Alaska Judicial Council

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ALASKA JUDICIAL COUNCIL

INTERIM REPORT

ON THE

ELIMINATION OF PLEA BARGAINING

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of the Plea Bargaining
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This report concerns the effect of the elimination of plea bargaining on the entire criminal justice system in Alaska. It describes the two parts of the evaluation completed during the first year: the misdemeanor statistical study based on court system data, an interview study consisting of interviews with judges, police, defendants and lawyers, and a survey of the entire Alaska Bar Association. In the final report of the evaluation project scheduled for March 1978, the information in this report will be integrated with information from the felony statistical study, a second round of interviews, a court management study and a legal evaluation of the plea bargaining process to produce a comprehensive study of the effect of a decision by one part of the criminal justice system on the remainder of that system.

The staff of the plea bargaining project would like to thank Stevens H. Clarke for his help in designing the study, Merle Martin of the Alaska Court System for the misdemeanor data, Professor Albert Alschuler for his ideas and hypotheses, Arthur H. Snowden II and Chief Justice Robert Boochever for opening up the court to us, and the National Institute of Law Enforcement and Criminal Justice for underwriting the research. But above all, our debt is to the police officers, defense attorneys, prosecutors, judges and defendants who offered their time and opinions and searched their memories and records for our interviewers.

SUMMARY OF CONCLUSIONS

In an effort to eliminate plea bargaining in the Alaska criminal justice system, the Attorney General instituted a statewide policy which prohibited district attorneys and assistant district attorneys from engaging in plea negotiation--the recommendation of a specific sentence, or "vertical" or "horizontal" reduction of charges for purposes of inducing a plea of guilty.

In March of 1976 the Alaska Judicial Council's Plea Bargaining Project undertook a two-part evaluation to assess the effect of the new policy. For purposes of comparative analysis this study focuses primarily on the year immediately preceding the policy's effective date (August 15, 1974--August 14, 1975) and the year following that date (August 15, 1957--August 15, 1976). (Hereafter called Year One and Year Two.)

Preliminary findings at the conclusion of the project's first twelve months of analysis are summarized in the interim report which follows. These findings are based on mail surveys, personal interviews with 174 attorneys, judges and law enforcement officers, and a statistical analysis of 23,000 misdemeanor cases filed during Year One and Year Two. The second phase of the study will conclude with the final report, combining further analysis of the first year's findings, analysis of the extensive felony statistical study now in progress, follow-up interviews taking as a point of departure the tentative conclusions reached in this interim report, a report of court observations, and a selective review of the literature and legal analysis of the policy's impact and possible implications. The final report should be completed

in March 1978.

The project bases its evaluation on a set of hypotheses which are subsidiary to two major questions:

(1) Has plea bargaining (as defined by the Attorney General) been eliminated?

(2) How has the new policy affected the system of criminal justice?

The second question can be answered notwithstanding the answer to the first inquiry.

* * *

Regarding the first issue, utilizing interview and survey methodologies it was determined that the aims of the policy have been partially accomplished. While a great number of those interviewed or surveyed believed that charging concessions (dismissals or reductions) were still being offered in exchange for guilty pleas, a significant majority of respondents agreed that sentence bargaining has been virtually eliminated. The variety of considerations involved in charging and general uncertainty as to what constituted "charge bargaining" are posited as possible explanations for divided opinion on the matter of whether this practice has been curtailed or halted. Follow-up interviews in the second project year are aimed at clarification of this question.

Confirming the evaluation's hypothesis, trials have substantially increased in both district and superior courts. The increase in district court trials averaged 72.4 percent for the three locations studied. Juneau was by far the least affected; while Anchorage had the greatest percentage increase (76.9 percent). However, the increase in misdemeanor trials had a more strongly felt impact in Fairbanks than in

Anchorage; possibly because in Anchorage the district court judges anticipated the effects of the policy and instituted new calendaring procedures which appeared to have had a salutary effect.

It was hypothesized that with no plea bargaining there would be fewer incentives for a defendant to change his plea from not guilty to guilty, a circumstance which would slow the system down. Preliminary findings from the misdemeanor study did not support this hypothesis: District court disposition times actually declined significantly in all three locations (-32.4 percent in Anchorage). The rate of guilty pleas entered at arraignments increased slightly in Anchorage, Fairbanks and Juneau. Decreases in misdemeanor case disposition times were less marked in Juneau (-8.6 percent) than in the other two locations studied. With regard to felony disposition times, data supplied by the Alaska Court System indicated that disposition times have decreased in Anchorage and Juneau. Only in Fairbanks did felony disposition times increase (+27.0 percent).

In their interviews, attorneys and judges were asked to evaluate the increase in trials--was it good or bad? Many private attorneys were critical, frequently stating that it required them to treat every criminal case as if it were definitely going to trial. As a consequence of this perceived necessity to prepare more diligently, middle-class persons without the benefit of any program of legal insurance were said to be unable to afford legal representation. Many judges and district attorneys said the policy had an adverse effect on the administration of justice in misdemeanor cases; it was claimed to be impossible for the state to litigate fully all charges filed, with the consequence that on the eve of trial the state "lost control" over many cases which were ultimately

dismissed. On the positive side, many lawyers and judges expressed the opinion that the policy was a "healthy change" since it encouraged a more thorough and professional approach to case preparation and was conducive to a generally higher quality of legal representation for both sides. The calendaring changes in the Anchorage district courts were also viewed as a positive impact of the policy.

The study sought to evaluate the new policy's effects on case disposition and outcome. Information derived from interviews alone tended to support the hypothesis that there existed, both previous to the policy and after its initiation, a differential between sentences rendered after pleas of guilty and those rendered following conviction at trial. The misdemeanor statistical study showed that the "active time" differential between post-plea and post-trial sentences increased significantly with the institution of the policy. This fact tends to refute another hypothesis--that the elimination of plea bargaining would reduce any such differentials that may have existed previously. For example, during the year preceding the new policy, the average active sentence for misdemeanors admitted to at arraignment was seven days; and this seven-day average remained constant in Year One even if the defendant was convicted following a full trial. However, in Year Two, while the average active time for guilty pleas at arraignment actually decreased (from seven days to six days), defendants who exercised their right to trial received average sentences in Year Two of 22 days, a dramatic differential. Also, in both Year One and Year Two, sentence differentials between guilty pleas entered at arraignment and guilty pleas entered during the pre-trial period were discovered, providing some evidence of the exaction of a penalty, not only for trial, but also

for the entry of a not-guilty plea.

Overall, misdemeanor conviction rates showed a slight increase; although for some types of offense there was actually a decrease in the rate of conviction. Analysis of specific offenses suggests that the state district attorneys' offices are following a policy of more rigorous screening for certain offenses, with higher conviction rates occurring for these as predicted. On the other hand, increased filings by the municipal prosecutors' offices (for example, +371.0 percent in Anchorage), and comparisons between conviction rates for offense classes containing primarily municipal offenses as opposed to primarily state offenses, suggests there is a clear difference between the screening policies of the two offices.

The shift in screening standards emphasized by the Attorney General as an integral part of the plan to eliminate plea bargaining appears to be one of the most agreed-upon effects of the policy change. Opinions concerning the merits of tighter screening ranged over the spectrum. Police officers on one end tended to take a strong stand that law enforcement interests suffered from overly strict standards for charge acceptance by prosecutors. It was claimed that district attorneys were acting "like judge and jury" in deciding questions of fact and law favorably to defendants, at great social cost. On the other end, many prosecutors and judges, and some police investigators, were pleased with tighter screening, claiming it was "more honest" and that cases were now investigated more thoroughly by both the assistant district attorney and the police officer, a circumstance benefiting the entire system.

Between the first and second years of the evaluation the pre-trial dismissal rates for almost every category of state misdemeanor offense

decreased. By contrast, for offense categories heavily weighted with municipal filings there was a perceptible increase in the numbers and rate of dismissals.

Average jail sentence severity for misdemeanors increased from Year One to Year Two by 71.4 percent (from seven days to 12 days); and average net fines increased by 13.6 percent in Year Two. In Year Two a smaller proportion of persons convicted of misdemeanors were released without serving any jail time at all as compared to Year One. As far as could be measured by the kind of misdemeanor data available, the variables most strongly associated with increase or decrease in sentence length were (1) the specific type of offense (e.g., assault sentences were down; concealment of merchandise sentences were up) and, (2) stage of disposition, (e.g., post-trial sentences were very much longer than sentences rendered after pleas of guilty.) The lack of any clear-cut pattern (other than the trial/plea differential) is some evidence that the overall average sentence increase for misdemeanors was not a direct product of the policy change, but may be attributable to other factors such as newspaper publicity, alleged public sentiment, or that 1976 was a judicial retention election year. The importance of these other factors was noted during the interviews by judges and other informants.

Finally, according to interviews and surveys, judicial participation in pre-plea sentencing discussions has been virtually eliminated. This change from prior practice is clearly the result of the new policy and was significantly affected by the Attorney General's prohibition against district attorney involvement in such conferences, followed closely by the Alaska Supreme Court's disapproval of judicial participation in plea negotiations in two recent opinions.

All findings in the interim report should be regarded as preliminary and subject to further analysis in the second year of the study. Misdemeanor data for this report was drawn solely from statistics supplied by the Alaska Court System. Data furnished did not always fit neatly into the project's working hypotheses; and as a result, some of the hypotheses could not be tested fully. Data for the felony statistical study is being collected at this time by the project staff directly from original sources beginning with jail booking sheets, public safety fingerprint files, Alaska Pre-Trial Services bail reports, court files and pre-sentence reports. Following analysis of this felony data the project will re-examine the tentative conclusions expressed in this interim report and these will be integrated with the final evaluation report in March of 1978.

I. INTRODUCTION

The directive by Alaska's Attorney General in July of 1975 prohibiting plea bargaining by all district attorneys and assistants received a very mixed reception. The Alaska Judicial Council, an agency of state government with the constitutional mandate to conduct "studies for improvement of the administration of justice . . . ," was awarded a grant by the National Institute of Law Enforcement to evaluate the effects of the policy change and report its findings to the Law Enforcement Assistance Administration and others. The following report summarizes the findings made by the staff of the Judicial Council's Plea Bargaining Project during its first year.

A. The Policy

> Commencing with offenses filed on and after August 15 [1975], 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). . . .
>
> . . . while there continues to be nothing wrong with reducing a charge, reductions should not occur simply to obtain a plea of guilty.[1]

The above is taken from the Attorney General's first memorandum to district attorneys and their assistants, dated July 3, 1975. In two later memoranda (July 24, 1975, and June 30, 1976), the Attorney General clarified his policy, especially with regard to charge reductions.

> 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. (Emphasis in the original.)

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[1]See Appendix 1, for Attorneys General's memoranda.

The Attorney General outlined several anticipated effects of the change and proposed that district attorneys and assistants handle these effects in certain ways. Among his concerns were improved screening ("I stress to you . . . that you should file the charge you can prove."[2]), use of diversionary programs (". . . we will try to make available to you as broad a spectrum of diversionary programs as we can."[3]), and participation by district attorneys and assistants in pre-plea conferences called by the judge and defense counsel (". . . in no way participate in the meeting other than to physically attend."[4]). These recommendations may be considered as integral parts of the formal policy itself.

B. The Hypotheses

The major hypotheses of the evaluation fall into two categories. The first asks whether the policy has been implemented--i.e., whether plea bargaining (by the Attorney General's definition) has actually been eliminated. Since the Attorney General defined several specific aspects of plea bargaining, four questions were asked.[5]

1. Have sentence recommendations, as prohibited by the Attorney General, been eliminated?

2. Have charge dismissals in exchange for guilty pleas been eliminated?

3. Have charge reductions in exchange for guilty pleas been eliminated?

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[2]See Appendix 1, Memorandum from Attorney General to All District Attorneys and Assistant District Attorneys (July 24, 1975).

[3]Id.

[4]Id.

[5]See Alaska Judicial Council Project Design Report, 11-12 (1976), for formal statement of hypotheses.

4. Have more cases been rejected for prosecution since the change of policy--i.e., has screening tightened?

The second set of questions asks whether the new policy has caused certain changes, regardless of whether it has "eliminated plea bargaining." The hypotheses and assumptions on which these questions were based came both from the Attorney General's memoranda and the literature. The questions include:

(a) Court Management

1. Have trials become more frequent?

2. Have case disposition times increased (and can this be directly correlated with the new policy)?

3. Have guilty pleas been entered closer in time to the trial date settings?

(b) Effects on Case Dispositions

1. Is it less likely that the defendant who goes to trial will receive a more severe sentence than the defendant who pleads guilty?

2. Have conviction rates increased?

3. Have dismissals by the state changed in frequency? Have the reasons for dismissals changed?

4. Has there been an increase in severity of sentences associated with the new policy?

5. Has the policy been associated with a change in the likelihood of appeal?

6. Has the policy been associated with a reduction in the influence of legally irrelevant factors on the disposition of cases?

7. Is there evidence of a change in policy regarding judicial participation in sentence discussions that can be directly correlated with the new policy?

Included in this interim report are the results of interviews done between September and December of 1976, preliminary results of the misdemeanor statistical analysis, and the results of surveys taken

during October and November of 1976. Much of the most important data from the study will not be available until the conclusion of the study in February of 1978.

The evaluation itself focuses on the year prior to the elimination of plea bargaining (August 15, 1974--August 14, 1975) and the year following its earliest effective date (August 15, 1975--August 14, 1976). All of the misdemeanor and felony statistical data reported are from these two years. The interviews reported here compare practices during these two years also; but there is some overlap into a later period as well. This time frame will be considerably extended by follow-up interviews in 1977. Any policy change as sweeping in its scope as the present will require a transition period before its final effects become apparent. One benefit of early evaluation is that events during this transition period can be captured while they are still fresh in the participants' minds. Other jurisdictions considering similar policies may find information about possible transition effects as vital to success in their planning as will be data pertaining to more long-range adjustments by the criminal justice system.

C. The Methodologies

The Project Design Report prepared in July of 1976 by the evaluation staff outlines the approaches to be used in answering the questions posed for the study. Because the Attorney General's policy covers all state criminal cases, both felony and misdemeanor, and because of the varying impacts it was expected to have on all parts of the criminal justice system, a cluster of methodologies has been employed. The methods were designed by project staff, with the assistance of LEAA, Professor Stevens H. Clarke, Institute of Government, University of

North Carolina, and the project's Advisory Board.[6]

1. Statistical Analysis

Two statistical studies, both historical, make use of court files and other agencies' records to test the hypotheses. The felony statistical study will compile extensive data on each person arrested or otherwise charged one year prior to the policy change (August 15, 1974--August 14, 1975) and one year following (August 15, 1975--August 14, 1976). Approximately 3,000 defendants, each with an average of two contemporaneous[7] charges against him, will be studied.

Strength of evidence, aggravating and mitigating aspects of the offense, socioeconomic characteristics, prior criminal history, and bail status will be determined for each defendant and charge. Changes in the charge from arrest to disposition, type of trial or plea, reasons for dismissals, and recommendations by the attorneys and presentence investigators will also be recorded. The data from the felony statistical study is now being coded from agency records and court files and will be ready for computer analysis by July 1977. In addition to standard descriptive statistics, a variety of sophisticated techniques of statistical analysis will be employed to ascertain the system-wide impact of the policy change.

The misdemeanor statistical study, drawing on court computer files for an analysis of selected offenses provides less detailed data, but a larger sample. In some of the analysis of misdemeanors, particular

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[6]See Appendix 2, for list of the membership of the Advisory Board.

[7]"Contemporaneous" as used in this study means that two or more state or municipal charges were pending against the defendant during the same period of time. One or more of the charges was a state felony charge.

coding problems in the variables under consideration arose, limiting the use that could be made of the data. Because the misdemeanor information was collected outside of this evaluation it was not possible to exercise complete control over its reliability; however, the data have been checked as carefully as possible for consistency and accuracy. (See Appendix 3, for a more detailed description of the methodologies utilized in the misdemeanor study.)

2. Interviews, Surveys, and Other Research Techniques

Open-ended interviews with 174 professionals in the criminal justice system were conducted during the project's first year of evaluation. An additional 18 interviews with defendants were obtained. Results of these inverviews are contained in this report. Mail surveys of the entire Alaska Bar Association and of patrolmen in several law enforcement agencies expanded the base of responses. About 430 Bar members and 71 patrolmen returned questionnaires describing their experience with and opinion of the policy change.

During the second year of evaluation 80 to 90 follow-up interviews will be done of a randomly selected sample of persons interviewed during the first year. The interviews provide both a rough estimate of the validity of some of the evaluation's hypotheses and descriptive information about the policy's effects which cannot be obtained through statistical analysis. A separate set of interviews will be carried out during the second year to gather information about court management factors. No further surveys are planned for the second year of the study.

Court observations and legal research comprise the remaining evaluation techniques. Court observations will follow two procedures. First, a selected group of felonies and misdemeanors will be observed at

all stages of the proceedings in open court, with follow-through interviews of the attorneys, parties and other participants. Second, arraignments, changes-of-plea, sentencing hearings and other proceedings will be observed on a weekly basis. Legal research and a selective review of the literature will explore the issues raised by the change of policy, including recent Alaska Supreme Court rulings which have affected judicial participation in plea negotiations.[8]

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[8]State v. Carlson, 555 P.2d 269 (Alaska 1976); State v. Buckalew, Opinion No. 1391 (Ak. Sup. Ct., March 14, 1977).

II. ELIMINATION OF PLEA BARGAINING-- HAS THE POLICY BEEN IMPLEMENTED?

A. Interview and Survey Methodologies

A full description of the methodologies is contained in Appendix 3. Briefly, questionnaires were designed with the assistance of Advisory Board members, the evaluation methodologist, and professionals with extensive experience in Alaska criminal justice. The questionnaires for defense attorneys and prosecutors included a series of questions about hypothetical criminal cases. Prosecutors and police investigators were asked to discuss another hypothetical case designed to show changes in screening policies. All persons interviewed were requested to complete a seriousness scale which ranked 34 descriptions of criminal offenses.

Interviews were completed with 45 defense attorneys (including the Public Defender and assistant public defenders, private defense attorneys, and attorneys working under labor union pre-paid legal programs), 24 judges, 21 district attorneys and assistant district attorneys, 84 police investigators (police officers assigned primarily to investigation of criminal cases, rather than patrol or administrative duties), and 18 defendants. Attempts were made to interview all judges, public defenders, state prosecutors and police investigators in Anchorage, Fairbanks and Juneau. Private defense attorneys were selected from a list of attorneys with extensive criminal defense practices recommended by judges in each judicial district. Defendants selected had had at least one criminal conviction preceding the date of the policy change, and one conviction following that date.

All members of the Alaska Bar Association were mailed a questionnaire, asking for their views and experience with the new policy. Half (430 attorneys) returned completed questionnaires, a very satisfactory

rate of return for a mail survey of this kind. Patrolmen in law enforcement agencies in Anchorage, Fairbanks and Juneau were provided with questionnaires to fill out during roll call and shift change. Project staff attended police staff meetings held at these times to explain the purpose of the questionnaire, and to answer questions from patrolmen. Seventy-one questionnaires had been returned by the time analysis was started for this interim report; an additional 20 have been returned since that date, and the results from these will be included in the final report.

The interviews cover approximately the first year and one-quarter of the period during which the Attorney General's policy was in effect. During this period participants in the criminal justice system were forced to rethink strategies and procedures for disposition of cases, and adjust to the unavailability of what had been Alaska's primary process of criminal case disposition. The data, together with recent interviews, suggest that this first year was in effect a "shakedown," and that the next year or two of the policy's life may see more settled, long-range adjustments than those reported here for this transition period.

B. Comparison of Interview Responses with Hypotheses

The following series of tables is provided to show some of the overall results of the interviews. Since the numbers of persons are different in each group interviewed (or surveyed), only percentages are given. The questions were framed differently for each group interviewed; the results shown are not completely comparable. Nevertheless, the interview results indicate some strong consensus about what has occurred in the state since the Attorney General's policy.

1. Have sentence recommendations, as prohibited by the Attorney General, been eliminated?

A majority of all of those interviewed agreed that sentence recommendations had been eliminated. Of those who commented on sentence recommendations, one prosecutor said, "I talk to X [a public defender]--I wink, he nods, and we go to court." Two judges expressed the most common perceptions among judges, with one saying, "I would suspect sentence bargaining has been the most curtailed," and the other saying, "Pleading guilty in exchange for a specific sentence has been effectively eliminated." The defense attorneys' position is summed up by one attorney who said, "I get no recommendations on sentence, but I've been able to get them [prosecutors] to agree on a variety of postures at sentencing."

TABLE 1

ELIMINATION OF SENTENCE RECOMMENDATIONS

	Yes	No	Somewhat	No Answer, Don't Know
Judges	62.5%	20.8%	12.5%	4.2%
Bar	65.2%	34.8%	--	--
Defense	53.5%	11.0%	35.5%	--
D.A.s	71.5%	9.5%	19.0%	--

NOTE: "Bar" responses include all lawyers--judges, prosecutors, and defense attorneys--who responded to the mail survey and whose practices were self-reported to include "substantial" criminal litigation. "Defense" responses include all defense attorneys who were personally interviewed. "D.A.s" responses include all district attorneys and assistant district attorneys who were personally interviewed.

2. Has the likelihood of "Charge Bargaining" (either reduction or dismissal of a charge in exchange for a plea of guilty) decreased after the effective date of the new policy?

Clearly, a much greater number of professionals within the criminal justice system feel that charge bargaining is continuing. Part of the

reason for this perception may be found in the Attorney General's memoranda. In the first memo to district attorneys and their assistants he said:

> 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 the 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. (July 3, 1975)

In his second memo to the district attorneys, the Attorney General clarified his position on charging:

> 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 . . . . Once you establish the atmosphere of bargaining with the defendant, be it over charge or sentence, it is difficult to stop the process . . . . 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. (July 24, 1975)

TABLE 2

CHARGE BARGAINING

	Yes	No	Somewhat	No Answer, Don't Know
Judges	16.6%	41.8%	20.8%	20.8%
Bar (reduction)	53.6%	46.4%		
(dismissal)	42.3%	57.7%	--	--
Defense	28.9%	71.1%	--	--
D.A.s	52.4%	47.6%	--	--

NOTE: "Bar" responses include all lawyers--judges, prosecutors, and defense attorneys--who responded to the mail survey and whose practices were self-reported to include "substantial" criminal litigation. "Defense" responses include all defense attorneys who were personally interviewed. "D.A.s" responses include all district attorneys and assistant district attorneys who were personally interviewed.

However, this second memorandum apparently left room for interpretation, because a third memorandum almost a year later addressed the issue of charging once again.

> Some District Attorneys remarked to me at the conference [a meeting of all district attorneys and assistants in June 1976] that they were bringing multiple charges and multiple counts as a matter of "tactics." I do not want that practice to continue . . . I reiterate that I do not want charges reduced or dismissed in order to obtain a plea. (June 30, 1976)

Given this need for restatement of the policy on charge negotiations, it is not surprising that comments such as the following were frequent: "Charge bargaining is practical, reasonable and sensible." (A judge). "There's charge bargaining all the time." (Another judge). "We do say, 'If you plan to plead to count 1, it isn't worth it to us to go to trial on count 2.'" (A prosecutor). "The D.A.s here pile charges on, and they do in fact dismiss if you plead to one. [I] have had two felony cases where the defendants acquired four new felonies after they were in handcuffs. You start off griping at the D.A. for heaping the charges on, and then when you plead to one, the rest get dismissed." (A defense attorney). "In our office as a whole, sentence bargaining has disappeared, charge bargaining still exists but is becoming less frequent as the policy continues. Bargaining still goes on in different ways." (An assistant public defender). "Horizontal bargaining I still do--you try to fit in the guidelines. So I look at charges I can prove and then dismiss or reduce. I'm less likely to look hard at the charges if the defendant is not entering a guilty plea." (A prosecutor).

3. Has plea bargaining been eliminated?

The question for judges, defense attorneys, prosecutors, and members of the Bar Association was designed to elicit comment about forms of plea bargaining that might be continuing. Other lawyers, police and

investigators were simply asked whether or not plea bargaining had been eliminated. Of the lawyers, 43.0 percent were not sure. Over half of the patrolmen in the sample (54.9 per cent) thought that it had been eliminated to some extent, but not entirely. It may be significant that such a small proportion of each group gave a positive answer to the question, saying "yes," plea bargaining had been eliminated.

TABLE 3

HAS PLEA BARGAINING BEEN ELIMINATED?

	Yes	No	Somewhat	No Answer, Don't Know
Bar	29.0%	28.0%	--	43.0%
Investigators	17.8%	82.2%	--	--
Police	2.8%	33.8%	54.9%	8.5%

NOTE: "Bar" responses include all lawyers and judges who responded to this item in the mail survey. "Investigators" responses include all police investigators who were personally interviewed. "Police" responses include all patrolmen who completed the questionnaire distributed to them by project staff.

Police comments focused most strongly on charge bargaining. "We've had the D.A.s come and tell us, 'Well, this guy says he's going to trial, but he'll plead guilty to one charge if you drop the others.'. . . . This happens many times." "I can give you an example. I had 26 drug defendants that I'd made multiple buys on. I never went to trial on any of them--they all pled guilty to one count and the others were dropped." Another frequent theme among police comments was: "Charge bargaining is going on--but maybe they're reducing charges just to make sure of conviction, without a deal with the defense--they do this a lot." In other words, many police felt that prosecutors were making unilateral decisions to reduce or dismiss charges, in the hopes that the defendant would then

plead guilty. Police labeled this practice as plea or charge bargaining.

Lawyers also made some assumptions about what plea bargaining included. One attorney, for example, stated: "Yes, it's been eliminated; but throughout, I assume this term refers only to sentence bargaining." Another said, "It still exists in the form of charge bargains." One attorney stated that "Any discussion with the prosecutor is negotiation."

Summary

Looking at questions 1, 2, and 3 together, interviews and surveys taken after the first year of the Attorney General's new policy indicate that its purposes have been accomplished to an extent. The likelihood that a defense attorney can exchange a guilty plea by his client for a specific sentence recommendation has very substantially diminished. On the other hand, the likelihood that a defense attorney can gain some concession on the charge (or charges) from the prosecutor in return for a guilty plea is still fairly high. How often these concessions result from specific arrangements rather than tacit understandings is unclear. One possible explanation for the difference between charge and sentence bargaining may lie in the Attorney General's early memoranda to district attorneys and their assistants, which apparently left the question of charging practices open to interpretation by prosecutors. Another explanation may be found in the fact that the process of initial charge selection and later readjustment embraces complex considerations, while a specific sentence recommendation is easy to define and easy to observe.

A third explanation lies in the varying assumptions made by persons interviewed about what actually constitutes a bargain. As mentioned earlier, one defense attorney believed that "[a]ny discussion with a prosecutor is negotiation." A police investigator said, "Plea bargaining

is not condoned, but amended complaints are." Another police investigator thought that plea bargaining "still exists, in the form of a 'good word' at sentencing." One police investigator said, "It's still going on. The D.A. will reduce even without a plea from the defendant. I had one case where I had to dance on his desk to get him to charge a felony as a felony--a bad check case." Police also often believed that the change of policy was more directed towards screening of cases, or that screening constituted plea bargaining. Prosecutors also mentioned practices, in one prosecutor's words, "perilously close to a bargain." He gave as an example a defense attorney's statement, "'I see this reckless driving charge as a negligent driving, and I don't have any defense to negligent driving.'" The prosecutor said, "sometimes I can amend the complaint."

This widespread lack of consistency in definition of what constitutes charge bargaining leaves much room for confusion about whether it has actually been eliminated. During the project's second year of evaluation a second set of interviews will be undertaken. The various definitions of "plea bargaining" given by respondents during the first set of interviews will be listed, and second-year respondents will be asked which of these definitions constitutes a plea bargain, in their opinion.[9]

4. Have more cases been rejected for prosecution since the change of policy--i.e., has screening tightened?

From the standpoint of police, the change in screening practice has definitely occurred, and has had more impact than any other aspect of the policy. This impact will be discussed further in the following sections on effects of the policy change. Less than half the Bar, and over half of the judges believed that more cases were being rejected for

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[9]See Appendix 4, for sample of interview forms.

prosecution. A private attorney in Fairbanks said, "I've seen no improvement whatsoever, in fact they seem to have gotten worse." An attorney in the Anchorage area said screening had improved in felonies, but not in misdemeanors. A judge concurred that screening varied: "The D.A.'s office is doing more selective screening, but they're not screening misdemeanors carefully enough before filing." Overall, the hypothesis that screening has tightened seems to be substantiated by the results of extensive interviews.

TABLE 4

SCREENING

	Yes	No	Somewhat	No Answer Don't Know
Judges	58.3%	12.6%	--	29.1%
Bar*	42.0%	58.0%	--	--
Defense*	17.7%	--	--	82.3%
D.A.s*	23.8%	--	--	21.1%
Police	78.9%	--	--	21.1%

*NOTE: This question was not asked directly of defense attorneys and prosecutors; the percentages shown represent the number of persons who volunteered information about screening. "Bar" responses include all lawyers--judges, prosecutors, and defense attorneys--who responded to the mail survey and whose practices were self-reported to include "substantial" criminal litigation. "Defense" responses include all defense attorneys who were personally interviewed. "D.A.s" responses include all district attorneys and assistant district attorneys who were personally interviewed.

III. HOW HAS THE POLICY CHANGE AFFECTED THE CRIMINAL JUSTICE SYSTEM?

Regardless of whether the new policy has "eliminated plea bargaining," the Attorney General's memoranda may have affected the Alaska criminal justice system. Prior to the implementation of the memoranda and for several months thereafter many possible effects were

hypothesized by professionals within the system. Among the hypotheses were (1) a significant increase in trials, (2) an increase in disposition times for criminal cases, (3) a higher conviction rate, and (4) a lesser disparity between sentences given following plea of guilty and sentences given after trial. These, and additional hypotheses suggested during the project design phase, are evaluated below in light of the information obtained from interviews and the misdemeanor statistical analysis.

A. Have Trials Become Significantly More Frequent under the New Policy?

1. Misdemeanors

Data from the misdemeanor statistical study indicate that trials in district courts in Anchorage, Fairbanks, and Juneau have risen from 283 in the year preceding the policy change (Year One, September 1, 1974--August 14, 1975) to 488 in the first year of the policy (Year Two, August 15, 1975--August 14, 1976). This figure represents an increase of 72.4 percent. The rate of trials (number of trials/number of dispositions) rose from 3.4 percent to 5.6 percent. In Anchorage, the increase in trials was 76.9 percent; in Fairbanks, 50.0 percent.

The impact on the courts of an increased trial calendar has varied by judicial district. For example, in Juneau one judge said: "There's been no significant increase in trials in this area. We don't have many trials now. The public defender and the D.A. are reasonable attorneys who don't have to worry about judges going on the rampage." His thoughts were echoed by most of the defense attorneys and prosecutors interviewed in Juneau. Juneau, of course, is the smallest town included in the evaluation (about 16,000 population), the least affected by the

Trans-Alaska Pipeline Project, and the oldest of the three communities. Throughout the interviews, people in the Juneau criminal justice system compared their community to the others, expressing a sense of satisfaction and compatibility among the agencies that was not found in Fairbanks or Anchorage.

A judge in Anchorage summed up the effects of trial increases in his district in a lengthy statement, which also brings out a number of other effects of the policy mentioned frequently by defense attorneys and D.A.s, as well as other judges.

