PROSECUTORIAL DISCRETION: THE EFFECTS OF UNCERTAINTY

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In this paper the author analyzes the exercise of prosecutorial discretion to "go forward" with charges. The author examines the relationship between sources of uncertainty in decision making and the initial decision to begin the criminalization process. Organizational theory bearing on uncertainty avoidance provides the perspective guiding the analysis. The author uses a maximum likelihood procedure to estimate the net effects on the probability of prosecution of a set of variables measuring uncertainty emerging within the backdrop of prosecutorial concern for obtaining a conviction at a jury trial.

I. INTRODUCTION

In the past decade the behavior of agents of social control has increasingly become the object of empirical study. In large measure this research has focused on four decisions: the decision to arrest, the pretrial release decision, the decision to enter a guilty plea, and the decision on sentence severity. There has been relatively little attention to understanding the variables that influence the *initial* decision to prosecute. The exercise of this prosecutorial discretion remains invisible. It is this frequently overlooked initial decision to "paper" or "go forward"[1] with charges that is the object of my analysis. I shall propose and test a theory of the exercise of prosecutorial discretion.

A. Prosecutorial Discretion

The present role of the American prosecutor is the product of a complex combination of three cultural influences: the French, the English, and the Dutch (Grosman, 1969; McDonald, 1979; Kress, 1976; Jacoby, 1980). Prior historical analyses

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[1] In the Superior Court of Washington, D.C., the terms to "paper" or "go forward" with charges refers to the decision to prosecute.

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(Jacoby, 1980; McDonald, 1979; LaFave, 1970) indicate the American prosecutor enjoys independence and discretionary privilege unmatched in the world.

Contributing to the breadth of American prosecutorial power are a number of court cases that began in 1883 and continue to the present.[2] As a result of these cases, the modern U.S. prosecuting attorney exercises unfettered discretion in three crucial areas of decision making: (1) the circumstances under which a criminal charge will be filed; (2) the level at which an alleged offender will be charged; and (3) when to discontinue prosecution. Because each of these aspects of prosecutorial discretion is beyond review, the prosecuting attorney has a central role in law enforcement that is free of accountability.

II. PRIOR RESEARCH

Research in the last decade and a half has examined the following theoretical concerns: the prosecutor's use of legal and social criteria in deciding to charge (Blumberg, 1967; Eisenstein and Jacob, 1977; Mather, 1979; Miller, 1969; Neubauer, 1974), the impact of victim characteristics on prosecutorial decision making (Cannavale and Falcon, 1976; Hall, 1975; Myers and Hagan, 1979; Stanko, 1977, 1981; Williams, 1976), the impact of defendant characteristics on the decision to file charges (Mather, 1973; Neubauer, 1974; Littrell, 1979; Swigert and Farrell, 1976), the effect of the defendant-victim relationship on the decision to prosecute (Stanko, 1982; Miller, 1969; Newman, 1966) and the existence of stereotypical notions of the

[2] Jacoby (1980) cites a number of court cases that tell much of the history of the emergence of the discretionary power enjoyed by the American prosecuting attorney. In *People* v. *Wabash, St. Louis and Pacific Railway* 12 Ill. App. 263 (1882) the Illinois Court of Appeals stated that the attorney "is charged by law with large discretion in prosecuting offenders against the law. He may commence public prosecution in his capacity by information and he may discontinue them when, in his judgment the ends of justice are satisfied." In *Wilson* v. *County of Marshall* 257 Ill. App. 220 (1930), the prosecuting attorney was given "absolute control of the criminal prosecution." In *People* v. *Berlin* 361 N.Y.S.2d 114 (1974) and *People* v. *Adams* 117 Cal. Rptr. 905 (1974), it was declared that the state courts do not possess the power to compel the prosecuting attorney to enforce the penal code.

Several more cases deserve mentioning. In *State ex rel. Kurkierewicz v. Cannon* 42 Wis. 2d 368, 378, 166 N.W.2d 255, 260 (1969), the prosecutor's right to determine which crimes will be investigated and under what circumstances the prosecution will "go forward" was upheld. In *Wilson* v. *State of Oklahoma* 209 P.2d 512, 514 (1949), the court refused to interfere with a prosecutor's right to press charges less than the evidence indicated. At the federal level, the following cases consistently ruled in support of the prosecutor's unlimited discretionary judgment: *Howell* v. *Brown* 85 F. Supp. 537 (D. Neb. 1949), *Pugach* v. *Klein* 193 F. Supp. 630 (S.D.N.Y. 1961), and *Milliken* v. *Stone* 7 F.2d 397 (S.D.N.Y. 1925).

"prosecutability" of a case (Sudnow, 1965; Swigert and Farrell, 1976).

Findings indicate that the seriousness of the crime and the evidentiary strength of the case exert a substantial effect on the prosecutor's decision (Blumberg, 1967; Eisenstein and Jacob, 1977; Mather, 1979; Miller, 1969, Neubauer, 1974). If the defendant has a criminal record the chances the prosecutor will file charges increase (Mather, 1979; Neubauer, 1974; Swigert and Farrell, 1976). Myers and Hagan (1979) found that the problems of older, white, male, and employed victims are more frequently pursued by the prosecutor. Littrell (1979) and Stanko (1981; 1982) found empirical support for the positive effect of victim credibility on the prosecutorial strategies at screening.

