TECHNICAL ASSISTANCE
IN
CAREER CRIMINAL PROGRAM PLANNING
TO THE
OFFICE OF THE PROSECUTING ATTORNEY
PORTAGE COUNTY, OHIO

TECHNICAL ASSISTANCE REPORT
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Technical Assistance Assignment No. 36

Consultants:
Thomas Vanes
Peter Giordano

December 1986
REPORT ON TECHNICAL ASSISTANCE
TO THE PORTAGE COUNTY (OHIO) PROSECUTING ATTORNEY'S OFFICE

I. Background

This report describes the technical assistance provided to the Office of the Prosecuting Attorney, Portage County, Ohio, by EMT consultants Thomas Vanes, director of the Career Criminal Unit in the Lake County (Indiana) Prosecutor's Office, and Peter Giordano, a prosecution office management consultant, on December 11-12, 1986. The primary on-site contacts for the consultant team were John Plough, Prosecuting Attorney, and Ken Bailey, his Chief Assistant.

Portage County has a population of approximately 145,000 people in a primarily rural, small town setting. However, the county's geographical position in the middle of a triangle among three urban, industrial areas -- Akron to the west, Cleveland to the northwest, and Youngstown to the east -- results in the county experiencing a substantial amount of inter-city traffic as well as offering a potential target of opportunity for individuals engaged in property crimes. Additionally, Portage County is the site of Kent State University with approximately 25,000 students, which further contributes to the amount of movement of people in and out of the area.

The Portage County Prosecutor's Office has five assistants assigned to the Criminal Division in addition to Mr. Plough and Mr. Bailey, who also carry a criminal caseload. The office files 225-250 felony cases per year.

The county employs a two-level court system for the processing of felony cases. An accused will generally make his first appearance in the court system at one of several Municipal courts located throughout the county, brought before the Court on the day, or day following, his arrest. The legal vehicle by which the arrested first appears is a police officer's Complaint, upon which the Municipal Court Judge will set bail. This initial appearance and bail determination is often conducted without the presence of any prosecutor. Five (5) to ten (10) days following, a preliminary hearing is conducted before that Court to determine whether the accused is to be bound-over on felony charges to the Court of Common Pleas located in Ravenna. In the interval between first appearance and the preliminary hearing, the investigating police agency is expected to
accumulate and inform the prosecutor of all possible evidence (local, state and/or national) of a prior criminal history of the accused.

Subsequent to the decision to bind-over a defendant, the case is scheduled for grand jury. A defendant in Ohio is generally brought to trial upon a Grand Jury Indictment. A defendant can also be formally charged by way of an Information or Affidavit, but only with the defendant's consent, and not unexpectedly, that consent is rarely given to charging by Information, as opposed to Indictment, without getting something in return. Accordingly, charging by Information is an often-utilized plea bargaining tool. More specifically, the prosecution and defendant will often agree to a relatively speedy disposition by plea to a lesser offense consensually filed by Information in lieu of a Grand Jury hearing. Mr. Plough has adopted a policy of holding regular meetings with Mr. Bailey, and other senior staff members, wherein all cases scheduled for preliminary hearings are reviewed for the purpose of determining whether a plea bargain will be offered to a defendant along the lines stated above. Since the preliminary hearings are, as stated earlier, conducted no more than 10 days after arrest, the earlier acquisition of accurate criminal history information is absolutely critical for there to be an intelligent plea bargain decision made at that point.

Assuming that no plea agreement is reached, the case is scheduled before the Grand Jury. Ohio statutes provide for some enhanced sentences for defendants with prior convictions, but the prosecution is required to include, within the Indictment, the allegation or "specification" of the prior conviction. It cannot be added later. That is, if the prosecution indicts without knowledge of a person's criminal convictions, and thus fails to include the specifications in the Indictment, the prosecution is essentially precluded from seeking enhanced sentences on the basis of subsequently discovered criminal history.

Finally, a defendant in custody must be brought to trial within 90 days of arrest, a time constraint which again emphasizes the importance of early acquisition of criminal history data and early intervention in cases designated for intensive prosecution.

Mr. Plough's office practices, with exceptions, horizontal prosecution. The least-experienced staff members practice in the Municipal courts, and are subsequently responsible for the preliminary hearings and seeing that the investigating police agencies accumulate the necessary evidence for a case, including criminal history data. Grand jury proceedings and trials are handled by Mr. Plough, Mr. Bailey, and another relatively senior staff member. There is currently a very substantial difference in experience levels
between the junior and senior staff members; whereas Mr. Plough and Mr. Bailey have 10 and 12 years of prosecutorial experience, respectively, the Municipal courts are staffed by persons just out of law school.

