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Developing Prosecutorial Charging Guidelines: A Case Study

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Summary

In July 1975, Alaska's attorney general announced his intention to end plea bargaining by assistant attorneys in all criminal cases involving violations of Alaska criminal law. While the major thrust of this policy change was intended to halt negotiations over sentencing, the policy also dealt — albeit less intensely — with charge bargaining. This paper describes efforts of the Alaska Department of Law's Criminal Division to enhance the effectiveness of plea bargaining policy through the development of uniform, statewide charging guidelines, including the development of Project PROSECUTOR (PROSecutor Enhanced Charging Using Tested Options and Research), and presents preliminary findings from the project's prosecutorial screening intake component.

DEVELOPING PROSECUTORIAL CHARGING GUIDELINES: A CASE STUDY

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INTRODUCTION

In July of 1975 the Attorney General of the State of Alaska announced his intention to end plea bargaining by assistant district attorneys in all criminal cases involving violations of state law. While the major thrust of this policy change was intended to halt negotiations over sentences, the policy also dealt -- albeit less intensely -- with charge bargaining.

This paper describes efforts of the Department of Law's Criminal Division to enhance the effectiveness of plea bargaining policy through the development of uniform, statewide charging guidelines. While that effort is still mid-stream, and data analysis is just beginning, observations of the activities associated with the development of the guidelines suggest that current notions of prosecutorial decision-making do not fully explain the exercise of discretion in environments in which direct plea negotiations between opposing counsel does not occur. (I have defined plea bargaining thusly because Bert Miller of the Institute of Criminal Law and Procedure, Georgetown University, has persuaded me that the existence of significant unexplained sentence differentials between those pleading guilty and those exercising their constitutional right to trial, even in jurisdictions such as Alaska which have abolished the formal practice, provides evidence of a more covert form of plea bargaining, if not plea coercion.)

THE ENVIRONMENT

Alaska is a land of great extremes, both in geography and in climate. In turn, they have had enormous influence on patterns of human settlement. Even today they continue to affect the lifestyle of Alaskans.

The land area of the state is vast. Alaska covers 586,000 square miles -- one fifth the area of the entire United States. There are 33,000 miles of coastline -- twice that of the continental United States. Four time zones separate residents.

Nearly twenty-five percent of the state is above the Arctic Circle. Permafrost traps two-thirds of the state in perpetual ice. In the panhandle area of southeastern Alaska 200 inches of yearly precipitation is not uncommon. In contrast, the arctic reaches of the state receive less than six inches, on the average, and would be considered desert but for the permafrost.

Across the entire state there are slightly over 7,000 miles of highways. Only 2,200 miles or so are paved. Virtually all of these connect Anchorage with communities within a 400 mile radius. Juneau, the state capital, is accessible only by boat or plane.

Scattered across this incredible land mass are slightly over 400,000 inhabitants. That is approximately one-third more than resided in the state in 1970. According to recent census figures, only Nevada grew in population faster than

Alaska during the seventies. Almost one-half these people live in Anchorage. Only fifteen communities have more than 2,500 residents.

High rates of migration, both in and out of the state, make accurate demographic surveying virtually impossible. Those who can be found at census time report incomes which indicate that much of the population is economically well-off. The state's birth rate is among the nation's highest; its death rate among the lowest. As might be expected, because of weather conditions, few elderly persons remain in the state. According to 1970 census data, those over 65 accounted for a mere 2.4 percent of the population.

In sum, Alaska, on its surface, presents a natural and demographic environment unlike that to be found anywhere else in the "Lower 48."

THE INTRASTRUCTURE

Alaska was the 49th state to enter the Union, doing so in 1959. Late to play the game of statehood, it enjoyed the benefit of looking at how some things had been done with a view towards avoiding some of the pitfalls of the past. The framers produced an infrastructure for justice administration which is relatively unique among the several states.

The hallmark of Alaska's justice system is the extremely high degree of centralization of services at the state level.

By constitutional and legislative mandate the state enjoys a unified court system which precludes the creation of municipal courts. Public defender services are unified and state supported. Correctional services, with but a few exceptions in rural Alaska (where the state contracts with local communities for detention facilities), are state run. Of prosecutorial services I shall have more to say momentarily.

Police protection and other law enforcement activities in Alaska are more familiar. The Division of State Troopers, part of the Department of Public Safety, has state-wide jurisdiction and is, in fact, the only law enforcement agency serving many Alaskans. In addition, there exist some 35-40 local police departments ranging in size from one-man to approximately 325 persons (in Anchorage). There are, however, no sheriff departments and functional jurisdictional overlaps are rare (Anchorage provides a major exception as the State Troopers still police in some areas within the political boundaries of the muncipality).

Prosecutorial services, my area of inquiry, reflect the general pattern: centralized and state administrered. The attorney general, an appointed official, heads the Department of Law. One of his two deputies heads the Criminal Division and is the state's chief prosecutor (although he rarely goes to court). Generally mirroring the administrative regionalization of the court system, prosecution is carried on by six district attorneys. All are appointed by the attorney general, at his discretion, as are their assistants.

In Anchorage (where the Municipal Penal Code, in one fashion or another, virtually blankets state misdemeanor law, a phenomenon growing out of the state's no plea bargaining policy), and to a far lesser extent in Fairbanks and Juneau, city ordinance offenses are prosecuted by city attorneys.

Finally, this brief discussion of the justice system would not be complete without making passing reference to the fact that Alaskans have greater access to prepaid legal systems than any other group of working Americans. The Teamster's -- the state's largest union (representing not only truckers but also school principals (Fairbanks) and police officers (Anchorage)) -- plan covers all criminal offenses for employees and their families. Thus, unlike many other areas of the country, the middle class, as well as the rich and the poor, can afford legal representation. And they use those services freely.

THE DEPARTMENT OF LAW

One of the principal departments of Alaska's state government, the Department of Law, whose principal executive officer is the attorney general,[1] has among its duties the prosecution "of all cases involving violations of state law, . . ."[2]

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1 AS 44.23.010.

2 AS 44.23.020(b)(3).

While, on its face, the statute just cited would seem to mandate the prosecution of all cases, common sense dictates a contrary conclusion; and, indeed, the Alaska Supreme Court has recognized that:

> Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best (citation omitted). This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases (citation omitted).[3]

The Attorney General has delegated his discretionary prosecutorial powers to local district attorneys through the office of the Deputy Attorney General for the Criminal Division -- the state's chief prosecutor.[4] The fact that the Attorney General and his authorized designees have discretionary powers with respect to the initiation of criminal prosecution does not mean that such discretion is absolute. Alaska's prosecutors, as is the case with their colleagues in other jurisdictions, are limited in the exercise of theirdiscretion by A.B.A.'s Code of Professional Responsibility which has been adopted by the Alaska Supreme Court.[5]

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3 Public Defender Agency v. Superior Court, 534 P.2d. 947, 950 (Alaska, 1975).

4 AS 47.17.010 and 020 authorize such action.

5 Ethical Consideration 7-13 states: The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor

Prosecution of violations of state laws is implemented through attorneys and support staff based in six regional district attorney offices located in Ketchikan, Juneau, Kenai, Nome, Fairbanks and Anchorage, with resident sub-offices located in Kodiak and Bethel. Centralized supervision, planning, policy implementation, administrative direction and the general furnishing of legal services to other components of the Alaska criminal justice system are based in the Deputy Attorney General's office in Juneau. The Criminal Division employs approximately 80 individuals statewide, including 50 attorneys.

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represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

Discretionary Rule 7-103 states: Performing the Duty of Public Prosecutor or Other Government Lawyer. (A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause. (B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

THE ANCHORAGE DISTRICT ATTORNEY'S OFFICE

The Anchorage district attorney's office, serving the state's Third Judicial District, is the largest of the six D.A. offices, measured in terms of staff and case load. Over one-half of the statewide total of criminal filings, both felony and misdemeanor, takes place within the courts of the Third Judicial District. In addition to serving the immediate Anchorage area, attorneys assigned to the Anchorage office also serve the communities of Palmer (45 miles to the northeast), Glennallen (175 miles to the northeast), Cordova (200 air miles to the south) and Valdez (150 air miles to the south), travelling to the latter two of these communities by air as demand and weather permits.[6]

The Anchorage office is headed by Joseph D. Balfe, a career prosecutor. The office is staffed by attorneys (including women), an investigator, three legal assistants (law clerks who are awaiting news on bar examination results) and 17 support staff.

Average tenure with the office is approximately three and one-half years. Attorneys usually begin their careers with the office by handling misdemeanors and, as they gain experience and vacancies arise, they "move up" to dealing with

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[6] Kenai and Kodiak and their neighboring communities, such as, Seward, Homer, Soldotna, Cold Bay and the Aleutian Chain are also encompassed within the Third Judicial District. However, their case load requirements warrant full-time staff.

felonies. Among current incumbents, felony attorneys have an average of five years of tenure in comparison with the one and one-half years experienced by misdemeanor attorneys.

THE PLEA BARGAINING POLICY

Our study of charge policy development takes place against the backdrop of one of the more significant criminal justice policy experiments of the seventies. On July 3, 1975, the incumbent attorney general, Avrum Gross, issued a memorandum on plea bargaining to all district attorneys. That memorandum was followed up by another, dated July 24, 1975, which was addressed to all district attorneys and assistant district attorneys. On July 7 he informed the judiciary of his policy by memo. (All three memos will be found in Appendix A. They should be read with the view that the policy was evolving in its definition.)

The salient points of the Attorney General's initial policy were: (1) that sentence bargaining was to cease, (2) that sentence recommendations were to be limited, (3) that charges should be carefully screened and filed consonant with a level of proof permitted by the evidence but that negotiations over multiple charges or charge level were permissible so long as their objectives were not pleas of guilty, and (4) that the district attorney's office, not law enforcement officials, was responsible for a final determination of who would be charged and for what offenses.

