategy and measures of success.

Like the **pure jurist**, the **sanction setter** values cases based on estimates of case strength, crime heinousness, and defendant depravity. In addition, case value increases with the perceived prospects for achieving either general deterrence (“sending a signal” about the wrongfulness of conduct), or incapacitative effects (reducing future crime, especially by “dangerous offenders”).

In general, the **sanction setter** is constrained by two strategic factors. First, the **sanction setter’s** caseload is passively developed. It is reactive to police arrests, and the limits and possibilities of the outcomes the **sanction setter** can achieve are set by the purposes and value of police strategy and arrests. There is, for example, often little or no coordination of enforcement policies between police and prosecutors, except on marginal or “high profile” matters. The one area in which prosecutors may invite themselves to take a stronger hand in establishing police priorities and strategy is in targeting dangerous offenders. The **sanction setter’s** concern for efficient use of prosecutor resources on behalf of future safety—crime control “bang for the buck”—and for closing gaps and loopholes in the system leads prosecutors often to take leadership roles in dangerous offender initiatives.

Second, the **sanction setter** is constrained by highly imperfect information about whether his policies in fact result in general deterrence, reduced future crime, or the vindication of community norms by retribution. He is, for example, uncertain whether his sanctions do send a deterrent signal, and if so, which one and to whom; or whether his sanctions will have prevented future crimes, and if so, which ones and by whom. The **sanction setter** is therefore unable, often, to specify the marginal return to deterrence and safety that might result from changes in sentence values. He is therefore unable consistently to formulate policy which is more than a guess about the likely effects of changes in sentence values, whether upon increased deterrence or future safety.

On any given case the **sanction setter** will have better information about whether his efforts have vindicated community norms. For at the very least, political dialogue between victim, community and prosecutor may alert him before hand to what he must do, and afterwards to his failures. And there is good information available to the **sanction setter** about whether particular punishments achieve their rehabilitative purposes.

Although the **sanction setter** introduces a concern for the outcome effects of punishment, and is interested in program evaluations to establish policy, the bulk of his core data about office performance still most nearly resembles the **pure jurist’s**. This is data about office transaction volumes: what went in, what came out, what happened to it, how long it took. Although this data provides the **sanction setter** with nearly perfect information about the equity and efficiency of outputs from his processing machinery, it tells him little about his policies’ outcome effects on crime, defendants, victims and communities.

This is a source not just of some frustration for the executive. As the only good information about what is happening as a result of prosecutors’ efforts, it pressures executives to diminish their expectations about what is possible and appropriate for the office to achieve. Whereas changes in crime rates may seem only distantly related to the **sanction setter’s** efforts, for example, the speed and equity of processing feels much more under his control, and easier to count. In the absence of good and available data about crime control outcomes, the **sanction setter** may over time come to find that the

limits of his data have begun to narrow his views about the limits and possibilities of policy.

C. The Prosecutor as Problem Solver

The prosecutor as **problem solver** is concerned to control crime at its source and in its environment, and to marshal the full range of available tools in the enforcement and regulatory communities to do so. The **problem solver** notices that criminal incidents are related to each other, and to a broader social and criminogenic context. Its theory is that merely removing the instant threat—incarcerating a particular offender, for example—may do little to improve the resilience of the target, or to reduce the probability of a new threat emerging. Rather, the **problem solver** seeks, in addition to specific deterrence, to identify the structural attractions and vulnerabilities of prospective targets, and to induce changes in them to reduce the risk and cost of future victimization.

The **problem solver** is keen to use a wide range of tools. Rather than ask, as the **pure jurist** or **sanction setter** might, “What are the limits and the possibilities of the criminal law for solving these problems?” the **problem solver** asks, “How can I best apply the authorities, resources and competencies invested in me, among them those of the criminal law, to contribute valuably to solving important public problems?”

From this perspective, the **problem solver** opens the door to a much broader role for the prosecutor than the **case processor** might contemplate, either as a **pure jurist** or a **sanction setter**. The leading edge areas of the problem solving approach in prosecutors’ offices—rape, child abuse, drunk driving, for example—have been thrust upon prosecutors seeking to respond to political demands for action from people demanding law enforcement solutions. In fashioning the effective response, prosecutors have necessarily widened both the objective to be achieved, and the instrumentality to be used.