Except for Myers and Hagan (1979) and Stanko (1981; 1982), in large measure the above research has been exploratory and has relied on a small sample of case histories. However useful this approach has been in developing and outlining the direction of future research, the variables routinely affecting prosecutorial decision making have yet to be rigorously explored. The small sample characteristically does not lend itself to an exploration of typicality. Moreover, the research has frequently not examined the net relationship between stated variables. Finally, the studies have often failed to couch their findings within a meaningful theoretical framework.

III. PRESENT RESEARCH

The research I report here examines the factors that influence the government's decision to prosecute. Theories focusing on decision making within an organizational context offer a fruitful perspective into the strategies of prosecutorial decision making.

A. The Theoretical Perspective

Among organizational theorists rational choice models are a point of departure for the development of models of decision making. To qualify as being fully rational, a decision must be made with the knowledge of all possible alternatives. In actuality decision makers are usually aware of only a small amount of all possible alternatives. According to Simon (1957: 102–103) these limits to decision-making rationality are overcome through organizational arrangements such as the type of division of labor, the establishment of standard operating procedures, a hierarchy of authority, formal channels of communica-

tion, professional training, and, finally, indoctrination. Because these structures absorb uncertainty, "bounded rationality" (March and Simon, 1958: 169) is achieved. What emerges is a decision-making strategy based on routine choices and predicated on the assumption that situations worked out in the past will produce future results. The central assertion of this perspective is that problems are solved on the basis of the limited search for satisfactory rather than optimal solutions (March and Simon, 1958).

March and Simon (ibid., p. 102–103) refer to pattern responses to stimuli as "satisficing" administrative behavior. In the criminal justice system such pattern behavior involves search processes dealing with decreasing the sources of uncertainty in case processing, rules such as due process requirements, and "general routinized stock responses" to a set of stimuli posed by each felony case.

To the above theoretical concerns, Thompson (1967: 134) adds two major dimensions of decision issues. He suggests that decision making within discretionary situations must be cognizant of (1) beliefs about cause and effect relations, and (2) preferences regarding possible outcomes. Each is characterized by uncertainty.

Regarding the first dimension, constraints on specifying the cause and effect relations underlying technical operations in the criminal justice system (i.e., case processing) exist owing to either incomplete knowledge of the most appropriate techniques for transforming the raw material of a charge into conviction or the decision maker's inability to control the transformation process itself. The latter situation is particularly relevant to decisions involving dynamic objects such as human beings (ibid., p. 135). A decision maker's inability to control other's behavior unilaterally impedes predictability. Thompson's examples of the uncertainty in this dimension are educational and therapeutic programs in which successful outcome is dependent on the student's or patient's motivation to participate in the transformation, a factor usually beyond the teacher's or counselor's control.

Uncertainty surrounding the early decision to criminalize the behavior in question shares common characteristics with that of the above people-processing activities. Other similarities are in the number of principal participants involved in the process. In educational and therapeutic programs successful outcomes typically involve individuals, such as parents and peers, who are outside the student-teacher or patient-counselor dyad. Similarly, at the initial decision to prosecute uncertainty arises

from the inability to control the behavior of the defendant, the defense attorney, and the jury.

The second dimension of decision making—defining preferences for possible outcomes—provides a crucial context for identifying sources of uncertainty within the organization of prosecution. There is little ambiguity within the prosecutor's office regarding the criteria of successful movement within the profession and the hierarchically arranged office. Prosecutorial success, which is defined in terms of achieving a favorable ratio of convictions to acquittals, is crucial to a prosecutor's prestige, upward mobility within the office, and entrance into the political arena. Because 80 percent to 90 percent of felony convictions are the product of a guilty plea, it is important to note that success relies on the more rigorous criterion of obtaining a trial conviction, which reflects a concern for sources of uncertainty that uniquely characterize trial dispositions.[3] If prosecutorial merit is assessed on the basis of proving guilt at a trial, the less rigorous evaluation in terms of a guilty plea is also met. I hypothesize that case information indicating increased uncertainty in obtaining a conviction at trial will decrease the probability of prosecution.

The decision to "go forward" with police charges is made within a social-definitional context emerging from uncertainty along the two dimensions Thompson suggests. My research focuses on the social-definitional organization of prosecution by estimating the net effects of a set of case information variables related to uncertainty arising out of the two dimensions of decision making.

Drawing from the work of Thompson (1967), March and Simon (1958), and Cyert and March (1963), I suggest that prosecuting attorneys attempt to remove uncertainty from the initial decision to prosecute. Underlying decision making is an internal logic that attempts to achieve rationality—a bounded rationality (March and Simon, 1958; Thompson, 1967). Concerns for avoiding uncertainty drive the exercise of discretion throughout the criminal justice system, including the decision to prosecute. Furthermore, the internal logic of avoiding uncertainty is dictated by concerns for achievement and maintenance of professional good standing within the social organization of the prosecuting attorney's office. Each actor participates in "satisficing" (March and Simon, 1958) behavior in deciding

[3] I interviewed the prosecuting attorneys responsible for the screening decisions in this analysis. During these interviews the attorneys cited the operational criterion of obtaining a jury trial conviction.

outcomes at each stage of adjudication. Each attempts to absorb or place boundaries on their area of decision making to decrease the levels of uncertainty in achieving a successful outcome. I suggest that prosecutorial discretion offers a way out of potentially frustrating and perplexing structural situations in which sources of uncertainty in case processing pose obstacles to risk-free outcomes. Discretion provides the opportunity for "satisficing" decision making. Exercising discretion provides the decision maker with a source of immediate control over the elements of uncertainty and, as such, gives the decision maker influence over later stages of processing.