At the time of the technical assistance request, Portage County was scheduled to receive Block Grant funding to implement a Career Criminal Program in January 1987. On this basis, the technical assistance effort was to be directed toward developing early career criminal identification procedures, refining case selection criteria, and integrating the Career Criminal Program implementation into the overall operation of the Prosecuting Attorney’s Office and the local criminal justice system. However, upon arrival, the consultants learned that funding for the program had been delayed due to a cutback in state monies that would have provided the required matching funds for this program. Mr. Plough indicated that, despite that news, he still hoped to install in his office a modified or scaled-down Career Criminal Program that could function without the additional staff that the grant would have brought. The consultants' inquiries and recommendations were thus directed to this current intention, with the two-fold objective of helping the Prosecuting Attorney’s Office implement interim measures to address some of the problems that initially created interest in a Career Criminal Program and laying the groundwork for implementation of a funded unit at a later date.

II. Analysis and Recommendations

Mr. Plough’s current hope is to establish a scaled-down Career Criminal Program, designating his Chief Assistant, Mr. Bailey, as the Career Criminal prosecutor. Since this designation would be in addition to, and not in lieu of, his responsibilities as the Chief Assistant, the consultants first sought to learn how many Career Criminal cases, involving more intensive prosecution with a more stringent plea-bargaining posture, Mr. Bailey reasonably could handle in a “part-time” capacity. After assessing the extent of his administrative responsibilities and responsibilities for handling routine cases, Ken Bailey calculated a maximum Career Criminal caseload for himself of ten (10) cases per year.

The next issue addressed was that of selection criteria for a modified program. At the time of their technical assistance request, Mr. Plough and Mr. Bailey had no specific selection criteria in mind for their prospective grant-funded Career Criminal Program other than a general intention or hope to formulate criteria modeled after disposition guidelines used by the Wayne County, Michigan, Repeat Offender-based point system.
Mr. Plough and Mr. Bailey hoped to apply these guidelines across-the-board to all felony prosecutions without concentration on any designated target offenses. They were anticipating requiring the investigating police officers to complete the point system calculations and thus notify the prosecutor's office of a potential Career Criminal case.

It became apparent to the consultants that it would be difficult to project, with any degree of accuracy, the caseload such criteria would generate, which was an obvious drawback in a situation where only a limited-scope program could be implemented. The consultants then made two inquiries of Mr. Plough and Mr. Bailey:

(1) Was there a specific crime problem in their jurisdiction that they felt needed attention?

(2) What did they hope to accomplish by implementation of a Career Criminal Program?

In response to the first inquiry, it became clear that while no single area of crime was an overwhelming problem in their jurisdiction, there was a perception that burglaries, particularly aggravated burglaries (burglaries involving homes, guns, or injury) were not being treated seriously enough by law enforcement agencies or the courts, a perception they felt was shared by the public in the county. A relative inattention to burglaries resulted, they felt, in inadequate police investigation, low bail settings and inadequate sentencing.

In answer to the second inquiry, Mr. Plough stated that he felt that repeat and/or prolific felony offenders were, on occasion, "slipping through the cracks in the system". It was his belief that repeat offenders were not getting the attention that they deserved for the following reasons:

(1) Police officers who were required to provide the prosecutor's office with the criminal history data were not doing so in a uniform and timely fashion.

(2) Due to the inexperience of his staff members at the lowest levels of the horizontal prosecution system, those police officers were not being forced to do their required work, nor could those junior staff members spot repeat and/or prolific offenders early in the procedural stages.
As a result of the above, criminal history information was, on occasions, not available at the time dispositions were made or grand jury indictments returned to the detriment of the prosecution. Simply stated, repeat offenders were not being routinely identified.

A. Selection Criteria

Based on the information gathered, the consultants recommended the adoption of selection criteria which included a "target offender" component. They strongly urged that the Prosecuting Attorney limit career criminal prosecutions to aggravated burglaries where the defendant had a prior conviction, in view of the drawbacks of the offender-based model they were initially contemplating. In addition to the unpredictable caseload that model would have generated, it relied too heavily on acquisition of criminal history data by the police on every felony prosecution. This was the very problem that currently existed and to expect the police to comply with such a complicated system seemed overly optimistic.

