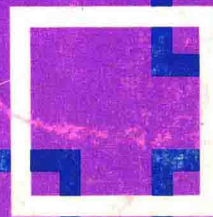
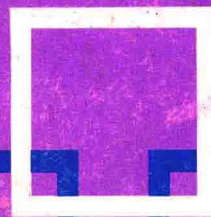
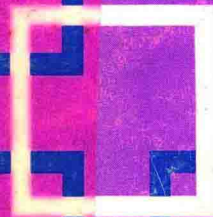
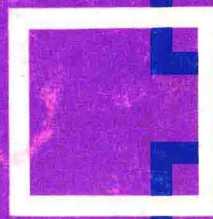
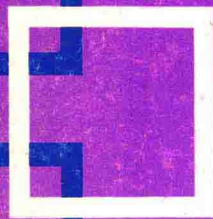
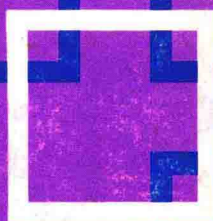
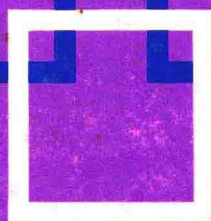
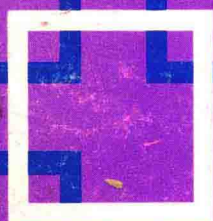


Home Office Research and Planning Unit

Managing Criminal Justice

A collection of papers

Edited by DAVID MOXON



Managing Criminal Justice

A collection of papers

Edited by David Moxon
Home Office Research and Planning Unit

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Home Office Research and Planning Unit Publications

Many of the studies collected together in this book were first published in the *Home Office Research Studies* series: titles in this series are listed at the end of the book, together with titles in the earlier series, *Studies in the Causes of Delinquency* and the *Treatment of Offenders*. Other studies included first appeared as *Research and Planning Unit Papers* which contain material of a rather more specialised nature. All Research and Planning Unit publications result from research undertaken within the Home Office to assist in the exercise of its administrative functions, and for the information of the judicature, the services for which the Home Secretary has responsibility (direct or indirect) and the general public.

Foreword

An awareness of the interdependence of the agencies of the criminal justice system underlies much recent Home Office research and policy. It is no longer sufficient to think of the various parts of the criminal justice process in isolation. A much deeper and more practical understanding flows from a consideration of interactions between the various stages of the process.

Much of the research which has fuelled this new understanding of interdependence issues has emanated from the Home Office Research and Planning Unit and been published in separate journal articles or papers. It seemed useful to bring this work together so as to assess its cumulative impact. The resultant collection of papers makes a strong case for the usefulness of the interdependence concept. The Research and Planning Unit will be well pleased if the joint publication of this set of articles leads to further public debate of these important issues and to yet more improvements in the workings of the system.

MARY TUCK

Head of the Research and Planning Unit

Editor's note

The papers collected together in this book were in the main written by researchers working within the Home Office Research and Planning Unit. However, some chapters were written by academics from outside the Home Office who were invited to contribute either because they had conducted research in relevant areas on its behalf or because their particular expertise enabled them to fill gaps in Home Office funded research.

Floyd Feeney, author of Chapters 2 and 9, undertook research on advance disclosure and interdependence for the Home Office whilst he was Director of the London office of the Vera Institute of Justice. He is Professor of Law at the University of California. Mr Pullinger, author of Chapter 3, formerly worked in the Home Office Research and Planning Unit but now works for the Export Credit Guarantees Department. Ken Lidstone, author of Chapter 5, is a lecturer at the Centre for Criminological and Socio-Legal Studies at the University of Sheffield. Andrew Sanders, author of Chapter 7, is a lecturer at the Institute of Judicial Administration in Birmingham. Peter Jones, formerly of the Home Office Research and Planning Unit and author or co-author of Chapters 8, 10 and 14, is an Assistant Professor in the Criminal Justice Department of Temple University, Philadelphia.

The views expressed are those of the authors and do not necessarily reflect the views of the Home Office.

Some of the chapters in this book draw on data provided by the Home Office Statistical Department and we are grateful for their assistance.