> Caseloads are increasing. In this court [district court], we're set for 20 trials a week, but only four go at the most. You know something has happened to the rest of the cases. It's really silly on the part of the state not to plea bargain. They've lost control of the other 16 cases [this comment was often made by prosecutors also]. I can't try all the cases I get, so I read the complaints looking at the seriousness of the charges and then try and bargain the weak cases [the role of judges in plea negotiations will be discussed below in section J]. It's too bad. The state should bargain instead of the judge--they're supposed to know the facts. If a guy comes in ready to go to trial but the court isn't ready or the D.A. isn't, he gets a dismissal or a bargain. The cases which most often go to trial are the lousy ones, because people charged with serious crimes or a strong case plead out. The ones with lousy cases think they're innocent. I do feel it's not possible for the state to be prepared for all the cases they're supposed to try. It does work to the defense attorney's advantage.

Of course, not everyone agreed with this judge that the situation worked entirely to the defense attorney's advantage. Many judges and attorneys (both defense and prosecutors) believed that the increase in trials was a very positive result of the policy change, for two reasons. The first reason often given was that attorneys had been forced to prepare more thoroughly in a greater number of cases, thus providing better legal representation for the state and for the defendant. The second was that the defendant's right to a trial was being exercised more

fully. One judge said, "It's been a healthy change."

A long overdue result of the policy change, according to several judges, was a change in the calendaring system used in the Anchorage district court. One judge said, "We have many more cases to try, but we now have the capacity to try more cases. We immediately instituted a new calendaring procedure . . . and we streamlined our system." [One very interesting by-product of this calendaring change was its susceptibility to "judge shopping."] Because of these changes, another judge commented: "I did feel in the beginning that courts were going to be overburdened, but it turned out that it hasn't happened."

This statement is in clear contrast to that of a judge from Fairbanks, who said: "There's been a greater impact in district court cases. We've had only three or four trials since June [a period of six months] because of serious calendar problems." A Fairbanks prosecutor agreed, saying: "We also have clogged court calendars, a problem with stacked court cases . . . the district court's problems are of their own making." These comments about the Fairbanks calendaring problems in district court may help account for the lesser increase in trials there (only 50.0 percent, compared to Anchorage's 76.9 percent).

2. Felonies

The situation in superior courts is somewhat different from that of district courts. Historically, the trial rates for felonies have been low. A 1973 Alaska Judicial Council sentencing study found a trial rate of 6.0 percent.[10] Court figures from September 1974 to December 1974 showed trials at 5.0 percent. Calendar year 1975 had a trial rate for

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[10]B. Cutler, Sentencing in Alaska (Alaska Judicial Council, 1975).

felonies of 8.0 percent (this year of course included four and one-half months during which the new policy was in effect). Calendar year 1976 shows a 128.3 percent increase in trials, to a rate of 17.0 percent.[11] Thus, the overall increase in felony trials has been more marked than that in district court.

The actual numbers of felony trials remain relatively low, as Table 5 indicates. The impact, however, has been far greater. Many attorneys expect to go to trial on the majority of cases, even though actual figures show that less than 20.0 percent of the cases do go to trial. Of 224 lawyers responding to the question, "Are you going to trial with greater frequency after August 15, 1975, than before August 15, 1975?" 131 (61.2 percent) answered yes (this response includes prosecutors, judges and defense attorneys, so some overlap may be present). During their interviews, several prosecutors mentioned increased workloads, but none complained about having to go to trial more frequently. Nor did superior court judges seem especially concerned about the increase in numbers of trials, although several concurred with a judge who said: "We're going to trial more when the state has an airtight case--a negative impact."

TABLE 5

NUMBER OF TRIALS IN SUPERIOR COURT CRIMINAL CASES

	Calendar 1975	Calendar 1976	% Change
Anchorage	28	71	+154.0%
Fairbanks	22	48	+118.0%
Juneau	3	2	- 33.0%
Totals	53	121	+128.3%

[11] 1974-1976 figures have been provided by Alaska Court System, Technical Operations Section.

Defense attorneys, on the other hand, believed that they had to prepare for trial in most cases. Included among their preparations were additional motions (one private attorney said, "It used to be you could just tell the D.A. you were going to file the motion; now you actually have to file it,") increased investigation, and more advice to clients ("Now I have to tell them to go out and clean up their act and get a job.") Their clients, given the choice between a guilty plea and a trial,". . . now have a tendency to say 'go to trial.' They might as well." Defense attorneys also feel that their expectation of going to trial has changed their relationship with prosecutors: "It's arm's length now." "I don't talk to the D.A. anymore--I stay away from them on a case so the case doesn't come to mind and they're unprepared."

The greatest awareness of the possibility of trial in every case comes from private attorneys. Sooner or later, with almost every private attorney interviewed, the subject of fees came up. One attorney viewed it in a positive light: "It's a better money-making deal for me . . . since trials cost more, I make more." Not all attorneys were so sanguine. "It's affected my willingness to take non-union [pre-paid legal insurance] cases. They can't afford me. I can't defend a felony case for less than $10,000." "Before when a person came in . . . I could tell him what it would cost because I could estimate my time . . . . I'm more reluctant to take cases now . . . it's impossible when you have to assume all go to trial." Because private attorneys believed that the policy change had made it difficult for the average middle-income person to afford a criminal defense for the reasons mentioned in their comments, they thought that the policy was unfair.

Summary

Trials have increased significantly, in both district and superior

courts, confirming the evaluation's hypothesis. The effects of the increase have been felt more in Fairbanks than either other location, apparently because of calendaring problems. The second year of evaluation will look closely at calendaring procedures in all three areas. While some judges and attorneys believed that the system was healthier and more just because of the increased chances of trial and more rigorous preparation of cases, others thought that some of the trials were a waste of time. Private attorneys were especially concerned about the costs of trial for their middle-class, non-union clients, and thus were unhappy about the change.

B. Have Case Disposition Times Increased (and Can This Be Directly Correlated with the New Policy)?

1. Misdemeanors

Contrary to the hypothesized effect, overall disposition times in district court in Anchorage, Fairbanks and Juneau declined significantly. Table 6 shows the decline in average days to disposition, and compares this decline with the corresponding increase in guilty pleas at arraignment.

TABLE 6

DISPOSITION TIMES

	Year 1		Year 2		% Change
District Court	Average Days	Arraignment Plea Rate	Average Days	Arraignment Plea Rate	Average Days
Anchorage	58.23	(39.7%)	39.34	(41.9%)	-32.4
Fairbanks	53.00	(46.4%)	38.78	(49.2%)	-26.8
Juneau	41.55	(48.3%)	37.98	(49.9%)	- 8.6

Disposition times were analyzed by offense, and by whether the offense was charged under municipal ordinances (for which plea bargaining is still permissible) or under state laws (see Tables 24 and 25,

Appendix 5). The drop in disposition times held true for most offenses in all three districts, whether they were state charges or municipal ones not directly subject to the policy. This fact seems to indicate that the change in policy may not have been the crucial factor in the reduced disposition times. The explanation for Anchorage may lie in changed district court procedures. In Fairbanks, where many persons complained of backlogs and delays, but where no new procedures were instituted during the period, the explanation for the drop is still unclear.

One Anchorage judge described the possible correlation between the change in plea bargaining policy and district court procedural changes:

> We have many more cases to try--but we've now got the capacity to try more cases. We immediately instituted a new calendaring procedure . . . and we streamlined our system. I think the change [of policy] was positive in that it forced the court to streamline its procedures. We had to change--the change was too late in coming, as it was.

This judge, however, was one of the few persons who saw more efficiency in the courts. Despite the statistical evidence to the contrary many attorneys and judges complained of crowded court calendars and inefficient procedures. Because of the great disparity between the statistical evidence and the perceptions of attorneys and judges, disposition times will be analyzed in more detail in the final report. Frequency distributions of disposition times in all courts will be examined by offense category and attorney type, and median disposition times for all offenses will be obtained.

2. Felonies

Data provided by the Alaska Court System Technical Operations Section covering the two nine-month periods of January to September 1975 and 1976 indicates a decrease in felony disposition times by 14.0 percent and 7.0 percent in Anchorage and Juneau respectively. In the

corresponding period Fairbanks experienced a 27.0 percent increase. In the interviews, most attorneys and judges who commented on disposition times complained that they had increased. This hypothesis will not be examined until data from the felony statistical study is available.

C. Have Guilty Pleas Been Entered Closer in Time to the Trial Date?

"A popular practice is to get a jury and see if the state really has witnesses--then plead. It's called the Alaska Airlines defense: 'Will the plane crash?'" (From a superior court judge).

Since the misdemeanor statistics available do not indicate the trial date in relation to when a guilty plea was entered on the charge, interviews provide the only present evidence to support or disprove this hypothesis. The felony statistical study will provide some information during the second year of the evaluation. The interviews themselves are not sufficient to answer the question. However, they do provide some interesting commentary.

One judge believed that prosecutors handled their cases inefficiently, with the result that they were not prepared for trial:

> If a defendant comes in ready for trial, and the court isn't ready or the D.A. isn't, the guy gets a dismissal or a bargain. There are too many cases, and the D.A. doesn't look at the facts of the case until just before trial. Everyone pleads not guilty, and nothing happens--the D.A. just sits on the case.

A Fairbanks judge concurred with this analysis, saying: "The D.A., because of the calendaring system, doesn't look to see if he can prove the case until the last minute." Another Fairbanks judge, however, saw a slightly different reason for the tardiness of pleas: "The defense attorneys and prosecutors are not indicating any changes of plea until the eve of trial--cases get stacked up. I think they want to impress on the Attorney General that they don't like the change of policy."

The same Fairbanks judge, although stating the belief that the attorneys were responsible for plea delays, criticized defendants as well: "I've made a lot of noises--if a criminal was remorseful--he wouldn't wait until the last day to plead." An Anchorage prosecutor agreed: "I'd like to see a standard sentence given if the guy pleads at arraignment or calendar call, more if he pleads on the day of trial. The average guy knows he's guilty--he doesn't need to wait until the day of trial to plead." An Anchorage judge was more sympathetic to the defendant's point of view: "I can understand why they wait until the last possible minute to plead--there's always the hope that the witness won't turn up."

Summary

The interviews support the hypothesis that guilty pleas are being entered closer to the date of trial, at least in some cases. The reasons for this practice were described by judges as (1) the D.A.'s office handles cases inefficiently, (2) D.A.s and defense attorneys use this procedure to express their dissatisfaction with the policy change, and (3) the defendant hopes that the state's witnesses will fail to appear. The consequences of defendants waiting until the day of trial appear to include (1) uncertainty among judges about their trial calendars, (2) judges and prosecutors who believe that the defendant has not been "remorseful," and (3) increased costs for juries and witnesses.

The final evaluation report will include data from the felony statistical study which may indicate the frequency with which pleas are entered close to the trial date, and any changes in frequency which might be associated with the policy change. Interviews with trial courts administrators and presiding judges during the project's second

year may allow some estimate of increased costs resulting from late entry of pleas.

D. Is It Less Likely That the Defendant Who Goes to Trial Will Receive a More Severe Sentence than the Defendant Who Pleads Guilty?

It has been suggested that defendants are sometimes penalized by judges for taking their cases to trial.[12] This difference between the sentence that a defendant might receive after a guilty plea and the sentence the same defendant might expect to receive following a trial can be called a "sentence differential." Professor Alschuler suggests that this differential should be lower where sentence bargaining is not permitted or practiced. However, he also suggests that without specific restrictions on implicit bargaining by prosecutors and judges, the differential might actually increase under the Attorney General's present policy.

Several questions were asked of judges, defense attorneys and prosecutors to determine whether sentencing differentials had existed in Alaska during previous years, and whether they existed since the change of policy. The interviews also included a hypothetical case to which defense attorneys and prosecutors responded. Finally, the survey of the Alaska Bar Association asked whether attorneys had ever had personal experience of a case in which a sentence differential existed, and whether they believed that such differentials should exist. Statistical data is also available for analysis of sentence differentials. The

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[12] Memorandum from Albert Alschuler to Helen Erskine and Joel Garner, National Institute of Law Enforcement and Criminal Justice, "Some Preliminary Thoughts on the 'Elimination of Plea Bargaining in Alaska' and the Alaska Judicial Council's Proposed Evaluation of this Reform" (Jan. 30, 1976).

misdemeanor statistical study analyzed sentences given at arraignment, for pleas of guilty entered during the pre-trial period, and sentences following conviction at trial.

1. Misdemeanor Data

Pleas of guilty or nolo contendere to a misdemeanor charge may be taken either at arraignment or during the pre-trial period. A defendant may also be convicted following trial. The hypothesis to be tested suggests that both the stage of conviction and the manner of conviction (i.e., whether by plea or trial) are significant variables affecting the severity of the sentence. This hypothesis was tested by analyzing all sentences imposed in Anchorage, Fairbanks and Juneau district courts for a period of two years (September 1, 1974--August 14, 1976). The hypothesis for this evaluation also suggests that the differential, if any, should be smaller during the study year in which plea bargaining had been prohibited (August 15, 1975--August 14, 1976).

Differences between the two study years. Tables 29 to 32 (Appendix 5) show the results of the analysis. The amount of fine actually ordered paid (less any suspended portions), and the amount of "active time" (time sentenced, less time suspended = active time) were taken as the criteria for severity of sentence. The average misdemeanor fine rose 13.6 percent, from $184 in Year One to $209 in Year Two. The average "active time" increased 71.4 percent, from seven days to 12 days.

Active times and fine averages alone fail to express the more important finding that differentials varied dramatically by the stage of proceedings at which the conviction occurred. Table 30 shows that while between Year One and Year Two fines increased at arraignment by

22.6 percent (from $159 to $195), active time given at arraignment decreased by 14.3 percent. Table 31 shows that fines assessed for pleas of guilty entered during the pre-trial period also increased, by 18.7 percent. The average length of active time imposed during the pre-trial period did not change between the two years. Persons who were convicted after trial experienced the smallest increase in fines between Year One and Year Two--only 2.0 percent (Table 32). However, sentences imposed after trial rose from an average of seven days in Year One to 22 days in Year Two--a startling increase of 214.3 percent.

Differentials within Year One. Persons convicted during Year One received, on the average, seven days of active time for a guilty plea entered at arraignment, eight days of active time for a guilty plea entered during the pre-trial period, and seven days of active time after conviction at trial. Whereas more detailed analysis of these figures is necessary before drawing firm conclusions, the present data indicate that increased active time for trial on a misdemeanor charge was not assessed by Alaskan judges in Year One. In fact, less active time was given for conviction after trial than for guilty pleas entered during the pre-trial period.

Fines did increase, however. The average fine for a guilty plea at arraignment was $159, for a guilty plea entered during the pre-trial period, $187, and for conviction after trial, $205. Thus, it appears that a monetary "penalty" may have been assessed for those defendants who pled not guilty at arraignment. The "penalty," if this is what it was, increased in steps--from arraignment to pre-trial period to conviction following trial.

Differentials within Year Two. The hypothesis suggests that if a sentence differential did exist during the period when plea bargaining was allowed, that differential should be reduced by the elimination of plea bargaining. In fact, considering only active time sentenced, the differential increased strikingly. Average active time given for a guilty plea at arraignment was six days during the second study year, eight days for a guilty plea entered during the pre-trial period and 22 days for a sentence given after conviction at trial.

The differentials for fines also changed, but in a different pattern. The average fine at arraignment was up to $195. The fine for guilty pleas entered during the pre-trial period was also up, to $222. The fine for convictions after trial had increased very slightly, to $209. The pattern for fines given during the second year appears very similar to the pattern for active time during the first year; comparable amounts (of fine or active time) at arraignment and trial, and significantly higher sentence for guilty pleas entered during the pre-trial period.

Trial differentials. The sudden appearance of a significant sentence differential between guilty pleas and trial convictions in the second study year led to further analysis of the data. The active time imposed after trial was examined for each offense category, and unusually lengthy sentences were excluded from the data for each year. A second average was then computed using only sentences of 90 days or less, to see whether the differential persisted. For Year One the average active time imposed after trial became 4.85 days (compared with seven days when all sentences had been included). For Year Two the average sentence dropped from 22 days down to 15.53 days. Thus,

eliminating unusual cases from the data base used did not reduce the amount of difference between sentences given during Year One after trial, and those given in Year Two. It did reduce the Year Two differential between guilty pleas and trial convictions, but not enough to eliminate the significance of the findings.

The data were also analyzed by offense category, to see whether significant changes had occurred in the types of offenses that were tried. No significant changes were found. Offense categories were also examined to determine whether a few types of offenses might account for the increased average active time during Year Two. Assault and battery (average, 18 days), concealment of merchandise (12 days), and petty larceny and embezzlement (16 days) were the three offenses with the longest average active times. None of the sentences given for these offenses accounted for the overall average increase. Finally, sentences imposed after trial were analyzed by the variable of whether they had been imposed for municipal charges or state charges, for these three offenses. All of the cases going to trial and receiving an active sentence had been state cases.

None of the variables analyzed provided an adequate explanation of the increase in average active times. Further analyses may give a better explanation. The question of sentence differential for trials versus guilty pleas will be re-evaluated in the final report prepared for this project.

Guilty plea differentials. A second phenomenon observable in the misdemeanor statistical analysis is the apparent existence of a differential between guilty pleas entered at arraignment and guilty pleas entered during the pre-trial period. Table 7 indicates that when an

active sentence is imposed (sentences in which all of the imposed time or fine were suspended are not included), it is likely to be higher if imposed for a guilty plea during the pre-trial period. One possible explanation for this phenomenon, since it appears consistently in both study years, is that a defendant is penalized simply for the entry of a plea of not guilty.

TABLE 7

GUILTY PLEA DIFFERENTIALS

	Arraignment	Pre-trial	% Difference
Year 1			
Average fine imposed	$159	$187	17.6
Average active time imposed	7 days	8 days	14.3
Year 2			
Average fine imposed	$195	$222	13.8
Average active time imposed	6 days	8 days	33.3

The reasons why a defendant might plead not guilty at arraignment on a misdemeanor charge include (1) a desire to contest the case to avoid the consequences of conviction (for example, persons charged with drunk driving whose livelihoods depend on their drivers' licenses), (2) a belief on the part of the defendant that although he is guilty, mitigating factors exist which should be considered, (3) a belief on the part of the defendant that the evidence against him is weak or that the charge is inaccurate in some way, or (4) the defendant is innocent of the charge. Finally, the defendant might plead not guilty simply because he desires to consult with an attorney before making any

decision.

No data is available from the present sources of information on misdemeanors to allow further hypotheses to be tested. It could be hypothesized that a high correlation exists between misdemeanor defendants who plead not guilty at arraignment and those who have a record of previous offenses. It could also be suggested that a strong correlation exists between misdemeanor not-guilty pleas and presence of aggravating factors. Due to lack of information neither of these hypotheses can be adequately examined with statistical methods.

2. Interview responses concerning differentials

General. Defense counsel whose practices were self-reported to include "substantial" criminal litigation were asked in the Bar Association survey whether they had ever had a case in which "after the judge indicated what sentence your client would receive if he/she pled guilty, your client then went to trial, was convicted, and received (from the same judge) a heavier sentence than that originally indicated?" Twenty-two attorneys (12 percent) said that they had had at least one such case at some time prior to August 15, 1975; only 12 (6.4 percent) stated that they had had such cases since that date. One attorney commented that, although he had never had such a case, "I've received those inferences when talking to several judges and almost all D.A.s."

All lawyers whose practices were self-reported to include "substantial" criminal litigation were asked whether they believed that such differentials did exist. Approximately the same numbers--68.5 percent before, 62.8 percent after--said yes, for both the period prior to August 15, 1975, and the period following the date. It is interesting

to note that although only 12.0 percent of the attorneys in the first study year and 6.5 percent in the second study year had had any actual experience with sentence differentials, over 60.0 percent believed that such differentials existed.

Many of the comments made by attorneys and judges in response to this question suggested that the existence of a differential depended on several factors. These included the facts brought out at trial, whether the defense was substantial or "frivolous" and the defendant's attitude. The most frequently mentioned factor, however, was the identity of the judge. Ten of the 18 comments recorded mentioned the judge's policy regarding sentencing as being the most important factor in sentence differentials.

3. Differentials in felony cases

Few of the judges interviewed believed that they sentenced differently for defendants convicted after trial than for defendants entering guilty pleas. Generally, even those who said that they didn't sentence more heavily for trials, suggested that several factors might cause a judge to do this. Most importantly, judges thought that a judge (either they themselves, or another judge) might take into account the possibility that a plea of guilty indicated remorse on the defendant's part. For example: "A plea of guilty more often than not suggests an attitude of admission that I've done something wrong. Seen in that light, a plea may result in better treatment." Thus, judges tended to indicate that defendants were rewarded for pleading guilty, rather than penalized for going to trial.

Judges mentioned other factors that might cause an increase in the

sentence given after trial. One judge said: "We hear a full description of a broken bleeding victim, or a perjuring defendant." Another said: "The defendant played the odds; they went against him. By pleading he should get less than by putting the state to the burden of trial." These three factors--perjury, more aggravating factors brought to light by witness testimony, and the cost to the state of a trial were the ones most frequently mentioned as justifying a more severe sentence for the defendant who went to trial.

Defense attorneys generally concurred that they weighed these factors also in their decisions about whether their client should risk a trial. They added three other factors that played a role in their calculations: (1) the impression the defendant himself was likely to make (whether because of attitude, personal appearance, or character); (2) the strength of the evidence against the defendant; and, (3) the identity of the judge. Defense attorneys also suggested that a judge's calendar might influence the sentence a defendant received: "If Judge X is pressured because of calendaring, your defendant may pay. I don't think the judges here are into punitive action, though."

Prosecutors did not discuss sentence differentials as extensively as defense attorneys and judges. One prosecutor believed that they had not existed in the past: "One good effect of the policy change is that with plea negotiations what we had was the judges not giving stiffer sentences for going to trial [by implication, judges are doing this since the policy change]. We had to go real low on sentences to get them to plead. In 5 percent of the cases we went to trial, and then the judges sentenced according to the bargaining norm. Now they can

give what they want to." Another prosecutor didn't think that most judges would sentence more heavily: "Most of the judges are looking over their shoulders at the Supreme Court so often that they get whiplash."

Some defendants were also interviewed about the sentences they had received both before and after the elimination of plea bargaining. Only two of the 18 defendants said that they pled guilty prior to the policy change because they thought they would receive a lighter sentence. However, of the 12 defendants who had been convicted of felonies since the policy change, six (half) gave the likelihood of a lighter sentence as the reason for their guilty plea. Some of these defendants had been advised by their attorneys that a plea might affect the judge's willingness to give a light sentence; some did not say why they believed that they would be better off pleading. One defendant thought that he had received a heavy sentence "Because I went to trial and ran up a lot of money for the D.A. and the judge."

Summary

The combination of data from the interviews and from the misdemeanor study tends to support the hypothesis that a sentence differential may exist. There are some indications that this differential may have increased with the elimination of plea bargaining. A clear penalty for pleading not guilty on a misdemeanor charge seems to exist, a penalty which seems to be consistent in both study years. Further analysis of the misdemeanor data, and analysis of the felony data is essential before any firm conclusions can be drawn.

E. Have Conviction Rates Increased?

Conviction rates can be analyzed in several ways:

1. The number of convictions divided by the total number of dispositions (cases closed);

2. The number of convictions divided by the total number of cases filed (includes open cases);

3. The number of convictions divided by the total number of arrests (no data available);

4. The number of convictions divided by the total number of reported incidents of crime (no data available for comparison).

Data from the felony statistical study will allow all four comparisons to be made for at least some offenses. The misdemeanor data, however, only provides information sufficient to calculate the first type of conviction rates.

The conviction rates for (1) and (2) are closely tied to the type of screening done by the prosecutor's office. If the prosecutor accepts most cases presented to him by police agencies the conviction rates are likely to be relatively low. If the prosecutor screens cases using a higher standard of proof (i.e., proof beyond a reasonable doubt rather than probable cause), it can be hypothesized that the conviction rate should be higher for (1) and (2), but relatively lower for (3) and (4). Conversely, if conviction rates (1) and (2) are higher it can be hypothesized that the prosecutor has changed his standards for accepting cases.

1. Misdemeanor Conviction Rates

Table 23 indicates that overall, for all cases filed (state and municipal charges), the conviction rate (convictions divided by dispositions) has increased slightly from 70.9 percent to 76.5 percent. Conviction rates for some offenses declined while others rose significantly.

This data alone is not sufficient to allow the conclusion that prosecution had improved from the first study year to the second.

Tables 10 through 19 show the dispositions for each type of offense in the district court.[13] The categories of offenses shown are those used by the Alaska Court System in analysis of misdemeanor statistical data, and include both violations of municipal ordinances and of state law. For analysis in this report, the numbers of municipal ordinance violations and state law violations have been shown separately. The

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[13]Ak. Const., art. IV, § 1 provides:

> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Accordingly, there are no municipal courts in Alaska, and under AS 22.15.160, the district court has jurisdiction over misdemeanors and violations of "ordinances of a political subdivision." Thus both offenses charged under state laws and violations of municipal ordinances are normally filed in the district courts, although the superior courts have concurrent jurisdiction over these matters. The same judges try both types of offenses in the same courtrooms. This fact is extremely important, since state prosecutors under the Attorney General prosecute all state cases, but each municipality provides its own prosecutors for violations of its ordinances. Municipal prosecutors are not subject to the Attorney General's authority and continued to plea bargain after the state prosecutors had been ordered to cease doing so.

Municipalities were required to reimburse the state for the judicial services provided until a legislative amendment effective July 1, 1976, eliminated the following wording from AS 22.15.270:

> The political subdivision shall pay to the state administrative director of the court for transfer to the general fund of the state such sums as will pay for the judicial services rendered to the political subdivision by the district judge or magistrate rendering the services.

The relationship between municipal ordinance violations and state law offenses tried in the state district court is further complicated by the fact that in all three of the cities studied, the offenses defined

information in these tables, when compared in general terms with the conviction rates given on Table 23 allows analysis of conviction rates by the type of charge filed: municipal ordinance violation or state law offense.

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by municipal ordinance overlap the state misdemeanor statutes to a greater or lesser extent. Thus, a defendant might be charged either with driving while intoxicated (AS 23.35.030) or operating a motor vehicle while intoxicated (AAC 9.23.028). This repetition of the same or similar offenses in both state and municipal codes allows municipal police agencies in the state a choice in deciding whether to bring charges to the municipal prosecutors' offices or to the state district attorney.

The relationship among police agencies, prosecutors' offices and state and local governments has provided one of the most interesting footnotes to the elimination of plea bargaining. Captain Brian Porter of Anchorage Police Department and Chief Prosecutor Dan Hickey, Alaska Department of Law, described the policies followed by their agencies in choosing whether to file a charge as a municipal violation or a state law infraction:

(1) Prior to August 15, 1975: Local police would charge under municipal ordinances only if the state law did not cover the offense (in part because municipal prosecutors' offices were understaffed);

(2) After August 15, 1975, until October 1976: Police without a formal policy change shifted towards filing many charges as municipal ordinance violations because they feared a district court backlog of state cases. In addition, the municipal prosecutors could continue to negotiate the disposition of charges, and police believed that they would therefore be more successful in obtaining convictions. In Anchorage especially, where unification of the city and borough governments in September 1975 required revision of the municipal codes, local government officials saw the elimination of plea bargaining for state cases as an opportunity for municipal pecuniary gain. Anchorage Municipal Mayor George Sullivan stated that:

> ". . . our [municipal] attorneys are not forbidden to use the technique of plea bargaining," . . .
>
> . . . [A]dditional income which would result [from the prosecution of a greater number of offenses] would outweigh any increase in costs.
>
> Most misdemeanors which are prosecuted at the municipal level result in guilty or no contest pleas with lesser trial expenses, according to Sullivan. "A far greater percentage

Conviction rates by type of offense can be divided into four significant groups:

(a) Offenses in which both the numbers of cases filed increased and the conviction rates increased by more than five percentage points;

(b) Offenses in which the numbers of cases filed increased, but the conviction rates dropped by more than five percentage points;

(c) Offenses in which the numbers of cases filed decreased, but the conviction rate increased by more that five percentage points;

(d) Offenses in which both the number of cases decreased, and the conviction rate decreased by more than five percentage points.

Within each classification, the proportions of municipal and state charges filed in each year was analyzed. Group (a) includes fraudulent use of credit cards, indecent exposure, petty larceny and embezzlement, reckless driving, and trespass. With the exception of reckless driving, most of these cases are state law charges. This would indicate that (1) police are arresting more people on these charges, (2) district attorneys are prosecuting more people on these charges, and (3) district attorneys are winning more convictions on these charges. This pattern of increased filings and higher conviction rates does not indicate whether or not screening activity has changed, since no figures are available which

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of misdemeanor convictions result in income generating fines than in expensive incarceration," he said. (Anchorage Daily News, June 29, 1976.)

(3) October 1976 to present: The current practice, at least with the Anchorage Police Department, is (a) if all charges are covered by both municipal ordinances and state law, they will be charged under the municipal ordinances, (b) if some of the charges against a defendant are covered only under state law, all charges will be filed under state law. In October 1976 a unified code for the municipality was approved by the Anchorage Assembly.

would allow a comparison of the number of cases presented to the district attorneys each year. The combination of increased filings and higher conviction rates does indicate more effective prosecution by district attorneys and their assistants.

Prostitution and soliciting and resisting arrest charges had a pattern of filings and conviction rates that met the criterion for group (b). In both categories of offense, the increase in the number of cases filed was due to significant increases in municipal filings. For prostitution and soliciting, the increase was found in both Fairbanks and Anchorage; for resisting arrest, the increase was primarily in Anchorage. The conviction rates for both crimes dropped. The decline in prostitution conviction rates was larger, from 59.0 percent in the first study year to 46.0 percent in the second study year. The decline in resisting arrest conviction rates was from 76.0 percent in Year One to 67.0 percent in Year Two. Increasing filings, combined with declining conviction rates, may indicate (1) increased enforcement of municipal ordinances by police agencies, and (2) a relatively open screening policy in municipal prosecutors' offices.

Group (c) offenses in which number of filings decreased, but conviction rates increased included assault and battery, defrauding, gambling, joyriding, and worthless checks. These cases are most interesting when viewed in light of the evaluation's hypotheses. Almost all of the cases are state law violations; these categories of offenses contain relatively few municipal ordinance violations. Assault and battery filings dropped about 20.0 percent, but conviction rates increased from 49.0 percent to 56.0 percent. Defrauding cases dropped

about 40.0 percent; conviction rates increased from 56.0 percent to 61.0 percent. Joyriding filings declined about 12.0 percent, but conviction rates went up from 62.0 percent to 74.0 percent. Worthless check charges showed the largest changes, with a 60.0 percent decline in number of filings, but an increase in conviction rates from 42.0 percent to 66.0 percent. (Gambling presented a different pattern, with a very large drop in Anchorage state law offenses charged and a slight increase in Fairbanks municipal ordinance violations filed. The increase in conviction rates from 48.0 percent to 59.0 percent is therefore mainly due to cases prosecuted by Fairbanks municipal prosecutors.)