Plans were made almost immediately to evaluate whether the policy was being carried out by assistant district attorneys and what effects, if any, the policy might have on the justice system in Alaska. By early 1976, funds had been obtained and the evaluation had commenced under the auspices of the Alaska Judicial Council.

In June of 1976, after the annual D.A.'s conference, General Gross issued a third memo on plea bargaining (see Appendix A for the complete memo) calling for a tightening up on "initial charging itself. Charges [were to] be dismissed or decreased only under unusual circumstances, only then when justified by the facts in a case, and not as a quid pro quo for the entry of a plea of guilty." (emphasis in original)

In May of 1977, the Judicial Council issued its first set of public findings[7] and concluded that "a significant majority of respondents agreed that sentence bargaining has been virtually eliminated."[8] As to whether charge bargaining had been eliminated, more ambiguity existed among the key actors within the system. Among other interim findings the report noted that trials increased at the District Court level (misdemeanors) as well as in the Superior Courts (felonies), disposition time decreased and that police officers were reporting tighter screening standards.

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7 "Interim Report on the Elimination of Plea Bargaining," Alaska Judicial Council, May 1977.

8 Id., at vi (emphasis in original).

The Judicial Council has just released a draft of its Final Report[9] to members of the Evaluation Project's Advisory Board. A verbatim summary of those findings follows:

1. The policy against sentence recommendations was well-enforced, a finding confirmed by both data and interviews. Cessation of sentence negotiations and termination of prosecutorial sentence recommendations were two of the most notable effects of the policy.

2. Plea bargaining as an institution is now defunct in Alaska, according to most defense attorneys, judges, and prosecutors. Most attorneys prepare most cases with the expectation of trial, although most defendants convicted were convicted by plea of guilty.

3. The policy was associated with an increase in sentence length and a lower probability of receiving probation for fraud, drug, and "low-risk" property felonies. Combining our interview data with our statistical findings, we conclude that the policy was most strictly enforced in "routine" cases. It was far less likely to make any difference in the handling of non-"routine," more serious, or violent cases. In general, implementation of the policy tended to follow paths of least resistance.

4. "Morals" felonies (Lewd and Lascivious Acts, Statutory Rape, etc.), singled out by the attorney general as possible "exceptions" to his policy formed the bulk of the exceptions actually granted and recorded. Further, though 7 of these cases were tried in Year One, none were tried in Year Two, indicating that most cases of this type were treated formally or informally as exceptions to the policy.

5. Trials increased significantly (by 37%) as expected, and the likelihood of conviction at trial increased from 62% to 74%. The actual numerical increase in trials was only 40 cases, which apparently did not affect the courts significantly. It did increase individual prosecutors' workloads, especially in Fairbanks.

6. The new policy did not increase court disposition times; it did not even impede a significant

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[9] See also, Rubenstein and White, "Plea Bargaining: Can Alaska Live Without It?" Judicature, 62:266-279, Dec/Jan 1979, and Anderson, David C., "You Can't Cop a Plea in Alaska Any More," Police, January 1979, p. 4.

decline in disposition times that had begun well before the policy was announced.

7. The percentage of cases filed by police but rejected by prosecutors (i.e., the "screening" rate) increased very little in Anchorage, but doubled in Fairbanks and rose from 9% to 14% in Juneau. Screening appeared uneven: some types of cases that had hardly been screened at all in Year One were rejected in large numbers in Year Two (e.g., "morals" cases, Anchorage -- 6.5% rejected in Year One, 40.9% rejected in Year Two; drug felonies, Juneau -- 5.4% rejected in Year One, 25.9% rejected in Year Two.

8. Charging patterns and court disposition patterns (i.e., dismissals, guilty pleas, and pleas to reduced charges) changed very little from Year One to Year Two. The causes for the lack of change probably include:

a) the fact that the attorney general did not closely monitor charging practices or establish any uniform guidelines or criteria;

b) confusion created by the attorney general in his memoranda and verbal instructions about permissible and impermissible charging practices;

c) the futility (as perceived by defense attorneys) of a trial in most "routine" cases (about 65% of cases);

d) the inherent "realities" of prosecution including such things as suppression of evidence, misleading police reports, discovery of new evidence, disappearance of witnesses, and so forth -- all of which may create weaknesses in a case not evident at the time of its initial filing.

9. The policy's implementation varied greatly in Anchorage, Fairbanks, and Juneau. Fairbanks prosecutors appeared to interpret it most strictly and Juneau prosecutors most flexibly. Anchorage prosecutors appeared more individualistic in applying the policy's strictures to the cases they handled. The variations are confirmed by statistical differences in screening, court disposition, and sentencing patterns as well as by interviews.[10]

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10 Draft Summary: The Effect of the Official Prohibition of Plea Bargaining on the Disposition of Felony Cases in Alaska Criminal Courts. Alaska Judicial Council, December, 1978, p. i. (emphasis in original)

The conclusions summarized in points 7-9 became apparent to Department of Law officials during the course of the evaluation and from analysis of their own limited management data. Their analysis of the data available to them indicated that: (1) too many cases were still being rejected after initial charging decisions had been made, (2) that too many cases were still resulting in acquittals, (3) that too many cases were still being reduced in charge after initial filings, and (4) that the situation was slightly more severe in the case of misdemeanor offenses than for felonies.[11]

What the Department had no way of knowing with any degree of certainty was the extent to which the plea bargaining policy was actually affecting charging decisions. That is, were these too high numbers lower than previous year experiences and would they continue to decline. Because of the comprehensive nature of the Judicial Council Study a decision was made not to conduct a separate analysis of charging decisions prior to and after the announcement of the policy change. The Department would await the findings of the Judicial Council's study originally anticipated for release in March of 1978.

When it became apparent that a final report of the plea bargaining study would be delayed well beyond the March 1978 target date, the Department decided to move ahead with efforts to tighten-up screening. This objective had been mentioned in the State's Annual Criminal Justice Plan for 1977 and had been

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[11] See Appendix B for data on 1976-78 dispositions in felony cases.

one of the final objectives of the State's Standards and Goals Project.

The Judicial Council contemporaneously had been pushing the Department to commence a program of greater reliance on the preliminary hearing as a means of initiating felony prosecutions. And, the law enforcement community continued to express interest in the concepts associated with the police legal advisor programs which had developed across the country in the late sixties and early seventies.

The Judicial Council, interested in the screening issue because it was one aspect of the plea bargaining study for which inadequate funding had prevented a more intensive investigation, submitted a proposal to the Criminal Justice Planning Agency (Alaska's S.P.A.) in September of 1977 to undertake a screening study. It called for an analysis of screening but did not address the actual development of charging policy. The Council also proposed to assist in the development of a PROMIS type system for the Department by identifying critical data elements.

Taken somewhat unawares by the proposal, the Department of Law's reaction was essentially negative and the proposal was withdrawn by the Council from further consideration at C.J.P.A. In part, the Department's negative reponse was due to the fact that it had been engaged in the initial development stages of a funding proposal to deal with charging policy development, working with faculty of the Criminal Justice Center at the University of Alaska, Anchorage.

The action by the Judicial Council caused the Department to intensify its planning efforts and to bring staff of the Council in on those deliberations. The final product of this three-agency planning consortium was a proposal (Project Prosecutor -- PROsecutor's Enhanced Charging Using Tested Options and Research) which called for the development of charging guidelines, experimentation with the use of the preliminary hearing, establishment of a police legal advisor position within the Department and development of a pre-trial diversion project. The proposal was considered and approved by the Governor's Commission on the Administration of Justice in January of 1978. Implementation efforts began in early March.

PROJECT PROSECUTOR

The formulation and promulgation of statewide crime charging guidelines has not been attempted in most states, apparently, because the offices of public prosecutors in other states are located within counties or other political subdivisions rather than being a part of the state government. Consequently, attempts to formulate and promulgate such uniform crime charging guidelines encounter resistance from each of the separate political entities. In addition, the organization most likely to undertake such an effort, a statewide association of prosecutors, usually has no authority to require compliance or to insure that any guidelines would be adopted.

California provides a notable exception. There the California District Attorneys' Association adopted uniform crime charging standards as early as December of 1974 in a first of its kind effort.

The organizational framework within which prosecution takes place in Alaska made the development of statewide charging guidelines both possible and desirable. On the other hand, the diversity of the state's social landscape presented many of the problems which undoubtedly inhibited development of guidelines in other jurisdictions. From the outset, the Department concluded that the project had to be undertaken by practicing attorneys if the final product was to have credibility. Anchorage was selected as the site for the project because it had the staff to support the effort and the caseload to permit the kinds of analysis of case variables which would be required to develop relevant charging guidelines.

Prior to the initiation of PROSECUTOR intake functions had been performed by a single, rotating attorney in the Anchorage office. If the intake attorney was not in the office (he might be taking a case to the Grand Jury) when a police officer came in for a complaint, any attorney who was available would perform the intake function. And, many felony cases first came to the attention of the office at district court arraignment, the complaints having been prepared and filed by police officers without assistance from or the approval of an assistant district attorney.

Selection of the intake attorneys for Project PROSECUTOR was designed to provide a range of experience and perspectives. A senior male felony attorney who had had previous intake experience and a junior female felony attorney with no prior intake experience were chosen for phase one of the project.

They determined that they would approach their task by rotating responsibilities on a week by week basis. One attorney would remain in the office handling intake while the other would take cases either to preliminary hearing or the Grand Jury as required. Specific days of the week were set aside for each of these activities. And, as a result of meetings with law enforcement agencies, agreements were reached that would require approval of the intake office before felony complaints could be filed in court.