Contents

	<i>Page</i>
Foreword by Mary Tuck	
Editor's Note	
Chapter 1 Introduction <i>by David Moxon</i>	1
 I Overview of the system	
Chapter 2 Interdependence as a working concept <i>by Floyd Feeney</i>	8
Chapter 3 The criminal justice system viewed as a system <i>by Hugh Pullinger</i>	18
Chapter 4 Modelling the criminal justice system <i>by Patricia Morgan</i>	29
 II Before trial	
Chapter 5 Magistrates and the pre-trial process <i>by Ken Lidstone</i>	45
Chapter 6 Police force cautioning: policy and practice <i>by Gloria Laycock and Roger Tarling</i>	54
Chapter 7 The prosecution process <i>by Andrew Sanders</i>	65
Chapter 8 The effectiveness of committal proceedings as a filter in the criminal justice system <i>by Peter Jones, Roger Tarling and Julie Vennard</i>	86
Chapter 9 Advance disclosure of the prosecution case <i>by Floyd Feeney</i>	94

Chapter 10	Remand decisions at magistrates' courts <i>by Peter Jones</i>	106
Chapter 11	Speeding up justice <i>by Roger Tarling and Julie Vennard</i>	118
III The trial and after		
Chapter 12	The outcome of contested trials <i>by Julie Vennard</i>	126
Chapter 13	Acquittal rates <i>by Sid Butler</i>	152
Chapter 14	Sentencing of adults and juveniles in magistrates' courts <i>by Roger Tarling, David Moxon and Peter Jones</i>	159
Chapter 15	Fines and their enforcement <i>by David Moxon</i>	175
Chapter 16	Working together? – The system in action <i>by George Mair</i>	186
References		198
Subject Index		206
Author Index		213

1 Introduction

DAVID MOXON

The way that the criminal justice system is managed affects us all. It affects us both as potential – and sometimes actual – victims of crime, and because the system makes substantial demands on the nation's resources. The aims of the system were summed up in the 1984 Home Office Working Paper on Criminal Justice which stated:

'The central objective [of criminal justice strategy] is to sustain the rule of law:

- a by preventing crime wherever possible;
- b when crimes are committed, by detecting the culprit;
- c by convicting the guilty and acquitting the innocent;
- d by dealing adequately and appropriately with those who are guilty and by giving proper effect to the sentences or orders which are imposed.'

Much of the research undertaken or sponsored by the Home Office has related in some way to these aims. The emphasis of the papers which follow is on the working of the criminal justice system as a whole and on the interdependence of the different agencies which comprise the system. Although it is only in recent years that the phrase 'criminal justice system' has come into general use much of the recent research of the Home Office Research and Planning Unit in the area of criminal justice process has been driven by the systems concept. Researchers have increasingly looked at issues not solely in their own terms, but with a view to their system effects. Yet since much of this research has been published in isolated journal articles or pamphlets, its full impact has perhaps not yet been fully absorbed.

The 1984 statement of the aims of the criminal justice system used the phrase 'adequately and appropriately' in describing the disposal of offenders. This phrase embodies a principle central to the management of criminal justice and at the heart of much research. For justice to be 'adequate and appropriate' it must treat offenders in a way seen by the public to strike a proper balance; neither over-processing the trivial nor neglecting to mark severe disapproval of the serious. Hence research has been aimed not only at defining and elucidating the system, but also at an assessment of its efficiency in achieving 'adequate and appropriate' justice. Concern that matters should be dealt with at an appropriate level is reflected in the growing interest in alternatives to criminal sanctions – non-prosecution in trivial cases; reparation; and the extension of fixed penalties to include minor motoring offences. If disproportionate resources are devoted to minor matters this is not only wasteful in itself but may draw resources away from other activities, in particular the

processing of serious cases. Several studies in this book draw attention to the problems caused by delay. The growth in custodial remands, which burden the prison system, and the effects on trials of the fading of memories of events are examples of such problems. These studies bring out the very real sense in which 'justice delayed is justice denied'. Decisions on minor cases have wider repercussions, on the system as a whole.

Since the cost of the criminal justice system falls on society, it is always in competition for funds with other public services. The actual or likely costs or benefits which flow, or may be expected to flow, from particular policies are important considerations in the formulation of priorities. It is for researchers to identify problems – to show where policies are failing to realise their objectives; to monitor the effects of new measures; to identify good practices which deserve to be more widely applied; and simply to describe how things are working. The aim is to provide a solid basis for policy decisions in relation both to the resources that should be devoted to the criminal justice system and the best way of allocating resources to different elements within it.