2. Support for Hypothesis

The evaluations's hypotheses suggest that an increase in conviction rates during the second study year combined with a decline in the number of cases filed would show tighter screening by the state prosecutors' offices. Four of the offenses analyzed showed this pattern, supporting the hypothesis since the vast majority of cases in each year were state cases. In addition, two other offenses in which a significant change occurred between the two study years from filing state charges to filing municipal charges showed the opposite pattern, of increased filings but declining conviction rates. Thus, it would appear that, at least for a limited number of misdemeanor offenses, screening by the district attorneys' offices has improved as a direct result of the policy change.

These six offenses, however, comprise a relatively small proportion of the total cases filed. In Year One they accounted for only 16.0 percent of the dispositions in Anchorage and Fairbanks courts combined; in Year Two they accounted for only 13.0 percent of Anchorage/Fairbanks dispositions. Therefore, it cannot be concluded that the evidence of

increased screening of state offenses applies equally to charges other than those which fit into group (c).

Two offenses--driving while intoxicated/OMVI and disorderly conduct--together account for 38.0 percent of cases filed in Anchorage/Fairbanks the first study year, and 39.0 percent of cases filed in Anchorage/Fairbanks for the second year. Table 8 shows which ordinances or laws were violated.

TABLE 8

DISPOSITIONS OF THE TWO MOST FREQUENTLY CHARGED MISDEMEANORS

	Anchorage State Law Offenses	Anchorage Municipal Ordinance Violations	Total Anchorage	Fairbanks State Law Offenses	Fairbanks Municipal Ordinance Violations	Total Fairbanks	Conviction Rates**
OMVI Yr. I	1338	51	1389	310	161	471	87.0%
OMVI Yr. II	1178	394	1572	370	155	525	91.0%
% Change*	-12.0%	+672.5%	+13.2%	+19.4%	-3.7%	+11.5%	
Disorderly Yr. I	777	-0-	777	175	112	287	65.0%
Disorderly Yr. II	642	3	645	231	157	388	68.0%
% Change*	-17.4%	--	-17.0%	+32.0%	+40.2%	+35.2%	

* % Change represents the amount of change between Year I and Year II in each column.

**Conviction Rate is all convictions, statewide, divided by all dispositions statewide. This figure includes Juneau cases, which are a small proportion of the total (see Table 11).

Neither of these offenses shows the clear patterns represented by either group (b) or group (c). Conviction rates increased slightly in both offenses. OMVI filings dropped slightly in Anchorage state law

offenses and increased drastically in Anchorage municipal ordinance violations. They showed an opposite pattern in Fairbanks, with increased numbers of state law offenses and slightly declining numbers of municipal ordinance violations. The overall net increase in both cities may reflect a growing amount of public pressure to arrest and convict more drunk drivers, a pressure which has been increasing since 1974. However, the major increase in Anchorage municipal ordinance violations filed for this offense almost certainly reflects the change in filing policy by police agencies mentioned earlier.

Summary of Data

An analysis of specific offenses indicates that the district attorneys' offices appear to be following a policy of tighter screening for some offenses, with higher conviction rates occurring as predicted. In addition, two other offenses show an increase in filings but a decline in conviction rates; significantly, the increase in filings occurred in municipal prosecutors' offices rather than state prosecutors' offices. The comparison between the conviction rates for the primarily municipal offense categories, and primarily state offense categories, points to a clear difference in screening policies between the two offices. Since a change in screening policy was an integral part of the Attorney General's elimination of plea bargaining in state cases, these comparisons provide evidence that the policy has been effective for certain offenses.

An overall net increase in conviction rates from 70.9 percent in Year One to 76.5 percent in Year Two may also be associated with the change of policy, but an analysis of all offenses does not provide clear evidence. Anchorage state law filings decreased by about 11.0 percent, while municipal ordinance filings increased by 371.0 percent.

Fairbanks filings showed a similar pattern, with a decline in state filings of 3.0 percent and an increase in municipal filings of 17.0 percent. Juneau municipal ordinance filing figures are not available for the first year; but state law offenses filed increased between the two years by about 12.0 percent. Comparison of these figures with the increase in conviction rates does not provide any indication of increased screening by state prosecutors due to the change of policy.

F. Have Dismissals by the State Changed in Frequency? Have the Reasons for Dismissals Changed?

"This way defendants get better bargains--dismissals." (Anchorage judge).

1. Misdemeanor Data

An increase in conviction rates should indicate a decline in the rate at which cases are dismissed. Tables 21 and 22 show that for almost every category of offense, dismissal rates decreased between the first and second years. The major increases in of dismissals came in the same two offenses (prostitution and resisting arrest) which were shown earlier to be heavily weighted with municipal ordinance violations, especially during the second study year.

Dismissals were analyzed by type of offense and stage of proceedings during which the dismissal was filed. The largest drop in dismissal rates for most offenses occurred at arraignment. It can be hypothesized that fewer dismissals at arraignment indicates increased screening of cases prior to filing. However, as Table 26 shows, the relative number of charges dismissed at arraignment is very low in either year when compared with dismissals filed during the pre-trial period.

Most dismissals are filed after arraignment but before trial (the "pre-trial" period). Dismissals during the second study year had declined

significantly for most offense categories, again possible support for the hypothesis that stronger cases were being filed. However, dismissals decreased for the offense category of OMVI which included a large number of municipal ordinance violations during the second study year, indicating that other factors may play a part in the decreasing number of dismissals. The largest increases in dismissals were for offense categories in which municipal ordinance violations figured heavily.

2. Deferrals

Deferral of prosecution, as the term is used in Alaska, means the decision by the prosecutor not to prosecute charges against a defendant for a certain period of time. There is no express statutory or decisional authority for this position in Alaska law. Deferrals are most frequently given for periods of six months to a year, and are often accompanied by conditions. Chief among these conditions is the requirement that the defendant waive his right to "speedy trial."[14] Other conditions usually include a standard provision that the defendant not violate any laws for the specified period of time, and may include requirements for treatment or counseling. Deferrals may be filed in open court, but this is not required.

Statistically, deferrals of prosecution are difficult to measure. The procedure for recording them (for the misdemeanor data used) is simply to show the case as open until the prosecutor files notice of dismissal; then to include the case in the figures for dismissed cases. By comparing the number of open cases to the number of cases filed in each study year, however, an indirect estimate can be made of the number of deferrals granted. Since the court system periodically updates

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[14]See Appendix 8, for text of Alaska Criminal Rule 45.

its computer files, most of the cases in which prosecution was deferred during the first study year will appear in the statistics as dismissed cases. However, cases for which deferrals were filed during the second study year may still have been open at the time the data was analyzed (December 1976).

A comparison of open cases with filings suggests an increased number of deferrals. Although total filings increased by only 11.0 percent, open cases were up 68.0 percent for the second study year over the first. Of the cases still open from the first study year, most represent outstanding warrants or administrative problems. Disposition times (see Section B) are significantly shorter in the second year,

TABLE 9

OPEN CASES AND CASES FILED

	Year One	Year Two	% Change
Cases closed	8375	8771	+ 5.0%
Cases open	965	1624	+68.0%
Total cases filed	9340	10395	+11.0%

which indicated that the same or greater proportion of cases should be closed. The results of interviews support the hypothesis that the relatively high increase in the number of open cases during the second study year represents an increase in deferrals of prosecution. This hypothesis will be tested further during the evaluation's second year by analyzing the average disposition times for dismissals.

3. Comments on Deferrals

Deferral of prosecution is not a new procedure developing as a

result of the elimination of plea bargaining; however, it appears to have been used significantly more frequently during the second study year than during the first. In his second memorandum to district attorneys and their assistants, the Attorney General suggested (see p. 3, Section C, July 24, 1975) that prosecutors should carefully consider diversionary programs. Perhaps as a result of this suggestion, deferrals (which can be considered a means for diverting a defendant from the criminal justice process) appear to have increased in frequency during the first year in which plea bargaining was eliminated.

The hypothetical case (see Appendix 4) administered to all defense attorneys and prosecutors who handled a large number of misdemeanor cases demonstrates this in a striking manner. The case hypothesized a young defendant with no prior record charged with a petty larceny. Attorneys were asked what sentence they would have expected for this defendant during the year preceding the policy and the year following. Prosecutors expected that under circumstances in which a negotiated plea was possible, the defendant would have received a fine, and at least some (suspended) jail time. Under the circumstances of the new policy, five of the six prosecutors said that they would probably defer prosecution. Thus, it would appear that for some types of offenses (and defendants), the judge quoted at the beginning of this section may be correct: defendants are indeed getting better bargains.[15]

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[15]The hypothetical case administered to attorneys who handled mainly felonies showed much different expectations however; for the most part, these attorneys expected that the defendant in the felony hypothetical case would receive a more severe disposition after the elimination of plea bargaining.

Deferrals of prosecution may be given for several reasons or a combination of reasons. One prosecutor said:

> Today we had 18 cases set for trial, with only three misdemeanor attorneys. We can't do them all. We have to worry about the four-month rule,[16] witnesses, etc. I have very few cases that go to trial--they get deferred prosecutions, dismissals, charge bargains. Most of the time when charges are reduced, there are some good grounds like the expense involved [in further prosecution of the case]. Seventy-five to 80 percent are reduced for that reason. The other 20 percent depend on the personal characteristics of the defendant--maybe his mother is dying. Characteristics such as job, marital status, youth and prior record are very important in deferrals.

Another prosecutor said,

> Deferred prosecutions are used now where S.I.S. [suspended imposition of sentence] could have been bargained before. At the misdemeanor level, I'll dismiss cases rather than bargain. Some [defense] attorneys have credibility with us. If they show me the guy is clean [i.e., no prior criminal record] and the case is pretty weak, I'll dismiss. If the case is strong, that's too bad.

In another office, a district attorney said:

> We started out [after the policy change] doing more deferred prosecutions, but have changed our policy. Now we require a signed confession, no prior record, and a program to help the defendant. That's only in this office.

The comments from prosecutors tended to show that reasons for deferral of prosecution fell into three categories: (1) the personal characteristics of the defendant, (2) the strength of the evidence against the defendant, and (3) case management needs, such as trial pressures. Interviews indicate that this type of dismissal (delayed dismissal through deferral of prosecution) became much more frequent, at least for a period of time after the change of policy. Further interviews and additional data analysis during the evaluation's second year

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[16]Alaska Criminal Rule 45.

will show whether this trend has continued, or was simply a phenomenon found during the transition period from plea bargaining to no plea bargaining.

4. Other Dismissals

Two other types of dismissals are important: dismissals during the screening process ("declined to prosecute") and dismissal of charges after they have been filed in court. Dismissals of cases during the screening process are difficult to measure statistically. Cases may be declined which the police have brought to the prosecutor prior to arrest. Where an arrest was made a case may be declined by the prosecutor prior to the filing of a complaint in court or the defendant's appearance for arraignment.

Data will be available from the felony statistical study for all cases in which an arrest was made. Neither the felony nor the misdemeanor data, however, reflect the number of instances in which a case was declined for prosecution prior to arrest (these cases are important, because it can be hypothesized that the police would not have brought them to the prosecutor unless they believed that they had probable cause to arrest). The interview comments, however, focus strongly on the screening process and will be used to develop a picture of what has occurred as a result of the policy change.

5. Dismissals During the Screening Process--"Declined to Prosecute"

The change in screening policy, encouraged by the Attorney General as an integral part of his policy eliminating plea bargaining, is one of the most controversial aspects of the policy from the standpoint of prosecutors and police. It is also one of the most difficult to measure. Accurate data was not available for comparison of screening during the

year preceding the policy change or that following the change, either for misdemeanors or felonies. Interview and survey results show a wide range of opinions about the effects and implementation of the screening policy depending in part on the judicial district, and in part on whether the person interviewed was a prosecutor or a police officer.

A hypothetical case was administered to all police investigators and prosecutors in which each person interviewed was asked to judge the strength of the case for prosecution, both before and after the policy change. (See Appendix 4, Hypothetical Case C.) Most prosecutors and police investigators would have expected this case to reach the indictment stage prior to the policy change, with only the facts presented at the beginning of the case. Since the change of policy, most would not expect the case to go to Grand Jury without additional evidence. The point at which most prosecutors and investigators believed that the evidence was sufficiently strong to warrant presentation to the Grand Jury was Variation 4, the presence of a second eyewitness who could positively identify the defendant.[17]

These changes in expectations indicate the degree to which screening standards have changed during the two study years. Prosecutors say that they are now using a standard of "proof beyond a reasonable doubt" for accepting cases for prosecution rather than the previous standard of "probable cause." Some favor this standard saying that it eliminates many cases which should not be prosecuted, even if a negotiated guilty plea could have been obtained under the old policy. Others worry (as

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[17]See Appendix 4, Hypothetical Case C.

do some judges and many policemen) that ". . . in reality, far fewer persons are being prosecuted for their crimes. . . . all appears to be going well. But the social cost for this cosmetic clean-up job is mind-boggling."

Police and several judges objected to the screening policy for other reasons as well. A number of police investigators believed that prosecutors were acting "like judge and jury; they're deciding questions that ought to be left up to the jury." The Attorney General's view (as expressed in his memorandum of July 24, 1975, pp. 2-3), however, is that:

> . . . it is a prosecutor's function to decide what charge can be proven in court rather than a policeman's function . . . .
>
> 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.

Other attorneys, judges and police investigators were pleased with the change in screening policy saying that "it's more honest." A prosecutor said (and his words were echoed by several policemen): "The police are making better cases now; a more appropriate charge is being filed." A police investigator said: "I try to get a little something extra; to get all of the paperwork together. I'm spending more time and screening more." Another police investigator commented: "We have increased our own screening to jibe with what the D.A. wants. His opinion carries more weight."[18] One investigator also believed that D.A.s had improved: "It seems that the prosecutor knows the background

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[18]The comments by police that their own screening standards have changed point to far-reaching effects of the policy change that should be measured by more extensive research into screening practices per se than is possible in this evaluation.

[of the case] better now because he's preparing for trial--it was embarassing before when he didn't know what the case was about."

Summary, Screening Comments

Overall, there seems to be little disagreement that screening in most courts and most judicial districts has tightened--one of the most direct and agreed-on effects of the policy change. Screening of misdemeanors in some district courts seems to be looser, according to attorneys, police investigators and district court judges; nonetheless, the misdemeanor data shows evidence of tighter screening for some types of offenses. Disagreement about screening policy seems to center on the degree to which it should be carried out and whether or not society is being sufficiently protected. Interviews indicate that dismissals by prosecutors which fall into the category of "decline to prosecute" have indeed increased, supporting the evaluation's hypothesis that the frequency of dismissals has changed. Reasons for dismissals have also changed: cases were previously declined for lack of "probable cause to indict"; now, it appears that many more are declined for lack of "proof beyond a reasonable doubt."

6. Dismissal of Charges after Filing

The misdemeanor data indicated that the number of dismissals in court had declined significantly, both at arraignment and during the pre-trial period. This decline may well show better screening prior to filing of charges, as discussed in the previous section. The hypothesis that frequency of dismissals has changed holds true at this later point in the process, though the change is a decline rather than the increase found at the point of initial intake.

Reasons for dismissal of charges after filing may have changed, but

the result (for the defendant) appears to have remained the same. For example, charges may have been dismissed prior to the policy change as a direct result of plea negotiations. Charges are still dismissed, but the reason, in one prosecutor's words is: "If you have five counts and the defendant will plead to three, it's hypocritical to go on all five. Where's the difference? The sentence will be the same. [Besides] there's no more time to go on the other two as well." Another prosecutor said:

> If a defendant says to me, "What happens if I plead to one count [of a several count indictment]?", I tell him I don't know; I can't stop you from pleading to one, but I would then look to see what the state's interest was in prosecuting the others--it doesn't look like much interest is served.

A third prosecutor said he would dismiss charges if the defendant pled to one because "substantial justice is done."

The comments quoted above do not necessarily indicate dismissal of charges in exchange for a plea of guilty. One prosecutor said: "Up to June 30, 1976 (see Attorney General's third memorandum to prosecutors, appendix 1), we felt we could drop charges if there were reasons <u>in addition</u> to a guilty plea. Since then, we don't do it. Some private attorneys do their own investigation and show us how a charge should be changed. But we're not making any bargains."

The time and expense of trying a case, and/or the prosecutor's workload were mentioned by some prosecutors as reasons for which they would dismiss a charge or charges. A plea to either contemporaneous (i.e., pending) municipal or federal charges may also be viewed by the prosecutor as sufficient reason to dismiss state charges against the defendant. Other reasons for charge dismissal were mentioned in the context of prosecutors requesting permission for special exceptions to

the policy (see Attorney General's July 7, 1975, memorandum, pp. 23). These included dismissals because the defendant turned state's evidence, or because the prosecutor believed that conviction could not be obtained at trial even though sufficient evidence might be available to obtain a negotiated plea of guilty.

Police investigators often objected strongly to dismissal of charges by prosecutors. Investigators working with bad check cases cited several examples of cases in which charges had been dismissed, giving the reasons they believed had caused the dismissals. "If a guy pays up on a check case, charges are dropped." "We had a recent forgery case involving numerous checks. The D.A. and defense attorney got together, the defendant pled to two charges and the others were dropped." "In the old system [plea bargaining], they pled guilty to three out of five charges. Now, no deals are made, but they still drop charges, without talking to defense counsel." "If there aren't enough judges to go around at calendar call or the D.A.s are busy, they only take 'more serious' cases and dismiss the others." "If they eliminated plea bargaining entirely, it would be O.K. But if we've got four counts, some shouldn't be dropped." Police were indignant that charges were dropped without any concessions in return from the defendant.

Summary

Dismissals after the defendant has been arraigned on charges have dropped significantly in their frequency. Reasons for dismissals include the pressure of heavy trial and/or other workloads, the time and expense of trying a particular charge, the perceived "seriousness" of the charges, and the "lack of state's interest" in prosecuting a defendant on further charges when a plea of guilty has already been entered to at least one charge.

G. Has There Been an Increase in Severity of Sentences Associated with the New Policy?

The hypothesis underlying this question of the evaluation is that if judges are no longer bound by negotiated sentences, they will give higher sentences. The hypothesis presumes that judges in the past have unwillingly gone along with negotiated sentences which were lower than the judges felt should have been imposed. With the freedom to sentence solely on the basis of the facts of the case and characteristics of the defendant, it has been suggested that judges might increase the severity of their sentences.

1. Misdemeanor Sentences

> If you had OMVI [operating a motor vehicle while intoxicated] reduced to negligent driving before [the change of policy], and now everyone pleads to OMVI, sentences have "gone up"--but they haven't really. The sentence for OMVI has remained the same. (A judge in the First Judicial District.)

The judge quoted above suggests an alternative hypothesis to that proposed by the evaluation. His hypothesis that an apparent increase in the severity of sentences simply reflects a greater number of defendants pleading guilty to the original charge is not a theory that can be adequately tested using the misdemeanor data available. (It will be tested, however, for felony charges.) Whether this hypothesis is the proper explanation, or whether the evaluation's hypothesis is more accurate, the net effect of both would be that the "average" defendant could expect to receive a more severe sentence under a policy of no plea bargaining.

The average defendant charged with a misdemeanor during the second study year did in fact receive a more severe sentence. Table 29 shows that overall, the net fine paid increased by 13.6 percent and the net amount of active time increased by 71.4 percent. The increase in active

time imposed means that the average defendant now faces 12 days in jail for his offense rather than the seven days he could have expected to serve during the first study year. A further indication of an increase in severity is that proportionately fewer people received sentences in which no jail time was imposed (the number who had all of the fine imposed suspended also decreased very slightly).

Of the variables which could be tested using the misdemeanor data available, two appeared to be significant--stage of disposition and type of offense. Stage of disposition has been analyzed on pp. 26 to 35. Changes in severity between the two years by type of offense is analyzed below.

2. Alternative Dispositions

Tables 27, 28 and 46 show changes in alternative dispositions imposed from Year One to Year Two. These alternative dispositions may be imposed in addition to, or in lieu of a fine and/or jail time. Comparing the percentages of all cases in which these alternatives were imposed during the first and second years, several changes can be seen. The numbers receiving restitution or deferred sentencing as a condition of sentence remained relatively the same. "Other conditions" and license actions increased slightly. Probation and suspended (deferred) imposition of sentence decreased.

Each type of alternative disposition was analyzed by the type of offense charged. Of most interest were the results of the analysis of S.I.S. (suspended imposition of sentence). Overall, this alternative has declined in usage, which would indicate an increase in the severity of sentences. However, the picture was very different for individual offenses. The proportion of cases of concealment of merchandise in

which S.I.S. was given, for example, increased from 6.6 percent to 14.5 percent. In the category of petty larceny/embezzlement, the proportion receiving S.I.S. rose from 10.0 percent to 15.7 percent.[19]

The overall decline in use of S.I.S. combined with the increase in its use for certain property crimes indicates an overall increase in severity, but requires further explanation. One possible hypothesis (strongly suggested by interviews) is that defense attorneys in Anchorage and Fairbanks have found that the present calendaring systems used in district courts in those areas make judge shopping possible. Defense attorneys also said that some judges were known to be harder on defendants charged with property crimes, while others typically gave S.I.S. sentences for first offenders. Defense attorneys stated that whenever possible, they waited until one of several judges (believed to be less severe for property crimes) was scheduled to hear changes of plea for the week, and then arranged to enter their client's plea of guilty during that week. A second set of interviews during the project's second year will explore this hypothesis more fully.

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[19]There were no Anchorage or Juneau municipal charges of concealment of merchandise receiving S.I.S.; there were some in Fairbanks, and the increase in proportions here between Year One and Year Two was more marked than in any of the state courts. The opposite situation was true for Fairbanks municipal charges of petty larceny--the proportion receiving S.I.S. dropped from Year One to Year Two. The other decrease in S.I.S. sentences of interest came in the category of possession of marijuana/hallucinogenics. This decrease may be associated with changes in enforcement policies resulting from changes in state law. The change in AS 17.12.110 and Ravin v. State, 537 P.2d 494 (Alaska 1975) probably account for much of this decrease. The United States District Court for the District of Alaska experienced an increase in marijuana filings in the same period.

3. Other Judgments: Active Time and Fines

Tables 34, 35 and 36 show the changes in active time and fines imposed for each group of offenses between the two years. Table 36 indicates that no clear overall pattern of sentence increases appeared. For some offenses, such as "assault," both the amount of active time imposed and the fine decreased from the first year to the second year. Tables 34 and 35 show that the number of "assault" convictions declined also, and that the number of defendants receiving no active time for these offenses increased by 100 percent from Year One to Year Two. Thus, it would appear that for this offense, punishment significantly declined in severity. The offense of "worthless checks" shows a similar pattern. Despite a slight increase in the number of sentences imposed in this category, and a decrease in the number of defendants receiving no active time, the average net sentence declined significantly.

Offenses in other categories indicated changing patterns of sentencing. Joyriding, for example, had an increase in the amount of active time imposed of 55.6 percent, but a decrease in fine of 32.9 percent. Malicious destruction had the opposite pattern, with a decrease in active time imposed of 60.9 percent and an increase in fine of 91.9 percent. Defrauding, like malicious destruction, had a significant increase in fine imposed (197.1 percent) and a decrease of 28.6 percent in active time. Resisting arrest showed a pattern more similar to joyriding, with an increase in active time and decrease in average fine. No offense, however, showed a large increase in both net active time and net fine. Only reckless driving, trespass, and concealment of merchandise showed net increases in both active time and fines.

Summary

Despite increasing average sentence severity (net fines +13.0 percent, active fines, +71.4 percent), an analysis of the misdemeanor data, both by type of offense and by stage of disposition, tends to refute the hypothesis that this increase in severity is a direct impact of the policy change. Analysis of both variables indicates that under some circumstances sentence severity has declined significantly or remained the same. Under other circumstances sentence severity has increased. These circumstances include entry of not-guilty plea at arraignment, or trial and conviction on certain charges, especially reckless driving, trespass, and concealment of merchandise. The lack of clear-cut increase in sentence severity for all or most types of offenses would tend to disprove the hypothesis that changes in sentence severity are directly associated with the elimination of plea bargaining. The felony statistical study will provide a much more detailed analysis of factors associated with patterns of sentence severity and allow the hypothesis to be tested more rigorously.

4. Explanations of Increase in Severity

Judges were asked whether their sentencing practices had changed since the change of policy. Thirteen of the 24 judges interviewed said that they had not changed. Many of the remaining judges believed that the sentences they imposed had increased in severity, but only two suggested that the change could be correlated with the change in plea bargaining policy. These two were district court judges in Anchorage, who were pleased with the opportunity to hold "open" sentencing hearings (in which the judge may listen to witnesses as well as to the comments of the defense attorney and prosecutor). The judges compared sentencing

in state cases with the sentences negotiated by municipal prosecutors, and concluded that elimination of sentence recommendations allowed a more just sentence to be imposed. One judge said:

> We still have plea bargaining in city cases. The bargains in city cases are ridiculous. I feel awful when I get off the bench. With the state system, I like it because I can justify the sentences I give--I can't do that with the city.

These judges were the only two who saw any correlation between an increase in sentence severity and the change in plea bargaining policy. Some of the other judges suggested that sentences had increased, but that "sentences go up with public reaction." One said: "I don't think the new policy affected sentencing. There has just been a change in the general attitude of judges. The legislature and the press are clamoring about criminals not being punished adequately by the system." Another said, when asked how he thought the policy change appeared to the public, "There's no feedback from the public on it. They're just mad about sentencing."

Other judges believed that an increase in sentence severity could be traced to observations made by judges themselves. One stated that: "We came to the conclusion that we weren't doing any good. I give much less probation now--I give time. But it's not attributable to plea bargaining [elimination]." A second judge said: "I don't see any blanket change [in sentences]. OMVIs may have gone up because judges got irritated and saw their responsibility to the community." Finally, one judge believed that sentences had declined in severity: "If you include dismissals that would have been pleas and gotten sentences before the policy change, sentences probably went down."

Prosecutors, like judges, had varied explanations for increases in sentence severity. One prosecutor suggested that: "Sentencing has

gotten back on the right track--it always does around election year."[20] Another said: "I think there's a trend toward stiffer sentences, but I'm not sure that it has anything to do with plea bargaining. I don't think there's any change for young offenders with no prior record--it would be unusual for them not to get an S.I.S."

Defense attorneys agreed in a few instances that factors other than the policy change had been responsible for increasingly severe sentences. One attorney in Juneau attributed the change to public pressure.[21] However, most defense attorneys who thought that sentences were higher associated the change with the elimination of plea bargaining.

One group of responses suggested that the cause of higher sentences was the decreased amount of flexibility in the charging process. These attorneys believed that overcharging had become more common and created the opportunity for conviction on a higher charge than would have been likely with plea bargaining. Other defense attorneys said that they now had less chance of getting a charge that was too high reduced to a lesser charge.

Many defense attorneys saw the actions of the judge as being more important than the charge(s) filed by the district attorney. Their views can be grouped into three categories:

(1) Some attorneys suggested that under a policy of plea bargaining,

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[20]Judges in Alaska are nominated by the Judicial Council and appointed by the Governor, but must stand for retention election periodically. See Ak. Const. art IV, § 6; AS 22.10.100 (Superior Court Judges); AS 22.15.170 (District Court Judges).

[21]Several defense attorneys in Fairbanks believed that the appointment of a new judge to the superior court bench in Fairbanks during the study's period of evaluation had increased the severity of sentences being imposed in that judicial district.

the defense attorney and prosecutor became well acquainted with the defendant's actions and needs through discussions of his case. Judges have far less opportunity to understand the defendant, despite pre-sentence reports and sentencing hearings, and therefore tend to impose harsher sentences than merited by the circumstances. (A number of judges and prosecutors took this same view of sentencing, and preferred plea bargaining for that reason.)

(2) Other attorneys believed that with a policy of plea bargaining responsibility for sentencing was shared much more equally among the defense attorney, prosecutor and judge. For this reason, they believed that sentences arrived at through negotiation were likely to be more just; first, because several experienced persons had contributed to the final result, and second, because the final sentence was less likely to have been a result of public pressure--the judge deriving support for his decision from the concurrence of two other professionals.

(3) Finally, several defense attorneys thought that judges welcomed the opportunity to sentence free from any strictures imposed by a bargaining process and therefore imposed heavier sentences than would have been arrived at through negotiations. Some suggested that the judge felt obligated to fill the vacuum left by the elimination of the prosecutor's recommendation.

Summary

The results of the interviews indicate, as did the analysis of the misdemeanor data by type of offense, that the overall increase in sentence severity may well be partially due to factors other than the change of plea bargaining policy. Additional interviews during the project's second year, and analysis of the felony statistical data may help to

clarify the association of the elimination of plea bargaining with changes in sentencing patterns.

H. Has the Policy Been Associated with a Change in the Likelihood of Appeals?

Misdemeanor data on appeals is unavailable through the court's computer records and is not included in this report. Interview data discussing appeals was also relatively scanty. More data will be available from the felony statistical study and interviews done during the project's second year to allow an adequate analysis of this hypothesis. It will not be discussed further in this interim report.

I. Has the Policy Been Associated with a Reduction in the Influence of Legally Irrelevant Factors on the Disposition of Cases?

The major evidence for testing of this hypothesis will be statistical evidence from the felony study to be completed during the project's second year. Because of anticipated difficulties in obtaining "neutral" answers from interviews, no attempt was made to answer this question with interview methodologies. Further discussion will be postponed until the project's final report.

J. Is There Evidence of a Change in Policy Regarding Judicial Participation in Sentence Discussions that Can Be Directly Correlated with the New Policy?

Plea bargaining practices in Alaska prior to the Attorney General's change of policy often included the presentation of results of negotiations to the judge in chambers prior to entry of a guilty plea in open court. This practice of a pre-trial conference including the prosecutor, defense attorney and judge was not universally followed; some judges refused to take part in such conferences. Results of the survey of the Alaska Bar indicated that judicial approval of sentence bargains prior

to entry of a guilty plea had been obtained at least occasionally by over half of the defense attorneys practicing before the policy change (prior to August 15, 1975). One defense attorney commented that he had "never made an agreement that the judge did not approve beforehand."

The Attorney General in his second memorandum to district attorneys and their assistants (July 24, 1975, p. 6) anticipated that these pre-trial conferences might take a slightly different form with the elimination of prosecutors' ability to negotiate sentence agreements:

> . . . [I]n 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 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.

The Attorney General objected strongly to the possibility of this practice:

> . . . I thought this would be extremely bad policy because . . . it would legally amount to coercion on the part of a judge to obtain a guilty plea . . . . 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.

As conferences became a reality, the Attorney General continued to object, and in his next memorandum to prosecutors took an even stronger position:

> . . . [H]enceforth I do not want District Attorneys or Assistant District Attorneys participating in sentence conferences with a judge prior to the entry of a plea. . . . If a judge persists in 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. (June 30, 1976, p.3)

Despite the Attorney General's objections, sentence discussions between defense attorneys and judges (and sometimes prosecutors) did continue for a limited time.

1. Frequency and Structure of Discussions

Interviews with judges, prosecutors, and defense attorneys focused on the frequency with which conferences occurred, the kind of information brought to the judge's attention, and the role played by each participant. In general, the interviews indicated that following the adoption of the new policy the frequency of pre-plea sentence discussions had decreased slightly.[22] Ten of the 20 judges responding to the question about pre-plea conferences said they held them; 10 said that they did not (though they added that defense counsel had requested them). Six of the 10 who had held such conferences said that they had stopped doing so within a short time after the policy change because they believed that they were unfair to the prosecution.