Beyond that, no formal steps were taken to systematize the process of establishing charging guidelines. The intake officers determined that they would "feel" their way towards the development of the guidelines, attempting to develop consistency in their respective approaches while remaining flexible in dealing with individual cases. They shared a common office and if both were present when a police officer requested a complaint they would both deal with the matter.

In early December, after eight full months of working in this mode of operation, the intake attorneys embarked on a one week retreat -- of sorts. During that period they began to translate their experiences into words. They had, all along, been exploring their problem on an intellectual level, reading

Miller (1969), Davis (1976), Abrams (1972), the California District Attorney's Manual, the U.S. Attorney's Manual and other works of a similar nature.

Working within an outline which included topics, such as: (1) the prosecutor's role; (2) general criteria for screening including relevant and irrelevant factors; (3) charge selection criteria; and (4) evidence sufficiency and specific crime related criteria, they fleshed out a first draft of charging guidelines. After much debate, they agreed that the key elements of the guidelines were to be found in balancing the prosecutor's obligation to protect the factually and legally innocent against what they determined to be the five basic purposes of prosecution: "(1) rehabilitation of the offender into a noncriminal member of society, (2) protection of society from individuals who pose a danger, (3) deterrence of the offender from posing a danger in the future, (4) deterrence of other individuals who might pose a similar danger in the future, and (5) reaffirmation of societal norms through community condemnation of the offender."[12] They were now ready to turn intake over to another team of attorneys -- two of whom had felony trial experience and a third with just misdemeanor trial experience -- who would seek to work within the strictures of the guidelines.

The second stage of development of the charging standards is now underway, having commenced on February 1, 1979. The

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[12] Tentative Draft, Alaska Charging Manual, p. 9.

new intake officers are working within the guidelines established by their predecessors and are also dealing with misdemeanor cases. For each charge decision they make they are recording their reasons on a precoded instrument. It is anticipated that this data will be collected for a six month period at the end of which a final set of charging guidelines will be recommended. Prior to that, however, the tentative criteria will also be experimented with in other office contexts, one rural and one urban. Problems with the guidelines experienced in these environments will be factored into the final decision-making process so that the guidelines truly can be used on a state-wide basis.

TENTATIVE FINDINGS

My observations of the process of developing charging guidelines to this point suggest that there are a number of areas related to prosecutorial discretion which need more intensive exploration.

First, an annotated bibliography on the subject of prosecutorial discretion[13] published in 1975 by the National Criminal Justice Reference Service contains a mere forty-five references and thereby provides stark evidence of the extent to which one of the most potentially intrusive functions of government in a democratic society has been subjected to the

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13 "Prosecutorial Discretion: The Decision to Charge. An Annotated Bibliography," NILECJ, L.E.A.A., Washington, D.C., 1975.

potentially harsh light of scholarly inquiry. Few of those works (Cole [1968], Miller [1969], are among notable exceptions) entailed the kind of systemmatic study which would permit those unfamiliar with the process of prosecutorial decision-making to begin to comprehend how discretion was exercised.

The situation is beginning to change. In the last three years a number of books treating the problems of the criminal justice system have focused on the role of the prosecutor (Rossett and Cressey [1976], Buckle and Buckle [1977], Weinreb [1977], for example) but too frequently they have dealt only with plea bargaining and issues related to it.

Most interesting, virtually all of the investigation to date has been undertaken by lawyers and the process of investigation has proceeded from within a framework that is essentially legalistic. The literature search undertaken in connection with this paper reveals three truly notable exceptions: Cole (1968), Greenwood et al. (1976) and Jacoby (1977).

During the course of the case study, it has become increasingly clear to me that those who had previously plowed the fields of prosecutorial decision-making have done so on the basis of a number of unwritten assumptions. Few investigators seem to have challenged basic assumptions about how the justice system ought to function. No one seems to have explored whether, if different models of the system were

developed, different conclusions on decision-making might be reached.

Thus, it seems critical that we begin to try to establish some relationships between alternate models of the justice system and the manner in which prosecutorial discretion is exercised.

Initially, we need to explore more fully Davis' (1976) questioning of the extent to which individual discretion is essential to the functioning of a prosecutor's office. My own tentative conclusion is that such individual discretion may be useful at the trial stage, but otherwise is essentially counterproductive to both a just and effective disposition of criminal charges.

Secondly, we need to explore more fully available models of the criminal justice system. Packer (1968) is perceived by many to have established the polar boundaries of models of the justice system. Griffins (1971), however, takes issue with Packer's delineations and suggests that other models of the justice system can be constructed. Further, Griffins argues that Packer's two models, the due process and crime control models, are in fact a mere reflection of one model of the system, the adversarial model. Griffins suggests that it is possible to construct what he would call the family model of justice. Similarly, we need to look more closely at bargain models of justice as posited by Tossett and Cressey (1976) and Buckle and Buckle (1977). Finally, Weinreb's (1977)

magisterial model offers some unique points of departure for further study.

Having more fully considered some of the models of the justice system, we also must look at models of decision-making developed for other disciplines. Allison (1971) describes three ways of looking at decision-making which he calls: (1) the rational actor, (2) the organizational process, and (3) the bureaucratic politics models of decision-making. Rovner-Pieczenick (1978) has broken important ground in applying Allison's models to justice system research. Levin (1977) and Radford (1975) describe other models against which prosecutorial decision-making must be reviewed. We absolutely need to explore the extent to which these and other models can contribute to a better understanding of how and why decisions are made by public prosecutors.

Further, we need better typologies of prosecutorial policy. Jacoby (1977) describes four policy types: (1) legal sufficiency; (2) system efficiency; (3) defender rehabilitation; and (4) trial sufficiency, all of which have relevance to an adversarial model of justice, but bear little on a family model. We need to develop other models of policy-making if we are to increase our understanding of how prosecutorial discretion is exercised.

My suggestions on the need for more conceptualizing and model building in the area of prosecutorial discretion are occasioned by actions taken by the intake officers in Project

Prosecutor. The key elements and basic purposes of the guidelines cited previously are difficult to relate to typical notions of an adversarial model of justice administration. They do not fall neatly within either a due process or a crime control theory of justice administration. While other sections of the guidelines are relevant to the adversarial process, their application is dependent upon a decision to involve that process. Those sections of the guidelines which deal with the primary decision of whether to prosecute or with diversion decisions quite clearly entail notions more akin to Griffith's family model of justice than to Packer's theories.

In addition to these kinds of issues, my interviews with and observations of the actions of the intake officers suggest the need for expanding our notions of factors which are relevant to charging decisions. The identity of the police officer seeking a complaint and the intake officer's knowledge of that officer's past loom large in the decision-making equation. Surprising or not, it is a factor not frequently discussed in the literature. In light of the developing knowledge of the extent to which truly small numbers of officers within a police department make disproportionately large numbers of arrests (of both the good and the bad variety), this factor may be rationally explained. It is an aspect of the decision-making process which we are exploring more closely in the data gathering efforts of the second stage of the project.

While the environment within which the development of charging guidelines is taking place here in Alaska does not permit it, I have seen enough to suggest that we need to look more intensely at experience factors among intake decision-makers. Price (1965) suggests four estates of decision-makers -- the scholarly, the professional (in which he groups lawyers), the administrative and the political. As each has differing orientations, they create a check and balance system among decision-makers. Interestingly enough, one can fit prosecuting attorneys into all four of the estates and in some instances, I suggest, this can be done with the assistants within a single office. Price's work provides an interesting point of departure for looking more closely at types of prosecutors and the impact this has on charging decisions.

Among the two assistants engaged in the initial development of the guidelines, the more experienced attorney more frequently took the broader view. In one case in which he disagreed with the intake decision of his younger colleague, cocaine possession charges (a felony offense) had been filed against a young man with no previous criminal history. The defendant had been stopped for a traffic violation. While producing his operator's license he dropped a small foil packet. The police officer asked him what it was and he replied, "Cocaine." He was arrested for possession. No Miranda warnings had preceeded the question.

The two intake officers both agreed that there was the likelihood of a suppression motion on the questioning. The

younger attorney felt that the case should be prosecuted for its general and specific deterrence value and as a reaffirmation of societal norms. The older intake officer thought that diversion or deferred prosecution might be more appropriate, that rehabilitation of the offender was the primary objective of prosecution and that the goals of specific deterrence had likely been accomplished by the arrest and subsequent processing of the defendant. (As it was the younger attorney's week for making decisions, the young man was prosecuted.)

Along similar lines, the older attorney, even at the conclusion of his initial involvement with the project, was still trying to resolve in his own mind the following dilemma. While rape cases present every prosecutor with an above average number of problems, in Alaska those problems are compounded by a series of relatively unique culturally based barriers to successful prosecution. A significant portion of victims are Native women who by western standards appear to act in a very passive manner. They remain so when threatened with or subjected to sexual assaults. Since the state must prove that carnal knowledge was forcible and against the victim's will in order to prove rape, it must overcome a serious evidentiary hurdle. This problem is exacerbated by the fact that excessive alcohol use on the part of both the victim and her assailant is present in many of the factual circumstances surrounding these particular kinds of cases.

The senior intake attorney described a need to prosecute such cases for general (and sometimes specific) deterrence

purposes as well as to reaffirm societal norms. However, he also understood the high probability of ultimate non-prosecution by the victim or acquittal by the jury and was troubled over the commitment of scarce resources to such cases. His younger colleague was less troubled. If the evidence would support a conviction, the defendant would be charged. Any "problems" with the case would have to be dealt with as they actually arose.

I will be looking for displays of similar behavior patterns among the new intake attorneys and if they occur will attempt to develop hypotheses that might better help explain the differences.