I adopt a theoretical perspective that emphasizes the effects uncertainty exerts in the criminalization process. My research seeks to (1) identify the sources of uncertainty in the decision to prosecute, and (2) estimate the net effects of uncertainty on decision outcome. This research contributes to an understanding of prosecutorial discretion by providing an understanding of the organization of prosecution, namely, the role evidence plays in case adjudication and the prosecutor's associated concern for managing uncertainty. Earlier research has typically overlooked the role evidence plays at each stage of decision making. Moreover, previous studies were content to estimate coefficients of interest without specification of the effect of evidence. I shall attempt to uncover the meaning of uncertainty within the context of the social construction of crime and the application of the official criminal label from a past event that is, by its very nature, characterized by historical ambiguity (Littrell, 1979). Before presenting the analysis and findings it is appropriate to describe the research site briefly.

B. The Research Site

The Office of the United States Attorney for the District of Columbia is organized into four divisions: the Civil Division, the Criminal Division, the Superior Court Division, and the Family Division. My research focused on the Grand Jury Intake Section within the Superior Court Division. This section is responsible for case processing and pretrial preparation of felonies and misdemeanors. In felony cases, the section is responsible for "papering," initial presentment, preliminary hearing, grand jury presentment, and preparation of indictments. In 1974 new assistant United States attorneys (AUSAs) were assigned to this section to work under the direct supervision of an experienced AUSA. After a time in the Intake Section, an

AUSA moves into the Misdemeanor Section and then the Felony Section.

The screening prosecutors are responsible for reviewing the information submitted by the police; evaluating the charges, the evidence, and the situation to assess whether the charges should be filed; interviewing the arresting police officer, any witnesses, or victims and defendants (this is done very infrequently); preparing a case jacket indicating the facts of the case; and submitting recommendations for a preliminary hearing date. In the District of Columbia, an arrest is made by warrant granted on the basis of sworn facts. Consequently, the prosecutor has the responsibility of "establishing probable cause to believe that a person committed the offense" (D.C. Code tit. 23, § 56a (Criminal Practice Institute Trial Manual 1982)). The reviewing assistant examines the adequacy and appropriateness of all warrants. Taken together, the Intake Section prosecutors are responsible for deciding the prosecutorial merit of the police charges. Decision making at this initial screening stage is the object of the present analysis, and will provide a context within which to analyze the scope of prosecutorial decision making and to identify potential sources of uncertainty with the process.

C. *Empirical Specification*

For my empirical models, I rely on data on 6,014 felony cases processed in the Superior Court of Washington, D.C., during 1974. The data were generated by the United States Attorney's Office.[4] My investigation focuses on the influence of uncertainty on the government decisions to prosecute. I will also focus on relationships examined previously with a reliance solely on field observation. These relationships deal with the net effect on the probability of offense-related variables, the evidentiary strength of the case, and the defendant-victim relationship. As I noted earlier, there is a substantial body of field research that provides explanatory assertions of the determinants government decisions to prosecute. However, this research has not, with few exceptions, provided empirical specification of the net effect of such variables. My examination of both the direction and magnitude of the estimates is guided by

[4] The data are the Prosecutor's Management and Information System (PROMIS) for 1974. It was discovered that data were missing for the dependent variable, the decision to prosecute. Using a matching scheme based on six variables, I obtained case identification numbers that allowed retrieval of the missing data using court records.

Table 1. List and Frequency of Offenses in Crime Categories

Harm to Property	Harm to Person: No Harm		Harm to Person: Potential Harm		Harm to Person: Real Harm	
No Harm	Possession of narcotics	43	Federal firearms	1	Assault with a deadly weapon	1,089
	Gambling and lottery promotion	136	Bribery	6	Assault with intent to do bodily harm	97
	Pandering	6	Carrying a deadly weapon	140	Assault of a police officer	160
	Procuring	6			Rape	197
					Sodomy	30
					Murder 1	52
					Murder 2	48
					Indecent act	30
					Kidnapping	40
					Manslaughter	107
	(N = 191)		(N = 147)		(N = 1,850)	
Potential Harm	Burglary 2	782	Burglary 1	125		
			Extortion	5		
			Conspiracy	2		
			Attempted robbery	61		
			Obstruction of justice	12		
	(N = 782)		(N = 205)			
Real Harm	Uttering/forgery	255	Robbery	1,470		
	Destruction of District of Columbia property	47	Armed robbery	48		
	Grand larceny	321	Arson	36		
	Embezzlement	30				
	Receipt of stolen goods	140				
	Unauthorized use of motor vehicle	473				
	Unlawful entry of vending machines	19				
	(N = 1,285)		(N = 1,554)			

earlier research as well as organizational theories of uncertainty in decision making.

The dependent variable in the analysis is a dichotomy (Y), taking the value of 1 if the AUSA decides to prosecute and 0 if otherwise (see Table 1). The multivariate analysis involves a single-equation probit model predicting the decision to prosecute. Under the model, the probability of the AUSA prosecuting a felony charge is a nonlinear function of a linear combination of exogenous variables. Estimates are generated by maximum likelihood procedure.