The structure of pre-plea sentence conferences seemed to follow well-defined patterns, varying to some extent depending on the judge and prosecutor involved. Normally, conference requests were initiated by defense counsel, and the prosecutor was notified of the time of the conference. At the conference, the judge would listen to the presentation by the defense attorney of the circumstances of the crime and the defendant's background.

Prosecutors questioned whether information presented by the defense was always accurate. One said: "The information ranged from being 50

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[22]Results of the Bar poll, taken before the Carlson opinion was issued also showed about 10 percent less participation in such conferences by defense attorneys. (For a discussion of State v. Carlson see pp. 69-72, infra, and Appendix 7.)

percent accurate to pretty accurate." Another commented: "Defense counsel gave most of the information and I would correct any misinformation. The longer some defense counsel talked, the more likely they were to misrepresent the facts." A third prosecutor said: ". . . Defense counsel explained the case and made many misrepresentations--we were taken to the cleaners." These prosecutors did not participate in the conferences, but sat mute.

Some prosecutors were more comfortable with the structure of the conferences. These prosecutors outlined a type of conference in which "I present the facts, and the defense counsel talks about the defendant's background and mitigating circumstances." Another prosecutor said, "I took an active part in relating the facts of the case and what I felt the guy should get." Participation in the conference appeared to make prosecutors more comfortable with the outcome.

Judges who described the conferences mentioned both types of participation by prosecutors--an active role, or a passive witnessing of the exchange between judge and defense counsel. Judges themselves varied in the part they played in pre-plea sentencing discussions. Their participation also ranged from very active to inactive. One said: ". . . I tell the attorneys the sentence I would be inclined to give knowing what I know. Then I ask the D.A. if he would be inclined to appeal this sentence to the supreme court as a too-lenient sentence. He's never yet said he would, but if he did, I'd have to say to the defense attorney that the deal was off." "I said on record the other day: 'O.K., I'm tired of doing this behind closed doors. If you're going to plead, I'll give you X." Other judges took less part in conferences; "Attorneys would come to me to find out whether I would live within a range of

sentences. My response was usually, 'Yes, if the pre-sentence report comes out O.K.'" Another judge said that he gave "only baseball figures." Some held them rarely, and then "only if the D.A. will agree to sit in."

Defense attorneys who requested pre-plea conferences with the judge described a similar dynamic to that mentioned by the prosecutors and judges. They, of course, had their own views on what actually occurred. One defense attorney noted that "Some judges will tell you [what sentence they would give]; others are more general." The structure he described was one in which the "D.A. is always present, except one prosecutor who has done it by phone. Lots of time the D.A.s are two-faced, saying one thing in chambers but refusing to say it on the record." Another said, "The D.A.s, if they come, participate actively." Sometimes, the D.A. refused to participate; at other times, the prosecutors would be present but silent. One defense attorney added that: "One judge initiates the discussions as you're walking down the hall. He tells <u>you</u> what he's going to do."

2. Non-Participants in Sentence Discussions

Half of the judges interviewed said that they did not participate in discussions of sentence prior to the entry of a guilty plea. A small number of defense attorneys also said that they did not request such conferences for a variety of reasons. In general, many of the persons interviewed who either did not request conferences or refused to participate believed that they were clearly unethical or could be interpreted as being wrong if the prosecutor was not going to take an active part.

The defense attorneys who would not initiate discussions of the possible sentence with the judge had varying views. One attorney commented: "I've had very little experience with these because I don't

have a good rapport with the judges. [Also] it's unethical to do it ex parte." Another attorney said that "I never have [had discussions] . . . . There are some judges with whom I think it would be effective, but I've never felt the need to initiate such a conference." Another attorney remarked, "I was [talking with judges] before the [plea bargaining] policy change but I never was after the change. I would have no hesitancy but generally I found judges didn't like to get involved. Most judges don't want to make promises. I don't expect a judge will tell me what he's going to do." Finally, one attorney said he never initiated such conferences "because it's possible to engage in judge shopping because in district court the judges are assigned certain matters on a weekly basis--and you have a judge doing all changes of plea for a week."[23]

Analysis of the interviews by judicial district showed that most defense attorneys in Fairbanks agreed that judicial conferences about sentencing did not occur prior to the entry of a guilty plea or trial in Fairbanks courts, except under very unusual circumstances. A Fairbanks attorney said, "I never have [participated in sentence discussions with the judge]. There is a split among lawyers whether this is proper. I don't believe it is going on in Fairbanks." Others simply said that such conferences didn't occur. One commented that "We have no pre-plea conferences. Although I can tell you it's common knowledge that the judges got together behind closed doors and decided what to give as

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[23]Judge shopping, as described by this attorney, will be analyzed in depth in the project's final report. It appears to have been a fairly common phenomenon in Anchorage district courts, resulting from calendaring changes made at about the same time that the plea bargaining policy was changed. There is reason to believe it may also operate in the superior court at least in Anchorage.

sentences with particular charges--such as five years for selling heroin, etc."

Very few prosecutors actually refused to attend conferences when they had been initiated by the defense attorney and agreed to by the judge--until they had been instructed by the Attorney General that he did not want them to be present at these conferences at all (see June 30, 1976, memorandum, p. 3). Two Fairbanks prosecutors did refuse. One said, "It's never done in my cases--but I understand there are conferences." The other said, "I've had this problem on two cases. The judge came and asked my position on a sentence. I refused to discuss it."

Judges who declined to hold conferences often commented that they did so primarily "because the Attorney General won't let the D.A. participate." They also give other reasons. One judge believed that "if defense counsel is worth anything he will already know what his client will get." Another judge would not participate in pre-plea sentence discussions because "Be it brilliance or bullshit, let's make it [the elimination of plea bargaining] a complete experiment."

3. The Carlson Decision

> In this case the Superior Court has announced its intention to accept a guilty plea to the crime of manslaughter from the defendant Vail in lieu of trying him for either first or second degree murder. The district attorney does not concur in this reduction of charge, and has applied to this court for a writ of prohibition on the ground that the trial judge has exceeded his authority. . . .
>
> . . . . . .
>
> We must go further, and hold that although the court may judicially determine the disposition of a charge based on the evidence, the law and its sentencing power, it may not, in effect, usurp the executive function of choosing which charge to initiate based on the defendant's willingness to plea guilty to a lesser offense. . . . [T]he decision whether to

> prosecute a case was committed to the discretion of the executive branch, and therefore was not subject to judicial control or review. . . .
>
> We are also concerned that a judge's involvement as plea negotiator would detract from the judge's neutrality, and would present a danger of unintentional coercion of defendants who could only view with concern the judge's participation as a state agent in the negotiating process . . . . In connection with these policies, we note that Fed. R. Crim. P. 11(e)(1) now prohibits a trial judge from participating in plea negotiation discussions. (State v. Carlson, 555 P.2d 269 (Alaska 1976)) [Footnote omitted.] (See Appendix 7, for the full opinion.)

The Carlson decision was announced on October 15, 1976, a little more than a year after the Attorney General's policy eliminating plea bargaining went into effect. Although the issue had to do primarily with the judge's power to determine the charge against the defendant, the consequences of the decision were that pre-plea sentence discussions came to a halt.

The concurring opinion by Justice Jay A. Rabinowitz and Chief Justice Robert Boochever may have played a part in bringing this chapter of the elimination of plea bargaining to a close. In their concurring opinion, the Justices forcefully stated the case against judicial participation in any aspect of plea negotiations.

> Admittedly, Alaska's Rule of Criminal Procedure which recognizes the controversial practice of plea bargaining does not contain an explicit prohibition against trial courts engaging in such practice. On the other hand, given the tremendously coercive impact judicial activism can have in this area, the erosion of the appearance of judicial neutrality, and the accused's constitutional rights to jury trial, I am of the view that our trial judges should be totally barred from engaging in either charge or sentence bargaining.
>
> Further, I note my agreement with the court's conclusion that to permit the superior court to dismiss the first and second degree charges against Vail at this stage of the criminal prosecution would be violative of the doctrine of separation of powers. (Supra at 274.) [Footnotes omitted.]

None of the judges, prosecutors or defense attorneys interviewed after Carlson admitted to engaging in pre-plea conferences after this opinion was issued. Few of those interviewed expressed any opinions about the decision, most simply saying that "since Vail [State v. Carlson], we don't do that any more." A series of interviews during the evaluation's second year will provide further description of the effects of the elimination of pre-plea sentence conferences.

A second, related decision was issued by the supreme court in March, 1977. State v. Buckalew, Opinion No. 1391 (Ak. Sup. Ct. March 14, 1977) again addressed the issue of a judge's participation in plea negotiations:

> The state's main contention is that Judge Buckalew acted improperly by participating in negotiations leading to the entry of Schmid's plea. [The "negotiations" referred to were in the form of a pre-plea conference taking place in the judge's chambers, with the defendant, his attorney, the assistant district attorney and the judge present. The result of the conference was an indication by the judge to the defendant that upon a plea of guilty, the judge would consider a maximum sentence of 90 days in jail and a deferred imposition of sentence. The judge further stated that the defendant would be allowed to withdraw his plea of guilty if the judge changed his mind about the maximum sentence after receiving the pre-sentence report.] . . .
>
> . . . . . .
>
> . . . The foregoing considerations persuade us to now grant the petition and to hold that henceforth Alaska's trial judges shall be totally barred from engaging in either charge or sentencing bargaining.

The Buckalew decision with its total prohibition of sentence or charge bargaining by judges combined with the Attorney General's policy as it has evolved over a year and a half, leaves the Alaskan criminal justice system with no perceptible opportunities for open plea negotiations of any sort, except under unusual circumstances. Since the Buckalew opinion has been issued so recently, and since much of the data analyzed

in this report was gathered prior to the Carlson opinion as well, detailed analysis of the effects of these rulings must be postponed to the project's final report.

Summary

The hypothesis suggests a change in policy regarding judicial participation in sentence discussions that could be directly correlated with the elimination of plea bargaining by the Attorney General. The results of the interviews support this hypothesis, although not entirely as expected. The interviews indicate that the major change was in the dynamics of such conferences, specifically in the emergence of the passive prosecutor-conferee (or non-conferee), and the variety of judicial responses to this phenomenon.

Factors in bringing these conferences to an end, in chronological order, appear to have been: (1) lack of participation by prosecutors, leading some judges to refuse defense attorneys' requests for conferences on the grounds that they were unfair to the prosecutor, (2) the Attorney General's instructions to district attorneys and assistant district attorneys on June 30, 1976, that they should not attend the conferences at all and should object to them, and (3) the Carlson opinion, issued by the supreme court on October 15, 1976 (backed up by the March 14, 1977, Buckalew opinion). This combination of factors halted all pre-plea sentence discussions involving the judge, except for some which may take place under unusual circumstances (the project's second-year interviews will determine whether any such conferences have occurred). Thus, it appears that judicial activism may have been a phenomenon of the transition stage from a plea-bargaining system to a criminal justice system in which little or no open plea bargaining occurs.

* * *

All findings in the interim report should be regarded as preliminary and subject to further analysis in the second year of the study. Misdemeanor data for this report was drawn solely from statistics supplied by the Alaska Court System. Data furnished did not always fit neatly into the project's working hypotheses; and as a result, some of the hypotheses could not be tested fully. Data for the felony statistical study is being collected at this time by the project staff directly from original sources beginning with jail booking sheets, public safety fingerprint files, Alaska Pre-Trial Services bail reports, court files and pre-sentence reports. Following analysis of this felony data the project will re-examine the tentative conclusions expressed in this interim report and these will be integrated with the final evaluation report in March of 1978.

APPENDICES

APPENDIX 1

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

TO: 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 case s 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 varicus 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.

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

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

APPENDIX 2

ADVISORY BOARD MEMBERS

The Honorable Robert Boochever	Chief Justice, Supreme Court of Alaska
Edgar Paul Boyko	Attorney at Law, Anchorage, Alaska
The Honorable Eugene A. Burdick	Judge, Fifth Judicial District, North Dakota
Honorable Avrum M. Gross	Attorney General, State of Alaska Represented by Daniel W. Hickey, Chief Prosecutor, Criminal Division, Alaska Department of Law
Walter B. Jones, Jr.	Assistant Director, Alaska Division of Corrections
Captain Brian Porter	Anchorage Police Department
Peter Smith Ring	Director of Research, Criminal Justice Center, University of Alaska
Bernard L. Segal	Professor, Golden Gate University School of Law, San Francisco, California
Lloyd L. Weinreb	Professor, Harvard Law School, Cambridge, Massachusetts

APPENDIX 3

METHODOLOGIES

This appendix describes briefly the methodologies used in each portion of the work done on evaluation during the first project year. Additional comments on specific methodologies have been made in several sections of this Interim Report when they were especially relevant to the data gathered.

Bar Association Survey

The Bar survey design was based on experience with previous Bar polls done by the Alaska Bar Association and the Alaska Judicial Council. The procedure used to obtain information about the attorney's legal experience (amount and type of experience) was similar to that used in polling attorneys for their opinions on judges prior to retention elections in 1976. Questions Nos. 1 through 7 allow the data to be analyzed using type of attorney, length of practice, type of practice, and judicial district as variables. The confidentiality precautions used were similar to, but slightly more rigid than the precautions taken in the retention election survey. A copy of the questionnaire, along with a self-addressed, stamped envelope, was sent to the entire statewide membership of the Alaska Bar Association (860 attorneys). The envelopes were numbered in the top left-hand corner with a number that had been pre-assigned to each attorney, and recorded on a master list. When the questionnaire was returned, it was removed from the envelope, making it anonymous, and the master list was updated to reflect the return of the questionnaire. A second mailing of the questionnaire to those Bar members remaining on the master list was made a month after the first mailing. Following the second mailing, the master list was destroyed. The combined result of both mailings was 430 responses, or 50.0 percent.

All returned questionnaires were then assigned a number, coded and key-punched. Many attorneys had written additional comments on the questionnaire form; these were also categorized and coded.

Analysis of the returned questionnaires indicated some points at which the design could have been improved. No provision was made in question No. 1 for attorneys who were sole practitioners. Forty-five attorneys (10.5 percent) wrote in this response. Question No. 20 asked attorneys whether they had ever negotiated an agreement for "pre-trial diversion." This term seemed unfamiliar to a number of attorneys, since some wrote in "What does this mean?" and 15.0 percent left the question blank.

One prosecutor commented that the date of the policy change had not been well defined on the questionnaire (the questionnaire asks attorneys whether certain types of negotiations had occured "Before 8/15/75" or "After 8/15/75." The policy was only applicable to cases opened on August 15, 1975, or after, which meant that any cases filed prior to that date and not disposed of were still subject to plea negotiations if the prosecutor desired. When the questionnaire was designed, the assumption was made that any attorney working within the criminal justice system and answering these questions would have been familiar with the

fact that some cases could still be negotiated after August 15, 1975, because they had been opened prior to that date; and the further assumption was made that attorneys would take this into consideration when responding. The results obtained from the Bar survey correspond closely with those obtained from interviews about the amount of and type of plea negotiations which continue to occur. This comparability of results suggests that attorneys were indeed capable of responding accurately to questions which required an understanding of the timing of the policy change.

Police Survey

A survey of patrolmen and other police officers, supplementary to the interviews with police investigators, was suggested by the Advisory Board at the July 1976 meeting. Questions on the survey were designed with the assistance of Advisory Board members and officers at Anchorage Police Department. The survey was intended for all officers in Anchorage, Fairbanks, and Juneau municipal police departments, and for State Troopers in all three cities. Seventy-one questionnaires were actually completed and returned in time for first-year analysis.

Surveys were not mailed, but were distributed to officers at shift changes, roll calls, and staff meetings. The procedures used for distribution in each department were arranged with the assistance of the police chief or division commander for that department. When possible, a staff member of the evaluation project gave a short talk to officers, describing the purpose of the questionnaire and answering questions from the officers. The staff members then either returned to the department to pick up completed forms, or the forms were mailed to the project's office by the division commander. Finally, the returned surveys were coded, key-punched and analyzed.

Police were quite candid in their comments on this survey, and none of the questions asked seemed confusing. The major improvement that could have been made in this survey was better distribution, which would have provided a greater number of responses for analysis. Because of days off, sickness, and officers in court, response was lower than anticipated.

Interviews

Judges

The presiding judge of one judicial district requested that judges not have overly-long interviews, because of heavy work schedules. For this reason it was decided not to use the hypothetical cases (see "Hypothetical Cases" in this section) with judges. Therefore, a short questionnaire covering general topics was used to interview each superior and district court judge in Anchorage, Fairbanks and Juneau.

Interviews lasted an average of 45 minutes to one hour, and generally took place in the judge's chambers. Interviewers were requested to probe on points of interest, as well as covering the questions on the

form. Two probing questions were asked of most judges: first, whether a sentence differential for going to trial had ever existed or existed now; and second, whether the judge had participated in pre-plea discussions of sentence. A total of 24 interviews were obtained in three cities. Most of the interviews had been completed prior to the time at which the Carlson decision was issued, and comments on judges' participation in sentence conferences generally reflect that fact (see Section J for an analysis of Carlson).

No significant problems arose during the interviews with judges. Two other persons participating in national studies on plea bargaining (Professor Albert Alschuler and Herbert Miller of Georgetown Law Institute) had interviewed many of the same judges three or four months prior to the beginning of the evaluation's interviews. This caused some confusion for a few judges, who wondered why they were being asked to discuss plea bargaining again. Once they understood the purpose of these interviews, most judges were exceptionally cooperative and willing to talk with the interviewers. Selected judges will be re-interviewed during the project's second year.

Hypothetical Cases

Three hypothetical cases were designed for use during the evaluation's interviews. The methodology of hypothetical cases was chosen for the following reasons:

(a) It was believed that attorneys would be more specific in discussing the facts of a given case than they could be if only presented with general questions about the elimination of plea bargaining and the effects of the policy change;

(b) By asking attorneys specific questions about a specific case, quantifiable data could be obtained from the interviews;

(c) Use of actual cases was considered and rejected; first because it would have been a cumbersome procedure, and secondly, because confidentiality presented serious problems.

The hypothetical cases were designed by the Project Director, an attorney with seven years of experience in criminal defense work, and the Legal Evaluator, with eight years of experience in para-legal work. Each case was then reviewed with attorneys from the Public Defender Agency and the District Attorney's office in Anchorage. Finally, the cases were pre-tested with three attorneys, one a former prosecutor for the state, and two defense attorneys. More pre-testing of the cases would have been desirable, but the Alaskan population of attorneys was too small to allow this without seriously cutting into the number of attorneys available for the interviews.

Each of the hypothetical cases to be used during interviews with defense attorneys and prosecutors was designed to allow two different fact situations and two different sets of defendant characteristics, so that the effects of strength of case and personal characteristics of the

defendant could be assessed. The crimes chosen were assault with a dangerous weapon and petty larceny. Both choices were based upon data showing that these crimes constituted a significant proportion of the charges filed during the two study years (August 15, 1974, to August 15, 1976). The cases were based on real cases, but simplified and modified to protect the identity of the defendant.

Use of hypothetical cases in interviewing provided much valuable information, despite the problems encountered. The two major drawbacks found by attorneys were that the overall interview (including general questions about the elimination of plea bargaining) was too lengthy, and that not enough information was given in the hypothetical cases to allow them to answer the questions asked. A few attorneys also objected that the questions about the hypothetical case reminded them of law school, and that they found the procedure dull.

An average interview with a prosecutor or a defense attorney required a minimum of one-and-a-half hours. Interviewers began by asking the attorney to respond to the hypothetical case, and then to general questions. After conducting a dozen interviews using this sequence of questions, interviewers started asking the general quesions first, followed by questions about the hypothetical case. This second sequence worked much better than the first. Attorneys who had a limited amount of time spent that time answering general questions. Attorneys who could make time for the entire interview (which included most of those interviewed, with the exception of a few private defense attorneys) used the hypothetical case to jog their memory and bring up points they had forgotten in responding to the general questions about the policy change.

The great majority of attorneys believed that not enough information had been presented in the hypothetical cases. The strongest comments came on the hypothetical assault case. Many attorneys did not understand what the defendant's motive for shooting the victim was. Despite the explanation given in the hypothetical that the defendant believed he had been threatened by the victim, attorneys wanted to know whether he really had been threatened; if he had, why (whether he had caused the threat); whether the threat had been a figment of his imagination, and so forth. Without more information about the defendant's personality and the relationship of defendant and victim, attorneys were hesitant to answer questions about probable sentences and dispositions.

The hypothetical petty larceny case presented fewer problems for most attorneys who answered questions on it (attorneys were asked to respond only to questions about one hypothetical case; they were given the misdemeanor or felony case, depending on the type of case with which they were most familiar). The major question about this case came on the second variation of the facts, where attorneys had difficulty determining how long ago the defendant had been convicted of a burglary offense.

Occasionally, questions on the interview form for the hypothetical cases were either redundant or confusing. Interviewers omitted some questions, or rephrased them to overcome these problems.

A third hypothetical, a robbery case, was presented to prosecutors and police investigators. Again, the case was based on a real fact situation, but modified and simplified for purposes of the interviews. The purpose of this hypothetical case was to test police and prosecutor perceptions of screening policies and changes which may have occurred in these policies since the ban on plea bargaining. The Legal Evaluator prepared a fact situation of a robbery which was a relatively weak case, and then added information and evidence in seven variations on the original facts. Each variation was designed to strengthen the case. (An interesting note on the design process is that the Legal Evaluator originally had only six variations of the facts; she then reviewed the hypothetical case with the Anchorage intake prosecutor who said that he would still refuse to accept it without further evidence of the defendant's guilt. He suggested that finding the defendant in possession of the victim's credit cards, together with all of the other evidence, would make the case strong enough for him to accept for prosecution.)

Fewer problems were encountered in the use of this hypothetical case than in the other two. One problem, peculiar to this case, arose from differences in court procedures among the three judicial districts. Anchorage is the only city of the three in which interviews were conducted that has a Grand Jury sitting continuously. Prosecutors in Fairbanks responded to the questions about whether the case would go to Grand Jury by saying whether or not they would expect to go to preliminary hearing. Otherwise, the only problem with the case was again lack of information. Prosecutors wanted to know whether the defendant had just been paid (Variation 5), whether the original victim's identification was trustworthy (since she was from Seattle, some prosecutors believed that all Natives "might look alike to her"), whether the knife found on the defendant matched the victim's description of the weapon, and so forth. Police had fewer questions about the information presented.

General Questions, Prosecutors and Defense Attorneys

All attorneys interviewed were also asked a series of general questions about their experience with the change of policy. The questions were based on the evaluation's hypotheses, and on the results of a series of informal interviews which had been conducted prior to the completion of the project design. Only one of the questions proved to be of extremely limited value; that question concerned relationships between defense attorneys and pre-sentence reporters, and between prosecutors and pre-sentence reporters. Responses to this question indicated that for the most part, little relationship existed between pre-sentence reporters and attorneys, and that what relationship did exist had changed very little for most attorneys as a result of the policy change.

The sample of prosecutors and defense attorneys was selected to cover the largest number of people possible in the time available. All district attorneys and assistant district attorneys in Anchorage, Fairbanks and Juneau who had held their positions for at least a year were interviewed (21 people). All public defenders who met the same criterion were interviewed. Private defense attorneys were selected for interviews who (a) worked in firms which provided pre-paid legal services for union

members or (b) were known to have large criminal defense practices. The presiding judges in each judicial district were asked to provide lists of attorneys who appeared before them frequently in criminal matters. A total of 45 defense attorneys were interviewed.

Police Investigators

Eighty-four investigators were interviewed, all of whom worked with Alaska State Troopers or for a municipal police department in Anchorage, Fairbanks or Juneau. Names of investigators were provided to the interviewers by the chiefs of the municipal police agencies or the detachment commanders of the State Troopers.

Questions for the interviews were derived from the evaluation's hypotheses, and from hypotheses suggested by police officers during a series of pre-design interviews (eight investigators were contacted). Interviewers completed the investigator interviews in 45 minutes to an hour, and experienced no significant difficulties with any of the questions. Some questions (as in the other interviews) did not provide good data. For example, police relationships with defense attorneys and pre-sentence investigators seem to be very limited, and to have changed little as a result of the policy change. One question was added to the interviews which had not been printed on the inteview form: investigators were asked at the end of the interview for their opinion of the policy change.

Two other comments could be made about future investigator interviews. First, the interviewer should note what types of crimes the investigator works with most frequently (e.g., frauds, burglaries, violent crimes) since some investigators commented that their realtionships with the prosecutors depended upon the type of investigations they did. Secondly, police in most departments are fairly mobile, either moving from city to city (Troopers) or moving within the department to different types of investigations. This mobility made some questions difficult, such as question No. 8, which asked whether investigators were spending more of less time in court than prior to the policy change.

Misdemeanor Statistical Study

The computerized judicial information system maintained by the Technical Operations Section of the Alaska Court System was made available to the Judicial Council for use in this evaluation. The system contains data from a docket sheet on each case filed. Design constraints within the information system limited the types of analysis which could be performed. The general hypotheses for the misdemeanor study which are outlined in the Project Design Report were based on the data which was known to be available.

The unit of information for the judicial information system is case/defendant (one record per defendant per case). The selection of computer records for analysis was done using the following criteria:

(1) The offense had to be coded a misdemeanor.

(2) The court location had to be Anchorage, Fairbanks or Juneau;

(3) The "most serious" offense had to be one which had been selected by the Evaluation Methodologist for consideration (the 27 offense categories are listed in Appendices 5 and 6). Those omitted included license violations, traffic offenses (except drunk driving and leaving the scene of an accident), and dog and animal violations.

(4) The case had to be in the project study years. (If the case was opened prior to August 15, 1974, or after August 15, 1976, it was not selected. If the case was opened after August 15, 1974, it was coded as Year One; if opened after August 15, 1975, it was coded as Year Two.)

(5) Municipal and Borough cases in the district courts were grouped together and segregated from state district court cases.

After all the criteria for selection had been met, a possible data file containing 23,000 cases was left for analysis. In some of the analysis it was not possible to utilize all records available because of particular coding problems in the variables under consideraton. In addition, the reliability and consistency of the data is a product of the docketing procedures used by court clerks, which have changed during the two-and-one-half years that the judicial information system has been in existence. Where records were not utilized, or where the reliability of the data is questionable, this fact is noted in the analysis of the individual variables.

Defendant Interviews

A group of 38 recidivists were selected for interviews at the suggestion of the Advisory Board during its first meeting. These individuals had been convicted of at least one felony or misdemeanor in the year preceding the policy change and at least one felony or misdemeanor following the policy change. Defendants' interviews were to be scheduled for the first project year and conducted as the interviewer's schedule for other interviews permitted. Each defendant's criminal history was to be researched prior to the interview so that the interviewer would be able to ask pertinent questions. Information obtained included the offenses, dates that cases were opened and closed, sentence given and judicial district in which the case occurred. Four pre-tests of the interview forms were made at Eagle River Correctional Center on August 1, 1976.

Serious problems were encountered with the selection and location of the defendants. The names of individuals chosen were sent to Division of Corrections, which sent back a list showing whether the defendants were incarcerated, and if so, where. Unfortunately, this list was only current for a short period of time. When interviewers tried to contact defendants at the given locations a month after the list had been prepared, only six of 14 defendants were available (most were still in custody, but had been transferred to different locations). Of the original 38,

eight were shown as being out of the custody of the Division (although one of these defendants was found by the interviewer to be in the maximum security section of the Eagle River Center), and six were listed as being on probation. Thus, only one of these 14 defendants could be interviewed. Of the remaining 10 defendants on the original list prepared by the Legal Evaluator, another seven were at Family House, the Palmer Correctional Center or the Anchorage Corrections Center Annex. The interviewer's schedule did not allow time for any of these defendants to be contacted. Altogether, only 10 of the defendants first selected could be located for interviews.

Staff members at the various correctional institutions were very helpful in providing names of other defendants whom they thought might meet the criteria for interviewing. Unfortunately, not all of the defendants suggested had actually had at least one charge prior to the policy change and one charge following it. In addition, the interviewer did not have time (because the recommendations were made on the spot) to review the defendants' criminal histories before interviewing. Without this information, the interviewer was unable to prompt the defendant when his memory of past proceedings failed (when the interviewer did have this information, defendants gave many more complete responses).

Scheduling of the inmates' activities also made scheduling of the interviews difficult. Inmates could not be interviewed during meal times (a period of about three hours), shift changes, or visitors' hours. This problem was particularly severe in Juneau, since the interviewer had only a week to spend in that city and numerous other interviews to conduct as well. Finally, the interviewer had to cut short one day's interviewing in Juneau because contraband had been reported and all visitors were asked to leave while the jail was searched. All of these problems suggest that future interviews with defendants will require much more time than was available during the first project year.

Interviews with defendants were conducted in attorney's rooms at the various correctional centers, and averaged one-half hour in length. Defendants had no difficulty answering most of the questions, with the exception of question No. 28, which asked at what stage of the proceedings the defendant had entered a plea. Most defendans did not understand the question and/or could not remember. After analysis of the information obtained from the interviews, project staff believed that a more open-ended interview would obtain a greater amount of data from defendants.

APPENDIX 4

JUDGE INTERVIEWS

1. Do you think that plea bargaining has been eliminated?

2. Do you think that there have been any definite changes in the way criminal cases are handled since the Attorney General's new policy went into effect?

3. What do you think these changes are?

4. How do you feel about these changes - are they positive or negative? In what ways?

5. Do you do anything differently now as a result of the policy change?

6. What reasons are there for plea bargaining to continue to flourish underground, if indeed it does?

7. Did sentences go up after the new policy change?

8. How do you feel the new policy looks to the public? Is it more dignified to the impartial observer?

PROSECUTOR INTERVIEW

I'd like to talk with you about the way you would handle the litigation of a hypothetical case. Please look over the facts in this case (hand respondent first case) and then I have a few questions.

1. If you were the Intake Attorney responsible for screening this case, which factor would you feel was most important in making your decision about whether to prosecute and what to charge?
What factor would you consider next?
How would you evaluate the strength of the prosecution's case against the defendant?
Explain?

2. Prior to August 15, 1975, would you have dealt this case out? What plea bargain would you have made?
After August 15, 1975, would you have made the same bargain? Any bargain?

3. On a scale from 1-9 (9 being most serious) how would you rate the seriousness of this case?

4. Before August 15, 1975, if defendant went to trial, what disposition would you expect?
If defendant entered a guilty plea, what disposition would you expect?
After August 15, 1975, would you expect a different disposition after trial? After a guilty plea?

5. Would you expect the disposition of this case to differ between individual judges in your area?
Could you give me some examples?

Now, I would like you to read a variation of the facts of this case and ask you how this variation makes a difference.

Variation 1:

Variation 2: Assume the same facts as in the original hypothetical, but assume that defendant had a prior conviction for assault and battery in 1973 for which he received four month's suspended. He had a second assault and battery conviction in 1974 for which he received three months to serve.

Variation 3: Assume the same facts as in variation 1, but also assume the defendant's background I just gave you.

PROSECUTOR INTERVIEW

I'd like to talk with you about the way you would handle the litigation of a hypothetical case. Please look over the facts in this case (hand respondent first case) and then I have a few questions.

1. If you were the Intake Attorney responsible for screening this case, which factor would you feel was most important in making your decision about whether to prosecute and what to charge?
   What factor would you consider next?
   How would you evaluate the strength of the prosecution's case against the defendant?
   Explain?

2. Prior to August 15, 1975, would you have dealt this case out? What plea bargain would you have made?
   After August 15, 1975, would you have made the same bargain? Any bargain?