Along other lines, I was interested in the dynamics of the relationship between the D.A.'s office and law enforcement agents, relationships which had been reportedly much cooler since the onset of the no-plea bargaining policy.[14] My own experiences as a member of the Plea Bargaining Study's Advisory Board had led me to conclude that while there was some initial, heated hostility to the policy by the police, as time wore on the heat had dissipated. There was much more agreement on the policy between the Department of Law representative and the police representative on the Advisory Board at the conclusion of the study than at the start. Further, at the June 1978 annual D.A.'s meeting the policy was given a vote of confidence by the Alaska Chiefs of Police Association.

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[14] See Anderson, supra, n. 9 at p. 8.

My observations of relationships between the personnel of the intake office and law enforcement agents, to this point in time, suggest that things have returned to a fairly even keel and in some respects may have even improved. My guess is that this is a combined product of the efforts made by the intake attorneys to explain their decisions to the officers requesting complaints and the efforts of the attorney functioning as the police legal advisor. Nevertheless, the inevitable tension between police and prosecutor still remains, largely because the police still do not completely understand the prosecutor's role in our system of justice.

On this last point, the following provides an excellent illustration of the lack of appreciation for the prosecutor's role. Early on in the course of the plea bargaining study I engaged in a debate with police officers on the legitimacy of establishing the police. I asked the officers gathered if they saw anything wrong with their taking cases to the D.A.'s office and demanding that they be prosecuted. To a man, they viewed such actions as not only proper but also mandatory. I then asked them if they would see anything wrong with a D.A. coming over to their offices and going through the crime reports of the past 24 hours and demanding that they only investigate those reports for which he had an interest in prosecuting. They were dumbfounded that I would even ask such a question. <u>They</u> decided those issues. The questions helped to define the respective roles more clearly. They did not, however, totally resolve the problem.

One interesting observation derived from the study, which may reflect practices in other communities, involved the way in which the intake attorneys refused prosecution without saying no -- a non-denial denial, to steal a phrase from the not too distant past. Not infrequently they would request that an officer who came seeking a complaint (especially one whose reputation for thoroughness was not enviable) conduct further investigation into some essential element of the case knowing full well that the officer would not return again to the office with the case. Their assumptions on how the officer would act were based on their experiences with follow-up investigations by the police in general: they were difficult to produce.

In fact, one of the basic dilemmas confronting the intake attorneys was obtaining follow-up investigations in cases which they felt were strong enough to meet a probable cause test (and would not likely survive beyond a reasonable doubt standard) but which required further investigation. Holding off filing a complaint was one form of leverage by which the follow-up investigation might be obtained, but the risk that the police would not persevere was ever present. And, of course, their non-denial denials contributed to the confusing messages some officers were receiving.

As an aside, it should be noted that one of the generally agreed upon benefits of the no-plea bargaining policy was better police case preparation, although the fact has yet to be empirically demonstrated. As might be expected, the case is better made with investigations conducted by detectives who worked

closely with prosecutors than with street cops. And, the fact that follow-up investigations were still being conducted was used to help persuade police officers that the no plea bargaining policy had not resulted in the substitution of a "beyond a reasonable doubt" for a "probable cause" standard in deciding whether to file a complaint. After all, if the former standard were being employed by prosecutors, why would they need any further evidence to make a case?

PRELIMINARY DATA FINDINGS

I had hoped to report to you more detailed findings based on data analysis, but project slippage precluded an earlier start on the data collection. I am into that phase of the project at the moment and am collecting data along three fronts. First, I am looking at cases in which complaints either were not filed or were dismissed at District Court arraignment. I shall report shortly on some data obtained from that effort. Second, I am collecting similar data for prosecuted cases, and, third, for cases which were deferred to the Pre-Trial Diversion component of the project. My intention is to ascertain whether (as there should be) there are recognizable differences among the three different groups of cases. (Appendix C contains a sample of the data collection instrument.)

In addition to these data collection efforts, I am just about to begin a more systemmatic collection of data on the intake decision. Appendix D provides a sample of a form which

will be used in all cases handled by the intake office. I hope that the attorneys will be somewhat more rigorous in their recording efforts, although as an attorney my own experiences leads me to conclude that there will be the inevitable gaps.

As I mentioned previously, I have just completed gathering data from a random sample of 110 of those cases which were not prosecuted. The data hasn't even been key-punched yet; consequently, I can only report at the moment on a few hand-counts.

Among the sample data, 38.2 percent of the no-charge cases involved situations in which an arrest had taken place. Among those cases, 30.9 percent involved actions taken by the Alaska State Troopers, 52.4 percent by the Anchorage Police Department and 16.7 percent by other enforcement agents. Another 64 cases, 58.2 percent, involved the refusal of the intake officer to file a complaint where the suspect had not yet been arrested. Forty-eight percent of those cases (N=31) involved A.S.T. personnel, 34.4 percent (N=22) A.P.D. personnel and 17.2 percent (N=11) other agents (see Table One and Table Two).

Table Three provides a breakdown of self-reported reasons for not prosecuting the case. This data had been routinely collected by the Department of Law prior to the start of the Project, primarily for purposes of communicating charging decisions to the officer who brought the case to the office. No statistical analysis had ever been done on the data and I determined that the frequency with which the forms were actually

filled out prior to the start of the Project was so low that analysis of their content would not be profitable use of time and resources.

TABLE THREE

Reported Grounds for Dismissal or Refusal to Charge

(N=110)

Reason	N	%	Cum %
Defendant Assist State in Another Case	1	00.9	.009
Victim Declines Prosecution	14	12.7	.136
Witness Unavailable	3	02.7	.163
Inadmissible Evidence	2	01.8	.181
Insufficient Evidence	19	17.3	.354
Investigation Incomplete	5	04.6	.400
Referred to City Attorney	1	00.9	.409
Dismissed, Rule 43A	3	02.7	.436
Convicted on Another Felony	3	02.7	.463
Defendant Not Criminally Responsible	3	02.7	.490
Inadequate Evidence of Essential Element	20	18.2	.672
Other	15	13.6	.808
Unknown	20	18.2	.990
TOTAL	110		

*Rounding Error.

As is clear from the data in Table Three, the problems still persists. In nearly one-fifth of the cases, the intake attorneys were still not reporting reasons why they were refusing to prosecute.

Among the reasons falling into the "Other category were: mutual combat, civil case, indicted on a more serious offense, defendant out of state and evidence would only support a misdemeanor charge, probation revocation proceedings instituted, restitution already made, the amount of drugs involved didn't warrant prosecution and, in two cases, the subsequent death of the defendant.

As indicated in Table Four, the vast majority of the defendants or suspects were male. Table Five provides a racial breakdown of the group.

TABLE FOUR

Sex of Suspects or Defendants

(N=110)

	MALE		FEMALE		UNKNOWN	
	N	%	N	%	N	%
Arrested	34	40.0	5	33.3	0	0.0
Not Arrested	53	57.0	10	66.7	0	0.0
Arrest Status Unknown	3	3.0	0	0.0	2	100.0
TOTALS	93	84.5	15	13.7	2	1.8

TABLE FIVE

Race of
Suspects or Defendants

(N=110)

Race	N	%
White	73	66.4
Alaskan Native	6	05.5
Black	14	12.7
Other	5	04.5
Unknown	12	10.9
TOTALS	110	100.0

The breakdown on the sex of the defendant/suspect is comparable to arrest data for Alaska. For instance, in 1978 83 percent of those arrested were men while 17 percent were women.

The racial data, on the other hand, reveals some apparent differences between the sample group and statewide arrest data. While the 1978 arrest figures for whites (63%) is comparable with our data, some difference exists for the Native group who made up 20 percent of those arrested in 1978 and blacks who comprised 4 percent. When the sample is separated into groups of those who were arrested and those who were not, and then broken down by race, even more striking differences occur. While the numbers involved are too small to provide any conclusive evidence, they do suggest the need for a closer look at arrest practices.

TABLE SIX

Cases Involving
Defendants Under Arrest

(N=42)

Agency Seeking Prosecution	Total		R A White		C Native		Black		E Other		Unknown	
	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.
	13	30.9	9	34.6	0	0	3	37.5	0	0	1	20.0
	22	52.4	13	50.9	2	100	5	62.5	1	100	1	20.0
	7	16.7	4	15.4	0	0	0	0.0	0	0	3	60.0
	42	100.0	26	100.0	2	100	1	100.0	1	100	5	100.0
Percent of TOTAL			61.9		4.8		19.0		2.4		11.9	

TABLE SEVEN

Cases Involving
Suspects Who Were Not Arrested

(N=64)

Agency Seeking Prosecution	Total		R A White		C Native		Black		E Other		Unknown	
	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.	N	% of Col.
	31	48.4	24	51.1	2	.5	2	.4	2	66.7	1	.2
	22	34.4	16	34.0	2	.5	2	.4	0	0.0	2	.4
	11	17.2	7	14.9	0	0.0	1	.2	1	33.3	2	.4
	64	100.0	47	100.0	4	100.0	5	100.0	3	100.0	5	100.0
Percent of TOTAL			73.4		6.3		7.8		4.7		7.8	

One other aspect of the project warrants brief mention. We have completed the collection of data on intake outcomes for cases opened in the months April-December, 1978. (We are working backwards to February.) During those months 347 cases were accepted for felony prosecution with 161, or 46.4 percent, being taken to preliminary hearing rather than the grand jury. This represents a significant increase over the average of approximately 10 percent of the cases taken to prelims in prior years.

SUMMATION

As I have previously stated, I had hoped to report in greater detail on our findings. Those of you who are interested in the outcome of this study should let me know and I'll be glad to keep you informed.