1. Exculpatory Evidence (EVID). The existence of exculpatory evidence is thought by prosecuting attorneys to provide a means for the screening AUSA to judge the accuracy and appropriateness of the police decision to arrest. An essential part of the prosecutorial responsibility is to assess whether a crime indeed occurred and whether the suspect is criminally linked to

the incident. Given the historical ambiguity (Littrell, 1979) associated with the prosecutorial decision, the presence of exculpatory evidence challenges the appropriateness of linking the suspect and the offense and provides information that decreases uncertainty and thus may decrease the probability that the screening AUSA will charge the suspect with the crime. This type of evidence challenges the correctness of the police decision to arrest. I include this variable since it represents a legal criterion for handling historical ambiguity.

2. Corroborative Evidence (CORR). Recent research (Miller, 1969; Mather, 1979) has asserted a strong relationship between the strength of a case and the government's decision to charge. The availability of corroborative evidence should increase the probability of prosecution. This variable thus represents a second source of legally relevant information that reduces the ambiguity surrounding the prosecutor's decision to charge.

3. Physical Evidence (PHED). Again, the possession of physical evidence, like the above two types of evidence, is routinely used to assess the prosecutorial merits of "going forward" with charging. Of the three forms of evidence, physical evidence provides the strongest case, especially if it reaches trial. It significantly reduces prosecutorial uncertainty about the chances for successful prosecution. Physical evidence also increases the screening AUSA's confidence that a crime indeed occurred and that the suspect is connected with the incident because it is an indisputable argument upon which to convince a jury of the defendant's guilt.

As noted, each of the above three types of evidence indicate to an AUSA the strength of a case and thereby its prosecutorial merit. However, my research suggests that the AUSA does not rely solely on the presence of evidence in deciding to prosecute a felony charge.

4. Number of Witnesses (NWIT). The number of witnesses plays a substantial role in the screening decision, although this variable does not solely represent a legal indicator of factual guilt. Rather, I argue, the importance of witnesses to the decision to prosecute lies in the uncertainty inherent in witness management. Witnesses and victims must be credible to a jury. The uncertainty surrounding their credibility emerges most significantly when the victim is the only witness. The prosecutor needs to produce witnesses who are knowledgeable about the

crime, who can present themselves as credible to a jury, and who can withstand attacks by the defense. Littrell (1979) asserts that when there is only one witness or when the victim is the witness, the strength of the prosecutor's case depends heavily on the witness's ability to perform in the above respects at a public trial. Therefore, I hypothesize that when more than one witness is available the probability of prosecution increases. Prosecutorial uncertainty of obtaining a conviction if a case goes to trial is increased by reliance on a single witness. In the organization of prosecutorial strategies, witness management thus assumes dimensions unrelated to the demand to assess factual guilt. I suggest that case information that has become associated with routine assessment of the likelihood of a trial conviction is particularly relevant to prosecutorial strategies. A prosecuting attorney simply does not want to jeopardize a good conviction ratio by failing to screen cases that decrease the probability of transforming a felony charge into a felony conviction.

5. Defendant-Victim Relationship (RELV). Interviews with AUSAs practicing in the District of Columbia's Superior Court in 1974 indicated that the defendant-victim relationship is an offense-related source of uncertainty in two ways. First, the involvement of nonstrangers in "bad acts" (Littrell, 1979: 43) threatens the unambiguous confirmation that a crime has actually occurred. This threat is particularly salient to assault charges in which the defendant and victim are friends who may have settled a temporary difference violently. Second, in nonstranger offenses there is the risk that the victim may not cooperate in prosecution once ill feelings have cooled. For my analysis, the defendant-victim relationship is trichotomized into the following categories: defendant and victim are strangers, defendant and victim are acquaintances, and defendant and victim are intimates. I estimated the contrasts of defendant-victim intimates versus defendant-victim acquaintances and defendant-victim strangers versus defendant-victim acquaintances. My hypothesis is that in cases involving strangers there is less uncertainty surrounding witness management and thus "bad acts" are more likely to be transformed into criminal acts. In addition, I hypothesize that "bad acts" between acquaintances compared to "bad acts" between intimates have a greater probability of prosecution. Further, decreased levels of intimacy in the defendant-victim relationship should increase the chance of prosecution, with the contrast represented in RELV (3) exerting more influence on the dependent variable than

RELV (2). Those who have suffered an offense from a stranger are more likely to define themselves as victims and therefore more likely to cooperate with prosecution. Perhaps the government's hypothesized unwillingness to criminalize a "bad act" between nonstrangers indicates the existence of policies consistent with victim attitudes. However, given the documented lack of victim influence in prosecuted cases, it is at least plausible that the decision not to "go forward" is founded in the AUSA's understanding of the factors that affect the likelihood of successful prosecution.

6. Defendant Arrested at the Scene (DEFAR). This variable is another indicator of uncertainty in case processing. In those cases in which the defendant has been arrested at the scene of the incident, there should be a decrease in the uncertainty in the prosecutor's ability to link the suspect with the crime successfully and thus an increase in probability that the AUSA will prosecute.

7. Gender. The defendant's gender is a control variable in analyzing the net effects of indicators of uncertainty. Parameter estimates show the effect of being female compared to being male on the dependent variable.

8. Race. A second extralegal variable estimated in the model is the defendant's race. Again, this variable primarily allows an investigation of the net effect of uncertainty variables by controlling for race. The estimated coefficient gives the standard deviation effect on the dependent variable of membership in a minority race compared to being white.