As political demands for action have increased in matters of family violence, for example, prosecutors have discovered that traditional enforcement tools such as arrest, punishment and incapacitation may be inadequate to restore, regulate and sustain orderly familial relationships—to, in effect, reconstitute the family—where the family itself has effectively vanished. Indeed, as the makeup of families in some urban areas has changed, and as the pressures of drug use and sale and the attendant subcultures of violence and intimidation have shifted extraordinary burdens onto the shoulders of very young, often single female parents—the capacity of the “family”, as such, to provide for and regulate itself over time has quite obviously declined. The volume and intensity of its dysfunctions and disorders, and the inappropriateness or inadequacy of available tools, can quickly overwhelm criminal justice systems. The sources of these disorders reveal themselves often to be too profound, and the problems let go for too long, to expect that legal threats and remedies alone will establish or return much control.

Increasingly, prosecutors have attempted to bring to bear all available qualified help to deal with these complicated problems. In some jurisdictions, for example, they have taken a leadership role in organizing the arrayed helping agencies into more effective strategic alignment on behalf of children. They have lead political initiatives to increase funding and staffing for therapeutic and treatment facilities. They have stepped in where corrections departments have defaulted and created programs to add non-incarcerative punishment capacity.

Prosecutors have themselves developed particular legal expertise in these areas, and have

embraced increasingly activist policies. They now routinely use plea negotiations, for example, to try to regulate family relationships by a variety of coercive means. By forcefully reordering the intrafamily balance of power, prosecutors hope to protect at-risk individuals in the short term and, over the longer term, to restore some of the family's lost capacity to regulate its own affairs.

And they have expanded their own purview to try to regulate disordered families even at the sources of their earliest troubles. They have gone so far in recent months, for example, as to attempt to influence the conduct of pregnant women on behalf of their fetuses.

In exposing themselves to these broad problems, prosecutors have discovered that the task of reconstituting the family as a self-governing unit frequently requires a complex balancing among the competing interests and preferences of individual family members, of the family as a unit, and of its neighbors and community. The **problem solver** inevitably develops some understanding of some of the institutional sources and consequences of disorder. It grasps, also, the impact which prosecutors' policies and decisions might have on institutional governance and functioning.

Yet it is also faced, ultimately, with having to decide which of the several outcomes available for the family and the community would be most valuable to realize. Such strategic dilemmas—dilemmas, essentially, requiring a well-formulated family policy—propel prosecutors into new and risky roles. For having advanced its technique to the point where crucial decisions of policy may be its to make, the **problem solver** may find that it lacks either the moral calculus or the political authority to discover and enforce the solution that returns the most value to the public.

Without any specific idea about what set of conditions would be valuable for problem solving to produce, for example, the **problem solver** has no special basis for deciding which among the many problems it faces would be most valuable to solve first; whether, for example, to allocate its agency's resources to prosecutions of robbery as against narcotics or jay walking. Nor does the **problem solver** have a consistent basis for resolving conflicts among solutions as they arise: to decide, for example, whether it would be more valuable to seize drugs at the border, or at a warehouse, or to permit some street-level distribution to reveal retail drug networks.

The **problem solver**, rather, represents a politically—and ethically-neutral approach to dealing with politically—and ethically-charged dilemmas. It is morally thin in this respect. It contains few, if any, ethical or political commands in itself.

The problem solving approach is, nonetheless, a prelude to a morally rich prosecutors' strategy. For to apply it requires the prosecutor to learn much more about the mechanics of crime and disorder in the world than he ordinarily might, including something of their sources and consequences, as well as the limits and possibilities of his own actions. In doing so he will discover the vast network of relationships that any criminal disorder places at risk, and the role his own agencies and others might play in fashioning various solutions to their problems.

But though it is dense with information, the problem-solving orientation contains no ethical or political commandments itself. It therefore works best when it is placed in the service of a broader strategy with a clearer normative base.

D. The Prosecutor as Strategic Investor

The prosecutor as **strategic investor** for the criminal justice system and related systems notices that the efficacy of prosecutor action (whether as **pure jurist, sanction setter, or problem solver**) may depend on adding some capacity now missing or in short supply. This added capacity may come as an innovation, or as a fill-in for a lapsed service once provided by a now-insolvent or bankrupt agency. In either event, the **strategic investor** typically finds himself in the business of expanding his organization boundaries. This may be horizontally, as in the prosecution of crimes other agencies may refuse to prosecute for a variety of reasons. Or it may be vertically, as when prosecutors establish alternative sentencing programs to add sanctioning capacity where the courts or corrections cannot or will not.

The spur to the **strategic investor** tends to be a desire to bolster the efficacy of the prosecutor's core business. By adding sanctioning capacity, for example, prosecutors reduce the inflationary pressures on the price-of-crime, and add backbone to plea negotiations.