I am confident, however, that when direct plea bargaining between opposing counsel does not provide the routine means for case disposition by prosecutors, then our current understanding of the meaning of prosecutorial discretion proves to be deficient. As the process of plea bargaining comes under increasingly greater scrutiny and as policy changes such as that experienced in Alaska are implemented in other jurisdictions, our need for a broader perspective on prosecutorial decision-making will increase. It behooves us to begin the processes of alternate model construction, conceptualization, theory building and hypotheses development now so that they will be available to those who will be analyzing prosecutorial decision-making in the years to come.

APPENDIX A

MEMORANDUM State of Alaska

TO: All District Attorneys
and Assistant District Attorneys

DATE: June 30, 1976

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Plea Bargaining

I found our general discussion concerning plea bargaining at the recent District Attorneys' Conference to be very helpful and appreciate the open expression of ideas and views offered by all of you. We have been operating under the present procedure for nearly a year now, and while it has had some unanticipated effects, the policy does not seem to be creating the general administrative chaos that some people seemed to believe would develop. While I plan to continue the present policy now in effect, I think our discussion at the conference indicates there are a few things which should be stressed.

First of all, I want to emphasize the thrust of the initial statement set out in my memorandum of July 3, 1975, to all of you concerning charge bargaining. When we implemented the original policy, I stated that I wanted charges which were initially filed to accurately reflect the level of available proof at that time and that I did not want overcharging, either in terms of the number of counts or the magnitude of the charge. I realize that to some degree it is inevitable that there may be reductions of charges or dismissals of charges once a defendant determines to enter a plea. But I think it is time to tighten up on initial charging itself. Some District Attorneys remarked to me at the conference that they were bringing multiple charges and multiple counts as a matter of "tactics." I do not want that practice to continue. I want you to file the charge or charges that you think you can prove and stick with them until and unless you are convinced they are not proper charges. I reiterate that I do not want charges reduced or dismissed in order to obtain a plea. In essence, I do not want you to set up a charge bargaining situation by the way the initial charges are filed. Charges should be dismissed or decreased only under unusual circumstances, only then when justified by the facts in a case, and not as a quid pro quo for the entry of a plea of guilty.

One possibility that has been recently suggested to me regarding the practice of charge bargaining is the use of some sort of a form, given to the defendant or his counsel, which indicates that a charge is being reduced or dismissed for reasons stated thereon and not in return for a plea of guilty to one or more offenses. The form would then state that the defendant is free to proceed to trial on the charge or charges remaining. I prefer not to have to employ this type of procedure since I feel that we can continue to rely on a good faith effort by each of you to implement the policy with respect to plea bargaining that has been articulated here and in previous memoranda on the subject.

I realize there are times when the elements of the offense may be highly technical, as a result of which two similar type counts are filed to protect yourself dependent upon the way the evidence develops. In that instance you obviously only intend to seek a conviction on one or the other, and therefore it obviously makes sense to dismiss one if a plea is entered to the other count. This is not the situation I am trying to prevent.

What I am trying to prevent is deliberate overcharging. That will not be easy to change, but I want a real effort made. I know that even if the facts warrant reduction on a charge, some of you will be hesitant to make it if you do not get some sort of implied or express indication from the defendant that he will plead guilty. After all, if the defendant does not want to plead, why give him the break of reducing ADW to A&B? The answer lies in the fact that if it is the kind of case that should be reduced to an A&B, it is the kind of case that should be filed as an A&B or reduced to one if it was initially filed at a higher level. I think over the years much of charging has become linked with the techniques of plea bargaining, to the point where filing the appropriate initial charge for an offense is not gauged in terms of what would be appropriate for conviction, but rather what would be appropriate for bargaining purposes. If we are not going to bargain, that should not be a relevant consideration.

The second thing I want to clarify is that henceforth I do not want District Attorneys or Assistant District Attorneys participating in sentence conferences with a judge prior to the entry of a plea. By now, each office should have received a copy of the Second Circuit opinion in United States v. Werker. In the remote event you have not, I am enclosing a copy with this memo, and it should be made available throughout each office. If a judge persists on holding a pre-plea sentence conference, either at the request of a defense counsel or on the judge's own motion, I do not want the office to participate, and in fact I want the office to strongly protest any such conference. I think the practice of judicial negotiations with a defendant is an extremely bad one and I have made my feelings known on the matter to both the Supreme Court and the Superior Court. We are presently in the process of finalizing a proposal to submit to the Supreme Court for an amendment to Criminal Rule 11 along the lines of the federal rule construed in Werker which would essentially prohibit trial courts from participating in a process of negotiating directly or indirectly with a defendant or his attorney with the objective of securing the entry of a plea of guilty.

Lastly, I should note that it has been suggested that certain modifications be made with respect to some aspects of the present policy, namely that misdemeanors that are essentially administrative or regulatory in nature and fish and game violations be exempted from the policy; that some adjustment be made for prosecutions, particularly for misdemeanors, arising in bush communities; and that sentence recommendations be permitted more frequently and under less stringent guidelines. I would welcome further comment on these and any additional aspects of the policy from those of you who feel that your views have not to date been sufficiently made known. We are taking a hard look at proposals that have been made and will be meeting with certain District Attorneys shortly to explore possible modifications in depth.

AMG:as
Enclosure
cc: Dan Hickey

MEMORANDUM State of Alaska

TO: All District Attorneys
Criminal Division
Department of Law

DATE: July 3, 1975

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Plea Bargaining

After our lengthy and heated discussions of last week on the referenced subject, I have given the matter a great deal of additional thought and have discussed it with Dan Hickey and with the Governor. As a result of these discussions, I wish to have the following policy implemented with respect to all adult criminal offenses in which charges have been filed on and after August 15, 1975:

(1) Commencing with offenses filed on and after August 15, District Attorneys and Assistant District Attorneys will refrain from engaging in plea negotiations with defendants designed to arrive at an agreement for entry of a plea of guilty in return for a particular sentence to be either recommended by the State or not opposed by the State pursuant to Criminal Rule 11(e). After the entry of a plea of guilty, the prosecuting attorney under circumstances described in No. 3 below is free to recommend an appropriate sentence or range of sentence to the court.

(2) While I was initially of the view that it would be necessary to abolish all sentence recommendations in order to insure that some form of sentence bargaining did not continue to occur, reflection has persuaded me that such a restriction would indicate a lack of faith in the District Attorneys and Assistant District Attorneys which I never meant to demonstrate. Consequently, if the District Attorney approves a sentence recommendation in a particular case prior to entry of a plea (though, as noted below, this should not occur in the general case), the contemplated recommendation may be transmitted to the defendant through his attorney in order that he might make up his own mind with respect to the entry of a plea. Again, I stress that I do not want bargaining over sentences and I assume that policy decision will be respected.

(3) In the majority of cases, I prefer that we employ open sentencing bringing to the court's attention all factors relevant to a consideration of sentence rather than

recommending a particular sentence. However, in light of our earlier discussions last week in Anchorage, I am willing to recognize that there are certain instances in which specific sentence recommendations are appropriate. Roughly, the circumstances in which a form of sentence recommendations will be appropriate are as follows:

(a) when the sentencing court specifically requests the prosecuting attorney to make a recommendation as to either a specific sentence or a form of sentence;

(b) when there are unusual aggravating or mitigating circumstances that dictate a specific recommendation;

(c) when the court has imposed a sentence which provides for a period of probation and recommendation is in respect to the conditions of probation.

Any proposal to make a specific sentence recommendation must first be reviewed and approved by the District Attorney to determine (a) whether in the particular case a recommendation is warranted and (b) whether the specific sentence proposed is consistent with sentences being imposed in similar cases in that district and other districts throughout the state. In each case where a specific sentence recommendation is made, a brief memo to the file should be prepared and endorsed by the District Attorney indicating what the sentence recommendation was, why it was felt appropriate and necessary and why it was determined to use specific sentencing as opposed to open sentencing. Copies of each such memorandum should be retained in a sentencing file maintained in each office and copies should be forwarded once a week to Dan Hickey in Juneau for maintenance of a statewide sentencing file.

(4) Plea negotiations with respect to multiple counts and the ultimate charge will continue to be permissible under Criminal Rule 11 as long as the charge to which a defendant enters a plea of guilty correctly reflects both the facts and the level of proof. In other words, while there continues to be nothing wrong with reducing a charge, reductions should not occur simply to obtain a plea of guilty.

(5) Like any general rule, there are going to be some exceptions to this policy. Any deviation, however, must first be approved by either Dan Hickey or myself. In

cases where we are dealing with co-conspirators or other similar type situations and a sentence bargain may be required to obtain a conviction, I would anticipate that we would approve it. In such cases I would, of course, lean extremely heavily on the recommendation of the District Attorney, but permission for sentence bargains will be given sparingly if at all.

I realize that, while the above policy reflects many of your concerns, it does not necessarily reflect all of your concerns. It is possible that we may have to try more cases and, if so, I will try my best to get additional help for us in the next legislature. I know it is going to make your individual work loads somewhat more difficult, though I hope not much more difficult. In return for this, hopefully we will be doing away with a technique which is generally considered, at least by a substantial segment of the public, as one of the least just aspects of the present justice system. It will also to a substantial degree put sentencing back in the courts, where I think it belongs, instead of it being a product of a negotiated arrangement.

I have held off implementing this policy immediately for one basic reason. Doing away with sentence bargaining may mean that some adjustments will have to be made in office procedures in order to accommodate the change. An effective screening of cases filed, for example, will have to be instituted in order to avoid filing cases which might be "bargained" under the existing system, but which could not be won at trial. We are going to have to be prepared to move people around between offices if the trial load gets too great in one place. It is entirely possible that immediately after implementation of the policy the Public Defender's office or private counsel may simply balk at pleading anyone, with the result that we will have a temporary pile-up of cases. I think if we make it clear that we will do everything we can to handle that pile-up, but not back off the policy, the situation will be temporary and after awhile things should return to something like normal.