The Home Office has substantial responsibilities in relation to the financial and manpower resources used by agencies in the system and has a duty to ensure that such resources are efficiently used. At the same time, a careful balance has to be struck between central and local control. A measure of local independence is important for two main reasons. First, there are very real differences in local circumstances which may call for different responses – practices which are appropriate in large cities may be much less suited to rural areas. Second, there is no monopoly of wisdom at the centre and many useful developments spring from local initiatives. However, local autonomy does mean that a variety of practices evolve in relation to a whole range of activities – cautioning, sentencing, fine enforcement, remand and so on – and some practices will inevitably be more efficient or more appropriate than others. It is part of the function of research to find out which practices are particularly successful, or to draw attention to variations which lead to uneven justice so that greater consistency can be encouraged. Examples which are discussed in the book include fine enforcement, sentencing and cautioning practice, all of which have been found to vary widely across the country and where lessons learned from studying a range of local practices can usefully be disseminated.

Overview of the system

Something should be said as to the structure of the book. It forms a whole greater than its parts. The first three articles explore the main theme of interdependence from different viewpoints. In the first chapter of Part I, Floyd Feeney both discusses the theoretic concept of interdependence and gives practical examples of its usefulness. Through a detailed examination of the way that various agencies work together in one police force area he shows how they currently achieve cooperation and resolve conflicts, identifies some of the

potential barriers to success, and develops ideas for promoting fuller cooperation and integration.

Hugh Pullinger approaches the subject of interdependence from the perspective of the operational researcher. In Chapter 3 he points out that the major parts of the criminal justice system are to a large extent controlled independently of each other and seek to realise objectives which derive mainly from their particular operational needs. Problems arise because the parts interact to such an extent that disparities between objectives can result in severe strains within the system. Prison overcrowding and unacceptable court delays are symptoms of such strains. The author draws on concepts from systems theory as an aid to understanding the nature of the criminal justice system, its work and its problems.

In Chapter 4 Patricia Morgan describes a computer model, developed by the Home Office Research and Planning Unit, which simulates the passage of defendants through the criminal justice system of England and Wales. Its prime function is to show how changes – for example in policy, crime patterns or the way cases are processed – will affect each part of the system. The way the model can be used is illustrated with examples which show the likely impact of specific changes.

After these opening general articles, the subsequent sections of the book (Parts II and III) present a series of specific studies of particular aspects of the criminal process. In order to clarify as far as possible the constant interaction of the system, the material has been arranged in a pattern which follows an individual's progress from arrest through to final disposal. Inevitably not all stages in the process have been studied and researched with equal intensity, but we believe the articles taken as a whole make a powerful case for the usefulness of the interdependence concept. Studies which deal primarily with the police have not (except in relation to cautioning) been included, as many of these studies have been brought together in another recent Research and Planning Unit volume, *Policing Today* (Heal, Tarling and Burrows, 1985). However, the role of the police at key stages in the criminal process forms a part of a number of the studies which have been included – the importance of their role as gate-keepers to the system as a whole cannot be overstressed.

The pre-trial process

In Chapter 5 Ken Lidstone of Sheffield University examines the way in which magistrates exercise their powers in relation to summonses and warrants. The relationship between magistrates and the police has a major bearing on the way these duties are performed, and on the efficacy of these safeguards against the undue exercise of police powers. The author concludes that this is one area where cooperation has been achieved at the expense of that independence which is essential if magistrates are to make effective use of their powers in the pre-trial process.

Many cases where the evidence against a suspect would be sufficient to sustain a prosecution never come to court because they are filtered out by the police, being dealt with by way of a formal police caution. The way the police exercise their discretion in relation to the cautioning of offenders has major implications for the courts, the probation service and for the police themselves. The policy and practice of police forces in relation to cautioning is examined by Gloria Laycock and Roger Tarling in Chapter 6. The authors found big differences in cautioning rates between forces and whilst some of this variation could be attributed to the kinds of offender dealt with, there was found to be wide variation in the policies of different forces. Since this research was completed the Home Office has issued detailed guidance to the police with the aim of promoting greater consistency in cautioning policy¹.