9. Prior Record of Felony Convictions (RECORD). I include this variable in light of earlier findings (Mather, 1979; Neubauer, 1974; Swigert and Farrell, 1976) that felony charges against a defendant with a history of prior felony convictions are more likely to result in prosecution. Packer (1968) argues that a crime control model of the criminal justice system assumes that even if the defendant is innocent of the current charges he or she is probably guilty of something else and therefore charges should be filed. A defendant with a prior record represents potentially serious and long-term harm to society. Therefore, I hypothesize that charges against such a defendant will increase the probability of "papering" the case.

10. Offense Type (CRIME). I treat information on offense type as a seven-category variable, each reflecting a cross-classi-

fication of the level of harm (none, potential, real) with the object of harm (person, property). The offense categories are contrasted with the reference category—no harm to person, no harm to property. This category includes so-called victimless crimes such as procuring, gambling, and possession of drugs. The scheme represents one way of operationalizing the social nature of crime (Schur, 1965). The object of harm as measured in the proposed typology allows an examination of a relationship between the social dimensions of crime and the decision to prosecute. The dimension of object of harm (person, object, none) is a measure of the immediacy of harm. Here immediacy is a continuum indicating direct contact between the victim and defendant. A crime that involves an immediate harm is one in which there is no space between the perpetrator and the object of the harm. For example, when harm, either real or potential, is directed toward an individual (Burglary 1, Murder, Robbery), the harm is immediate to the victim.

On the other hand, the real harm to property/potential harm to person situation presents a direct harm to property but also an indirect, less immediate harm to the property owner. An assault to the property of an individual represents a symbolic assault on the owner. Therefore, crimes involving either potential or real harm to an object represents a social harm of less immediacy. I hypothesize that an offense involving an immediate harm to an individual will have a greater probability of prosecution than will a victimless crime. Therefore, crimes with no harm to property/real harm to person are more likely to result in prosecution than crimes with real harm to property/potential harm to person. Although this seven-category scheme does not rank crimes by seriousness, it does nominally attempt to characterize the social nature of crime.

11. Use of a Weapon (WEAP). Another dimension of perceived seriousness of a defendant is thought to be the use of a weapon in committing an offense. I hypothesize that the net effect of such weapon use increases the probability of prosecution. In my analysis, this variable is treated as a control variable.

12. Type of Victim (VICI). This variable is scored 1 if the victim is an individual and 2 if the victim is a corporation, institution, or other collectivity. This distinction allows an examination of whether the government is more likely to prosecute offenses against organizations or individuals. There is less uncertainty of victim management when the victim is a collectiv-

ity. Organizations, compared to the typical individual victim, have a broader base of resources to use to protect their interests. Hagan (1982) suggests an "elective affinity" between corporate victims and the criminal justice system. He finds that corporate victims exert a greater influence than individuals in obtaining a conviction. Of interest to this research on uncertainty is Hagan's assertion that the impersonal nature of the relationship between corporate victims and their offenders, makes corporations more likely to cooperate with agents of the court, thereby affecting case processing to their advantage. Cases involving organized victims simply represent less risk to the prosecuting attorney. Therefore, I hypothesize that organizations will be viewed by the screening prosecutor as reliable victims who can be expected to continue their support for prosecution. Loss of victim interest would threaten the certainty of success and therefore be a salient factor in deciding to prosecute.

13. Victim Provocation (VICP). The stereotype of a credible victim-witness involves the extent to which the victim provoked the crime. I hypothesize that prosecutors expect victim provocation to reduce the certainty of a successful prosecution. Provocation should therefore decrease the probability of prosecution. There is some support for this hypothesis in the stereotype of the "good victim" (Stanko, 1981; 1982).

14. Statutory Severity (STATSEV). Research has indicated a strong relationship between offense severity and the likelihood of prosecution (Blumberg, 1967; Eisenstein and Jacob, 1977; Mather, 1979; Miller, 1969; Neubauer, 1974). This variable is included in the analysis as a control variable allowing an assessment of the effects of uncertainty net of statutory severity.

IV. FINDINGS

Tables 2–4 report the empirical findings of the single-equation model of the decision to prosecute.

Table 2 shows that there is a sizable number of missing cases for some independent variables. The critical question is whether deletion of these cases would produce substantially different coefficients than if estimated "dummy" variables were included for the missing data. To answer this question two probit models are estimated. One model (Table 3) excludes the missing data in the estimation procedure; a second model (Table 4) includes a "dummy" variable for each independent variable with missing data. Cohen and Cohen (1975: 268) note that