Since Mr. Plough and Mr. Bailey felt that more serious, violent felonies (robbery, sexual, assault, murder) are receiving sufficient attention in the county, targeting property crimes such as aggravated burglary and burglary, particularly if there is evidence of drug involvement on the part of the defendant, would address their local crime problem and also fit into the overall Career Criminal Program philosophy of directing prosecutorial resources into areas where they are likely to produce conviction and sentencing improvements. To that end, the consultants arrived at tentative selection criteria of a target crime of burglary or aggravated burglary, with particular emphasis on defendants under thirty years of age where there is some indication of involvement in drug trafficking. The criminal history criteria would be as follows:

- one previous felony conviction, or
- one pending felony case, or
- two previous serious felony arrests where the disposition was either unknown or based on factors other than the factual merit of the case.

The consultants also made some further recommendations they felt would contribute to program success and improve funding possibilities. These are listed below:
o Delineation of early identification procedures for potential career criminal defendants.

o Procurement of a NCIC computer terminal linkup to permit faster, more accurate record checks.

o Further enlistment and documentation of the support and cooperation of the various police agencies in the county in identifying and developing career criminal cases.

There are several distinct advantages in the adoption of the recommended criteria:

(1) Simplicity of organization and identification. The police, upon the arrest of a person for aggravated burglary, will know immediately that the case is a potential Career Criminal case and on this limited scale may be persuaded to do the necessary criminal history checking.

(2) Preliminary projections indicated that such criteria would generate about 8 to 10 cases per annum which, as stated earlier, is about all that could be handled.

(3) Given the current relative inattention to aggravated burglaries, designating such crimes as target offenses would allow the program to operate in an area where it could achieve a demonstrable effect. The ability to demonstrate an impact would be important should it become necessary for this office to reapply for a career criminal grant.

B. Administrative Recommendations

In light of the uncertainty surrounding the outside funding of a career criminal unit in Portage County, the adoption of some interim administrative measures would be helpful in addressing some of the concerns which led John Plough and Ken Bailey to become interested in a program initially. Specifically, since local interest in a program was motivated more by the perception that active criminals were "slipping through the cracks" and not receiving the attention their criminal backgrounds would warrant, rather than concern over any specific local crime problem, the consultants recommended several relatively small adjustments in case processing to try to avoid the situation where decisions were being made at the preliminary hearing stage without knowledge of the defendant's background. These recommendations include:
- Assigning a municipal court deputy to monitor the incoming cases in court each morning and notify Ken Bailey of any cases deserving greater attention.

- Rescheduling preliminary hearing conferences to allow adequate review of the defendant's background prior to making a prosecutorial decision on how to proceed with the case.

- Meeting with police officials to further enlist their cooperation in obtaining criminal histories on defendants prior to filing the case.

The institution of the above-listed measures would help identify defendants whose criminal histories warrant greater prosecutorial attention, although the instant offense may not be for a particularly violent or serious crime. It is suggested that these measures be implemented immediately, without consideration of the funding possibilities.
WAYNE COUNTY, MICHIGAN, PROSECUTOR'S OFFICE

DEFENDANT CLASSIFICATION

_______ Class I - 55 or more points.

_______ Class II - Prior felony convictions, misdemeanor conviction that was a felony reduced or prior charges (misdemeanor or felony) which indicates significant criminal activity.

_______ Class III - Charge of a low-grade felony (forgery, uttering checks, larceny, assault, embezzlement) and the facts are not aggravated as to injury, amount or circumstances and the defendant has no record as would move him into Class II.

_______ Class IV - Qualifies for deferred prosecution utilizing written standards.

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<th>Variable</th>
<th>Points</th>
<th>Variable</th>
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<td>Heavy Alcohol Use</td>
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<td>Crimes of Violence</td>
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<td>Prior Drug Offense</td>
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<td>Crimes Against Property</td>
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<td>Sale of Drugs</td>
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<td>Police indications</td>
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<td>Other Offenses</td>
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<td>Age at Instant Arrest</td>
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<td>Longest Time Served, Single Term</td>
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<td>1-5 months</td>
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<td>23-27</td>
<td>+ 14</td>
<td>6-12</td>
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<td>- 14</td>
<td>49 +</td>
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<td>Length of Criminal Career</td>
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<td>16-20</td>
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<tr>
<td>21 +</td>
<td>4</td>
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<td>TOTAL Minimum</td>
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DISPOSITION GUIDELINES

Class I - Conviction of top count(s) and bringing to the attention of the Court all particulars of the defendant's record and requesting a maximum sentence.

Class II - A felony disposition and conviction of multiple charges.

Class III - May be reduced to a misdemeanor but not mandatory.

Class IV - May be deferred if the ends of justice can be met and the defendant requests deferred prosecution. The original charge should remain as a felony and is not to be reduced to a misdemeanor for deferred prosecution even through the defendant might otherwise qualify as a Class III defendant to have the felony reduced on a misdemeanor plea.