3. On a scale from 1-9 (9 being most serious) how would you rate the seriousness of this case?

4. Before August 15, 1975, if defendant went to trial, what disposition would you expect?
   If defendant entered a guilty plea, what disposition would you expect?
   After August 15, 1975, would you expect a different disposition after trial? After a guilty plea?

5. Would you expect the disposition of this case to differ between individual judges in your area?
   Could you give me some examples?

Now, I would like you to read a variation of the facts of this case and ask you how this variation makes a difference.

Variation 1:

Variation 2: Assume the same facts as in the original hypothetical case, but also assume that the defendant is a 35-year old caucasian male who has lived in Anchorage for two years. Defendant came to Alaska from Florida to work on the Pipeline, but was unable to find work there and now is sporadically employed as a drywall finisher. Defendant has a prior Florida conviction for burglary for which he received three years with two years suspended; he completed his parole two years ago. Defendant was divorced last year.

Variation 3: Assume the same facts as in Variation 1, but also assume the defendant's background I just gave you.

Prosecutor Interview

Please look over the facts in this case (hand respondent hypothetical C) as if you were the Intake Attorney, and then I have some questions.

1. Would you take this case to the Grand Jury prior to August 15, 1975? Why?

2. Would you take this case to the Grand Jury after August 15, 1975? Why?

3. Do you think that if you took this case to trial the jury would convict?

VARIATION 1:

VARIATION 2:

VARIATION 3:

VARIATION 4:

VARIATION 5:

VARIATION 6:

VARIATION 7:

Prosecutor Interview

1. How do you feel about the change of policy -- what do you think have been the most important effects?

Do you think these have been positive or negative?

2. Do you personally know of any instances in which unapproved plea bargaining has occurred?

What happened?

3. How do you think the change of policy has affected your work with other agencies?

For example, do you do things differently with police now?

With pre-sentence investigations?

4. How often have you had a case which fell into one of the categories of special exceptions -- such as informers, cases involving sex offenses, and so forth?

Do you usually negotiate a plea in such cases, or do you often find that you don't need to?

What about sentencing in these cases -- has that changed since the policy change?

5. How often is the judge involved in a discussion of sentence with the defendant or his attorney prior to the entry of plea?

How has this changed since the change of policy?

What has been your role in these discussions? In your experience, what type of information about the defendant and the offense does the judge have during these discussions?

Where does this information come from?

How complete would you say it is?

How does this affect the way in which you would handle a case?

DEFENSE ATTORNEY INTERVIEW

I'd like to talk with you about the way you would handle the litigation of a hypothetical case. Please look over the facts in this case (hand respondent the case) and then I have a few questions.

1. Would you go to trial on this case?
Explain?

2. What do you think would be your chances of winning an acquittal? (percentage)

3. On a scale from 1-9 (9 being most serious) how would you rate the seriousness of this case?

4. Please describe to me how you would handle this case.

5. Do you feel that you would have handled this case differently under the old policy of plea bargaining? How?

6. To what extent would the outcome of this case depend on (a) the prosecutor?
(b) the judge?
(c) the strength of the evidence?
(d) the personal characteristics of the defendant?
(e) other factors? (please specify)

Would this have been different prior to August 15, 1975?

7. Prior to August 15, 1975, what is the most likely plea bargain you could expect to have negotiated for your client? What if you were unable to reach a bargain but didn't want to go to trial?

8. Since August 15, 1975, what is the most likely disposition you could expect to obtain with your client entering a plea of guilty? Could you bargain this disposition?

Defense Attorney Interview

9. Prior to August 15, 1975, what is the most likely disposition you could obtain if your client went to trial? Do you think your client would get a different sentence now for the same act than he would have received prior to 8/15/75? Do you attribute this difference (if any) directly to the policy?

10. Would the dispositions you have just quoted me differ between individual judges in your area? Could you give me some examples?

Now, I would like you to read a variation of the facts of this case and ask you how this variation makes a difference.

Variation 1:

Variation 2: Assume the same facts as in the original hypothetical, but assume that defendant had a prior conviction for assault and battery in 1973 for which he received four month's suspended. He had a second assault and battery conviction in 1974 for which he received three months to serve.

Variation 3: Assume the same facts as in Variation 1, but also assume the defendant's background I just gave you.

DEFENSE ATTORNEY INTERVIEW

I'd like to talk with you about the way you would handle the litigation of a hypothetical case. Please look over the facts in this case (hand respondent the case) and then I have a few questions.

1. Would you go to trial on this case?
Explain?

2. What do you think would be your chances of winning an acquittal? (percentage)

3. On a scale from 1-9 (9 being most serious) how would you rate the seriousness of this case?

4. Please describe to me how you would handle this case.

5. Do you feel that you would have handled this case differently under the old policy of plea bargaining? How?

6. To what extent would the outcome of this case depend on (a) the prosecutor?
(b) the judge?
(c) the strength of the evidence?
(d) the personal characteristics of the defendant?
(e) other factors? (please specify)

Would this have been different prior to August 15, 1975?

7. Prior to August 15, 1975, what is the most likely plea bargain you could expect to have negotiated for your client? What if you were unable to reach a bargain but didn't want to go to trial?

8. Since August 15, 1975, what is the most likely disposition you could expect to obtain with your client entering a plea of guilty? Could you bargain this disposition?

Defense Attorney Interview

9. Prior to August 15, 1975, what is the most likely disposition you could obtain if your client went to trial? Do you think your client would get a different sentence now for the same act than he would have received prior to 8/15/75? Do you attribute this difference (if any) directly to the policy?

10. Would the dispositions you have just quoted me differ between individual judges in your area? Could you give me some examples?

Now, I would like you to read a variation of the facts of this case and ask you how this variation makes a difference.

Variation 1:

Variation 2: Assume the same facts as in the original hypothetical case, but also assume that the defendant is a 35-year old caucasian male who has lived in Anchorage for two years. Defendant came to Alaska from Florida to work on the Pipeline, but was unable to find work there and now is sporadically employed as a drywall finisher. Defendant has a prior Florida conviction for burglary for which he received three years with two years suspended; he completed his parole two years ago. Defendant was divorced last year.

Variation 3: Assume the same facts as in Variation 1, but also assume the defendant's background I just gave you.

1. How do you feel about the change of policy? What do you think have been the most important effects? Do you think these have been positive or negative?

2. Since the policy change on August 15, 1975, have you personally engaged in negotiations with the state prosecutor about any case, either about the charges or about sentences? If not, why not? If yes, how frequently? What types of offenses have these been? How have you handled them - please give me a few examples. How successful have you been?

3. (For private counsel) Has the change of policy had any effect on your willingness to take criminal cases? What has been the effect?

4. Have you ever discussed with a judge his thinking on the sentence he was considering in a certain case? Does this happen more or less frequently since the change of policy? What factors are usually discussed? How often has the prosecutor participated in these discussions? What is his role? What about the pre-sentence investigator, does he ever participate in these discussions? How have these discussions been initiated? Has any judge made it known he was amenable to such discussion. Is there any change in the willingness of judges to discuss disposition since the new policy went into effect?

5. Do you ever ask for a pre-plea sentence report? Why? Did you do this prior to August 15, 1975?

6. How often do you handle cases in which the prosecutor is willing to ask for a special exception from his supervisor in order to negotiate? What types of cases are these? Do you feel that the outcomes in these cases are better than in other cases?

7. How do you think the change of policy has affected the way in which you deal with the police? With pre-sentence investigators? With the amount of investigation which your office does for each case?

8. Has the change of policy affected the advice you give your clients? In what way? Do you feel that your clients are more or less ready to take your advice now than before the policy change? Why?

9. As a defense attorney, has the new policy caused you to alter your strategy or tactics with reference to the way you pursue the interests of your clients?

10. If and when your clients suggest you make a deal for them, do you explain about the new policy? What do you tell them? If you tell them about the new policy, what is their reaction? Any interesting examples?

POLICE INVESTIGATOR INTERVIEW

1. How long have you worked with the _____ Police Department (or State Troopers)?

2. How long have you been an investigator for the _____ Police Department (or State Troopers)?

3. How much of your time is spent investigating misdemeanors? Felonies? (please estimate.)

4. Based on what you know, what would you say the Attorney General's actual policy on plea bargaining is?

5. How would you describe the extent to which the Attorney General's policy is actually being carried out by assistant district attorneys?

6. Do you feel that plea bargaining has been eliminated? To what extent? Is plea bargaining taking some other form now? (If "NO," plea bargaining has not been eliminated, ask:) Please give me some examples from your own experience of plea bargaining that has occurred? Is the present situation good or bad?

7. In your opinion, has the Attorney General's change of policy had an effect on your job? Has it affected your actions in any way? How?

8. Do you feel that you are spending more or less time in court now than a year or so ago, before the policy change? Why? Do you feel this is worthwhile?

9. Does the defense attorney ever discuss cases with you? To what extent? Do you ever initiate contact with him? Has this changed at all since August 15, 1975?

10. Does the pre-sentence investigator ever call you up or meet with you to discuss a defendant's background in connection with his decision whether or not to file a probation revocation petition? Do you ever contact him/her? What kinds of information are you usually able to provide? Have there been any changes in dealings with probation officers since the new policy about plea bargaining went into effect last year? If so, do you attribute the changes directly to the new policy? Explain?

11. Which do you think has more effect on whether a case is accepted for prosecution--the particular individual who is doing intake for the district attorney's office, or the district attorney's general office policies? Has this changed since the new policy on plea bargaining became effective?

12. If one prosecutor rejects your case, is there any procedure which you can use to get another assistant district attorney to accept it?

13. From your own personal experience, does the head district attorney of the office personally review decisions not to prosecute?

14. Has a district attorney or an assistant district attorney ever asked you for your opinion about the appropriate sentence to recommend to the court prior to August 15, 1975, when plea bargaining was still in effect? How often? How often since August 15, 1975?

15. How frequently has the district attorney or an assistant district attorney asked you for your opinion about the appropriate charge in a case, or about the reduction or dismissal of certain charges before the change of policy about plea bargaining? How often since the policy change?

16. What else can you tell me about your discussions with the prosecutors concerning disposition of cases?

17. To what extent do you feel that your suggestions have been followed in determining the disposition of cases?

18. When the district attorney or assistant district attorney decides not to file one of your charges, or decides to dismiss a case of yours, or reduces it in grade, does he usually explain his reasons to you? If he explains, does he talk with you before or after his decision? Does he ever seek your "OK in advance? Have relations between you and the district attorney and assistant district attorneys changed since August 15, 1975, with regard to district attorneys' explanations of dismissals, reductions, etc.?

Police Investigator Interview

I'm going to hand you a hypothetical case. After you have read it I'll have a few questions to ask you about it. (Hand respondent hypothetical Case D)

1. Do you have probable cause for arrest in this case? Why?

2. Would you expect the district attorney to take this case to the Grand Jury prior to August 15, 1975? Why?

3. Would you expect the district attorney to take this case to the Grand Jury after August 15, 1975? Why?

4. Do you think that if the district attorney took this case to trial the jury would convict? Why?

VARIATION 1:

VARIATION 2:

VARIATION 3:

VARIATION 4:

VARIATION 5:

VARIATION 6:

VARIATION 7:

DEFENDANTS' INTERVIEWS

Offense A refers to the offense committed and disposed of prior to August 15, 1975.
Offense B refers to the offense committed and disposed of after August 15, 1975.

1. Age _____ 2. Sex _____ 3. Race _____
(May be determined before talking to defendant.)

4. What do you usually do for a living?

5. Did you have a record prior to being charged with Offense A?

6. Did you have a prior juvenile record?

7. What was your age at the time you were charged with Offense A?

8. What was the charge?

9. Where were you charged?

10. Who paid for your attorney?

11. Did you go to trial?
(If yes, go to Question 13.)

12. If you answered "no" to Question 11, did you plead guilty or nolo?
(If you answered "yes" to this question, please go to Question 25.)

13. Did your attorney tell you he had talked with the prosecutor about a recommended sentence if you pled guilty?

14. If you answered "yes" to Question 13, why didn't you accept the offer?

15. Did you go to trial on the original charge or was the charge reduced or dismissed? If "no", why?

16. Were you out on bail before trial?

17. Did you have a judge-tried or a jury-tried case?

18. Did you feel you had a strong case?

19. What was the outcome of your trial?

20. Why do you think you received the sentence you did?

21. Was it the same sentence you thought you'd get? Why or why not?

22. Do you feel it was a fair sentence . . . or do you feel it was too harsh or too lenient? Why?

23. How do you think the prosecutor saw his job at sentencing?

24. How do you think the judge saw his job at sentencing?

25. Did you enter the plea to the original charge?

26. If you answered "no" to Question 25, what was the charge reduced to?

27. If you answered "no" to Question 25, did your attorney tell you he had talked to the prosecutor about reducing the charge?

28. At what stage of the proceedings did you enter a plea?

29. Were you out on bail when you pled to the charge?

30. Did you feel you had sufficient contact with your attorney before entering your plea?

31. Did your attorney urge you to enter a plea?

32. Did your attorney tell you he had talked with the prosecutor about a sentence before you entered a plea?

34. Why do you think you received the sentence you did?

35. Was it the same sentence you thought you'd get?

36. If you answered "no" to Question 35, why not?

37. Do you feel it was a fair sentence . . . or do you feel it was too harsh or too lenient? Why?

38. How do you think the prosecutor saw his job at sentencing?

39. How do you think the judge saw his job at sentencing?

40. If the District Attorney decided to recommend a sentence, did the judge in any way let you or your attorney know beforehand that he was or was not going to follow therecommendation? Did he follow it?

(The next questions pertain to Offense B)

41. What was your age at the time you were charged with Offense B?

42. What was the charge?

43. Where were you charged?

44. Who paid for your attorney?

45. Did you go to trial? If "yes", go to Question 47.

46. If you answered "no" to Question 45, did you plead guilty or nolo? (If you answered "yes" to this question, please go to Question 59.)

47. Did your attorney tell you he had talked with the prosecutor about a recommended sentence if you pled guilty?

48. If you answered "yes" to Question 47, why didn't you accept the offer?

49. Did you go to trial on the original charge or was the charge reduced or dismissed? If "no", why?

50. Were you out on bail before trial?

51. Did you have a judge-tried or a jury-tried case?

52. Did you feel you had a strong case?

53. What was the outcome of your trial?

54. Why do you think you received the sentence you did?

55. Was it the same sentence you thought you'd get? Why or why not?

56. Do you feel it was a fair sentence . . . or do you feel it was too harsh or too lenient? Why?

57. How do you think the prosecutor saw his job at sentencing?

58. How do you think the judge saw his job at sentencing?

Go to Question 74.

59. Did you enter the plea to the original charge?

60. If you answered "no" to Question 59, what was the charge reduced to?

61. If you answered "no" to Question 59, did your attorney tell you he had talked to the prosecutor about reducing the charge?

62. At what stage of the proceedings did you enter a plea?

63. Were you out on bail when you pled to the charge?

64. Did you feel you had sufficient contact with your attorney before entering your plea?

65. Did your attorney urge you to enter a plea?

66. Did your attorney tell you he had talked with the prosecutor about a sentence before you entered a plea?

67. Did you or your attorney talk to the judge about the length of your sentence before you entered a plea?

68. Why do you think you received the sentence you did?

69. Was it the same sentence you thought you'd get?

70. If you answered "no" to Question 69, why not?

71. Do you feel it was a fair sentence . . . or do your feel it was too harsh or too lenient? Why?

72. How do you think the prosecutor saw his job at sentencing?

73. How do you think the judge saw his job at sentencing?

74. Did the judge in any way let you or your attorney know beforehand that he was or was not going to follow the District Attorney's recommendation? Did he follow it?

75. In general, do you think you were treated more fairly by the Judicial System for Offense A or Offense B . . . or do you feel you were treated about the same in both? Why?

76. Suppose you were an attorney and your client was accused of a serious crime, like the one with which you were charged. Would you talk with the prosecutor about reducing the charges or recommending a lighter sentence if your client would plead guilty? If he agreed to recommend probation, what would you adivse your client to do? Would it matter if your client claimed he was innocent?

HYPOTHETICAL CASE A

Offense: Assault with a Dangerous Weapon
Penalty: 6 months to 10 years in the penitentiary; or, one month to one year jail; or $100 to $1,000 fine

ORIGINAL HYPOTHETICAL

Facts: Defendant, Jones, allegedly shot victim in the leg with a .22 pistol outside a movie theatre. The dispute allegedly concerned the defendant's impression that the victim had previously threatened the defendant with a gun.

Three apparently impartial eyewitnesses testified that they observed the victim pull out his wallet just before the defendant shot him. One of the eyewitnesses stated he did not know why defendant shot the victim because the victim stated he was not the person defendant was looking for, and the victim showed defendant I.D. indicating he was not the person defendant was looking for.

Defendant was pursued for several blocks before being apprehended by the police, at which time they recovered the automatic pistol used in the shooting.

The victim was transported to Elmendorf Hospital where he recovered several weeks later.

DEFENDANT'S BACKGROUND: Defendant is a 26-year old caucasian male. He's married with one child and is an enlisted man stationed at Ft. Richardson. He has no prior arrests or convictions.

VARIATION I:

Facts: Defendant, Jones, allegedly shot victim in the leg with a .22 pistol outside a movie theatre. The dispute allegedly concerned the defendant's impression that the victim had previously threatened the defendant with a gun.

Three apparently impartial eyewitnesses were interviewed outside the theatre. They said that the victim looked like he made a "sudden grab" for his pocket just before the defendant shot him. The eyewitnesses said that the victim had a bad reputation for violence and was generally believed to carry a concealed pistol. However, no weapon of any kind was recovered from the person or proximity of the victim. The defendant is 5'7" and weighs 140; the victim is 6'2" and weighs 210.

When the defendant was apprehended by the police several blocks from the scene, they recovered the automatic pistol used in the shooting. The defendant at that time told the police that he believed the victim "reached for his gun" and so he shot him first. The victim was treated and recovered without complications or permanent consequences.

DEFENDANT'S BACKGROUND: Defendant is a 26-year old caucasian male. He's married with one child and is an enlisted man stationed at Ft. Richardson. He has no prior arrests or convictions.

HYPOTHETICAL CASE B

Offense: Petty Larceny - AS 11.20.140
Penalty: 1 month -- 1 year, or $25 -- $100

Facts: Defendant allegedly stole a 12-volt Autolite battery from a parked car at 11:30 p.m. Police were called to the scene by a witness who observed a man walk down the street to an automobile, lift the hood, and take something out and set it on the ground. The witness said he called because the man "ducked down" when the witness' car went by.

Upon arrival at the scene, a policeman observed only one person, the defendant, in the area; the defendant appeared to have difficulty walking and smelled of alcohol. When the policeman reached the defendant, he saw a battery lying on the ground near a parked car. The defendant stated the car had a dead battery and he had the owner's permission to work on it. The policeman left defendant to search the scene for further suspects; when he returned, defendant had disappeared leaving the battery on the ground. The policeman examined the battery and determined that the cables had been cut. The owner of the automobile was contacted and told police he had never given defendant permission to work on the car.

Upon being arrested two days after the incident and read his rights, the defendant first stated that he was in a bar all night on the night the battery was stolen. Under closer questioning, the defendant admitted attempting to steal the battery.

DEFENDANT'S BACKGROUND: Defendant is a 21-year old caucasian male who graduated from Palmer High School and spent two years in the army as a heavy-duty mechanic. He is employed on the Pipeline and is married with one child. He has no prior arrests or convictions.

Hypothetical Case B

VARIATION I:

Facts: Defendant allegedly stole a 12-volt Autolite battery from a parked car at 11:30 p.m. Police were called to the scene by a witness who observed a man walk down the street to an automobile, lift the hood, take something out and set it on the ground. The man "ducked down," the witness said, when he saw witness' car drive past.

Upon arrival at the scene, a policeman observed only one person, the defendant, in the area; the defendant appeared to have difficulty walking and he smelled of alcohol. When the policeman reached the defendant, he saw a battery lying on the ground. The defendant stated that his car had a dead battery and he was trying to start it by borrowing a battery, temporily, from another vehicle. Defendant's car was parked across the street. No mechanical examination of it was made by the police. The policeman arrested the defendant for petty larceny. Defendant made no further statements.

DEFENDANT'S BACKGROUND: Defendant is a 21-year old caucasian male who graduated from Palmer High School and spent two years in the army as a heavy-duty mechanic. He is employed on the Pipeline and is married with one child. He has no prior arrests or convictions.

HYPOTHETICAL CASE C

Mrs. Jones, a well-spoken systems analyst from Seattle, was standing in front of the Anchorage Westward Hotel at 11:00 p.m. waiting for a cab to the Anchorage Airport. The street in front of the hotel was completely deserted. As she was waiting, a man approached her, placed a knife at her stomach and demanded her purse. She immediately surrendered her purse and her assailant fled on foot down the street. Mrs. Jones rushed into the hotel and called the police. When they arrived 10 minutes later, she told them that a native man in his early 20's about 5'7" with dark hair and dark skin robbed her of her purse at knife-point, and that the purse contained $250 in assorted bills. The police searched the area and found a man three blocks from the scene who answered the victim's description of the man who robbed her. The police radioed for the victim. The victim identified him as the man who had robbed her, and the police arrested him. The man consistently denied being at the location where the victim was robbed or robbing her. He had $10 on his person when apprehended. No knife or purse was found.

VARIATION 1: Lets say that Mrs. Jones is not from Seattle, but lives and is employed in Anchorage. She is waiting for a cab to take her home when the incident occurred.

VARIATION 2: Let's continue to say that Mrs. Jones lives and is employed in Anchorage. But let's also say that one of the police officers at the scene recognized the suspect as the same man he had arrested two years ago for robbery.

VARIATION 3: Let's continue to say that Mrs. Jones lives and is employed in Anchorage and that the suspect was recognized by the police officer, but let's also say that at the time Mrs. Jones is being robbed, a man emerges from the Signature Room. He witnesses the robbery, and after the suspect is apprehended tells police that it certainly looks like the man who committed the robbery, but he can't be positive. This witness admitted to having four drinks while in the Signature Room.

VARIATION 4: Let's continue to say that Mrs. Jones lives and is employed in Anchorage, that the suspect was recognized by the police officer, and that there was a witness to the robbery. But now let's say that the witness positively identified the suspect, but admitted to having four drinks in the Signature Room just before the robbery.

VARIATION 5: Let's continue to say that Mrs. Jones lives and is employed in Anchorage, that the suspect was recognized by the police officer, that there was a witness who could positively identify the suspect (although he admitted to having four drinks). But let's further say that when the suspect was apprehended, he was found to be carrying $260 in assorted bills.

VARIATION 6: Let's continue to say that Mrs. Jones lives and is employed in Anchorage, that the suspect was recognized by the police officer, that there was a witness would could positively identify the suspect (although he admitted to having four drinks), that the suspect was found to be carrying $260 in assorted bills. But let's also say that in addition to finding the assorted bills on the suspect's person, the police also confiscated a knife.

VARIATION 7: Let's continue to say that Mrs. Jones lives and is employed in Anchorage, that the suspect was recognized by the police officer, that there was a witness who could positively identify the suspect (although he admitted to having four drinks), that the suspect was found to be carrying $260 in assorted bills and a knife. But let's also say that in addition police found on the suspect's person the victim's credit cards which the victim claims were in her purse at the time of the robbery.

Assign a value from 1 to 9 to each of the following descriptions of an offense. You may assign equal values to two or more offenses.

_____ Shooting a moose out of season
_____ Selling marijuana
_____ Passing worthless checks for more than $500
_____ Selling liquor to minors
_____ Pointing a loaded gun at a stranger
_____ Beating up a stranger
_____ Armed holdup of a taxi driver
_____ Knowingly selling worthless stocks as valuable investments
_____ Forcible rape after breaking into a home
_____ Planned killing of a person for a fee
_____ Armed robbery of a supermarket
_____ Fixing prices of a consumer product like gasoline
_____ Shoplifting a diamond ring from a jewelry store
_____ Armed robbery of a bank
_____ Theft of a car for joy-riding
_____ Making sexual advances to young children
_____ Kidnapping for ransom
_____ Selling heroin
_____ Killing someone during a serious argument
_____ Beating up an acquaintance
_____ Burglary of an appliance store stealing several T.V. sets
_____ Burglary of a home stealing a color T.V. set
_____ Causing auto accident death while driving when drunk
_____ Impulsive killing of a policeman
_____ Using heroin
_____ Armed street holdup stealing $200 cash
_____ Killing a suspected burglar in home
_____ Shoplifting a book in a bookstore
_____ Soliciting for prostitution
_____ Shoplifting a dress from a department store
_____ Cashing stolen payroll checks
_____ Using LSD
_____ Neglecting to care for own children
_____ Causing the death of a tenant by neglecting to repair machinery

QUESTIONS FOR ALL BAR MEMBERS

1. I am

   (a) _____ A prosecutor
   (b) _____ A public defender
   (c) _____ An employee of another governmental branch or agency
   (d) _____ A state court judge
   (e) _____ A partner or associate of a private law firm
   (f) _____ A partner or associate of a private law firm holding a pre-paid legal services contract
   (g) _____ Other than above_____

2. I have been a member of the Alaska Bar Association for _____ years.

3. My practice is composed of:

   _____% civil work
   _____% criminal work
   100%

4. Civil litigation constitutes _____% of my total law practice.

5. Criminal litigation constitutes _____% of my total law practice.

6. Actual in-court time constitutes _____% of my total law practice.

7. The majority of my work is conducted in the

   (a) _____ First Judicial District
   (b) _____ Second Judicial District
   (c) _____ Third Judicial District
   (d) _____ Fourth Judicial District

8. Has the Attorney General's new policy, effective August 15, 1975, eliminated plea bargaining?

   (a) _____ Yes
   (b) _____ No
   (c) _____ Can't tell

9. Are you in favor of the Attorney General's new policy?

   (a) _____ Yes
   (b) _____ To some extent
   (c) _____ No
   (d) _____ No opinion

10. Do you think the Attorney General's new policy is workable?

    (a) _____ Yes
    (b) _____ To some extent
    (c) _____ No
    (d) _____ No opinion
    Explain if you wish:_____

If your law practice <u>does</u> <u>not</u> include substantial civil or criminal litigation, <u>do</u> <u>not</u> continue answering the following questions.

If your law practice includes any civil or criminal litigation, please continue answering the following questions:

11. If you took criminal cases on an individually negotiated fee arrangement prior to August 15, 1975, did you continue to take them after that date?

(a) _____ Yes, more cases
(b) _____ Yes, approximately the same number
(c) _____ Yes, fewer cases
(d) _____ No
(e) _____ Not applicable to me

12. Has the "no plea bargaining policy" affected in any way your decision whether or not to represent defendants in private criminal cases?

(a) _____ Yes
(b) _____ No
(c) _____ Do not take criminal cases

13. Has the "no plea bargaining policy" affected in any way your decision whether or not to accept court-assigned cases?

(a) _____ Yes
(b) _____ No
(c) _____ Never took court-assigned cases

If your law practice includes any criminal litigation, please continue answering the following questions:

14. In State cases, have you ever arrived at a binding deal with opposing counsel concerning a specific sentence recommendation?

Prior 8/15/75	After 8/15/75
(a) _____ Yes	(c) _____ Yes
(b) _____ No	(d) _____ No

15. If you answered "Yes" to Question 14, how frequently are such deals made?

Prior 8/15/75	After 8/15/75
(a) _____ Rarely	(d) _____ Rarely
(b) _____ Occasionally	(e) _____ Occasionally
(c) _____ Frequently	(f) _____ Frequently

16. In State cases, have you ever made a deal with opposing counsel in which Charge "X" would be dismissed if the defendant would plead guilty or nolo contendere to Charge "Y"?

Prior 8/15/75	After 8/15/75
(a) _____ Yes	(c) _____ Yes
(b) _____ No	(d) _____ No

17. If you answered "Yes" to Question 16, how frequently did this occur?

Prior 8/15/75	After 8/15/75
(a) ____ Rarely	(d) ____ Rarely
(b) ____ Occasionally	(e) ____ Occasionally
(c) ____ Frequently	(f) ____ Frequently

18. In State cases, have you ever made a deal with opposing counsel in which the defendant would plead guilty or nolo contendere to Charge "X" if "X" were reduced to a less serious charge?

Prior 8/15/75	After 8/15/75
(a) ____ Yes	(c) ____ Yes
(b) ____ No	(d) ____ No

19. If you answered "Yes" to Question 18, how frequently did this occur?

Prior 8/15/75	After 8/15/75
(a) ____ Rarely	(d) ____ Rarely
(b) ____ Occasionally	(e) ____ Occasionally
(c) ____ Frequently	(f) ____ Frequently

20. In State cases, have you ever negotiated a pre-trial diversion agreement with opposing counsel?

Prior 8/15/75	After 8/15/75
(a) ____ Yes	(c) ____ Yes
(b) ____ No	(d) ____ No

21. If you answered "Yes" to Question 20, how frequently did this occur?

Prior 8/15/75	After 8/15/75
(a) ____ Rarely	(d) ____ Rarely
(b) ____ Occasionally	(e) ____ Occasionally
(c) ____ Frequently	(f) ____ Frequently

22. (For defense counsel) Have you ever negotiated a plea of guilty upon a representation (or other indication) by a judge as to the sentence your client would receive?

Prior 8/15/75	After 8/15/75
(a) ____ Yes	(c) ____ Yes
(b) ____ No	(d) ____ No

23. If you answered "Yes" to Question 22, how often did this occur?

(a) ____ Rarely	(d) ____ Rarely
(b) ____ Occasionally	(e) ____ Occasionally
(c) ____ Frequently	(f) ____ Frequently

24. Which factor or factors in your opinion may have a substantial effect on the outcome of a felony case? (You may check one factor or any combination of factors.)

Prior 8/15/75	After 8/15/75
(a) ____ Clogged court calendars	(f) ____ Clogged court calendars
(b) ____ "Overworked" prosecutors	(g) ____ "Overworked" prosecutors
(c) ____ "Overworked" defense attorneys	(h) ____ "Overworked" defense attorneys
(d) ____ Judges' vacation schedules	(i) ____ Judges' vacation schedules
(e) ____ Other, specify:_____	(j) ____ Other, specify:_____

25. Are you going to trial with greater frequency after August 15, 1975, than before August 15, 1975?

(a) ____ Yes
(b) ____ No

26. In your experience, has the incidence of judge-tried cases increased or decreased in relation to jury-tried cases since August 15, 1975?

(a) ____ Increased
(b) ____ Decreased
(c) ____ Remained the same

27. (For defense counsel) Has there been any change in the percentage of your criminal cases being dismissed since August 15, 1975?

(a) ____ A greater percentage of dismissals
(b) ____ A lesser percentage of dismissals
(c) ____ Approximately the same number of dismissals
(d) ____ Can't tell

28. Has the District Attorney's office become more selective in its decisions whether or not to prosecute since August 15, 1975?

(a) ____ Yes
(b) ____ No
(c) ____ About the same

29. Do you think that with the new "no plea bargaining policy" the District Attorney's office is getting a higher conviction rate on those felony charges they file?

(a) ____ Yes
(b) ____ No
(c) ____ Approximately the same
(d) ____ Not sure

30. (For defense counsel) Have you ever had a case in which after the judge indicated what sentence your client would receive if he/she pled guilty, your client then went to trial, was convicted, and received (from the same judge) a heavier sentence than that originally indicated?