Table 2. Variables in the Model of the Decision to Prosecute*

Variables	Code		Frequency
Independent			
Exculpatory evidence (EVID)	(1)	No	4,927
	(2)	Yes	497
	(3)	Missing	590
Corroborative evidence (CORR)	(1)	No	1,831
	(2)	Yes	3,615
	(3)	Missing	560
Physical evidence (PHED)	(1)	No	2,881
	(2)	Yes	3,133
Number of witnesses (NWIT)	(1)	More than one	4,410
	(2)	One or less	1,604
Defendent-victim relationship (REVL)	(1)	Acquaintance	1,407
	(2)	Intimates	286
	(3)	Strangers	2,534
	(4)	Missing	1,787
Defendant arrested at scene (DEFAR)	(1)	No	2,069
	(2)	Yes	3,471
	(3)	Missing	474
Gender (GENDER)	(1)	Male	5,408
	(2)	Female	606
Race (RACE)	(1)	White	358
	(2)	Minority	5,656
Prior record of conviction (RECORD)	(1)	No	2,738
	(2)	Yes	3,276
Offense type (CRIME)	(1)	No person harm/No property harm	191
	(2)	No person harm/ Potential property harm	782
	(3)	No person harm/Real property harm	1,285
	(4)	Potential person harm/No property harm	147
	(5)	Potential person harm/Potential property harm	205
	(6)	Potential person harm/Real property harm	1,554
	(7)	Real person harm/No property harm	1,850
Use of weapon (WEAP)	(1)	No	2,777
	(2)	Yes	2,196
	(3)	Missing	1,041
Type of victim (VICI)	(1)	Individual	3,865
	(2)	Organized collectivity	848
	(3)	Missing	1,301
Victim provocation (VICP)	(1)	No	5,110
	(2)	Yes	266
	(3)	Missing	638
Statutory severity (STATSEV)	(1)	1–3 years/$500	134
	(2)	3 years/$1,000	166
	(3)	5 years/$5,000	715
	(4)	Up to 10 years/$1,000	683
	(5)	2–5 years	2,354
	(6)	10 years	1,205
	(7)	5–30 years	142
	(8)	20 years/$5,000	234
	(9)	20 years to life	294
	(10)	Life	87
Dependent			
Decision to prosecute	(1)	Yes	4,561
	(2)	No	1,453

* $N = 6{,}014$.

Table 3. Probit Model of the Decision to Prosecute (Without Missing Data)

Variables		Probit Estimates	Standard Error
EVID (2)		−.788[a]	.105
CORR (2)		.625	.063
PHED (2)		.128	.070
NWIT (2)		−2.113[a]	.096
RELV (2)		−.208	.113
(3)		.256[b]	.075
DEFAR (2)		−.390[a]	.070
GENDER (2)		.102	.103
RACE (2)		.128	.128
RECORD (2)		.221[b]	.063
CRIME (2)		−.069	.522
(3)		−.337	.470
(4)		.508	.632
(5)		−.171	.538
(6)		−.068	.514
(7)		.117	.478
WEAP (2)		.197[c]	.084
VICI (2)		.504[a]	.111
VICP (2)		−.263	.125
STATSEV (2)		.674	.442
(3)		−.106	.333
(4)		.192	.336
(5)		.235	.392
(6)		−.414	.356
(7)		.712[c]	.333
(8)		.357	.357
(9)		.201	.371
(10)		.677	.484
Scaled deviance	2,079		
Degrees of freedom	3,028		
Constant	.372		.54

[a] $p = \leq .001$.
[b] $p = \leq .01$.
[c] $p = \leq .05$.

dropping cases with missing data on one or more variables is not generally an adequate solution to the problem. The codes in Table 2 indicate the missing data categories for the relevant variables. A comparison of Table 3 with Table 4 shows that

1. physical evidence (PHED) exerts a statistically significant effect on the decision to prosecute only when missing data are included in the analysis,
2. the statutory severity of the offense (STATSEV) coefficient for ten years of prison time exerts a statistically significant effect on the decision to prosecute when the missing data are included in the analysis, and
3. the magnitude for the coefficient for using a

weapon in committing an offense (WEAP) is substantially greater when missing data are included in the analysis.

These differences strongly suggest that a "dummy" variable should be estimated for each missing category. Any nonrandom process for producing the missing data is controlled for in testing the uncertainty avoidance hypothesis.[5] With the above findings, I used the probit model reported in Table 4 to analyze the government's decision to prosecute. Table 4 reports the chi-square goodness-of-fit statistic (scaled deviance), the degrees of freedom for the model, the probit coefficient estimates, their standard errors, the predicted probit, and the predicted probability for variables predicting whether the government will prosecute. Examining the probit coefficient estimates and

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[5] Cohen and Cohen (1975: 273) caution that perfect multicollinearity among missing data categories will result in complete redundancy among the affected categories of the independent variables, which in turn produce biased or unstable coefficient estimates. Following their suggestion, I computed a missing data correlation matrix in which each independent variable with missing data was recoded as a 1,0 dichotomy. A value of 1 was assigned to cases with missing data on the particular variable; a 0 value was assigned to the remaining cases. The matrix indicated a first-order correlation range in values from .20 to .94. Missing data on three variables (EVID, CORR, VICP) showed the following high correlations:

$$r_{\text{VICP/EVID}} = .91 \qquad r_{\text{EVID/CORR}} = .94 \qquad r_{\text{VICP/CORR}} = .89$$

Although these correlations do not indicate perfect collinearity and therefore complete redundancy in the data, they are sufficiently high to warrant further investigation into whether inclusion of these variables in the equation will result in unstable estimates. Following Cohen and Cohen (1975) and Hanushek and Jackson (1977), I excluded two of the variables (EVID,CORR) from the equation. The resulting coefficient estimates and standard errors for VICP and the other independent variables in the analysis *were not* statistically significantly different from the values obtained when the two variables are included in the equation (see Table 4). I estimated a second equation that excluded EVID only. Again, no statistically significant difference was obtained. In other words, substantive conclusions based on testing the null hypothesis that $\beta_i = 0$ for each of the independent variables are unchanged from those reported in Table 4. I finally estimated a third equation, this time excluding VICP. Again, the substantive conclusions remained unchanged. I conclude that although correlations among three of the variables are high enough to pose potential problems of multicollinearity, in fact there is no evidence of a problem of biased, unstable estimates. Hanushek and Jackson (1977: 88) use Monte Carlo simulations to report similar findings when the correlations between two variables is increased from .20 to .94. They conclude that the results "clearly show that the estimates are unbiased, even in the face of substantial multicollinearity, by properly specifying the model." For my research, data on EVID and CORR are important control variables in testing the uncertainty avoidance hypothesis and would result in a misspecified model if excluded. The results of the diagnostic procedures indicate that including "dummy" variables for missing data provides a more rigorous test of the uncertainty avoidance hypotheses. The missing data correlation matrix and tables of the two modified equations are available from the author upon request. Direct all correspondence to Celesta A. Albonetti, University of Illinois at Champaign/Urbana, Department of Sociology, 702 S. Wright Street, Urbana, Illinois, 61801.