The system of prosecution has attracted much attention in recent years, and an independent prosecution service is in the process of being created. In Chapter 7 Andrew Sanders provides an overview of the prosecution system of England and Wales, drawing on research on prosecution decisions and the guidelines used by the Attorney-General. Not all will share the author's pessimism that the objectives of the new Crown Prosecution Service will be undermined by entrenched practices and attitudes. He warns us that it could be a mistake to expect too much of the new service too quickly. Structural changes will not of themselves ensure improved practices.

In Chapter 8 Peter Jones, Roger Tarling and Julie Vennard examine the operation of committal proceedings. These were originally conceived as a constitutional safeguard against the citizen being brought to trial on insubstantial evidence. Yet the great majority of committal proceedings are now 'paper' committals, whereby a defendant is committed to the Crown Court for trial by an examining justice without consideration of the evidence. The number of acquittals ordered on the direction of the judge has cast doubt on the effectiveness of committal proceedings in filtering out weak cases. The findings show that committal proceedings do in fact filter out a considerable proportion of weak cases and, perhaps surprisingly, finds no evidence that the full committal operates as a more effective filter than the paper committal.

In 1975 the James Committee argued that the interests of both fairness and efficiency required the introduction of disclosure procedures for the magistrates' courts. It was felt that existing procedures encouraged elections for jury trial because that was one way the defence could obtain disclosure in cases triable either way.

On the other hand, the police were concerned about the effect that disclosure would have on the way they prepared summaries or obtained witness statements, and the costs that might be incurred. Chapter 9 describes a study which was undertaken by the Vera Institute of Justice which examined the effects of

1. Home Office Circular 14/1985.

different systems of advance disclosure both on the courts – in terms of changes in the proportion of guilty pleas and elections for jury trial – and on the police in preparing statements or summaries. In demonstrating that advance disclosure could have a useful impact on guilty pleas and elections for Crown Court trial, at moderate cost, the study was helpful in shaping the statutory system which was introduced in May 1985.

One cause of the increase in the prison population in recent years has been the sharp rise in the remand population. Such growth could result from a change in the offence mix of those remanded in custody; more defendants being remanded in custody overall; or those who were remanded being held in custody for longer periods. It has long been recognised that there is wide variation in the extent to which defendants are remanded in custody in different areas. This highlights the fact that the size of the remand population depends also on the policies and attitudes of the courts. In Chapter 10 Peter Jones seeks to explain the reasons for differences in the use of bail by different courts. The most important reasons for these differences were found to be the police remand decision, the offence type and court policy.

There is general agreement that delays in dealing with defendants works against the ideals of justice. Memories of events fade; defendants are liable to be remanded in custody for longer periods; and adjournments incur substantial financial costs. Changes in police and court procedures provide one approach to reducing delays. It has been argued that the imposition of limits on the time taken to deal with cases could act as a spur to such changes and a provision in the Prosecution of Offences Act 1985 will permit statutory time limits to be introduced at a future date if current experiments suggest that this would be worthwhile. In Chapter 11 Roger Tarling looks at the reasons for delays and suggests how procedures might be changed to reduce them; and Julie Vennard looks at the impact of statutory time limits in the United States, where there is evidence that the potential impact of time limits has been weakened because the rules can too easily be bent. The author concludes that safeguards against abuse, allied to a firm commitment to enforce reasonable deadlines, are crucial to the success of such a system.

The trial and after

The decision to have a case heard in a magistrates' court or the Crown Court is one which has a substantial impact on the resources which the case will absorb and for pre-trial waiting times. It has often been claimed that magistrates are more likely than juries to accept doubtful prosecution – and especially police – evidence, and that summary procedures do not provide as fair a hearing for the defendant who pleads not guilty. In Chapter 12 Julie Vennard provides the first empirical evaluation of the outcome of contested charges in both magistrates' courts and the Crown Court in terms of the evidence adduced in the course of the trial. Her findings support the view that the chances of acquittal are significantly higher in the Crown Court, and suggest that juries

are markedly less inclined than magistrates to accept the evidence of prosecution witnesses as sufficient to sustain a conviction. There have been claims that juries' readiness to acquit increased as a consequence of the removal of the property qualification from jurors in 1972. Some have argued for a more selective approach on the grounds of the increased complexity of some types of case and the risk of intimidation or subversion of a jury which includes a convicted person. In Chapter 13 Sid Butler examines acquittal rates in relation to the available statistical and research evidence, but finds no firm evidence that the changes in eligibility for jury service increased juries' propensity to acquit. However, there was some suggestion that longer waiting times and changes in the not guilty plea rate were associated with higher acquittal rates.