The activities of the prosecutor as **strategic investor** constitute a major source of innovation in the criminal justice system. But it is prospectively costly, and role-expanding. It holds deep political ramifications and raises real questions of core competencies. For more so than the **problem solver**, the **strategic investor** feels authorized to venture into very new businesses as part of his problem solving.

Risky as it may be, the **strategic investor** is an explicit affirmation of the public value/public management approach to the job embraced by **problem solvers**. It continues to press the organizational boundaries of prosecutors' offices back deeper (and farther forward) into the sources and consequences of crime and system response.

E. The Prosecutor as Institution Builder

The evidence was plain to Executive Session members that recent years' increases in drug and drug-related crime had taken their toll not just on individuals, but on their families, friends and neighbors, and the institutions and neighborhoods around them. Among its many public and private impacts, for example, the crime and disorder associated with the sale and use of crack cocaine had had significant consequences for education and school environments, for the vitality of local commercial districts, and for the safety and viability of public housing. Violence, fear and disorder had disrupted normal patterns of use of neighborhood parks and playgrounds, as well as public transportation. Families whose relationships had once been rooted in norms of mutuality, nurture and support, became fractured and violent, and in some cases vanished.

The damage done by drugs pressured these institutions, making it difficult for them to maintain orderly operating environments, or to support normal patterns of use and participation. When threatened by crime they often proved vulnerable. When weakened by repeated violent crimes and disorder they proved unable either to defend or to restore themselves to normal operations, or over time, to regulate their own affairs.

What were the options for dealing with drugs and drug-related crime? The prosecutor's customary response was to triage cases based on a three-way test of seriousness: strength of the evidence, heinousness of the crime, and depravity of the defendant. But the typical street-level buy-

and-bust case against a buyer or steerer might easily fail such a test. This might be so even though the defendants were drug-involved and their participation in drug markets constituted a source of disruption and disorder for key neighborhood institutions.

These consequences suggested that prosecutors would do well to consider the long-term interests of neighborhoods in estimating case seriousness and value, as well as the immediate order requirements of institutions. For it was apparent that the quality and character of neighborhood life depended heavily on the vitality of neighborhood institutions and the many relationships they sustained. Together they comprised the critical avenues of exchange through which communities accomplished their basic social, political and economic purposes. Their norms of conduct and attached informal sanctions, whether in the schools, the family, or the churches, for example, helped to impart structure, direction and stability to communities. They were the key to regularity in community life, and to communities' ability to tolerate diversity, to sustain themselves in the face of adversity, and to regulate their own affairs.

As crime destabilized institutions, neighborhoods declined, and it became increasingly costly for individuals and communities to execute the basic work of social, economic and political life: for people to educate themselves, raise families, walk, travel and shop, provide for their health, to play, worship, or work, unimpeded by crime and disorder.

Evidence from the social and political sciences suggested strongly that under such stressful social conditions, measurable individual and group withdrawal, disengagement, and diminished planning were probable. As the possibilities for raising children into citizenship free of the pressures of crime and violence became more remote, confidence and hope for the future would diminish, and patterns of investment and participation in the social and political life of communities would decline.

Beyond the great personal tragedy of any crime, then, its most significant effect might be cumulative: over time, the weakening of social ties, increasing personal perceptions of powerlessness, reduced individual participation, and the coincident collapse of supporting institutions. The defense of such institutions seemed, then, like an especially appropriate and logical unit around which to organize every effort to restore the neighborhood's capacity for self-regulation.

The possibilities were plain. Law enforcement might, by its affirmative efforts, give crime-ravaged institutions breathing room to restore themselves, and leverage significant gains to order. Or by its default law enforcement might permit a downward spiral of disorder to go unchecked.

If the vitality of neighborhood institutions constituted the strategic "swing" vote in the future of neighborhoods, then prosecutors' job might be to help to secure them from criminal disruption and disorder. The Executive Session has considered the idea that like the family, such key mediating institutions as schools, transit systems, local commerce districts, industry work sites and others have specific, generic disorder problems which can best be addressed with an overall ordering strategy. By contrast, dealing reactively and piecemeal with incidents or cases as they arise, without any clear view of their sources, contexts, and possible solutions, with a concern only for equity and efficiency in processing, for example, may put these institutions at risk of continued disorder and instability. This is especially so if core institutional problems of crime and disorder are left untreated and grow worse, or suffer the unintended consequences of other prosecutorial actions.

The immediate tactical concern for prosecutors might then be to inventory the value and

condition of existing institutions and establish priorities and plans for their individual defense. The central strategic concern might be to take steps to forcefully regulate the criminally disordered relationships which have disrupted them, whether from within the institution or without.