Prior 8/15/75	After 8/15/75
(a) _____ Yes	(c) _____ Yes
(b) _____ No	(d) _____ No

31. Do you personally believe that a person who goes to trial is more likely to receive a harsher sentence than if he enters a guilty or nolo contendere plea to the identical charge?

Prior 8/15/75	After 8/15/75
(a) _____ Yes	(d) _____ Yes
(b) _____ No	(e) _____ No
(c) _____ Don't know	(f) _____ Don't know

32. Do you think it is right, as a general principle, to distinguish for the purpose of sentencing between those defendants who go to trial and those who plead guilty or nolo contendere?

Prior 8/15/75	After 8/15/75
(a) _____ Yes	(d) _____ Yes
(b) _____ No	(e) _____ No
(c) _____ Not sure	(f) _____ Not sure

33. (For defense counsel) Since the new plea bargaining policy went into effect, do you feel you can do as much for your criminal clients as you were able to do before the new policy commenced?

(a) _____ Yes
(b) _____ No

34. Are you filing more criminal appeals since August 15, 1975?

(a) _____ Yes
(b) _____ No
(c) _____ About the same
(d) _____ Not applicable

35. If you are a private practitioner, has the new plea bargaining policy affected your income from criminal cases?

(a) _____ Yes, more income from criminal cases
(b) _____ Yes, less income from criminal cases
(c) _____ No, no effect on income
(d) _____ Can't tell
(e) _____ Not applicable

POLICE SURVEY QUESTIONNAIRE PLEASE PRINT

1. How long have you been a police officer in Alaska? _____

2. Please list your police experience (most recent first).

Organization	Location (city)	Position (type of work)	Dates From	Dates To

3. What is your current rank? _____

4. What type of offenses have you handled most frequently during the past year? (Please rank from (1) to (4), beginning with the most frequently handled offense.)

1. _____ 3. _____
2. _____ 4. _____

5. I handle

____% misdemeanors
____% felonies
100%

6. Has the district attorney or assistant district attorney often discussed with you:

Prior 8/15/75

1. ____ A sentence he is thinking about recommending
2. ____ Reduction of charge
3. ____ Dismissal of charge (or charges)
4. ____ All of the above
5. ____ None of the above

After 8/15/75

1. ____ A sentence he is thinking about recommending
2. ____ Reduction of charge
3. ____ Dismissal of charge (or charges)
4. ____ All of the above
5. ____ None of the above

7. Have you been asked by a district attorney or an assistant district attorney for your opinion on how he should proceed with a case (dismissal, reduction, sentence bargain, etc.)?

Prior 8/15/75

1. ____ Never
2. ____ Rarely
3. ____ Occasionally
4. ____ Frequently

After 8/15/75

1. ____ Never
2. ____ Rarely
3. ____ Occasionally
4. ____ Frequently

8. Do you think that in general the change of policy about plea bargaining has been positive or negative?

1. ____ Positive
2. ____ Negative
3. ____ Not sure

9. Some people have suggested that the change of policy has had some (or all) of the following effects. Please check one or more of the items which you have actually experienced or observed while doing your job.

1. ____ Spend more time in court
2. ____ More time is required to investigate cases
3. ____ Police officers are not filing some types of complaints that they filed before the policy change
4. ____ Prosecutors are spending more time with police officers
5. ____ Prosecutors are rejecting more cases than they used to reject
6. ____ Of the cases actually being prosecuted, a greater percentage of defendants are being convicted
7. ____ Stiffer sentences are being given

10. Has plea bargaining been eliminated?

1. ____ Yes, completely
2. ____ Yes, to some extent
3. ____ No, not at all

11. Has anything changed as a direct result of the new policy on plea bargaining?

1. ____ Yes
2. ____ No
3. ____ Not sure

12. If you answered "yes" to question 12, please describe the most important change that comes to mind: _____

13. Personally, do you feel that plea bargaining should be:

1. ____ Completely eliminated
2. ____ Partially eliminated
3. ____ Should continue as a possibility for every case
4. ____ Should be allowed only for some kinds of cases

Please explain your choice: _____

14. If you checked answer 4 above, please indicate for which kinds of cases it should be allowed.

1. ____ Less serious felonies and misdemeanors
2. ____ Any case involving first offenders
3. ____ Non-violent first offenders only
4. ____ All drug cases
5. ____ Only drug possession cases (not sales)
6. ____ Any case where the defendant becomes a confidential informant
7. ____ Other (please specify) _____

APPENDIX 5

TABLE 10

YEAR ONE MISDEMEANOR DISPOSITIONS

Offense Category	Anchorage State	Anchorage Municipal	Fairbanks State	Fairbanks Municipal	Juneau State	Total
Assault and Battery	454		230	3	54	741
Assault	25		17		7	49
Accident Violation	97	27	23	37	7	191
Concealment of Merchandise	137	1	22	34	2	196
Concealing Stolen Property						
Carrying a Concealed Weapon	151		30	50		231
Defrauding	59		14	2	5	80
Disorderly Conduct	777		175	112	27	1091
Driving While Intoxicated/OMVI	1338	51	310	161	269	2156
Fish and Game	151		37		37	225
Fraudulent Use of a Credit Card	8					8
Gambling	51	8	3	9		71
Gun Related	62		21	28	3	114
Harassment					2	2
Indecent Exposure	33		10	15		58
Joyriding	69		73	1	7	150
Leaving Scene of Accident	197	28	8	12	13	258
Malicious Destruction	80		32		5	117
Minor Related	109	2	148	3	94	356
Petty Larceny, Embezzlement	222	2	28	72	7	331
Possession of Marijuana/Hallucinogenics	360		157	2	56	575
Prostitution/Solicitation	70	33	33	22	4	162
Resisting Arrest	53	9	16	26	9	113
Reckless/Negligent/Careless Driving	421	40	214	65	48	788
Trespassing/Unauthorized Entry	171	5	31	7	14	228
Worthless Checks	52	1	28		3	84
	5147	207	1660	661	700	8375

TABLE 11

YEAR TWO MISDEMEANOR DISPOSITIONS

Offense Category	Anchorage State	Anchorage Municipal	Fairbanks State	Fairbanks Municipal	Juneau State	Juneau Municipal	Total
Assault and Battery	357	11	169	1	54	1	593
Assault	14	10			9		33
Accident Violation	43	55	7	43	14		162
Concealment of Merchandise	175	1	94	190	2	3	465
Concealing Stolen Property	13		12				25
Carrying a Concealed Weapon	107	1	36	34	2		180
Defrauding	34	1	11		2		48
Disorderly Conduct	642	3	231	157	66	2	1101
Driving While Intoxicated/OMVI	1178	394	370	155	242	1	2340
Fish and Game	184		55	3	35	2	279
Fraudulent Use of a Credit Card	34		7				41
Gambling	1	7	2	14			24
Gun Related	62	1	39		4		106
Harassment					3	1	4
Indecent Exposure	28		25	12	3		68
Joyriding	62		62	1	6		131
Leaving Scene of Accident	160	138	9	16	13		336
Malicious Destruction	98	8	26		13	1	146
Minor Related	79	4	73	5	141		302
Petty Larceny, Embezzlement	272	2	42	16	19		351
Possession of Marijuana/Hallucinogenics	144	3	59		56	1	263
Prostitution/Solicitation	61	70	26	43	5		205
Resisting Arrest	42	45	19	11	23	3	143
Reckless/Negligent/Careless Driving	337	197	158	63	56	4	815
Trespassing/Unauthorized Entry	462	24	60	11	16	1	574
Worthless Checks	22		11		3		36
	4611	975	1603	775	787	20	8771

TABLE 12

COMBINED ANCHORAGE STATE LAW AND MUNICIPAL ORDINANCE CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	454	8.5	368	6.6	-18.9
Assault	25	.5	24	.4	- 4.0
Accident Violation	124	2.3	98	1.8	-21.0
Concealment of Merchandise	138	2.6	176	3.2	+27.5
Concealing Stolen Property			13	.2	
Carrying a Concealed Weapon	151	2.8	108	1.9	-28.5
Defrauding	59	1.1	35	.6	-40.7
Disorderly Conduct	777	14.5	645	11.5	-17.0
Driving While Intoxicated/OMVI	1389	25.9	1572	28.1	+13.2
Fish and Game	151	2.8	184	3.3	+21.9
Fraudulent Use of a Credit Card	8	.1	34	.6	+325.0
Gambling	59	1.1	8	.1	-86.4
Gun Related	62	1.2	63	1.1	+ 1.6
Harassment					
Indecent Exposure	33	.6	28	.5	-15.2
Joyriding	69	1.3	62	1.1	-10.1
Leaving Scene of Accident	225	4.2	198	3.5	-12.0
Malicious Destruction	80	1.5	106	1.9	+32.5
Minor Related	111	2.1	83	1.5	-25.2
Petty Larceny, Embezzlement	224	4.2	274	4.9	+22.3
Possession of Marijuana/Hallucinogenics	360	6.7	147	2.6	-59.2
Prostitution/Solicitation	103	1.9	131	2.3	+27.2
Resisting Arrest	62	1.2	87	1.6	+40.3
Reckless/Negligent/Careless Driving	461	8.6	534	9.6	+15.8
Trespassing/Unauthorized Entry	176	3.3	486	8.7	+176.1
Worthless Checks	53	1.0	22	.4	-58.5
	5354		5586		+ 4.3

TABLE 13

COMBINED FAIRBANKS STATE LAW AND MUNICIPAL ORDINANCE CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	233	10.0	170	7.1	- 27.0
Assault	17	.7			
Accident Violation	60	2.6	50	2.1	- 16.7
Concealment of Merchandise	56	2.4	284	11.9	+407.1
Concealing Stolen Property			12	.5	
Carrying a Concealed Weapon	80	3.4	70	2.9	- 12.5
Defrauding	16	.7	11	.5	- 31.3
Disorderly Conduct	287	12.4	388	16.3	+ 35.2
Driving While Intoxicated/OMVI	471	20.3	525	22.1	+ 11.5
Fish and Game	37	1.6	58	2.4	+ 56.8
Fraudulent Use of a Credit Card			7	.3	
Gambling	12	.5	16	.7	+ 33.3
Gun Related	49	2.1	39	1.6	- 20.4
Harassment					
Indecent Exposure	25	1.1	37	1.6	+ 48.0
Joyriding	74	3.2	63	2.6	- 14.9
Leaving Scene of Accident	20	.9	25	1.1	+ 25.0
Malicious Destruction	32	1.4	26	1.1	- 18.8
Minor Related	151	6.5	78	3.3	- 48.3
Petty Larceny, Embezzlement	100	4.3	58	2.4	- 42.0
Possession of Marijuana/Hallucinogenics	159	6.9	59	2.5	- 62.9
Prostitution/Solicitation	55	2.4	69	2.9	+ 25.5
Resisting Arrest	42	1.8	20	.8	- 52.4
Reckless/Negligent/Careless Driving	279	12.0	221	9.3	- 20.8
Trespassing/Unauthorized Entry	38	1.6	71	3.0	+ 86.8
Worthless Checks	28	1.2	11	.5	- 60.7
	2321		2378		+ 2.5

TABLE 14

COMBINED JUNEAU STATE LAW AND MUNICIPAL ORDINANCE CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	54	7.7	55	6.8	+ 1.8
Assault	7	1.0	9	1.1	+ 28.6
Accident Violation	7	1.0	14	1.7	+100.0
Concealment of Merchandise	2	.3	5	.6	+150.0
Concealing Stolen Property					
Carrying a Concealed Weapon			2	.2	
Defrauding	5	.7	2	.2	- 60.0
Disorderly Conduct	27	3.9	68	8.4	+151.9
Driving While Intoxicated/OMVI	296	42.3	243	30.1	- 17.9
Fish and Game	37	5.3	37	4.6	0.0
Fraudulent Use of a Credit Card					
Gambling					
Gun Related	3	.4	4	.5	+ 33.3
Harassment	2	.3	4	.5	+100.0
Indecent Exposure			3	.4	
Joyriding	7	1.0	6	.7	- 14.3
Leaving Scene of Accident	13	1.9	13	1.6	0.0
Malicious Destruction	5	.7	14	1.7	+180.0
Minor Related	94	13.4	141	17.5	+ 50.0
Petty Larceny, Embezzlement	7	1.0	19	2.4	+171.4
Possession of Marijuana/Hallucinogenics	56	8.0	57	7.1	+ 1.8
Prostitution/Solicitation	4	.6	5	.6	+ 25.0
Resisting Arrest	9	1.3	26	3.2	+188.9
Reckless/Negligent/Careless Driving	48	6.9	60	7.4	+ 25.0
Trespassing/Unauthorized Entry	14	2.0	17	2.1	+ 21.4
Worthless Checks	3	.4	3	.4	0.0
	700		807		+ 15.3

TABLE 15

ANCHORAGE STATE LAW OFFENSES: CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	454	8.8	357	7.8	- 21.4
Assault	25	.4	14	.3	- 44.0
Accident Violation	97	1.9	43	.9	- 55.7
Concealment of Merchandise	137	2.7	175	3.8	+ 27.7
Concealing Stolen Property			13	.3	
Carrying a Concealed Weapon	151	2.9	107	2.3	- 29.1
Defrauding	59	1.1	34	.7	- 42.4
Disorderly Conduct	777	15.1	642	14.0	- 17.4
Driving While Intoxicated/OMVI	1338	26.1	1178	25.6	- 12.0
Fish and Game	151	2.9	184	4.0	+ 21.9
Fraudulent Use of a Credit Card	8	.2	34	.7	+325.0
Gambling	51	1.0	1	.0	- 98.0
Gun Related	62	1.2	62	1.3	0.0
Harassment					
Indecent Exposure	33	.6	28	.6	- 15.2
Joyriding	69	1.3	62	1.3	- 10.1
Leaving Scene of Accident	197	3.8	160	3.5	- 18.8
Malicious Destruction	80	1.6	98	2.1	+ 22.5
Minor Related	109	2.1	79	1.7	- 27.5
Petty Larceny, Embezzlement	228	4.4	272	5.9	+ 19.3
Possession of Marijuana/Hallucinogenics	360	7.0	144	3.1	- 60.0
Prostitution/Solicitation	70	1.4	61	1.3	- 12.9
Resisting Arrest	53	1.0	42	.9	- 20.8
Reckless/Negligent/Careless Driving	421	8.2	337	7.4	- 20.0
Trespassing/Unauthorized Entry	171	3.3	462	10.0	+170.2
Worthless Checks	52	1.0	22	.5	- 57.7
	5153		4611		- 10.5

TABLE 16

ANCHORAGE MUNICIPAL ORDINANCE VIOLATIONS: CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery			11	1.1	
Assault			10	1.0	
Accident Violation	27	13.0	55	5.6	+103.7
Concealment of Merchandise	1	.5	1	.1	0.0
Concealing Stolen Property					
Carrying a Concealed Weapon			1	.1	
Defrauding			1	.1	
Disorderly Conduct			3	.3	
Driving While Intoxicated/OMVI	51	24.7	394	40.5	+672.5
Fish and Game					
Fraudulent Use of a Credit Card					
Gambling	8	3.9	7	.7	- 12.5
Gun Related			1	.1	
Harassment					
Indecent Exposure					
Joyriding					
Leaving Scene of Accident	28	13.5	138	14.2	+392.9
Malicious Destruction			8	.8	
Minor Related	2	1.0	4	.4	+100.0
Petty Larceny, Embezzlement	2	1.0	2	.2	0.0
Possession of Marijuana/Hallucinogenics			3	.3	
Prostitution/Solicitation	33	15.9	70	7.2	+112.1
Resisting Arrest	9	4.3	45	4.6	+400.0
Reckless/Negligent/Careless Driving	40	19.3	197	20.2	+392.5
Trespassing/Unauthorized Entry	5	2.4	24	2.5	+380.0
Worthless Checks	1	.5			
	207		975		+371.0

TABLE 17

FAIRBANKS STATE LAW OFFENSES: CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	230	13.9	169	10.5	- 26.5
Assault	17	1.0			
Accident Violation	23	1.4	7	.4	- 69.6
Concealment of Merchandise	22	1.3	94	5.9	+327.3
Concealing Stolen Property			12	.7	
Carrying a Concealed Weapon	30	1.8	36	2.2	+ 20.0
Defrauding	14	.7	11	.7	- 21.4
Disorderly Conduct	175	10.5	231	14.4	+ 32.0
Driving While Intoxicated/OMVI	310	18.7	370	23.2	+ 19.4
Fish and Game	37	2.2	55	3.4	+ 48.6
Fraudulent Use of a Credit Card			7	.4	
Gambling	3	.2	2	.1	- 33.3
Gun Related	21	1.3	39	2.4	+ 85.7
Harassment					
Indecent Exposure	10	.6	25	1.6	+150.0
Joyriding	73	4.4	62	3.9	- 15.1
Leaving Scene of Accident	8	.5	9	.6	+ 12.5
Malicious Destruction	32	1.9	26	1.6	- 18.8
Minor Related	148	8.9	73	4.6	- 50.7
Petty Larceny, Embezzlement	28	1.7	42	2.6	+ 50.0
Possession of Marijuana/Hallucinogenics	157	9.5	59	3.7	- 62.4
Prostitution/Solicitation	33	2.0	26	1.6	- 21.2
Resisting Arrest	16	1.0	19	1.2	+ 18.8
Reckless/Negligent/Careless Driving	214	12.9	158	9.9	- 26.2
Trespassing/Unauthorized Entry	31	1.9	60	3.7	+ 93.5
Worthless Checks	28	1.7	11	.7	- 60.7
	1660		1603		- 3.4

TABLE 18

FAIRBANKS MUNICIPAL ORDINANCE VIOLATIONS: CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	3	.5	1	.1	- 66.7
Assault					
Accident Violation	37	5.6	43	5.5	+ 16.2
Concealment of Merchandise	34	5.1	190	24.6	+458.8
Concealing Stolen Property					
Carrying a Concealed Weapon	50	7.6	34	4.4	- 32.0
Defrauding	2	.3			
Disorderly Conduct	112	16.9	157	26.3	+ 40.2
Driving While Intoxicated/OMVI	161	24.4	155	26.0	- 3.7
Fish and Game			3	.4	
Fraudulent Use of a Credit Card					
Gambling	9	1.4	14	1.8	+ 55.6
Gun Related	28	4.2			
Harassment					
Indecent Exposure	15	2.3	12	1.5	- 20.0
Joyriding	1	.2	1	.1	0.0
Leaving Scene of Accident	12	1.8	16	2.1	+ 33.3
Malicious Destruction					
Minor Related	3	.5	5	.6	+ 66.7
Petty Larceny, Embezzlement	72	10.9	16	2.1	- 77.8
Possession of Marijuana/Hallucinogenics	2	.3			
Prostitution/Solicitation	22	3.3	43	5.5	+ 95.5
Resisting Arrest	26	3.9	11	1.4	- 57.7
Reckless/Negligent/Careless Driving	65	9.8	63	8.2	- 3.1
Trespassing/Unauthorized Entry	7	1.0	11	1.4	+ 57.1
Worthless Checks					
	661		775		+ 17.2

TABLE 19

JUNEAU STATE LAW OFFENSES: CASE DISPOSITIONS

Offense Category	YEAR ONE # Dispositions	YEAR ONE % Total Dispositions	YEAR TWO # Dispositions	YEAR TWO % Total Dispositions	% Change
Assault and Battery	54	7.7	54	6.9	0.0
Assault	7	1.0	9	1.1	+ 28.6
Accident Violation	7	1.0	14	1.8	+100.0
Concealment of Merchandise	2	.3	2	.3	0.0
Concealing Stolen Property					
Carrying a Concealed Weapon			2	.3	
Defrauding	5	.7	2	.3	- 60.0
Disorderly Conduct	27	3.9	66	8.4	+144.4
Driving While Intoxicated/OMVI	296	42.3	242	30.6	- 18.2
Fish and Game	37	5.3	35	4.4	- 5.4
Fraudulent Use of a Credit Card					
Gambling					
Gun Related	3	.4	4	.5	+ 33.3
Harassment	2	.3	3	.4	+ 50.0
Indecent Exposure			3	.4	
Joyriding	7	1.0	6	.8	- 14.3
Leaving Scene of Accident	13	1.9	13	1.7	0.0
Malicious Destruction	5	.7	13	1.7	+160.0
Minor Related	94	13.4	141	17.9	+ 50.0
Petty Larceny, Embezzlement	7	1.0	19	2.4	+171.4
Possession of Marijuana/Hallucinogenics	56	8.0	56	7.1	0.0
Prostitution/Solicitation	4	.5	5	.6	+ 25.0
Resisting Arrest	9	1.3	23	2.9	+155.6
Reckless/Negligent/Careless Driving	48	6.9	56	7.1	+ 16.7
Trespassing/Unauthorized Entry	14	2.0	16	2.0	+ 14.3
Worthless Checks	3	.4	3	.4	0.0
	700		787		+ 12.4

TABLE 20

GUILTY PLEAS ENTERED IN ALL LOCATIONS

Offense Category	DISTRICT COURT ARRAIGNMENT YEAR ONE	YEAR TWO	% CHANGE	PRETRIAL PLEAS YEAR ONE	YEAR TWO	% CHANGE
Assault and Battery	187	158	- 15.5	160	147	- 8.1
Assault	20	5	- 75.0	12	10	- 16.7
Accident Violation	90	71	- 21.1	30	29	- 3.3
Concealment of Merchandise	115	299	+160.0	50	108	+116.0
Concealing Stolen Property		7			5	
Carrying a Concealed Weapon	100	72	- 28.0	43	41	- 4.7
Defrauding	37	25	- 32.4	9	4	- 55.6
Disorderly Conduct	533	529	- .7	127	169	+ 33.1
Driving While Intoxicated/OMVI	982	1041	+ 6.0	858	938	+ 9.3
Fish and Game	130	183	+ 40.8	50	64	+ 28.0
Fraudulent Use of a Credit Card	5	5	0.0	3	30	+900.0
Gambling	2	1	- 50.0		8	
Gun Related	41	47	+ 14.6	36	29	- 19.4
Harassment	1	3	+200.0		1	
Indecent Exposure	24	38	- 58.3	5	11	+120.0
Joyriding	57	72	+ 26.3	34	36	+ 5.9
Leaving Scene of Accident	91	121	+ 33.0	71	122	+ 71.8
Malicious Destruction	42	53	+ 26.2	25	30	+ 20.0
Minor Related	192	183	- 4.7	58	45	- 22.4
Petty Larceny, Embezzlement	162	180	+ 11.1	90	84	- 6.7
Possession of Marijuana/Hallucinogenics	236	115	- 51.1	122	87	- 61.5
Prostitution/Solicitation	29	11	- 62.1	50	56	+ 12.0
Resisting Arrest	30	40	+ 33.3	31	33	+ 6.5
Reckless/Negligent/Careless Driving	367	420	+ 14.4	230	285	+ 23.9
Trespassing/Unauthorized Entry	75	116	+ 54.7	25	35	+ 40.0
Worthless Checks	15	4	- 73.3	14	13	- 7.1
	3563	3936	+ 10.4	2133	2371	+10.6

TABLE 21

RELATIVE DISPOSITIONS OF CASES FILED IN YEAR ONE
(All Locations)

Offense Category	% Dismissed	% Guilty Plea Arraignment	% Guilty Plea Pre-Trial Period	% Guilty Trial	% Other*	Total # of Case Dispositions
Assault and Battery	49.0	25.0	21.0	3.0	2.0	741
Assault	34.0	42.0	22.0	2.0	0.0	49
Accident Violation	34.0	48.0	16.0	0.0	2.0	191
Concealment of Merchandise	15.0	58.0	25.0	2.0	0.0	196
Concealing Stolen Property						
Carrying a Concealed Weapon	38.0	43.0	19.0	0.0	0.0	231
Defrauding	44.0	45.0	11.0	0.0	0.0	80
Disorderly Conduct	28.0	52.0	12.0	1.0	7.0	1091
Driving While Intoxicated/OMVI	13.0	45.0	40.0	2.0	0.0	2156
Fish and Game	19.0	56.0	21.0	4.0	0.0	225
Fraudulent Use of a Credit Card	33.0	17.0	50.0	0.0	0.0	8
Gambling	52.0	2.0	46.0	0.0	0.0	71
Gun Related	33.0	42.0	25.0	0.0	0.0	114
Harassment	50.0	50.0	0.0	0.0	0.0	2
Indecent Exposure	44.0	48.0	8.0	0.0	0.0	58
Joyriding	38.0	38.0	23.0	1.0	0.0	150
Leaving Scene of Accident	29.0	35.0	31.0	5.0	0.0	258
Malicious Destruction	37.0	39.0	24.0	0.0	0.0	117
Minor Related	31.0	53.0	16.0	0.0	0.0	356
Petty Larceny, Embezzlement	25.0	48.0	26.0	0.0	1.0	331
Possession of Marijuana/Hallucinogenics	38.0	41.0	21.0	0.0	0.0	575
Prostitution/Solicitation	35.0	18.0	31.0	10.0	6.0	162
Resisting Arrest	21.0	34.0	35.0	7.0	3.0	113
Reckless/Negligent/Careless Driving	17.0	47.0	29.0	4.0	3.0	788
Trespassing/Unauthorized Entry	49.0	36.0	12.0	1.0	2.0	228
Worthless Checks	58.0	22.0	20.0	0.0	0.0	84
Mean %	27.3	43.2	25.7	2.0	1.8	8375

*Other includes acquittals, bail forfeitures, and hung juries

TABLE 22

RELATIVE DISPOSITIONS OF CASES FILED IN YEAR TWO
(All Locations)

Offense Category	% Dismissed	% Guilty Plea Arraignment	% Guilty Plea Pre-Trial Period	% Guilty Trial	% Other*	Total # of Case Dispositions
Assault and Battery	42.0	26.0	24.0	6.0	2.0	593
Assault	37.0	14.0	32.0	6.0	11.0	33
Accident Violation	36.0	42.0	16.0	5.0	1.0	162
Concealment of Merchandise	13.0	63.0	20.0	4.0	0.0	465
Concealing Stolen Property	44.0	30.0	15.0	11.0	0.0	25
Carrying a Concealed Weapon	31.0	39.0	23.0	4.0	3.0	180
Defrauding	35.0	51.0	8.0	2.0	4.0	48
Disorderly Conduct	28.0	50.0	16.0	2.0	4.0	1101
Driving While Intoxicated/OMVI	9.0	48.0	38.0	5.0	0.0	2340
Fish and Game	17.0	63.0	14.0	6.0	0.0	279
Fraudulent Use of a Credit Card	13.0	13.0	74.0	0.0	0.0	41
Gambling	35.0	6.0	53.0	0.0	6.0	24
Gun Related	32.0	38.0	24.0	6.0	0.0	106
Harassment	0.0	60.0	40.0	0.0	0.0	4
Indecent Exposure	18.0	70.0	12.0	0.0	0.0	68
Joyriding	24.0	38.0	28.0	8.0	2.0	131
Leaving Scene of Accident	26.0	36.0	32.0	6.0	0.0	336
Malicious Destruction	41.0	38.0	18.0	3.0	0.0	146
Minor Related	29.0	59.0	11.0	1.0	0.0	302
Petty Larceny, Embezzlement	20.0	50.0	23.0	7.0	0.0	351
Possession of Marijuana/Hallucinogenics	34.0	42.0	18.0	3.0	3.0	263
Prostitution/Solicitation	50.0	6.0	33.0	7.0	4.0	205
Resisting Arrest	33.0	34.0	29.0	4.0	0.0	143
Reckless/Negligent/Careless Driving	13.0	50.0	30.0	7.0	0.0	815
Trespassing/Unauthorized Entry	41.0	40.0	12.0	5.0	2.0	574
Worthless Checks	27.0	14.0	45.0	7.0	7.0	36
Mean %	22.4	45.4	26.3	4.8	1.1	8771

*Other includes acquittals, bail forfeitures, and hung juries

TABLE 23

CONVICTION RATES*

Offense Category	YEAR ONE	YEAR TWO
Assault and Battery	49.0%	56.0%
Assault	66.0%	52.0%
Accident Violation	64.0%	63.0%
Concealment of Merchandise	85.0%	87.0%
Concealing Stolen Property		56.0%
Carrying a Concealed Weapon	62.0%	66.0%
Defrauding	56.0%	61.0%
Disorderly Conduct	65.0%	68.0%
Driving While Intoxicated/OMVI	87.0%	91.0%
Fish and Game	81.0%	83.0%
Fraudulent Use of a Credit Card	67.0%	87.0%
Gambling	48.0%	59.0%
Gun Related	67.0%	68.0%
Harassment	50.0%	100.0%
Indecent Exposure	56.0%	82.0%
Joyriding	62.0%	74.0%
Leaving Scene of Accident	71.0%	74.0%
Malicious Destruction	63.0%	59.0%
Minor Related	69.0%	71.0%
Petty Larceny, Embezzlement	74.0%	80.0%
Possession of Marijuana/Hallucinogenics	62.0%	63.0%
Prostitution/Solicitation	59.0%	46.0%
Resisting Arrest	76.0%	67.0%
Reckless/Negligent/Careless Driving	80.0%	87.0%
Trespassing/Unauthorized Entry	49.0%	57.0%
Worthless Checks	42.0%	66.0%
	70.9%	76.5%

*Dismissals and "others," compared to all convictions

TABLE 24

YEAR ONE MISDEMEANOR DISPOSITIONS AVERAGE ELAPSED DAYS

Offense Category	ANCHORAGE State Days	ANCHORAGE State #*	ANCHORAGE Municipal Days	ANCHORAGE Municipal #*	FAIRBANKS State Days	FAIRBANKS State #*	FAIRBANKS Municipal Days	FAIRBANKS Municipal #*	JUNEAU State Days	JUNEAU State #*
Assault and Battery	70	(454)			57	(230)	36	(3)	31	(54)
Assault	70	(25)			62	(17)			43	(7)
Accident Violation	68	(97)	114	(27)	60	(23)	58	(37)	112	(7)
Concealment of Merchandise	55	(137)	543	(1)	23	(22)	19	(34)	1	(2)
Concealing Stolen Property										
Carrying a Concealed Weapon	41	(151)			63	(30)	24	(50)		
Defrauding	88	(59)			62	(14)	73	(2)	10	(5)
Disorderly Conduct	28	(777)			35	(175)	36	(112)	24	(27)
Driving While Intoxicated/OMVI	56	(1338)	76	(51)	54	(310)	53	(161)	45	(296)
Fish and Game	64	(151)			37	(37)			59	(37)
Fraudulent Use of a Credit Card	103	(8)								
Gambling	114	(51)	459	(8)	62	(3)	28	(9)		
Gun Related	83	(62)			38	(21)	12	(28)	27	(3)
Harassment									57	(2)
Indecent Exposure	22	(33)			61	(10)	23	(15)		
Joyriding	60	(69)			55	(73)	66	(1)	133	(7)
Leaving Scene of Accident	71	(197)	108	(28)	110	(8)	59	(12)	28	(13)
Malicious Destruction	50	(80)			52	(32)			25	(5)
Minor Related	74	(109)	52	(2)	40	(148)	153	(3)	24	(94)
Petty Larceny, Embezzlement	61	(222)	54	(2)	58	(28)	23	(72)	8	(7)
Possession of Marijuana/Hallucinogenics	42	(360)			52	(157)	21	(2)	40	(56)
Prostitution/Solicitation	130	(70)	59	(33)	78	(33)	77	(22)	254	(4)
Resisting Arrest	72	(53)	30	(9)	47	(16)	63	(26)	17	(9)
Reckless/Negligent/Careless Driving	69	(421)	67	(40)	57	(214)	56	(65)	38	(48)
Trespassing/Unauthorized Entry	72	(171)	21	(5)	54	(31)	19	(7)	55	(14)
Worthless Checks	160	(52)	6	(1)	125	(28)			65	(3)