The need for the criminal justice system to respond to crime in a way which is both adequate and appropriate, having regard to all the factors in a case, is of special relevance to the sentencing of offenders. Perhaps to an even greater extent than for other decisions in the criminal process, views as to what is adequate and appropriate are likely to differ widely, and this has major implications for the way in which offenders are treated by different courts. The main focus of Chapter 14, by Roger Tarling, David Moxon and Peter Jones, is on the sentencing practices of individual adult and juvenile courts, and the research shows that there is wide variation in the practice of different courts. The study of juveniles takes the analysis one stage further by applying the concept of a tariff to the overall pattern of juvenile sentences. It shows how the juvenile offender progresses up the tariff according to the type of offence committed and as the number of previous convictions rises.

Fines are by far the most common penalty applied by the courts and effective enforcement of fines is therefore essential to the credibility of the criminal justice system. The subject has understandably attracted a number of research studies over the years. Growing unemployment has posed particular difficulties for fine enforcement, and this is reflected in the increase in the number of defaulters imprisoned over the past decade – though the growing realisation that default is strongly associated with unemployment, and the need to set fines at realistic levels, may have made some contribution to a recent fall in the number of defaulters imprisoned. Enforcement can be a complex task, involving police, prisons and the probation service as well as the courts. In Chapter 15 David Moxon draws together the threads from the various complementary studies that have been undertaken by the Research and Planning Unit over the years. These show the importance of swift and persistent action in the event of default, and suggest that the threat of imprisonment is less persuasive in securing payment than is often supposed.

The theme of interdependence is particularly well illustrated in the final chapter. George Mair records how, in a demonstration project in Hampshire organised and monitored by the RPU, it was shown that co-operation between judges, magistrates, justices' clerks, probation officers and others could

promote maximum use of various alternatives to custody without in any way circumscribing the independence of the courts or their ability to impose serious custodial sentences for serious crime. However, the problem of securing lasting change was highlighted by the fact that old habits soon returned once the project ended.

This last project is of interest not only in itself but also in that it perhaps points the way towards further studies in the Interdependence area. More experimental or demonstration projects are needed which will test out various methods of improving the efficiency and effectiveness of the system. The current work in the Bristol courts discussed briefly in Chapter 2 is another example of this type of approach as also is the work on advance disclosure recorded in Chapter 9. The Home Office is developing studies which will involve monitoring and studying specific initiatives at a local or demonstration level. Meanwhile we hope that this book will act as a stimulus both to further research and to policy thinking on interdependence issues.

2 Interdependence as a working concept

FLOYD FEENEY

There may well have been a time when criminal justice was viewed as a series of separate processes connected neither with each other nor anything else. These times have long since passed, however, and today there is widespread agreement that the work of the various criminal justice agencies is closely related and that together these agencies form some kind of 'system'. There is much less agreement, however, about the nature of this system and the implications of such related concepts as interdependence of the criminal justice system.

The general idea of a system dates back at least to the ancient Greeks, who saw systems as some kind of organised whole. By the eighteenth century the system concept had already assumed great importance in branches of theoretical physics such as mechanics where it appeared in full mathematical garb. In the nineteenth century the term began to be applied to biology, and has since been extended to a wide variety of fields including engineering, physiology, international affairs, political affairs and even language. In the late 1950s and early 1960s the concept was further refined and systems analysis appeared as an 'in' method for analysing complex problems. It became common at this time to think of systems in almost every field of human and scientific endeavour. While some earlier criminal justice studies had taken something of a systems-type approach, it was not until this era that the term 'criminal justice system' first began to be used.

The application of systems concepts to criminal justice which followed these developments bore almost immediate fruit, leading to a much better understanding of the linkages among the various parts of the system and the way that the work of each agency affected the work of the other agencies involved. This knowledge proved to be very useful in thinking about criminal justice problems and 'criminal justice system' rapidly became a standard part of the criminal justice vocabulary.

The explicit application of systems concepts to criminal justice produced a number of other results as well. It exposed a great deal of divergence in the way that agencies approached particular problems and showed that the policies followed by one agency often undermined or were at cross-purposes with those followed by other agencies. It also demonstrated just how complex and interdependent the various parts of the system actually are.