Ultimately, the goal might be to secure the local political, social and economic institutions from criminal disruption, so as to leverage their full order-making potential and help restore a self-regulating civic order. This would likely require the introduction of an additional criterion of case value for prosecutors, namely, one that reflected the value of the public asset (institution) threatened or harmed by crime, and the possible return from prosecutors' action on its behalf. If very low-level disorder, for example, threatened to disrupt the operations of a school, **institution-building** prosecutors, recognizing the importance of the school to neighborhood order, would fashion a prosecutors' response and view it as an important and legitimate use of their resources, authorities and skills.

The prosecutor as **institution builder** notices that the many decisions within his power and authority may affect not just individual victims and defendants, but families, blocks, institutions and neighborhoods. The core areas of his impact are those relationships which have become criminally disordered, or which could be. He is concerned to learn how his actions—or defaults—can and do affect these relationship networks. He is concerned to minimize the unintended consequences that might result from his actions, and to purposefully and regularly create valuable ones for them instead.

The locus of the **institution builder's** efforts is the local institutions comprising the many relationships which sustain the basic work of communities. The prosecutor recognizes that it is preferable for the ordering arrangements of neighborhoods to originate from within the neighborhood rather than to be imposed from without. In searching for a standard to use to reorder them, the **institution builder** is intent on using his vast discretion to provide a cumulative effect, over time, of empowering institutions to regulate their own affairs. In the end, it is to provide the basis for a just and safe democratic civic order.

The **institution builder** expects that this order will emerge when indigenous mediating institutions such as the families, the schools, and civic and religious institutions are fully-functioning. He views his role in the community as to contribute to the vitality of these institutions by whatever means is possible and appropriate. Above all else, it is to defend these vital neighborhood assets from criminal disruption and disorder, to help strengthen them over time, and to help restore them when they have been damaged or disrupted. The ultimate test of whether law enforcement had done its job would be, then, whether people could walk, talk, worship, play, work, educate themselves, raise families, travel and so on, if in the absence of crime and disorder, they otherwise would.

The **institution builder's** role as a jurisdiction's chief law enforcement officer is to rationalize and direct criminal justice resources concertedly in a plan towards that end. His role as elected political leadership is to shape and gather moral force and license around the important public issues and policy choices he must face. As a **pure jurist** he is concerned with efficiency and horizontal equity in case processing. As a **sanction setter** he is concerned to use the price of crime to create prudent deterrence where deterrence is measurable and can help. As a **problem solver**, he is concerned to marshal all the tools at his disposal in the name of the continued vitality or restoration of local mediating institutions. As a manager he is concerned to develop information sources about the nature of the problems he faces, and the consequences, expected and actual, of his actions. As an **institution builder**, he is concerned to take a strategic view of the neighborhood order, to play the role of **strategic investor** as required, and to bring his authorities, resources and distinctive competencies to

bear explicitly in support of key mediating institutions of community and the prospect of a just and democratic civic order.

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On reflection it appears that prosecutors' strategy has failed systematically either to promote or abstain from any single deliberate strategy. This finding is unsurprising, for across bureaus and divisions, even in a single office, prosecutors' strategy may be diverse: **pure jurist** in misdemeanor cases, **sanction setting** in dangerous offender cases, **problem solving** in family violence cases, **strategic investor** in alternative sanctions matters, and perhaps (though by no means always) **institution building** in office units dedicated to schools, housing projects, or transit systems.

Certainly there is often enormous variation and diversity across bureaus with respect to concern for the institutional consequences flowing from prosecutors' discretion. The co-existence of several competing strategies in a single office may in fact mean that, one bureau to the next, an office may simultaneously take actions to advance the interests of institutions (e.g., schools), to ignore them, or to disrupt and damage them. As a result, it may be said that prosecutors' overall strategy usually fails to take full advantage of the possibilities for leveraging order from restored institutions, and in so doing fails, systematically, to help halt the downward spiral of disorder which many communities face.

IV. An Agenda for Future Research: The Questions Most Pressing for Answers

There are several areas in need of further research.

For example, it is quite clear that research must establish a viable set of performance indicators for prosecutors offices beyond today's rather limited throughput processing measures. This will require a more precise rendering of the causal chain of effects that results from the exercise or default of prosecutor's discretion.

The current state of performance measures is crude and constricting. Even **sanction setters** are generally hard pressed to ascribe to their actions any consequent changes in crime control beyond some swings in the frequency or duration of prison sentences in their cases. With such limited knowledge, particularly about the deterrent effects of sentencing, rational and fair plea policy is extremely difficult to fashion.