Table 4. Probit Model of the Decision to Prosecute (With "Dummy" Variables)

Variables		Probit Estimates	Standard Error	Predicted Probit[a]	Predicted Probability[a]
EVID (2)		−.902[b]	.077	−.193	.42
(3)		.192	.240		
CORR (2)		.623[b]	.046	1.327	.91
(3)		.486	.240		
(2)		.147[c]	.049	.851	.80
(2)		−1.886[b]	.062	−1.182	.12
RELV (2)		−.079	.100		
(3)		.292[b]	.060	.996	.84
(4)		.122	.067		
(2)		−.407[b]	.051	−.297	.11
(3)		.190	.124		
GENDER (2)		−.035	.070		
RACE (2)		.033	.089		
RECORD (2)		.239[b]	.046	.943	.83
CRIME (2)		−.001	.256		
(3)		−.421[d]	.204		
(4)		.329	.263		
(5)		−.418	.245		
(6)		−.054	.249		
(7)		−.113	.215		
WEAP (2)		.323[b]	.064	1.027	.85
(3)		.175	.073		
VICI (2)		.350[b]	.078	1.054	.85
(3)		.234[b]	.069		
VICP (2)		−.265[d]	.104	.439	.17
(3)		−.193	.164		
STATSEV (2)		.109	.232		
(3)		−.360	.187		
(4)		.113	.188		
(5)		−.026	.232		
(6)		−.640[c]	.208	.064	.02
(7)		.632[d]	.239	1.336	.91
(8)		.244	.214		
(9)		.086	.226		
(10)		.469	.295		
Scaled deviance	4,129				
Degrees of freedom	5,978				
Constant		.704	.265	.704	.76

[a] Provided only for statistically significant coefficients and theoretically meaningful variables.
[b] $p = \leq .001$.
[c] $p = \leq .01$.
[d] $p = \leq .05$.

their standard errors allows the identification of the variables that produce statistically significant effects on the decision to prosecute. Once these are identified, I can compare the predicted probability for the variables of interest with the predicted probability for the reference category. This comparison indicates the net effect of independent variables on the probability of prosecution.

We are now ready to look at the factors that influence the

decision to prosecute. The parameter showing the effect of the existence of exculpatory evidence (EVID) compared to absence of such evidence indicates a statistically significant *decrease* in the probit of the probability of prosecution. A predicted probit of −.193 is a value of a standard normal variable and corresponds to a .42 predicted probability of prosecution. Comparing cases without exculpatory evidence with cases with such evidence produces a 34 percent decrease in the probability of prosecution. The negative effect of the possession of this type of evidence supports the uncertainty hypothesis, for such evidence challenges the factual guilt of the defendant and thus increases the uncertainty of conviction.

The presence of either corroborative evidence (CORR) or physical evidence (PHED) exerts a statistically significant increase in the probability of prosecution. Net of other factors, cases with corroborative evidence have a 91 percent chance of being prosecuted, whereas cases with physical evidence have an 80 percent chance of being prosecuted. Compared to the reference category, corroborative evidence increases by 15 percent the probability of prosecution. Possessing physical evidence only slightly increases the probability of prosecution. Compared to cases lacking physical evidence, cases with such evidence display a 4 percent increase in prosecution.

The number of witnesses variable (NWIT) shows that cases with only one witness or in which the witness is the victim are significantly less likely to be prosecuted than those with more than one witness. The predicted probability of prosecution is .12 for the former type of cases. Compared to the reference category, having one or no witnesses produces a 64 percent decrease in the probability of prosecution. This provides strong support for Littrell's (1979) argument that there is more uncertainty in terms of conviction at trial in cases with one witness.

Puzzling is the decrease in the probability of prosecution in cases in which the defendant is arrested at the scene of the crime (DEFAR). The predicted probit estimate of −.297 corresponds to an 11 percent chance of prosecution. Compared to the reference category, this variable decreases the probability of prosecution by 65 percent. I had hypothesized that being arrested at the scene would decrease the uncertainty of linking the suspect to the crime. Clearly, however, the influence on the prosecutor's decision is in the reverse direction. An explanation of this finding may lie in the prosecuting attorney's responsibility for issuing arrest warrants. Arrests are made at the scene of the crime without the screening prosecutor's review of probable cause to issue a warrant. Therefore, the unex-

pected negative effect of this variable actually supports the uncertainty hypothesis. From the prosecutor's perspective, warrantless arrests might be the outcome of hasty police decisions. In contrast, warrant arrests are the product of the prosecutor's review process, which functions as a protective procedure. Thus, the prosecuting attorney can reduce the uncertainty of successful prosecution by controlling the situation in which an arrest warrant is issued. That this is not the case when defendants are arrested at the scene accounts for the negative effect on the probability of prosecution. Petersilia (1985) reports findings consistent with this interpretation. She found that cases involving an arrest warrant were more likely to be processed because identical criteria had been applied for both issuing the warrant and filing charges.