* Number of dispositions

TABLE 25

YEAR TWO MISDEMEANOR DISPOSITIONS AVERAGE ELAPSED DAYS

Offense Category	ANCHORAGE State Days	ANCHORAGE State #*	ANCHORAGE Municipal Days	ANCHORAGE Municipal #*	FAIRBANKS State Days	FAIRBANKS State #*	FAIRBANKS Municipal Days	FAIRBANKS Municipal #*	JUNEAU State Days	JUNEAU State #*	JUNEAU Municipal Days	JUNEAU Municipal #*
Assault and Battery	51	(357)	25	(11)	60	(169)	51	(1)	67	(54)	41	(1)
Assault	55	(14)	69	(10)					51	(9)		
Accident Violation	51	(43)	74	(55)	123	(7)	76	(43)	28	(14)		
Concealment of Merchandise	39	(175)	5	(1)	17	(94)	25	(190)	49	(2)	61	(3)
Concealing Stolen Property	53	(13)			33	(12)						
Carrying a Concealed Weapon	51	(107)	6	(1)	43	(36)	40	(34)	23	(2)		
Defrauding	38	(34)	12	(1)	13	(11)			101	(2)		
Disorderly Conduct	19	(642)	8	(3)	29	(231)	31	(157)	32	(66)	21	(2)
Driving While Intoxicated/OMVI	47	(1178)	37	(394)	38	(370)	37	(155)	36	(242)	3	(1)
Fish and Game	44	(184)			34	(55)	82	(3)	21	(35)	14	(2)
Fraudulent Use of a Credit Card	32	(34)			76	(7)						
Gambling	64	(1)	36	(7)	34	(2)	24	(14)				
Gun Related	48	(62)	46	(1)	52	(39)			42	(4)		
Harassment									39	(3)	11	(1)
Indecent Exposure	31	(28)			5	(25)	2	(12)	146	(3)		
Joyriding	49	(62)			44	(62)	170	(1)	24	(6)		
Leaving Scene of Accident	53	(160)	52	(138)	54	(9)	68	(16)	51	(13)		
Malicious Destruction	44	(98)	35	(8)	46	(26)			22	(13)	23	(1)
Minor Related	42	(79)	10	(4)	32	(73)	65	(5)	32	(141)		
Petty Larceny, Embezzlement	39	(272)	32	(2)	37	(42)	48	(16)	52	(19)		
Possession of Marijuana/Hallucinogenics	33	(144)	99	(3)	34	(59)			30	(56)	27	(1)
Prostitution/Solicitation	49	(61)	60	(70)	80	(26)	68	(43)	95	(5)		
Resisting Arrest	21	(42)	40	(45)	29	(19)	63	(11)	75	(23)	29	(3)
Reckless/Negligent/Careless Driving	43	(337)	40	(197)	44	(158)	29	(63)	26	(56)	25	(4)
Trespassing/Unauthorized Entry	23	(462)	27	(24)	25	(60)	38	(11)	33	(16)	19	(1)
Worthless Checks	83	(22)			65	(11)			45	(3)		

* Number of dispositions

TABLE 26

DISMISSALS

Offense Category	AT ARRAIGNMENT YEAR 1	AT ARRAIGNMENT YEAR 2	% CHANGE	IN PRETRIAL PERIOD YEAR 1	IN PRETRIAL PERIOD YEAR 2	% CHANGE
Assault and Battery	36	22	- 38.9	322	218	- 32.3
Assault	2	1	- 50.0	17	11	- 35.3
Accident Violation	11	6	- 45.5	53	47	- 11.3
Concealment of Merchandise	5	5	0.0	25	53	+112.0
Concealing Stolen Property		1			10	+900.0
Carrying a Concealed Weapon	10	5	- 50.0	77	47	- 39.0
Defrauding	2	2	0.0	33	14	- 57.6
Disorderly Conduct	51	42	- 17.6	232	243	+ 4.7
Driving While Intoxicated/OMVI	16	12	- 25.0	262	192	- 26.7
Fish and Game	4			41	46	+ 12.2
Fraudulent Use of a Credit Card				2	5	+150.0
Gambling						
Gun Related	2	3	+ 50.0	32	34	+ 6.3
Harassment						
Indecent Exposure	9	3	- 66.7	13	7	- 46.2
Joyriding	8	2	- 75.0	48	28	- 41.7
Leaving Scene of Accident	3	6	+100.0	72	76	+ 5.6
Malicious Destruction	4	5	+ 25.0	36	46	+ 27.8
Minor Related	8	6	- 25.0	101	75	- 25.7
Petty Larceny, Embezzlement	2	5	+150.0	81	59	- 27.2
Possession of Marijuana/Hallucinogenics	16	14	- 12.5	203	82	- 59.6
Prostitution/Solicitation				56	89	+ 58.9
Resisting Arrest	1	1	0.0	17	33	+ 94.1
Reckless/Negligent/Careless Driving	10	8	- 20.0	126	85	- 32.5
Trespassing/Unauthorized Entry	13	10	- 23.1	85	106	+ 24.7
Worthless Checks				36	6	- 83.3
	213	160	- 24.8	1971	1612	- 18.2

TABLE 27

YEAR ONE SUSPENDED IMPOSITION OF SENTENCE

Offense Category	ANCHORAGE State #	% Total	ANCHORAGE Municipal #	% Total	FAIRBANKS State #	% Total	FAIRBANKS Municipal #	% Total	JUNEAU State #	% Total	ALL LOCATIONS #	% Total
Assault and Battery	23	(5.9)	1	(6.3)	3	(1.7)					27	(3.9)
Assault	3	(.8)							1	(2.0)	4	(.6)
Accident Violation	2	(.5)	3	(18.8)	6	(3.4)	4	(5.8)			15	(2.1)
Concealment of Merchandise	34	(8.7)			4	(2.3)	8	(11.6)			46	(6.6)
Concealing Stolen Property												
Carrying a Concealed Weapon	19	(4.9)			3	(1.7)	12	(17.4)			34	(4.9)
Defrauding	3	(.8)			1	(.6)					4	(.6)
Disorderly Conduct	21	(5.4)			20	(11.4)	6	(8.7)	1	(2.0)	48	(6.8)
Driving While Intoxicated/OMVI	19	(4.9)	3	(18.8)	6	(3.4)	1	(1.4)	4	(8.0)	33	(4.7)
Fish and Game	11	(2.8)							1	(2.0)	12	(1.7)
Fraudulent Use of a Credit Card												
Gambling					1	(.6)					1	(.1)
Gun Related	10	(2.6)			3	(1.7)	6	(8.7)			19	(2.7)
Harassment									1	(2.0)	1	(.1)
Indecent Exposure	3	(.8)			2	(1.1)	2	(2.9)			7	(1.0)
Joyriding	7	(1.8)			7	(4.0)			1	(2.0)	15	(2.1)
Leaving Scene of Accident	10	(2.6)	1	(6.3)	1	(.6)	5	(7.2)			17	(2.4)
Malicious Destruction	7	(1.8)			1	(.6)					8	(1.1)
Minor Related	22	(5.7)			39	(22.3)	1	(1.4)	28	(56.0)	90	(12.8)
Petty Larceny, Embezzlement	51	(13.1)			7	(4.0)	12	(17.4)			70	(10.0)
Possession of Marijuana/Hallucinogenics	109	(28.0)			39	(22.3)	1	(1.4)	10	(20.0)	159	(22.7)
Prostitution/Solicitation	5	(1.3)	5	(31.3)	2	(1.1)	1	(1.4)			13	(1.9)
Resisting Arrest	2	(.5)			1	(.6)	1	(1.4)	1	(2.0)	5	(.7)
Reckless/Negligent/Careless Driving	18	(4.6)	3	(18.8)	23	(13.1)	8	(11.6)	1	(2.0)	53	(7.6)
Trespassing/Unauthorized Entry	8	(2.1)			2	(1.1)	1	(1.4)			11	(1.6)
Worthless Checks	2	(.5)			6	(3.4)			1	(2.0)	9	(1.3)
	389		16		177		69		50		701	

TABLE 28

YEAR TWO SUSPENDED IMPOSITION OF SENTENCE

Offense Category	ANCHORAGE State #	% Total	ANCHORAGE Municipal #	% Total	FAIRBANKS State #	% Total	FAIRBANKS Municipal #	% Total	JUNEAU State #	% Total	ALL LOCATIONS #	% Total
Assault and Battery	29	(8.2)			15	(8.8)	1	(.9)	5	(11.6)	50	(7.1)
Assault					1	(.6)	7	(6.6)	1	(2.3)	9	(1.3)
Accident Violation	3	(.8)	3	(8.6)							6	(.8)
Concealment of Merchandise	54	(15.3)			15	(8.8)	33	(31.1)	1	(2.3)	103	(14.5)
Concealing Stolen Property	1	(.3)			3	(1.8)					4	(.6)
Carrying a Concealed Weapon	10	(2.8)			3	(1.8)	5	(4.7)			18	(2.5)
Defrauding	2	(.6)			2	(1.2)					4	(.6)
Disorderly Conduct	14	(4.0)			23	(13.5)	17	(16.0)	2	(4.7)	56	(7.9)
Driving While Intoxicated/OMVI	21	(5.9)	5	(14.3)	10	(5.9)	1	(.9)	18	(41.9)	55	(7.8)
Fish and Game	16	(4.5)			10	(5.9)	1	(.9)	3	(7.0)	30	(4.2)
Fraudulent Use of a Credit Card	21	(5.9)									21	(3.0)
Gambling												
Gun Related	7	(2.0)			7	(4.1)	5	(4.7)			19	(2.7)
Harassment									1	(2.3)	1	(.1)
Indecent Exposure	8	(2.3)			1	(.6)	1	(.9)			10	(1.4)
Joyriding	6	(1.7)			9	(5.3)			1	(2.3)	16	(2.3)
Leaving Scene of Accident	18	(5.1)	3	(8.6)			1	(.9)			22	(3.1)
Malicious Destruction	6	(1.7)	1	(2.9)	5	(2.9)					12	(1.7)
Minor Related	10	(2.8)			15	(8.8)	2	(1.9)	9	(20.9)	36	(5.1)
Petty Larceny, Embezzlement	89	(25.1)	1	(2.9)	17	(10.0)	4	(3.8)			111	(15.7)
Possession of Marijuana/Hallucinogenics	19	(5.4)			11	(6.5)	4	(3.8)			34	(4.8)
Prostitution/Solicitation	4	(1.1)	19	(54.3)							23	(3.2)
Resisting Arrest	2	(.6)	1	(2.9)	1	(.6)			2	(4.7)	6	(.8)
Reckless/Negligent/Careless Driving	9	(2.5)	1	(2.9)	16	(9.4)	23	(21.7)			49	(6.9)
Trespassing/Unauthorized Entry	5	(1.4)	1	(2.9)	5	(2.9)	1	(.9)			12	(1.7)
Worthless Checks					1	(.6)					1	(.1)
	354		35		170		106		43		708	

TABLE 29

ALL KNOWN SOURCES OF CONVICTIONS
(Including Misdemeanors in Superior Court)

Sentence	YEAR 1	% Total Sentence	YEAR 2	% Total Sentence	% Change
Fine	2563	(69.1)	3114	(71.5)	+21.5
Time	3051	(82.2)	3670	(84.3)	+20.3
Both	1904	(51.3)	2429	(55.8)	+27.6
Total fine susp.	165	(4.4)	177	(4.1)	+ 7.3
Total time susp.	1517	(40.9)	1664	(38.2)	+ 9.7
Total sentences	3710		4355		+17.4
Average fine					
Fine	$285		$312		+ 9.5
Fine susp.	101		103		+ 2.0
Net paid	184		209		+13.6
Average time					
Time	26 days		29 days		+11.5
Time susp.	19 days		17 days		-10.5
Active time	7 days		12 days		+71.4

TABLE 30

GUILTY PLEAS AT ARRAIGNMENT

Sentence	YEAR 1	% Total Sentence	YEAR 2	% Total Sentence	% Change
Fine	1440	(64.9)	1671	(68.5)	+16.0
Time	1822	(82.1)	2064	(84.6)	+13.3
Both	1043	(47.0)	1296	(53.1)	+24.3
Total fine susp.	107	(4.8)	109	(4.5)	+ 1.9
Total time susp.	822	(37.0)	915	(37.5)	+11.3
Total sentences	2219		2439		+ 9.9
Average fine					
Fine	$254		$288		+13.4
Fine susp.	95		93		- 2.1
Net paid	159		195		+22.6
Average time					
Time	19 days		16 days		-15.8
Time susp.	12 days		10 days		-16.7
Active time	7 days		6 days		-14.3

TABLE 31

GUILTY PLEAS DURING PRETRIAL PERIOD

Sentence	YEAR 1	% Total Sentence	YEAR 2	% Total Sentence	% Change
Fine	1037	(74.8)	1276	(75.7)	+23.0
Time	1138	(82.0)	1404	(83.3)	+23.4
Both	788	(56.8)	994	(59.0)	+26.1
Total fine susp.	52	(3.7)	59	(3.5)	+13.5
Total time susp.	651	(46.9)	673	(39.9)	+ 3.4
Total sentences	1387		1686		+21.6
Average fine					
Fine	$299		$322		+ 7.7
Fine susp.	112		100		-10.7
Net paid	187		222		+18.7
Average time					
Time	25 days		27 days		+ 8.0
Time susp.	17 days		19 days		+11.8
Active time	8 days		8 days		0.0

TABLE 32

GUILTY AT TRIAL

Sentence	YEAR 1	% Total Sentence	YEAR 2	% Total Sentence	% Change
Fine	86	(82.7)	167	(72.6)	+ 94.2
Time	91	(87.5)	202	(87.8)	+122.0
Both	73	(70.2)	139	(60.4)	+ 90.4
Total fine susp.	6	(5.8)	9	(3.9)	+ 50.0
Total time susp.	44	(42.3)	76	(33.0)	+ 72.7
Total sentences	104		230		+121.2
Average fine					
Fine	$303		$327		+ 7.9
Fine susp.	98		118		+20.4
Net paid	205		209		+ 2.0
Average time					
Time	34 days		45 days		+ 32.4
Time susp.	27 days		23 days		- 14.8
Active time	7 days		22 days		+214.3

TABLE 33

FINES

YEAR ONE

	Arraignment	% Change[1]	Pretrial Period	% Change[2]	Trial	% Change[3]
Fine	$254	+17.7	$299	+ 1.3	$303	+19.3
Fine Susp.	95	+17.9	112	-12.5	98	+ 3.2
Fine paid	159	+17.6	187	+ 9.6	205	+28.9

YEAR TWO

Fine	$288	+11.8	$322	+ 1.6	$327	+13.5
Fine susp.	93	+ 7.5	100	+18.0	118	+26.9
Fine paid	195	+13.8	222	- 5.9	209	+ 7.2

1. % change is arraignment to pretrial period
2. % change is pretrial period to trial
3. % change is arraignment to trial

TABLE 34

NUMBER OF DEFENDANTS RECEIVING ACTIVE TIME AND/OR FINE IN YEAR ONE

Offense Category	Net Active Time (When Imposed) Average	#	Net Fine (When Imposed) Average	#	Net Fine of $0.00	No Active Time Served	Total # of Sentences*
Assault and Battery	12 days	214	$143	95	6	48	225
Assault	13	23	133	6	0	3	23
Accident Violation	5	30	77	56	14	17	64
Concealment of Merchandise	9	100	86	35	4	16	106
Concealing Stolen Property							
Carrying a Concealed Weapon	13	60	83	34	3	22	70
Defrauding	7	31	35	10	1	10	34
Disorderly Conduct	5	330	78	90	9	52	360
Driving While Intoxicated/OMVI	4	1508	218	1553	41	1120	1680
Fish and Game	4	20	157	74	5	9	82
Fraudulent Use of a Credit Card	50	3	0	0	0	0	3
Gambling	0	4	275	3	1	3	4
Gun Related	8	33	116	22	6	13	39
Harassment							
Indecent Exposure	17	14	25	5	2	1	17
Joyriding	27	67	155	28	3	17	71
Leaving Scene of Accident	6	52	100	86	10	33	102
Malicious Destruction	23	38	62	19	3	9	47
Minor Related	11	63	52	38	7	17	83
Petty Larceny, Embezzlement	11	166	85	45	2	24	169
Possession of Marijuana/Hallucinogenics	9	80	112	49	0	24	100
Prostitution/Solicitation	9	66	185	32	2	16	70
Resisting Arrest	5	41	126	24	1	16	43
Reckless/Negligent/Careless Driving	5	104	95	331	46	71	352
Trespassing/Unauthorized Entry	11	44	45	14	4	4	55
Worthless Checks	119	12	138	4	1	6	13

*Defendants received varying combinations of fine and sentence. Consequently, the numbers shown in columns 1 through 6 will be greater than the total number of sentences imposed, shown in column 7.

TABLE 35

NUMBER OF DEFENDANTS RECEIVING ACTIVE TIME AND/OR FINE IN YEAR TWO

Offense Category	Net Active Time (When Imposed) Average	#	Net Fine (When Imposed) Average	#	Net Fine of $0.00	No Active Time Served	Total # of Sentences*
Assault and Battery	13 days	212	$140	107	8	60	229
Assault	2	13	85	5	1	6	13
Accident Violation	3	14	65	39	7	6	47
Concealment of Merchandise	11	285	127	90	7	33	295
Concealing Stolen Property	23	9	0	0	0	0	9
Carrying a Concealed Weapon	6	54	88	42	5	22	63
Defrauding	5	22	104	8	2	2	25
Disorderly Conduct	5	362	72	102	14	49	385
Driving While Intoxicated/OMVI	4	1796	277	1777	30	1214	1891
Fish and Game	4	34	152	100	7	17	108
Fraudulent Use of a Credit Card	43	12	205	5	1	1	13
Gambling							
Gun Related	5	40	154	31	3	17	48
Harassment	5	1	0	0	0	0	1
Indecent Exposure	6	18	19	4	2	2	20
Joyriding	42	73	104	27	10	8	74
Leaving Scene of Accident	3	116	140	156	13	73	180
Malicious Destruction	9	43	119	30	9	11	55
Minor Related	9	52	55	44	7	18	82
Petty Larceny, Embezzlement	10	151	98	61	8	16	168
Possession of Marijuana/Hallucinogenics	16	39	96	39	5	11	56
Prostitution/Solicitation	8	58	143	26	4	14	61
Resisting Arrest	8	49	116	31	0	10	54
Reckless/Negligent/Careless Driving	6	114	106	343	27	58	360
Trespassing/Unauthorized Entry	13	67	79	44	11	12	97
Worthless Checks	30	15	102	4	0	3	16

*Defendants received varying combinations of fine and sentence. Consequently, the numbers shown in columns 1 through 6 will be greater than the total number of sentences imposed, shown in column 7.

TABLE 36

ANALYSIS OF ACTIVE TIME AND FINES: YEAR ONE--YEAR TWO

Offense Category	% Change in Active Time Imposed*	% Change in Fines Imposed**	% Change in # of Defendants Receiving Sentences
Assault and Battery	+ 8.33	- 2.10	+ 1.78
Assault	- 84.62	- 36.09	- 43.48
Accident Violation	- 40.00	- 15.58	- 26.56
Concealment of Merchandise	+ 22.22	+ 47.67	+178.30
Concealing Stolen Property			
Carrying a Concealed Weapon	- 53.85	+ 6.02	- 10.00
Defrauding	- 28.57	+197.14	- 26.47
Disorderly Conduct	-0-	- 7.69	+ 6.94
Driving While Intoxicated/OMVI	-0-	+ 27.06	+ 12.56
Fish and Game	-0-	- 3.18	+ 31.71
Fraudulent Use of a Credit Card	- 14.00	-0-	+333.33
Gambling			
Gun Related	- 37.50	+ 32.76	+ 23.08
Harassment			
Indecent Exposure	- 64.71	- 24.00	+ 17.65
Joyriding	+ 55.56	- 32.90	+ 4.23
Leaving Scene of Accident	- 50.00	+ 40.00	+ 76.47
Malicious Destruction	- 60.87	+ 91.94	+ 17.02
Minor Related	- 18.18	+ 5.77	- 1.20
Petty Larceny, Embezzlement	- 9.09	+ 15.29	- 0.59
Possession of Marijuana/Hallucinogenics	+ 77.78	- 14.29	- 44.00
Prostitution/Solicitation	- 11.11	- 22.70	- 12.86
Resisting Arrest	+ 60.00	- 7.94	+ 25.58
Reckless/Negligent/Careless Driving	+ 20.00	+ 11.58	+ 2.27
Trespassing/Unauthorized Entry	+ 18.18	+ 75.56	+ 76.36
Worthless Checks	- 74.79	- 26.09	+ 23.08

*Includes only cases in which active time was imposed.
**Includes only cases in which fine was imposed.

APPENDIX 6

MISDEMEANOR STATISTICAL STUDY

Analysis of Cases Opened in Each Study Year with Known Dispositions

The total number of dispositions of cases in district and municipal courts in Anchorage, Fairbanks, and Juneau during the two study years rose from 8,375 to 8,771, an increase of 4.7%. These dispositions are outlined below by city and study year:

	Year 1	Year 2	% Change
Anchorage	5354	5586	+ 4.3
Fairbanks	2321	2378	+ 2.5
Juneau	700	807	+15.3

In Anchorage the state law violations filed were down 10.5% and the municipal ordinance violations filed were up 371.0%. In the first year municipal cases accounted for 4.0% of the case load and in Year 2, 17.0% of the total Anchorage misdemeanor case load. Five offenses account for most of the increase in municipal cases.

TABLE 37

ANCHORAGE MUNICIPAL ORDINANCE VIOLATIONS FILED

Offense	Year 1	Year 2	% Change
Driving while Intoxicated/OMVI*	51	394	+672.5
Reckless Driving	40	197	+392.5
Leaving Scene of Accident	28	138	+392.9
Prostitution/Solicitation	33	70	+112.1
Resisting Arrest	9	45	+400.0

*Operating a motor vehicle while intoxicated

The same Anchorage state law offenses filed decreased an average of 16.7%. Another major decrease in Anchorage district court was in possession of marijuana/hallucinogenics.

A similar trend in municipal ordinance violations filed exists in Fairbanks. The state law filings declined 3.4% and the municipal ordinance filings rose 17.2%. Three offense categories account for most of the increases in municipal cases.

TABLE 38

FAIRBANKS MUNICIPAL ORDINANCE VIOLATIONS FILED

Offense	Year 1	Year 2	% Change
Concealment of merchandise	34	190	+458.8
Prostitution/solicitation	22	43	+ 95.5
Disorderly conduct	112	157	+ 40.2

In Fairbanks state law filings, concealment-of-merchandise cases rose 327.3% (22 to 94), prostitution/solicitation declined 21.2% (33 to 26), and disorderly conduct rose 32.0% (175 to 231). The comparison, offense by offense, is less clear than in Anchorage.

Juneau experienced an overall increase in cases of 12.4% between the two years. In Juneau there were very few municipal ordinance violations filed--none in the first year and 20 in the second year. Given the small number of filings in each offense category, the rate of change was not as significant as in the larger jurisdictions.

Tables 10 through 19, appendix 5, illustrate the case dispositions by offense category and by location.

Analysis of Hypotheses

Has the new policy made guilty pleas less frequent? Are guilty pleas occurring at a later stage because of the new policy?

TABLE 39

COMPARISON OF GUILTY PLEAS IN TWO STUDY YEARS

			Total Dispositions
Pleas at Arraignment (Guilty and Nolo)			
Year 1	3563	(42.5%)	8375
Year 2	3936	(45.0%)	8771
Pleas in Pretrial Period (Guilty to Original Charge, Lesser Included, New Charge)			
Year 1	2133	(25.5%)	8375
Year 2	2371	(27.0%)	8771

The total number of cases disposed of by guilty (or nolo) pleas at either district court arraignment or after arraignment but before trial (the "pretrial" period) increased slightly in the second study year. In the first study year, 69.0% of all dispositions were accounted for by pleas at district court arraignment or during the pretrial period. In the second study year these pleas accounted for 72.0% of all dispositions.

There were no significant changes in the procedural stage of the guilty pleas. Of the 26 offenses analyzed, in 21 offenses there were consistent trends in pleas. That is, if pleas at arraignment increased from Year 1 to Year 2, then pleas in the pretrial period increased; the same was true for decreases in pleas. The most notable exceptions were:

TABLE 40

COMPARISON OF GUILTY PLEAS BY OFFENSE

	% Change District Court Arraignment Pleas	% Change Pretrial Period Pleas
Disorderly conduct	- .7	+ 33.1
Fraudulent use of credit cards	0.0	+900.0
Gun related (weapons offenses)	+14.7	- 19.4
Petty larceny, embezzlement	+11.1	- 6.7
Prostitution/solicitation	-62.1	+ 12.0

The overall trend was an increase of 10.0% in pleas at both procedural stages.

The overall number of cases with dispositions in Anchorage, Fairbanks and Juneau rose from 8375 to 8771 for only an increase of 4.7%. In the same periods the frequency and timing of guilty pleas did not change significantly. The overall rate of change for pleas at arraignment (10.4%) and pleas in the pretrial period (10.6%) remained constant. In comparing the rate of change between the two stages over the two years, only five offenses showed opposite trends. Table 20, appendix 5, shows the combined guilty pleas for Anchorage, Fairbanks and Juneau.

Has the new policy increased the time from filing of charges to trial court disposition?

The average disposition times in all three locations declined, but the average disposition times for specific offenses varied from location to location and study year to study year. In Anchorage only one offense--carrying a concealed weapon--had a longer mean disposition time in the second year than in the first. In Fairbanks four offenses took longer in Year 2; in Juneau, eight took longer.

In all district court locations disposition times declined, and the corresponding rate of guilty pleas at arraignment increased. The following table shows the trends in disposition times.

TABLE 41

DISPOSITION TIMES

District Court	Year 1		Year 2		% Change
	Average Days	Arraignment Plea Rate	Average Days	Arraignment Plea Rate	Average Days
Anchorage	58.23	(39.7%)	39.34	(41.9%)	-32.4
Fairbanks	53.00	(46.4%)	38.78	(49.2%)	-26.8
Juneau	41.55	(48.3%)	37.98	(49.9%)	- 8.6

In Anchorage district court the average of all disposition times dropped from 58 days in Year 1 to 39 days in Year 2. The two most frequent offenses in Anchorage--OMVI and disorderly conduct--accounted for 41.0% of all dispositions in Year 1; each averaged nine fewer days in Year 2. In Fairbanks district court OMVI and disorderly conduct accounted for 29.0% of all dispositions; OMVI averaged 16 days less, and disorderly conduct six days less. The same two offenses in Juneau district court accounted for 46.0% of all dispositions; OMVI averaged nine fewer days, but disorderly conduct averaged eight more days than in the first year. (See Table 24, and Table 25, appendix 5.)

Has the new policy caused a change in procedural stage for disposition of misdemeanors?

The major impact on the disposition stage of misdemeanor cases has been the increase of trials. About the same percentage of cases were resolved at district court arraignment in both study years. The number of dispositions in the pretrial period declined slightly as the number of trials increased. For all cases in all locations the dispositions were as follows:

TABLE 42

DISPOSITION STAGE

Procedural Stage	Year 1	%	Year 2	%
Arraignment	3779	45	4069	46
Pretrial period	4159	50	4027	46
Trial	283	3	488	6
Other	154	2	187	2
	8375		8771	

Has the new policy resulted in more dismissals in the pretrial period?

The dismissal of misdemeanor cases was substantially reduced in the second year both at arraignment and during the pretrial period.

TABLE 43

DISMISSALS (AND PERCENT OF TOTAL DISPOSITIONS)

	Arraignment	Pretrial Period	Total
Year 1	213 (2.5%)	1971 (23.6%)	2184 (26.1%)
Year 2	160 (1.8%)	1612 (18.4%)	1772 (20.2%)

At arraignment the frequency of dismissal declined 25.0% and during the pretrial period dismissals declined 18.0%. Of the 26 offenses only four showed an increase at arraignment, and 10 an increase during the pretrial period. Table 26, appendix 5, shows the dismissals by type of offense.

Has the new policy reduced "differential sentencing" (i.e., stiffer sentences for going to trial rather than pleading guilty)? Has the new policy resulted in stiffer sentences?

The analysis of sentences includes those sentences in which the sentence contained some time and some fine, all of which could have been suspended. The sentences are differentiated by guilty pleas at district court arraignment, during the pretrial period and guilty at trial. For 115 sentences in Year 1 and 62 sentences in Year 2 the source of plea was not available and those will not be included in the data. Table 29, appendix 5, includes all 26 offense categories in all three locations.

The sentences with only fines, only time, or both time and fine increased about 20.0%. The fines with all the fine suspended rose, but only 7.0%, and the fines with the time suspended rose, but only 10.0%. These increases are represented in an overall increase of 17.0% in the number of sentences. The sentence of time or fine increased by 10.0%, while the average suspension remained relatively constant. Overall, the net fine paid rose 14.0%, and the net active time rose 71.4%.

To analyze the sentencing differential the sentences were sorted by time of plea: arraignment, during pretrial period, or after trial. The data for all three locations for each type of plea is contained in Table 30, Table 31 and Table 32, appendix 5. The sentences were separated by fine to pay and time to serve and compared at each time of plea in both years.

The overall pattern can be viewed by comparing Year 1 fines at trial, and Year 2 fines at arraignment. (See Table 33, appendix 5.)

The differential between fines given at arraignment and during the pretrial period ("% change[1]") decreased between the two study years. The differential between fines given in the pretrial period and trial ("% change[2]"), which is a smaller differential, also decreased. For the differential between arraignment and trial ("% change[3]") not only was the differential of fine and fine paid smaller than in Year 1, but the amount suspended increased.

TABLE 44

COMPARISON OF FINES IN THE TWO STUDY YEARS

	Year 2 Arraignment	Year 1 Trial	Difference
Fine	$288	$303	5.2%
Fines susp.	93	98	5.4%
Fine paid	195	205	5.1%

This indicates the old top fines became the new bottom fines, and the differential for fines was reduced.

The differential in active time between the two years was considerably greater than differential in fines. (See Table 33, appendix 5.) The pattern in Year 1 was an increase in the total time imposed, but the amount of the increase was suspended. During the second year the differential increased substantially over Year 1. The average of 22 days active time after trial was brought up by some particularly large sentences imposed after trial:

TABLE 45

ACTIVE TIME FOR SPECIFIC MISDEMEANORS

Offense Category	#	Total Active Time(Days)
Assault and battery	23	18
Concealment of merchandise	10	12
Petty larceny/embezzlement	17	16
Prostitution/solicitation	13	154
Trespass	8	63

The analysis of misdemeanor sentencings in the two study years yields some of the most interesting results. In order to frame the

parameters for the sentencing data, the sentencing alternatives must be analyzed. These alternative judgments may be in addition to or in lieu of sentencing. No data is available for deferred prosecution from the court system's computer records. For administrative records the case is open until the conditions of the agreement are met and then the case is dismissed.