I appreciate the fact that all of you were so frank with me when we discussed this in Anchorage last week. I hope now, having had a free discussion of our views, that we can implement this policy as smoothly as possible.

I will today inform the Public Defender's office of the forthcoming modification in procedure. I anticipate that private criminal defense attorneys will simply find out in due course.

AMG:as

MEMORANDUM State of Alaska

All District Attorneys
and
Assistant District Attorneys

DATE: July 24, 1975

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Plea Bargaining

I am sure you realize by now that what started as a discussion among ourselves as to new office policy has developed into a matter of statewide significance and national attention. The fact that we are going to try to end plea bargaining here has received comment in papers as far away as Washington, D.C. and New York. The Judicial Council, the court system and this office have been contacted by several national organizations who are anxious to do an in-depth study of what occurs once we embark on the new program.

For your reading pleasure, I am enclosing (1) an editorial from the "Washington Star", and (2) a brief discussion of some of the reasons for eliminating plea bargaining as outlined by the National Advisory Commission on Criminal Justice Standards and Goals in their study on courts. I bring these materials to your attention to emphasize the significance of what you as District Attorneys and Assistant District Attorneys are about to do. I realize as well as any of you how difficult this is going to be. There are many people who believe that it cannot be done--that the people within the criminal justice system will be unable to generate the effort and dedication that a change of this magnitude requires. I know, for instance, that every member of the criminal justice system, be it District Attorneys, defense counsel, or judges, is going to have to work harder at least for awhile. Trying more cases is going to mean greater preparation and more intense effort and that is asking a lot from people.

The attorneys who work in the District Attorneys' offices are professionals, and a little too old for a pep talk so I'll skip that approach. I do want to tell you, though, that if we can do this--if we can really make a change in the system to effectively eliminate sentence bargaining--the office will have accomplished something really meaningful. I think it will be something that each person in the office will be proud of. It would certainly be something the office would have a right to be proud about. In this day when government is subject to so much criticism, I think it would really be satisfying to those who work in government to do something which, while difficult, is truly recognized by the public as being valuable. I hope we can do it.

Now, with that behind, let me make a few specific comments on procedures which should be implemented as we embark upon this experiment. The key feature of the elimination of plea bargaining is that we are going to be faced with more trials. Our problem, then, is how to handle those trials with the manpower we now have available. It may be that experience shows that we need more personnel, but I want the program initially to operate under the assumption that we are going to do it with the people we now have. If that is the case, we are going to have to develop means of keeping the trials manageable. Toward that end I have two basic suggestions:

1. <u>There Must Be a Careful Screening of Cases</u>.

A. As a basic rule, the final decision on charges should be made by the District Attorney who is going to end up having to prosecute those charges in court. In some judicial districts we have found ourselves in the position of having to back up or back away from decisions made by Public Safety officials as to what charge should be filed. I will be meeting with Commissioner Burton to make very clear that we will make that decision in the future and I want each of you to make clear to the city or state police with whom you work that it is a prosecutor's function to decide what charge can be proven in court rather than a policeman's function. If you do that, you should be in a position to hold off filing those cases which should not be filed in the first instance, and when cases should be filed to file them in the appropriate category of offense. If charges are filed by police officers, and in your opinion they are not justified, notify the officer, discuss it with him, but in the end promptly modify the charge to what you feel is appropriate.

B. Preliminary figures I have obtained from the court system indicate that the percentage of guilty pleas or convictions on felonies filed in some areas of the state is extremely low. In one judicial district it is less than 60 per cent. I assume that rather than indicating that we are losing cases, this indicates that many cases are being filed as felonies and then being reduced to misdemeanors. When the percentage gets that high, it is indicative of the fact that the original charges are not appropriate. If a large percentage of cases end up as misdemeanors they probably should be filed that way in the first instance. I stress to you, for reasons I will mention later, that you should file the charge you can prove. Don't file charges which you cannot prove in the assumption that they will be reduced later.

C. Some charges should not be filed at all. Merely because you are brought a police file does not mean that you are required to file a criminal charge. In some cases the facts simply will not justify criminal prosecution either because it is not warranted in the interest of justice or because technically we could not prove the charge. If that is the case, do not file the charge in the first instance. I am not interested in seeing the office file Assault with a Deadly Weapon charges and then reduce them to simple Assaults with suspended impositions of sentence with no fine or jail time purely because we never had a case in the first place. The time spent on those kinds of cases would be better spent on the cases we can prove. Merely having a conviction statistic proves nothing--if we prosecute somebody and we believe it is warranted, we should be seeking a result justified by the offense and not simply obtaining convictions with meaningless penalties.

In this vein, consider diversionary programs carefully. Before August 15 we will have had meetings with Health and Social Services, particularly Corrections, to try to outline for the various prosecutors meaningful alternatives to criminal procedures in situations where criminal procedures are not warranted. Alcoholism rehabilitation instead of drunk and disorderly prosecutions is perhaps the classic example, but we will try to make available to you as broad a spectrum of diversionary programs as we can. If they are meaningful alternatives, use them.

D. In my initial memorandum on this subject, I stated that while prosecutors should feel free to reduce charges if facts warrant, I did not want charges reduced simply to obtain guilty pleas. I am sure with the elimination of sentence bargaining there will be a great temptation to charge heavily under the assumption that you can later reduce the charge in exchange for a guilty plea. I do not want the office to do that for several reasons. First, it would, in my opinion, violate the spirit of what we are trying to do, which is to insure that people are charged fairly, tried fairly and sentenced fairly for offenses that they have committed. Second, and of a more practical bent, I think you will have more chance of obtaining a guilty plea if you make the charge realistic in the first instance. Once you establish the atmosphere of bargaining with the defendant, be it over charge or sentence, it

is difficult to stop the process. If a defendant feels that the state has charged him properly, there is more of a chance of him responding in a non-contentious manner. Again I stress, charge what you can prove and then do not deviate from it unless subsequent facts convince you that you were erroneous in your initial conclusion.

The third reason you should not use reduction of charges as a means to obtain guilty pleas is that I am sure you all realize you are going to be very much in the public eye in this experience. There are many people who believe that this change cannot be accomplished, and they are going to look for any example to prove that. If you use charge bargaining to obtain guilty pleas and not because the facts warrant a reduction in charge, the office is going to be criticized justifiably for doing something that we said we would not do. I want to give this system a fair try, and accordingly only reduce charges when the level of proof warrants.

II. Efficiency in Trial Procedures.

More effective screening of cases and diversionary programs may help us handle some of the case load we are bound to face, but the major efforts should be spent at increasing the efficiency of the office to actually try criminal cases. Right now, 94 per cent of criminal cases which are filed are plea bargained. We can expect that number to drop substantially with the result that no matter how you analyze it we are going to have to try a great many more cases than we are now trying.

Presently, after the initial complaint is filed, negotiations take place with defense counsel over the appropriateness of the charge, continued conferences take place, and eventually as a result of either preliminary proceedings or continuous negotiation, some agreement is reached on sentence. The time previously used negotiating with defense counsel over reaching a plea bargain should now be devoted to preparing for and trying cases. We will be meeting with court officials and officials from the Department of Public Safety and local police departments to try and insure that we minimize the time wasted in bringing a case to trial. What we hope to accomplish and what you should strive for is a system by which (1) when a case is filed it is immediately docketed for a trial date and an omnibus hearing and (2) under the assumption that the case will go to trial, witnesses should be scheduled to appear at the date set. At the omnibus hearing, open files should be the policy if it already is not in the various District Attorney's

offices. While efforts should be made at the omnibus hearing to find out whether the defendant will enter a plea (efforts I'm sure that will be promoted by the judge), assume that the defendant will not plead guilty and prepare accordingly.

If continuances are sought it should be the policy of the office to grant them sparingly. There are, of course, instances in which continuances are inevitable, but the entire shift from plea bargaining is going to require additional efficiency and, if that is so, efforts should be made to keep continuances to a minimum. If judges want to grant continuances on their own, they are of course free to do so, but if we get into the habit of consenting to continuances, we are going to run into some serious administrative problems when cases which are reasonably scheduled initially start to pile up on each other. In every case in which a continuance is obtained, of course obtain a waiver of the four-month rule.

Since we will be having many more trials, it may be desirable in multi-member offices to have a clerical person designated whose sole function it is to get the right witnesses to the right place for the right trials on the right dates. It is going to be a bit much to ask for the attorney who is trying the case to handle his own administrative arrangements. Dan Hickey will be working with each office in an effort to improve the handling of those administrative details so that the attorneys themselves are freed as much as possible for actual trial and preparation for trial.

I think if you assume that every case is going to trial and act accordingly, you will find that you pick up a lot of time which otherwise was lost when we dealt with cases under the assumption they would bargain out. If the defendant eventually does enter a plea, fine. But assume from the outset that he will not.

III. Miscellaneous Matters.

A. In many cases, judges or defense counsel are going to try to get around the policy of changing plea bargaining by simply asking District Attorneys what they will recommend in a particular case prior to the time the defendant enters a plea. Except in the extremely unusual case the answer to this should be that no decision will be made until the defendant enters the plea and that in any event we anticipate in most cases to go with open sentencing. If you make this clear at the outset of this program, it will make it lots easier for you in the future.

TO: Judges
Alaska Court System

DATE: July 7, 1975

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Plea Bargaining

I am sure that by now you have become aware of an impending policy change within the Attorney General's office concerning plea bargaining. So as to insure that there are no misunderstandings concerning that policy, I would like to advise you exactly what I have advised the various District Attorneys throughout the state:

(1) Commencing with offenses filed on and after August 15, District Attorneys and Assistant District Attorneys will refrain from engaging in plea negotiations with defendants designed to arrive at an agreement for entry of a plea of guilty in return for a particular sentence to be either recommended by the State or not opposed by the State pursuant to Criminal Rule 11(e). After the entry of a plea of guilty, the prosecuting attorney under circumstances described in No. 3 below may recommend an appropriate sentence or range of sentence to the court.