Public drunkenness was an early example used to illustrate the kind of divergencies that systems analysis could expose. Enforcement efforts for this

crime at this time typically involved a large number of police arrests followed in America by short jail sentences and in England by fines. In both countries the offenders were rapidly back on the street, and the whole process started over again. Calculating the enormous waste of police and court effort in this revolving-door situation, systems analysts sought to devise treatment approaches that would make more productive use of the resources expended. They argued explicitly that there were benefits to be gained in overall system accomplishment by transferring resources from the police and the courts to the treatment end of the system. Experiments with detoxification programmes for street alcoholics were one result of their efforts.

Some of those who first sought to apply systems concepts to criminal justice were less impressed with the linkages among criminal justice agencies, however, than with their fragmentation. They argued that criminal justice was in reality not a system but a 'non-system'. Judged strictly by the formal definitions developed by theorists these analysts made a persuasive case.

A very broad definition, used by some general systems theorists, for example, views a system as a set of entities whose relations are specified so that deductions may be made from some relations to others or from the relations among the entities to the behaviour or history of the system. A more detailed formulation requires that (1) the system under investigation be explicitly distinguished from its environment, (2) the internal elements of the system explicitly stated, (3) the relationships between the elements of the system and between the system and its environment explicitly stated, (4) the use of canons of logical or mathematical reasoning in deductions relating to these relationships, and (5) the confirmation of assertions about these relationships through scientific methods.

Even the strongest proponents of the systems approach would be hard-pressed to claim that their efforts meet the precision required by these standards. Despite this, however, most of those involved in criminal justice have come to think of it as a system. There is also considerable agreement that the system includes: (1) the police and the prosecution; (2) the defence; (3) the courts; and (4) corrections, including probation and the prisons. The medical, mental health, welfare, education and private security systems are all seen as closely related systems but not as part of the criminal justice system. As the criminal justice system receives not only clients but also political guidance, financial support, information and personnel from the larger society, it obviously is part of the general political, economic and social systems of the larger society.

One of the central features of all systems is the interdependence of the various system parts. The concept of interdependence is therefore a natural part of the systems idea. In recent years, however, interdependence has taken on special meaning in the criminal justice system, particularly in Great Britain. As this special meaning has a considerable overlap with the more general systems

approach, it cannot be defined in ways that sharply distinguish the two concepts. It is perhaps best understood, however, as meaning that what one criminal justice agency does is likely to affect and be affected by other agencies and that a detailed knowledge of the kinds of interactions that are likely to take place is essential for undertaking system improvements. The idea is thus explicitly concerned with the development of improved performance in functions that cross agency lines.

In the criminal justice system interdependence occurs at many different levels – national and local; agency head and working officer; strategic, tactical and mechanical. Strategic level choices include large questions of system design or structure, and in Great Britain are generally made at the national level. Included in such choices would be issues such as whether there should be an independent prosecution service, whether probation resources should be increased in order to provide more sentencing alternatives to prison, and whether the police should receive a much larger share of the system's resources than the courts. Questions such as how the defence function is to be organised and financed and whether greater efforts should be expended on prevention as opposed to apprehension and punishment also involve strategic issues likely to be decided at the national level.

Tactical level choices generally concern use of the resources available to particular criminal justice agencies. Whilst these choices can be made at many different levels within a given organisation, they are generally made locally rather than nationally. Decisions of this kind include such things as the deployment of police forces, the hours of service provided by the courts, and how the duty solicitor rota is to function.

Perhaps the most fundamental sense in which criminal justice agencies are linked together at the tactical level lies in the process of discretionary decision-making by which cases are adjudicated and transferred from one agency to another. Cases typically begin with the discovery of a crime and the apprehension of a suspected offender by the police. After deciding whether to prosecute, the police pass the case on to the courts for adjudication. The courts in turn often secure the services of the probation service to assist in the sentencing decision, and in this decision may pass the case on either to probation or the prison service. This process is rather like an assembly line in which each agency's workload is essentially controlled by the actions of the previous agency. In most instances the decision of the transmitting agency is largely discretionary, but the receiving agency generally has little or no say in the decisions made. Probably the most important of these discretionary decisions are the decisions to arrest, to prosecute and to sentence. Obviously policies such as cautioning and non-charging by the prosecution are of major importance in this system of discretionary decision-making.

In addition to these aspects of criminal justice that derive from deliberate strategic and tactical choices about the way that criminal justice agencies