Clearly, more information is necessary to make punishment effective and just as a deterrent. It may be possible for urban anthropologists, for example, to convey to prosecutors with much greater precision than prosecutors now possess what sentences would be useful to seek in any given case so as to signal the wrongfulness of conduct, to vindicate community norms, and to deter future crime among various individuals and groups in the community.

The data demands for the **institution builder** are especially complex. They probably require the prosecutor to undertake systematic surveys of the target areas to identify the current state of the operating institutions there, certainly with respect to the current and expected threat and effects of crime and disorder. The nature of the problems need to be identified, and an understanding of the value of the institution to the neighborhood undertaken. A plan of action might be established which specified what

prosecutors, institutional players and others would be expected to do on the institution's behalf to strengthen it and defend it, and with what intended outcome. These plans and objectives would serve as the basis for prosecutors' efforts and measures of success in the near term.

Second, the administrative and organizational implications of the various strategies are complex and varied. In particular, the customary bureau arrangements that are built around crime speciality (e.g., sex crimes), or statutory crime seriousness (e.g., felonies), or point of processing (e.g. intake or arraignments), may serve **pure jurists'** bureaus particularly well, but only them. At the opposite extreme, it is almost impossible, one suspects, for **institution builders** to do their work if they are grouped into such specialties. The **institution builder**, rather, might be grouped around institution—family, commerce, transportation, schools, religion, and so on.

To make sense of this organization probably requires that both **problem solvers** and **institution builders** be located in the neighborhoods rather than centrally around court houses, as so many prosecutors are. The **institution builder's** requirements, especially, for information about the ebb and flow of order and the vitality of institutions in neighborhoods, about the key relationships that need to be sustained or restored, about the limits and possibilities of prosecutors efforts on their behalf, can really only be satisfied by maintaining a nearly continuous on-site presence of some kind.

The organizational and administrative implications of the various strategies need to be more closely identified, and their costs and benefits articulated.

Third, the role prosecutors might play with respect to other agencies, particularly the police, needs to be explored fully. One way to do this is to identify the current trends in policing, and ask, what implications have they for prosecutors, and what ought prosecutors to do in response?

For example, many people are now agreed that 911-policing—so called “response oriented” policing—has failed to produce the substantial gains and returns to safety once promised for it. As a strategy it is said to have reached its limits. In exploring alternatives, many feel that some version of “community policing” is to be preferred. What would be the implications of this shift for prosecutors?

It should be noted that there is at the moment considerable confusion about just what community policing is. Among its core beliefs, though, is a shift away from “response oriented” policing to “problem-oriented” policing.

At the moment, there are few limits now articulated or as a matter of policy placed on the problems which police might be expected to deal with in this mode. But in reality there are significant limits as to the kinds of problems and changes that ordinary police officers, under ordinary circumstances, could and should ordinarily be expected to deal with and effect. Police might be expected to have considerably more success, for example, in dealing with some of the sources of neighborhood vandalism than with severe family disorders.

Thus, there may be a substantial opportunity for prosecutors to add social and political value to police problem solving efforts and initiatives by, for example, participating early on in problem assessments and strategy discussions, taking a leadership role in crafting law enforcement responses to major public problems. At issue is, among other things, both the efficacy and the propriety of police actions in attempting to solve problems. For problem-oriented policing is as value neutral as problem-oriented prosecution. It may be left to prosecutors, as **institution builders**, to give problem-oriented

policing strategic direction and value.

The notion of community policing is an evolving one, and it is an ongoing conversation to which prosecutors ought to contribute. Community policing advocates have, for example, yet to identify exactly what role is most valuable for police to play in citywide efforts to defend and restore neighborhood order and safety; nor what measures other law enforcement and criminal justice agencies must take for community policing to work. Yet to be defined are either the limits or the possibilities of the police role in these broader efforts. They have yet to translate the police role into operating-level objectives that individual officers at the precinct level can understand and execute.

As prosecutors contemplate the strategic changes they themselves may wish to undertake, these are conversations in police departments they should at the very least monitor, and more likely, participate in. For at the moment, the role which prosecutors, courts or corrections must play in order for community-based policy to work is completely unspecified. If prosecutors, judges and corrections do nothing different—if they continue to process these cases as isolated events, without much knowledge of their neighborhood context, with very little punishment capacity available except for the most heinous case and predatory defendants—how much difference will it make to communities that police made the arrest during a problem-solving exercise in a community based strategy?

The opportunity is great for prosecutors to contribute. The implications of their own strategies and those contemplated in the next generation of policing need, however, to be more closely articulated and reasoned through.