(2) If the District Attorney approves a sentence recommendation in a particular case prior to entry of a plea (though, as noted below, this will not occur in the general case), the contemplated recommendation may be transmitted to the defendant through his attorney in order that he might make up his own mind with respect to the entry of a plea. There will be no bargaining over sentences.

(3) In the majority of cases, the District Attorneys will employ open sentencing bringing to the court's attention all factors relevant to a consideration of sentence rather than recommending a particular sentence. There are certain instances in which specific sentence recommendations are appropriate. Roughly, the circumstances in which a form of sentence recommendations will be appropriate are as follows:

(a) when the sentencing court specifically requests the prosecuting attorney to make a recommendation as to either a specific sentence or a form of sentence;

(b) when there are unusual aggravating or mitigating circumstances that dictate a specific recommendation;

(c) when the court has imposed a sentence which provides for a period of probation and recommendation is in respect to the conditions of probation.

If an Assistant District Attorney wants to make a specific sentence recommendation, it will first be reviewed and approved by the District Attorney to determine (a) whether in the particular case a recommendation is warranted and (b) whether the specific sentence proposed is consistent with sentences being imposed in similar cases in that district and other districts throughout the state.

(4) Plea negotiations with respect to multiple counts and the ultimate charge will continue to be permissible under Criminal Rule 11 as long as the charge to which a defendant enters a plea of guilty correctly reflects both the facts and the level of proof. In other words, while there continues to be nothing wrong with reducing a charge, reductions will not occur simply to obtain a plea of guilty.

(5) Like any general rule, there may be some exceptions to this policy. For instance, in cases where we are dealing with co-conspirators or other similar type situations and a sentence bargain may be required to obtain other convictions, it is possible it may be approved. Approval for sentence bargains will be granted directly by the Attorney General or Deputy Attorney General for Criminal Affairs and approval will be given sparingly.

It may be that this change in policy will result in more cases being tried since defendants may be hesitant to plead without a specific bargain. Nonetheless it is, in my view at least, a step which is required to hopefully restore some public confidence in what is admittedly an imperfect criminal justice system. We do not yet have the kind of administrative problems in Alaska that they have in larger states, and accordingly the type of experiment I am proposing is at least feasible. Hopefully it will not result in the kind of administrative problems they have in other states.

I have advised the Public Defenders' offices of the modification in our procedures. If you have any questions concerning those procedures, please check with the District Attorney in your district or directly with this office. We recognize that some initial problems may result and we stand ready to aid in any way possible to alleviate whatever problems there may be.

AMG:as

As noted in the original memo, District Attorneys must approve any specific sentence recommendation and I do not want specific sentence recommendations made in criminal cases before entry of plea except in the most unusual sort of case.

An offshoot of this appeared in a recent conference I had with the Superior Court judges in Anchorage. I was advised that judges might attempt a new form of plea bargaining directly by calling the defendant and his attorney into chambers, advising him what sentence the judge would give him if he pled guilty "on the basis of facts now known to the judge", and further advising him that if he did not plead guilty all bets were off. I was asked whether I would forbid prosecutors to participate in this procedure. I advised that if a judge called a prosecutor to a conference he would of course attend, but that we would not make any recommendation for sentence prior to the entry of a plea. I further advised that I thought this would be extremely bad policy because (1) it would make the present system of plea bargaining even worse, (2) it would legally amount to coercion on the part of a judge to obtain a guilty plea, and (3) a defendant who entered a guilty plea would very quickly apply for post-conviction relief and my guess is would obtain it. If you are called to such conferences, of course feel free to attend but I think you should state very clearly that the Department of Law disagrees with the concept of a judge "bargaining" impliedly or directly with a defendant and in no way participate in the meeting other than to physically attend. I told the judges that while I knew of their hesitancy about doing away with plea bargaining, I hoped they would give the system a fair try. I know that it will require them to try more criminal cases, and I sympathize with their concerns about that. Nonetheless they have a responsibility to try criminal cases if necessary and I have confidence that they will do whatever is necessary to perform that responsibility.

After the 15th of August I will try to spend as much time in the District Attorneys' offices around the state as I can. I will be available to listen to whatever suggestions you may have for the improvement of the program. Do not hesitate to make such suggestions. At the same time, the Governor is firmly committed to this program, I am firmly committed to it, and I hope that everyone in the department will do their absolute best to make a change which is, in my opinion, long overdue in the criminal justice system.

AMG:as
Enclosures

APPENDIX B

PRETRIAL FELONY CASE
DISPOSITION DATA

(Between Arraignment and Trial)

	1976	1977	1978
Cases Disposed of Between Arraignment and Trial	657	485	582
Percent of Total Felony Cases	73%	63%	64%
Dismissed	234	157	219
Change of Plea to Guilty on Original Charge	350	285	289
Change of Plea to Guilty on Lesser Included	73	43	74

Sources: Annual Reports, Alaska Court System
1976, 1977, 1978

SUPERIOR COURTS
DISPOSITION OF FELONIES

	1976	1977	1978
COMPLAINTS FILED	898	764	905
Change of Venue	4	4	25
Complaint Withdrawn	35	5	75
Dismissed at Arraignment	8	2	4
Plea of Guilty at Arraignment	8	59	53
Dismissed: Pre-Trial	234	157	219
Change of Plea: Pre-Trial	423	328	363
Acquitted at Trial (Court)	1	4	5
Acquitted at Trial (Jury)	9	16	39
Convicted at Trial (Court)	6	17	8
Convicted at Trial (Jury)	36	86	100
Dismissed After Mis-Trial	2	23	10
Change of Plea After Mis-Trial	0	11	4
Sentenced	561	501	528

Sources: Annual Reports, Alaska Court System
1976, 1977, 1978

APPENDIX C

1. ___/___/___ Defendant Number.

Defendant's Name: _____
Last First M.I.

4. ___/___ - ___/___ - ___/___ Date of Birth. Unknown = XX-XX-XX

10. ___/___ - ___/___ - ___/___ Date of Offense. Unknown = XX=XX-XX

16. _____ Filing Agency (1 = AST; 2 = APD; 3 = AIP; 4 = FWP; 5 = Metro Unit 6 = Other, explain_____).

17. _____ Was an arrest made? (1 = Yes; 2 = No).

18. _____ Total number of charges against defendant.

19. ___/___/___ Offense code(s) for police version of most serious charge(s).

___/___/___

___/___/___

31. _____ Arrest Promptness: How long from time of offense to arrest? (1 = two hours or less; 2 = more than two, less than four; 3 = more than four, less than twenty-four; 4 = more than twenty-four hours; 5 = no arrest; 9 = unknown)?

32. _____ Total Number of Co-Defendants.

33. _____ Race of Defendant. (1 = White; 2 = Native; 3 = Black; 4 = Other: _____; 9 = Unknown).

34. _____ Sex of Defendant. (1 = Male; 2 = Female).

35. _____ Occupation at time of offense (1 = Professional, executive or supervisory; 2 = Skilled worker or craftsman; 3 = White collar worker; 4 = Factory, unskilled worker or domestic; 5 = Student; 6 = Other occupation; 7 = No occupation; 8 = Military; 9 = Unknown).

36. _____ Employment Status at time of Offense (1 = Unemployment; 2 = Military, 3 = Full-time job other than military; 4 = Part-time job; 5 = Student; 9 = Unknown).

37. _____ Marital Status. (1 = Single; 2 = Divorced, separated; 3 = Married; 4 = Widowed; 9 = Unknown).

38. _____ Was Defendant of Probation/Parole at time of offense? (1 = Probation; 2 = Parole; 3 = No; 9 = Unknown).

39. _____ Does Police Report indicate a prior record? (1 = Yes; 2 = No).

40. _____ Number of Prior Felony Arrests. (9 = Unknown).

41. /__/ Number of Prior Felony Convictions. (9 = Unknown.)

42. /__/ Number of Prior Misdemeanor Arrests. (9 = Unknown.)

43. /__/ Number of Prior Midsdemeanor Convictions. (9 = Unknown.)

44. /__/ Type of Pre-Trial Release. (1 = No release; 2 = API; 3 = Full cash deposit; 4 = 10% cash deposit; 5 = Secured bond; 6 = Unsecured bond; 7 = O.R.;8=no arrest;9=unknown)

45. /__/ Type of Attorney. (1 = None; 2 = Public defender; 3 = Public defender requested, disposition unknown; 4 = Private attorney; 9 = Unknown.)

46. /__/ Did Police Officer Witness Crime? (1 = Yes; 2 = No; 9 = Unknown.)

47. /__/ Other Eyewitness to Crime? (1 = Yes; 2 = No; 9 = Unknown.)

48. /__/ Did Defendant Make a Statement? (1 = Yes, 2 = No; 9 = Unknown.)

49. /__/ Did Defendant Make a Confession? (1 = Yes, 2 = No; 9 = Unknown.)

50. /__/ Was a Search Warrant Used in Case? (1 = Yes; 2 = No; 9 = Unknown.)

51. /__/ Was there Identifiable Physical Evidence Connecting Defendant to Crime, Other Than Stolen Property (cars, fingerprints, weapons, hair samples, etc.)? (1 = Yes; 2 = No; 9 = Unknown; Describe: _____.)