Of particular interest are the parameter estimates of the two contrasts of RELV (2) and RELV (3) to the reference category. Only stranger relationships (compared to acquaintance relationships) significantly affect the decision to prosecute. The probit prediction of .292 corresponds to a predicted probability of .996, indicating that cases involving strangers have an 84 percent chance of being prosecuted. Compared to the reference category, offenses between strangers increase the probability of prosecution by 18 percent. This is consistent with the view that offenses between strangers fit the prosecutor's normal conception of a crime, which is related to the perception of a credible witness (i.e., one who will sustain the charges and be convincing to a jury). Table 4 reports no significant difference in the probability of prosecution for cases involving intimates compared to those involving acquaintances.

A second variable that relates to the perception of victim credibility is whether the case involved victim provocation (VICP). The findings tend to support the hypothesis. A probit estimate value of $-.265$ corresponds to a predicted probit of .439. Compared to the reference category, victim-provoked offenses decrease the probability of prosecution by 59 percent. Indication that the victim provoked the offense increases the ambiguity surrounding the crime. Underlying the effect of this variable is the need to convince a jury that there indeed was a victimization. If both the innocence and credibility of the victim become suspect, the uncertainty of conviction will increase.

Table 4 also indicates that use of a weapon in the commission of a crime (WEAP) significantly increases the probability of prosecution. Because defendants who use a deadly weapon are viewed as more dangerous, the predicted probability of their prosecution is 85 percent. Compared to nonweapon of-

fenses, the effect represents an increase of 9 percent in the probability of prosecution. As suggested earlier, the effect is in the hypothesized direction and is explained by the additional severity routinely assigned to cases involving a weapon.

Table 4 further shows that, net of other factors, defendants with a prior record of felony convictions (RECORD) are more likely to be prosecuted. Compared to first offenders, recidivists have a 7 percent higher chance of being prosecuted.

Since I hypothesized that the social nature of the crime might affect the prosecutor's decision to pursue charges, net of other case information, I included the six category contrasts of social harm in the analysis. Table 4 shows that, except for the contrast of no harm to person/real harm to property with victimless crimes, the social harm of victimless crimes does not produce statistically significant effects on the initial decision to prosecute.

As noted earlier, I included the statutory severity of the offense (STATSEV) in the analysis as a control variable. Only two statutory severity contrasts yield statistically significant results. Charges involving a potential statutory penalty of ten years produce a predicted probit of .064, which corresponds to a .02 predicted probability of prosecution. Comparing this predicted probability to that for the reference category indicates a 74 percent decrease in prosecution. On the other hand, a statutory severity of five to thirty years in prison produces a .91 predicted probability of prosecution, or a 15 percent increase in the probability of prosecution.

Finally, type of victim (VICI) is significantly related to the decision to prosecute. If an organized collective such as an institution or corporation is the victim, the probability of prosecution is higher. The predicted probit of 1.054 corresponds to a predicted probability of prosecution of 85 percent. Compared to the reference category (individual victims), cases involving organized collectives as victims have a 9 percent higher probability of prosecution. The data provide modest support for the hypothesis that crimes against organized collectives are significantly more likely to be prosecuted than crimes against individuals. This is consistent with the argument that the uncertainty surrounding victim management is less when the victim is an organized collective.

V. SUMMARY AND CONCLUSION

This analysis indicates that the initial stage of criminalization—the government's decision to prosecute—is made with a

generalized preference for avoiding uncertainty. Uncertainty emerging from stereotypical perceptions of cause and effect relationships between successful case prosecution and containments thereof does affect the prosecutor's initial decision to "go forward" with a charge. Furthermore, an understanding of the organization of prosecution is enhanced by relying on the social/definitional context of rational decision making, a rationality bounded by the stereotypical evaluations of containments to successful outcome. Sources of uncertainty are directly related to organizationally and professionally defined measures of success. More specifically, the findings indicate that the exercise of prosecutorial discretion at the initial stage of felony screening is significantly influenced by the uncertainty of the assessment of the prosecutorial merit of a case, which is the probability of conviction. Uncertainty is significantly reduced with the introduction of certain legally relevant evidence. More importantly, uncertainty is substantially reduced by other extralegal factors. Effectively decreasing uncertainty about successful prosecution stacks the deck in the prosecutor's favor. Achieving a good ratio of convictions to acquittals is a well-known criterion for upward movement in the legal profession. Concerns over witness management, victim credibility, and defendant/victim relationship are extralegal sources of uncertainty that exert a net effect on the decision to prosecute.

The significance of these findings is the elaboration and clarification of the link between the exercise of prosecutorial discretion and concerns for avoiding uncertainty. This research supports an assertion that prosecution is mobilized around concerns for avoiding uncertainty. Controlling for legally relevant variables such as the presence of exculpatory (EVID), corroborative (CORR), and physical evidence (PHED), the statistically significant effects of witness management variables (VICP, RELV, NWIT, VICI) and review control over police decisions to arrest (DEFAR) on the probability of prosecution strongly argue for a theoretical perspective relating uncertainty avoidance to decision making in the administration of justice. The overall findings suggest a need to consider the sources of uncertainty unique to the particular decision stage in any examination of the determinants of decision-making outcome.

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