52. /__/ Did Police Recover Identifiable Stolen Property? (1 = Identified cash-marked bills; 2 = Other Identified property; 3 = Property not involved; 4 = no; 9 = unknown

53. /__/ Value of Property Stolen, Damaged, Destroyed, or Taken by Fraud (whole dollars). (0 = None; 1 = 1-100; 2 = 101-250 3 = 251-500; 4 = 501-1000 ; 5 = 1001 - 5000; 6 =5001-10,000 ; 7= 10,001 - 25,000 ; 8 = 25,001 and above; 9 = Unknown.)

54. /__/ Value of Property Recovered (same breakdown as 53).

55. /__/ Weapon Used. (1 = Firearm; 2 = Knife; 3 = Club; 4 = Poison; 5 = Other, explain: _____; 6 = Hands, feet, etc.; 7 = None; 9 = Unknown.)

56. /__/ Number of Victims. Unknown = 9

57. / / Was Primary Victim Person or Organization? (Primary is most severly injured or has highest property value cost incurred.) (1=person; 7 =organization; 8=no victim)

58. / / Condition of Primary Victim. (1 = Dead; 2 = Hospital; 3 = Bleeding wound, or had to be carried from scene of crime; 4 = Other visible injury; 5 = No visible injury, but victim momentarily unconscious or complained of pain; 7 = No personal injury; 8 = no victim; 9 = unknown)

59. / / Age of Primary Victim. (1 = Under 18; 2 = 18-25; 3 = 26-55; 4 = over 55; 7 = Victim is organization; 8 = No victim; 9 = Unknown.)

60. / / Primary Victim's Sex. (1 = Male; 2 = Female; 7 = Victim is organization; 8=no victim; 9=unknown)

61. / / Primary Victim's Race. (1 = Black; 2 = Native American; 3 = Caucasian or other; 7 = Victim is organization; 8 = No victim; 9 = Unknown.)

62. / / Was Primary Victim Severly Handicapped? (1 = Victim had severe physical handicap; 2 = Victim was of low intelligence or had other severe mental handicap; 3 = Victim was under influence of drugs or liquor to extent that he was unable to defend self; 4 = Victim not unusually handicapped; 7 = Victim is organization; 8 = No victim; 9 = Unknown.)

63. / / Are Primary Victim and Defendant Related? (1 = Husband and wife; 2 = Other family relationship; 3 = Friends or acquaintances; 4 = No relationship; 5 = Employment relationship; 6 = Divorced; 8 = No victim; 9 = Unknown

64. / / Did Primary Victim's Own Behavior Facilitate or Provoke the Crime? (1 = Victim's conduct evidenced some provocation; 2 = Crime arose out of some criminal conduct on the part of the victim himself; 3 = Defendant claims victim provocation unsubstantiated; 4 = No clear relationship between victim's action and defendant's conduct; 8 = No victim; 9 = Unknown.)

65. / / Did Defendant Make Restitution to Victim? (1 = Yes, on own initiative; 2 = Yes, prior to case disposition; 3 = Yes, part of judgement; 4 = No; 8 = No victim; 9 = Unknown.)

66. / / / If Drug Offense Charged, Indicate Type of Drug.

01 = Not drug offense;	07 = Hashish or synthethic cannabis;
02 = Opiates;	08 = Marijuana;
03 = Cocaine;	09 = Other, specify: _____
04 = Hallucinogens;	
05 = Amphetamines;	
06 = Barbituates;	99 = Unknown.

68. /_/_/_/ Amount of Marijuana Seized. (In grams; 28 grams = 1 ounce.) If no marijuana enter 000, if unknown enter XXX.

71. /_/_/_/ Amount of Other Drugs Seized. (Indicate number of pills, capsules or other dosage units seized. If none enter 000, if unknown enter XXX.)

74. /_/ Charge Status.

1 = All charge(s) dismissed.
2 = No charge(s) filed by D.A.
3 = Felony charge(s) dropped.
4 = Felony(s) dropped, prosecuted misdemeanor charge(s).
5 = Misdemeanor charge(s) increased to felony by D.A.
6 = Misdemeanor charge(s) dropped, prosecuted as misdemeanor.
7 = Felony reduced to misdemeanor.

75. /_/_/ Primary Reason for Not Prosecuting.

/_/_/
/_/_/

01 = Defendant pled guilty to another charge.
02 = Defendant assisted state in prosecuting another defendant.
03 = Victim declines to prosecute unavailable.
04 = Witness unavailable.
05 = Inadmissible evidence.
06 = Insufficient evidence.
07 = Case investigation incomplete.
08 = Referred to Municipal Attorney's office.
09 = Interest of Justice.
10 = Dismissed by D.A. under Rule 43a, but no reason given.
11 = Lack of probable cause.
12 = Essential evidence suppressed.
13 = Convicted of other felony.
14 = Defendant not criminally responsible.
15 = Mistrial/hung jury.
16 = Inadequate evidence of essential element _____.
17 = Prosecuted as charged.
18 = Other, explain: _____.
99 = Unknown.

APPENDIX D

CASE EVALUATION FORM

(A Separate Form Must be Prepared for Each Charge)
(Contemplated or Filed Against a Defendant)

DEFENDANT'S NAME: _____

D.A. CASE NUMBER: /__/__/__/__/__/__/ (1–5)

INVESTIGATING AGENCY: 1 = A.S.T.; 2 = A.P.D.; 3 = F & W; 4 = Other _____; 5 = Private Citizen; 9 = Civil Division, D.O.L. /__/ (6)

POLICE CASE NUMBER: /__/__/__/__/__/__/__/ (7–12)

REQUESTING OFFICER: _____

DATE CHARGE(S) REQUESTED /__/__/__/__/__/__/ (13–18)

CHARGE REQUESTED: _____ /__/__/__/__/ (19–22)

CHARGE DECISION: 1 = case rejected; 2 = charge accepted as requested; 3 = charge modified; 4 = case referred to city attorney; 5 = case referred to federal authorities; 6 = case referred to Attorney General staff; 7 = case referred to out of state agency _____; 8 = case referred to other state agency _____; 9 = further investigation required. /__/ (23)

CHARGE FILED: _____ /__/__/__/__/ (24–27)

FURTHER INVESTIGATION REQUIRED TO: _____ /__/__/ (28–29)
_____ /__/__/ (30–31)
_____ /__/__/ (32–33)
_____

CASE REJECTED FOR FOLLOWING REASONS: _____ /__/__/ (34–35)
_____ /__/__/ (36–37)
_____ /__/__/ (38–39)
_____

CASE SYNOPSIS: _____
_____
_____
_____

RELATIONSHIP OF CHARGE DECISION TO REHABILITATION OF DEFENDANT:

_____

_____

RELATIONSHIP OF CHARGE DECISION TO DETERRENCE OF DEFENDANT:

_____

_____

RELATIONSHIP OF CHARGE DECISION TO DETERRENCE OF OTHERS: _____

_____

_____

RELATIONSHIP OF CHARGE DECISION TO PROTECTION OF SOCIETY FROM DEFENDANT:

_____

_____

RELATIONSHIP OF CHARGE TO REAFFIRMATION OF SOCIETAL NORMS: _____

_____

_____

LEGAL PROBLEMS: 1 = Search; 2 = Arrest; 3 = Confession; 4 = Identification; 5 = Severance; 6 = Joinder; 7 = Speedy trial; 8 = Rule 16; 9 = None known at this time. /__/ 40 /__/ 41 /__/ 42

PROOF PROBLEMS: 1 = Witness demeanor/background _____; 2 = Witness availability _____; 3 = Witness cooperation _____; 4 = Physical evidence; 5 = Hearsay evidence; 6 = Circumstantial evidence; 7 = Corpus delecti; 9 = None known at this time. /__/ 43 /__/ 44 /__/ 45

LIKELY DEFENSES: 1 = Entrapment; 2 = Competency; 3 = Insanity; 4 = Diminished capacity; 5 = Alibi; 6 = Self defense; 7 = Mistake of age; 8 = Privacy right; 9 = None forseen at this time. /__/ 46 /__/ 47 /__/ 48

TIME REQUIREMENTS: to Grand Jury by _____
to Preliminary Hearing by _____
to Omnibus Hearing by _____
to Trial by _____

COMMENTS TO TRIAL ATTORNEY /__/ (check appropriate box)
POLICE AGENCY /__/

_____

_____

_____

_____

ADDITIONAL INVESTIGATION CODES:

01: Inadequate evidence of corpus.
02: Inadequate evidence of wrongful intent.
03: Insufficient proof of value.
04: Inadequate identification.
05: Inadequate evidence regarding search/seizure.
06: Corroboration of witness' story needed.
07: Investigate alibi.
08: Establish chain of physical evidence.
09: Obtain lab analysis.
10: Get statement from defendant.
11: Get statement from witness.
12: Corroborate informant tip for search warrant.
13: Corroborate informant tip for arrest warrant.
14:
15:
16:
17:
18:
19:
20:

CASE REJECTION CODES:

01: Prosecution will not serve to rehabilitate defendant.
02: Prosecution will not serve to protect society from defendant.
03: Prosecution will not deter defendant from further acts.
04: Prosecution will not deter others from committing similar acts.
05: Prosecution will not reaffirm societal norms.
06: Prolonged non enforcement of statute.
07: Evidence establishing corpus illegally obtained.
08: Victim unavailable/uncooperative -- no other way to establish corpus.
09: Non-victim witness essential to establishing corpus unavailable/ uncooperative.
10: Statute of limitations bars prosecution.
11: Lack of corroboration required by law.
12: Inadmissible identification.
13: Inadequate identification.
14: Lack of credibility in victim.
15: Lack of sufficient corroborating evidence.
16: Charging contrary to legislative intent.
17: Victim requests no prosecution.
18: Immunity to be provided to defendant.
19: Costs of prosecution too high for severity of offense.
20: Lack of venae/jurisdiction.

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REFERENCES

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