TABLE 46

OTHER MISDEMEANOR JUDGMENTS

	Year 1	Year 2	% Change
Deferred sentencing	12 (.5%)	18 (.5%)	+ 50.0
Suspended imposition of sentence	701 (30.3%)	708 (18.2%)	+ 1.0
Restitution	92 (4.0%)	166 (4.3%)	+ 80.4
Probation	69 (3.0%)	55 (1.4%)	- 20.3
Other conditions of sentence*	542 (23.4%)	1145 (29.5%)	+111.3
License action*	899 (38.8)	1792 (46.1)	+ 99.3
	2315	3884	+ 67.8

*The other conditions of sentence included: no similar violations, credit for time served, no visitation, defensive driving school, alcohol screening, etc. The license actions applied primarily to traffic offenses, with OMVI accounting for 87.5% in Year 1 and 88.8% in Year 2.

The distribution of suspended imposition of sentence is outlined in Table 27, for Year 1, and Table 28, appendix 5, for Year 2.

The most significant decrease in suspended imposition of sentence was seen in possession of marijuana/hallucinogenics--a drop of 78.6%. A partial explanation for this is the overall decline in filings of possession of marijuana charges. The greatest increase in suspended imposition of sentence was in concealment of merchandise (123.9%), and petty larceny/embezzlement (58.6%).

Interim Results of Misdemeanor Statistical Study

Evaluation of the court system misdemeanor data is scheduled to continue in two phases. In phase one, as part of the court management analysis, both reported and unreported data will be made available to court administrators for their interpretation and analysis. Any suggested explanations for sentence differentials, changes in sentence severity, or the decreases in disposition times and dismissals, will be evaluated for inclusion in the final report.

The second phase will involve evaluation of additional data from dispositions of second year open cases. As of August 1977 the deferred prosecutions from both study years should have been closed by dismissal.

Through evaluation of disposition times of dismissals it should be possible to draw conclusions concerning the use of deferred prosecution. The analysis of disposition times for all cases will be refined in the second phase.

OFFENSE CATEGORIES

Many misdemeanor offenses against state laws and municipal ordinances have been grouped by the Technical Operations Section of the Alaska Court System for purposes of administrative and statistical reporting. The following list outlines the administrative categories of specific offenses:

Offense Category	Specific Offenses Included
Assault	-Unspecified simple assaults as opposed to assault and battery.
Accident Violation	-False report of auto accident. -Failure to give information or render assistance (no injury). -Failure to report accidents.
Concealment of Merchandise	-Shoplifting
Defrauding	-Defrauding an innkeeper. -Fraud by person authorized to provide goods or services. -Miscellaneous frauds not involving credit cards.
Disorderly Conduct	-Excretion in public (municipal ordinance).
Driving while Intoxicated/OMVI	-Includes drugs or alcohol.
Fish and Game	-License violations. -Commercial or sport fishing or wildlife violations.
Gambling	-Attending a gambling establishment. -Conducting a gambling game.
Gun Related	-Shooting across roadway. -Carrying firearm while under the influence. -Flourishing a firearm. -Shooting at buildings.
Malicious Destruction	-Injury to buildings. -Injury to highways.
Minor Related	-Contributing to the delinquency of of a child. -Minor in card rooms. -Furnishing liquor to a minor.

Offense Category	Specific Offenses Included
Petty Larceny, Embezzlement	-Petty larceny. -Embezzlement, bailee. -Embezzlement, servant or employee.
Prostitution/Solicitation	-Prostitution. -Soliciting or procuring for prostitution. -Assignation (municipal).
Worthless Checks	-Issuing funds without funds or credit. -Drawing checks with insufficient funds.

APPENDIX 7

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Petitioner, v. THE HONORABLE VICTOR D. CARLSON, Judge of the Superior Court, and the SUPERIOR COURT for the State of Alaska, Third Judicial District, Respondents. SIDNEY LEE VAIL, Real Party in Interest.	File No. 2986 O P I N I O N [No. 1327 - October 15, 1976]
STATE OF ALASKA, Petitioner, v. SIDNEY LEE VAIL, Respondent.	

Motion for Writ of Prohibition to issue to Victor D. Carlson, Superior Court Judge, Third Judicial District, Anchorage.

Appearances: Charles M. Merriner, Assistant District Attorney, Anchorage, and Joseph D. Balfe, District Attorney, Anchorage, for Petitioner. R. Stanley Ditus, Anchorage, for Respondent Vail.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Erwin, and Burke, Justices.

CONNOR, Justice.
RABINOWITZ, Justice, with whom Boochever, Chief Justice, joins, concurring.

In this case the Superior Court has announced its intention to accept a guilty plea to the crime of manslaughter from defendant Vail in lieu of trying him for either first or second degree murder. The district attorney does not concur in this reduction of charge, and has applied to this court for a writ of prohibition on the ground that the trial judge has exceeded his authority.

Counsel for Vail and his co-defendant engaged in negotiations with the prosecutor pursuant to Criminal Rule 11(e). The prosecutor was willing to accept guilty pleas to manslaughter from both defendants, but not from only one, feeling that his chances of obtaining a conviction of Taylor, the co-defendant, would be substantially better in a joint trial than if Taylor were tried alone. The court, on the other hand, was willing to accept a manslaughter plea from Vail even though Taylor was not also pleading guilty. This the prosecutor was unwilling to accept.

Judge Carlson cited a number of reasons for accepting a manslaughter plea: the possibility that Vail was suffering from diminished capacity; Vail's youth (age 20); complicated issues regarding bifurcation of trial, severance of defendants, and evidentiary problems under Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L.Ed.2d 476 (1968), which would arise in a joint trial but would be mooted if either or both defendants pleaded guilty; saving the cost of a trial; avoiding the possibility that Vail might be acquitted; and his belief that the sentence for

manslaughter would be sufficient to punish Vail.

Vail argues that Alaska Criminal Rule 43(c), which permits a court to dismiss a prosecution "in furtherance of justice," vests the traditional nolle prosequi power jointly in the court and the prosecution.[1/] See People v. Superior Court of Marin County, 446 P.2d 138, 146 (Cal. 1968). Since the nature of the nolle prosequi power is traditionally to dismiss a prosecution in whole or in part, People v. Sidener, 375 P.2d 641, 643 (Cal. 1962) (Traynor, J.), appeal dismissed and cert. denied, 374 U.S. 494 (1963), overruled on other grounds in People v. Tenorio, 473 P.2d 993 (Cal. 1970), the court also has the power to dismiss or strike out a part. People v. Burke, 301 P.2d 241, 244 (Cal. 1956). Since manslaughter is a lesser offense included in a charge of murder, Vail reasons that the court may reduce the charge by "striking out a part" of the charge. He further reasons that the Alaska Constitution contains, implied in its terms, the doctrine of separation of powers. Public Defender Agency v. Superior Court, 534 P.2d 947, 950 (Alaska 1975). This principle, he argues, prevents the exercise of the nolle prosequi power from

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1/ Alaska Criminal Rule 43(c) provides:

> "(c) IN FURTHERANCE OF JUSTICE. The court may, either on its own motion or upon the application of the prosecution attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order."

being conditional on the approval of another branch. Esteybar v. Municipal Court, 485 P.2d 1140 (Cal. 1971); People v. Tenorio, 473 P.2d 993, 996 (Cal. 1970); see generally O'Donoghue v. United States, 289 U.S. 516, 530 (1932).

Vail's reliance on California precedent is misplaced. The "part" of a charge referred to in Burke and Sidener was an allegation that the defendant was a prior offender, which under the statutes subjected him to increased punishment. Dismissal was sought either because the prior conviction had not been sufficiently proven or because the facts showed that "in the interest of justice" the defendant should not suffer the increased penalty which the repeat-offender provisions would warrant. People v. Burke, supra. Neither case, and apparently no other Calfornia case, speaks to a lesser included offense. The facts of this case have not yet been presented at trial; nor do we perceive, from the statement of the facts by the district attorney, that this would be a case of the nature envisioned by the Burke and Sidener courts.

Further, the California Supreme Court has explicitly held that, except in unusual circumstances, the trial judge may not use his nolle prosequi powers to engage in plea, charge, or sentence bargaining without the participation of the prosecution. If the "bargain" is in fact opposed by the state, there cannot be said to have been a real plea bargain, and such use of the court's power has been held an abuse of discretion since it is not "in furtherance

of justice" under the language of California Penal Code § 1385, which is similar to Alaska Rule 43(c). People v. Orin, 533 P.2d 193, 197, 201 (Cal. 1975) (alternative holding).[2/] Vail's constitutional argument, including his reliance on Tenorio and Esteybar, has also been considered and rejected by the California courts. People v. Smith, 126 Cal. Rptr. 195, 197-98 (Cal. App. 1975).[3/] While the reduced charge in Smith was a related but not a lesser included offense as it is in the case at bar, the policy considerations of the Smith court are persuasive. It reasoned that the executive branch and the grand jury have exclusive authority for charging a criminal defendant. The court then concluded that the trial court could not charge a non-included offense. 126 Cal. Rptr. at 198. We must go further, and hold that although the court may judicially determine the disposition of a charge based on the evidence, the law and its sentencing power,

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2/ Orin recognized that the trial court may, in the exercise of its sentencing discretion, have occasion to dismiss charges in furtherance of justice. It also left open the possibility of the court using the dismissal power without the participation or consent of the prosecution if the prosecution has a "rigid" and "obstructionist" position opposed to all bargaining in all cases. 533 P.2d at 201-02.

3/ The California cases addressed in Smith, including Tenorio and Esteybar, struck down a number of California statutes which conditioned various sentencing alternatives on the consent of the prosecutor. The statutes were held to violate the separation of powers, since they shared with the executive branch the judicial function of disposing of cases. As People v. Smith, points out, none of these cases dealt with the charging function, which is "the heart of the prosecution function." 126 Cal. Rptr. at 197-98, quoting ABA Criminal Justice Standards, The Prosecution Function, § 3.9(a) Commentary (1971). Nor did any of them deal with plea -- or charge -- bargaining simpliciter, as the instant case does.

For the same reasons, our decision today does not call into question the constitutionality of Rule 43(c) in any context other than this one. By its terms, the rule deals with the judicial function of disposition.

it may not, in effect, usurp the executive function of choosing which charge to initiate based on defendant's willingness to plead guilty to a lesser offense. In Public Defender Agency v. Superior Court, 534 P.2d 947, 950-51 (Alaska 1975), we set aside a trial court order directing the Attorney General to prosecute a case. Such an order, we held, violated the separation of powers because the decision whether to prosecute a case was committed to the discretion of the executive branch, and therefore was not subject to judicial control or review. Here the trial judge, with the defendant's agreement, was in effect ordering the district attorney not to prosecute the murder charge against Vail.

We are also concerned that a judge's involvement as plea negotiator would detract from the judge's neutrality, and would present a danger of unintentional coercion of defendants who could only view with concern the judge's participation as a state agent in the negotiating process. See People v. Smith, supra at 197.[4/]

4/ The Smith and Orin courts relied in part on a series of guilty plea statutes, Cal. Penal Code §§ 1192.1 et seq. Even absent these express statutory considerations, we are persuaded by the policies enunciated in arriving at their decisions.

In connection with these policies, we note that Fed. R. Crim. P. 11(e)(1) now prohibits a trial judge from participating in plea negotiation discussions.[5/]

Even though Judge Carlson has not yet issued an order reducing the charge in this case, we note that he fully stated his reasons as required for such an order by Criminal Rule 43(c). We therefore see no reason, given the seriousness of the legal issue involved, to postpone exercise of our supervisory power. The writ of prohibition shall issue. AS 22.05.010(a); Alaska App. R. 25(a).

5/ We recognize that the only substantial difference between Alaska Criminal Rule 11(e)(1) and the Federal criminal rule of the same number is that the federal rule contains the explicit prohibition against judicial participation in bargaining while the Alaska rule does not. The policies we have discussed persuade us that this difference should not be dispositive.

Federal Rule 11(e)(1) and its underlying policies are discussed in United States v. Werker, 535 F.2d 198 (2d Cir. 1976). See also the comment to the rule, reprinted in 8 Moore's Federal Practice ¶ 11.01[4], at 11-14 to 11-15 (2d ed., rev. 1975). In accord with the federal rule are the ABA Criminal Justice Standards, Pleas of Guilty, § 3.3(a) (Approved Draft, 1968), and Uniform Rule of Criminal Procedure 441 (1974).

RABINOWITZ, Justice, with whom Boochever, Chief Justice, joins, concurring.

The record we have been furnished indicates that respondent Sidney Lee Vail and co-defendant Timothy Taylor were jointly charged by an Indictment with the offense of first degree murder in violation of AS 11.15.010. According to Vail's brief, the matter then came on for pre-trial hearing before Judge Carlson on June 18, 1976, "with all counsel present."[1] At this conference it is asserted that counsel for the state and defense counsel informed the superior court that they had been engaged in plea discussion "toward the end of disposing of the pending case by pleas to the lesser included offense of manslaughter." The superior court was also advised that the prosecution was agreeable to accepting pleas to manslaughter from both Vail and Taylor provided they agreed to a stipulated sentence of 15 years as to each. According to Vail, the superior court then ". . . sua sponte, based apparently upon its review of the file, statements of counsel, the circumstances involved and its wisdom, indicated that it would accept a plea of guilty to manslaughter from either or both of the defendants with open sentencing."

On June 22, 1976, counsel for Vail advised

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1. There is no indication whether this conference was on the record or whether Vail and Taylor were present. My own view is that Alaska's trial courts should refrain from conducting any proceedings relating to a criminal prosecution which are off the record. Additionally, I note that Criminal Rule 38(a) requires the presence of the defendant "at every stage of the trial."

the superior court that Vail would enter a plea of guilty to manslaughter with open sentencing. The matter was set for hearing on June 25, 1976, on the contemplated change of plea by respondent Vail. At this hearing counsel for the state objected to the court's intention to permit Vail to enter a plea of guilty to the lesser included offense of manslaughter and stated his reasons for his opposition. At the conclusion of the hearing Judge Carlson announced that he intended to accept a plea of guilty to manslaughter from Vail on July 7, 1976. This delay in the change of plea proceedings was granted by Judge Carlson to enable the prosecution to seek a ruling from this court as to the propriety of his contemplated action.

In granting the delay Judge Carlson remarked that:

> The reason that I would accept a plea of guilty to manslaughter is that I find that the one to 20 years which is the range of sentence for manslaughter appears at this stage of the proceedings to be a sufficient range of sentence to punish Mr. Vail for what he had done. 2 /

The transcript of this June 25, 1976, hearing further reveals that the superior court characterized its actions in the following manner:

> I also take into account that this is not a -- from the court's standpoint, this is not a plea bargaining situation, this is what's . . . or the sub-category of charge bargaining, reducing a case -- the charge in a case, and it appears to me that the -- justice would be done by the public to having

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2. The court's opinion details numerous additional reasons Judge Carlson articulated for accepting a manslaughter plea.

> a plea to manslaughter instead of running the risk of an acquittal which to me appears very unlikely, but there's always that possibility, and the great expense both of prosecution and appeal.

These remarks of Judge Carlson are crucial to analysis and disposition of the issues raised by the state's petition for writ of prohibition. In my view, they clearly indicate that what really transpired here does not present a true Criminal Rule 43(c) court dismissal issue; rather we are confronted with a question which concerns the extent of the trial court's authority under Criminal Rule 11(e) governing plea agreement procedures.[3]

As Rule 11(e)(1) is presently structured, it permits "[t]he attorney for the state and the attorney for the defendant" to engage in discussions encompassing both charge bargaining and sentence bargaining.[4] No provision of Rule 11 authorizes the court to engage in either charge or sentence discussions with either the state or the accused for the purpose of obtaining a disposition of the matter without trial. Subsections (2), (3) and (4) of Rule 11 essentially contemplate a passive ratification role for the

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3. See ABA, Standards Relating to Pleas of Guilty, Standards 3.1-3.4 [hereinafter cited as Pleas of Guilty]. I do not interpret Criminal Rule 11(e)(3), which provides: "If the court accepts the plea agreement, the court shall inform the defendant that the judgment and sentence will embody either the disposition provided for in the plea agreement or another disposition more favorable to the defendant" as authorizing active plea negotations on the part of Alaska's trial judges.

4. Since August of 1975 the Attorney General has instituted a policy which purports, in its general outlines, to prohibit all state prosecutors from sentence bargaining and also, for the most part, charge bargaining.

trial court in relation to any charge or sentence discussions which have been entered into by counsel for the accused and for the state.[5]

In the circumstances of the case at bar, the record we do have unambiguously indicates that the superior court actively engaged in charge bargaining. Thus, as I

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5. Alaska's Rule 11(e) does not contain any provision which parallels Standard 3.3(b), Pleas of Guilty, supra note 2. This Standard provides:

> (b) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or nolo contendere in the expectation that other charges before that court will be dismissed or that sentence concessions will be granted, upon request of the parties the trial judge may permit the disclosure to him of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. He may then indicate to the prosecuting attorney and defense counsel whether he will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to him. If the trial judge concurs but the final disposition does not include the charge or sentence concessions contemplated in the plea agreement, he shall state for the record what information in the presentence report contributed to his decision not to grant these concessions.

The Commentary to this Standard reads in part:

> It does not follow from the above, however, that a trial judge may never indicate his concurrence in the proposed concessions prior to the time the defendant enters his plea. There is one situation in which the judge must do so, namely, that in which the concession would be granted by receipt of a plea to a lesser offense. Consent of the court is typically required for a lesser plea, e.g., Ariz. R. Crim. P. 184, and since acceptance of the plea to a lesser included offense would bar subsequent prosecution for the greater offense, the determination must be made prior to the time the plea is accepted.

Thus, while the trial judge should not be required

perceive the question confronting this court, we must decide whether Criminal Rule 43(c)[6] in light of the provisions of Rule 11, was intended to authorize the trial court to employ the charge dismissal power as a vehicle for an active role in plea discussions encompassing either charge or sentence concessions, or both. I am of the view that Criminal Rule 43(c) was not intended to give legal sanction to such activities on the trial court's part. For neither Criminal Rule 43(c) nor Rule 11(e) authorizes the use of the trial court's dismissal powers as an adjunct to judicial plea negotiations. Thus, I join in the majority's conclusion that the writ of prohibition should issue.

Admittedly, Alaska's Rule of Criminal Procedure which recognizes the controversial practice of plea bargaining does not contain an explicit prohibition against trial courts engaging in such practice.[7] On the other hand, given

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(footnote 5 continued)

> to make promises concerning sentence concessions or dismissal of other counts in advance of defendant's plea, it is proper to have the judge indicate his approval of a plea to a lesser charge before the plea is accepted. . . .

6. Alaska's Criminal Rule 43(c) provides:

> The court may, either on its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order.

7. Compare Alaska Criminal Rule 11(e)(1) with Fed. R. Crim. P. 11(e)(1).

the tremendously coercive impact judicial activism can have in this area, the erosion of the appearance of judicial neutrality, and the accused's constitutional rights to jury trial, I am of the view that our trial judges should be totally barred from engaging in either charge or sentencing bargaining.[8]

Further, I note my agreement with the court's conclusion that to permit the superior court to dismiss the first and second degree charges against Vail at this stage of the criminal prosecution would be violative of the doctrine of separation of powers.[9] In Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), we said:

> 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. State v. Finch, 128 Kan. 665, 280 P. 910 (1929). This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution, and disposition of cases. United States v. San Jacinto, Tin Co., 125 U.S. 273, 279, 8 S.Ct. 850, 31 L.Ed. 747 (1888); Federal Trade Commission v. Clair Furnace Co., 274 U.S. 160, 174, 47 S.Ct. 553, 71 L.Ed. 978 (1927); Smith v. United States, 375 F.2d 243, 246-47 (5th Cir. 1967); United States v. Cox, 324 F.2d 167 (5th Cir. 1965);

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8. See Standard 3.3(a), Pleas of Guilty, supra note 2. This Standard provides:

> The trial judge should not participate in plea discussions. See also Fed. R. Crim. P. 11(e)(1); United States v. Werker, No. 76-3024 (2d Cir., May 11, 1976).

9. See Bradner v. Hammond, Opinion No. 1297 (Alaska, August 2, 1976).

> Boyne v. Ryan, 100 Cal. 265, 34 P. 707 (1893); Ames v. Attorney General, 332 Mass. 246, 124 N.E.2d 511 (1955).
>
> When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. . . .

Thus, it is clear that the determination whether or not to prosecute and the precise charge to be lodged against an accused are initially committed to the discretion of the executive branch of Alaska's government.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Petitioner, v. THE HONORABLE SEABORN J. BUCKALEW, JR., Judge of the Superior Court, and the SUPERIOR COURT for the State of Alaska, Third Judicial District, Respondents. DAVID JAMES SCHMID, Real Party in Interest.	File No. 3143 O P I N I O N
STATE OF ALASKA, Petitioner, v. DAVID JAMES SCHMID, Respondent.	[No. 1391 - March 14, 1977]

Petition for Writ of Prohibition to issue to the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Seaborn J. Buckalew, Judge.

Appearances: Michael J. Keenan, Assistant District Attorney, Ivan Lawner, Assistant District Attorney, Joseph D. Balfe, District Attorney, Anchorage, Avrum M. Gross, Attorney General, Juneau, for Petitioner. Richard G. Lindsley, Anchorage, for Respondent Schmid.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Erwin and Burke, Justices.

BURKE, Justice.
Connor, Justice, dissenting.

The State of Alaska, petitioner, seeks a writ of prohibition preventing the Honorable Seaborn J. Buckalew, Judge of the Superior Court, from sentencing David James Schmid on a pending drug charge. In the event that the petition is granted, the state further seeks assignment of another judge and asks for an order requiring that Schmid be given an opportunity to withdraw his plea of guilty to the charge.

The state's main contention is that Judge Buckalew acted improperly by participating in negotiations leading to the entry of Schmid's plea. Since the petition raises a significant question concerning the proper exercise of judicial authority and the administration of criminal justice in Alaska that might evade review if not considered at this time, we consider prohibition to be an appropriate method of review. See United States v. Werker, 535 F.2d 198, 200 (2d. Cir. 1976).

On February 20, 1976, Schmid was arrested at Anchorage International Airport in possession of 79 pounds of marijuana and a quantity of hashish oil. Subject to certain exceptions not applicable to the instant case, the possession of marijuana is prohibited by AS 17.12.010.[1]

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1. AS 17.12.010 provides:

> Except as otherwise provided in this chapter, it is unlawful for a person to

When such possession is for the purpose of sale, AS 17.12.110(b)(1) provides that the offender is guilty of a felony, punishable "for the first offense, by imprisonment for not more than 25 years, or by a fine of not more than $20,000, or by both." On April 5, 1976, an Anchorage grand jury returned an indictment charging Schmid with possession of marijuana for the purpose of sale.

Following his arraignment in superior court, Schmid entered a plea of not guilty. Thereafter, on October 12, 1976, he changed his plea to guilty. The change of plea

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1. Cont'd

manufacture, compound, counterfeit, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, a depressant, hallucinogenic or stimulant drug.

AS 17.12.150 provides in part:

In this chapter

. . . .

(3) 'depressant, hallucinogenic or stimulant drug' means:
(A) cannabis

. . . .

(4) 'cannabis' includes all parts of the plant Cannabis Sativa L., whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, manufacture, salt, derivative, mixture, or preparation of this plant, its seeds, or resin;

occurred immediately after an off the record, in-chambers conference attended by Judge Buckalew, Schmid, Richard G. Lindsley, Schmid's attorney, and Assistant District Attorney Michael J. Keenan.

The absence of a verbatim transcript hampers our ability to determine exactly what took place in Judge Buckalew's chambers. However, the following facts are not in serious dispute: after being advised of certain mitigating factors including the fact that Schmid was a second year law student with no prior criminal record, Judge Buckalew indicated to the defendant that if he changed his plea he could probably expect a maximum sentence of 90 days incarceration, to be served so as not to conflict with Schmid's law school classes, and that the judge would consider a deferred imposition of sentence.[2] Schmid was cautioned by Judge Buckalew that such a favorable disposition was dependent on a variety of factors, and that if after receiving a presentence report any additional

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2. AS 12.55.085(a) provides:

> If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence which may be imposed, and upon the terms and conditions which the court determines, and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

information indicated a more severe sentence was demanded, he would so advise Schmid and afford him an opportunity to withdraw his guilty plea.

Upon conclusion of the in-chambers conference, the parties immediately removed themselves to the courtroom where Judge Buckalew, in open court, restated his intentions with regard to sentencing and advised the defendant of the various rights he would give up by changing his plea. Schmid thereupon withdrew his not guilty plea and entered a plea of guilty. The prosecutor objected to the court's involvement in open court.

Contending this procedure objectionable, the State of Alaska petitioned this court for a writ of prohibition.

The gist of the state's argument is that Judge Buckalew improperly made himself a party to the process commonly known as "plea bargaining." Plea bargaining between prosecution and defense, while a recognized and accepted practice in many parts of the United States, is contrary to present policies of the Alaska Department of Law, as established by the Attorney General.[3]

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3. State v. Carlson, 555 P.2d 269, 273 n.4 (Alaska 1976) (concurring opinion):

> Since August of 1975 the Attorney General has instituted a policy which purports, in its general outlines, to prohibit all state prosecutors from sentence bargaining and also, for the most part, charge bargaining.

On October 15, 1976, three days after the above described conference and change of plea, we rendered our decision in State v. Carlson, 555 P.2d 269 (Alaska 1976). In that case we held that the superior court could not accept a plea of guilty to a reduced charge over the state's objection where a defendant charged with murder sought to plead guilty to the lesser included offense of manslaughter. On the application of the state, we issued a writ of prohibition ordering the superior court not to accept the plea. Our decision was based in part on the fact that the trial judge had engaged in plea bargaining. We said:

> We are also concerned that a judge's involvement as a plea negotiator would detract from the judge's neutrality, and would present a danger of unintentional coercion of defendants who could only view with concern the judge's participation as a state agent in the negotiating process. (citation omitted)[4]

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3. Cont'd

It is important to note that the issue in this case is not the propriety of the trial court approving or disapproving an agreement reached by the parties, but, instead, involves a situation where the court has engaged directly in plea discussions with the defense leading to the entry of a guilty plea.

4. 555 P.2d at 272.

The American Bar Association Standards Relating to Pleas of Guilty § 3.3(a), provides:

> Responsibilities of the trial judge.
> (a) The trial judge should not participate in plea discussions.

In the commentary to that section we find the following language:

> Although it is by no means the prevailing practice, it is not uncommon for trial judges to participate in plea discussions and to promise or predict certain concessions in the event the defendant pleads guilty. . . .
>
> The standard takes the position that judicial participation in plea discussions is undesirable. Compare Informal Opinion No. 779, ABA Professional Ethics Committee: 'A judge should not be a party to advance arrangements for the determination of sentence, whether as a result of a guilty plea or a finding of guilty based on proof.' 51 A.B.A.J. 444 (1965).
>
> There are a number of valid reasons for keeping the trial judge out of plea discussions, including the following: (1) judicial participation in the discussions can create the impression in the mind of the defendant that he would not receive a fair trial were he to go to trial before this judge; (2) judicial participation in the discussions makes it difficult for the judge objectively to determine the voluntariness of the plea when it is offered; (3) judicial participation to the extent of promising a certain sentence is inconsistent with the theory behind the use of the presentence investigation report; and (4) the risk of not going along with the disposition apparently desired by the judge may seem so great to the defendant that he will be induced to plead guilty even if innocent. (citation omitted)[5]

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5. ABA Standards Relating to Pleas of Guilty § 3.3(a), Commentary at 72-73 (1968).

Such reasoning persuaded the United States Court of Appeals, Second Circuit, to issue a writ of mandamus requiring a federal district court judge to refrain from communicating, directly or indirectly, to a criminal defendant, prior to the entry of a plea of guilty, the sentence that he would impose if such a plea was subsequently submitted. In that case, United States v. Werker, 535 F.2d 198 (2d. Cir. 1976), the court rested its decision on an express provision found in Rule 11(e), Fed. R. Crim. P., prohibiting judicial participation in plea bargaining, but made clear that even in the absence of such a provision the result would have been the same, saying:

> Even apart from the mandate of Rule 11, our duty to exercise a supervisory power over the administration of criminal justice in this circuit impels us to enjoin any such premature communication. Every consideration regarding the proper and just disposition of criminal cases teaches that the [trial judge's] intended communication to counsel for [defendant] of a proposed sentence in the event of a guilty plea at this pretrial stage would constitute a premature interference with the normal prosecution of the case which in all probability would render the fair and expeditious disposition of the charges more difficult and uncertain.[6]

In Carlson, supra, we took a similar position, after noting the absence of an express prohibition in our own rules of

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6. 535 F.2d at 203.

criminal procedure, saying:

> We recognize that the only substantial difference between Alaska Criminal Rule 11(e)(1) and the Federal criminal rule of the same number is that the federal rule contains the explicit prohibition against judicial participation in bargaining while the Alaska rule does not. The policies we have discussed persuade us that this difference should not be dispositive.[7]

The court, in Werker, supra, also expressed its concern for the public interest involved, saying:

> Rule 11 [of the Federal Rules of Criminal Procedure] implicitly recognizes that participation in the plea bargaining process depreciates the image of the trial judge that is necessary to public confidence in the impartial and objective administration of criminal justice. As a result of his participation, the judge is no longer a judicial officer or a neutral arbiter. Rather, he becomes or seems to become an advocate for the resolution he has suggested to the defendant.[8]

We agree.

The foregoing considerations persuade us to now grant the petition and to hold that henceforth Alaska's trial judges shall be totally barred from engaging in either charge or sentencing bargaining.[9] Accordingly, we direct

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7. 555 P.2d at 272 n.5.

8. 535 F.2d at 203.

9. This position is supported by the majority opinion in State v. Carlson, 555 P.2d at 272 and was specifically urged by Justice Rabinowitz, joined by Chief Justice Boochever, in his concurring opinion in that case, 555 P.2d at 274.

that a writ of prohibition issue enjoining the Honorable Seaborn J. Buckalew from passing sentence on the defendant below. The case is remanded to the superior court with instructions to the presiding judge to immediately assign the matter to another trial judge. The defendant, prior to any further proceedings in the superior court, shall be given an opportunity to withdraw his plea of guilty.

By our holding we do not intend any criticism of Judge Buckalew or his actions in this case.[10] Prior to our decision in Carlson, supra, there was nothing in the published opinions of this court or any of our rules of criminal procedure to suggest that such conduct by a trial judge would be considered improper. As already noted, our decision in Carlson was not rendered until three days after the events giving rise to the petition in the instant case. We are confident that Judge Buckalew was acting entirely in good faith and with genuine concern for the just and expeditious resolution of criminal cases.

We are compelled to discuss one further issue. As noted earlier in this opinion, the conference in Judge Buckalew's chambers was not electronically recorded. The absence of a record presents grave problems when it becomes

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10. Nor should our decision in any way be construed as commenting on the appropriateness of the sentence the trial court indicated it would impose.

necessary, as it did in this case, to reconstruct the events that occurred in the court below. We therefore take this opportunity to call to the attention of the trial bench and bar the following provisions of the Alaska Rules Governing the Administration of All Courts.

Rule 25 provides:

> So far as practicable, all judicial business involving the trial of causes and conferences with members of the Bar or litigants shall be transacted in open court. (emphasis added)

Rule 47(a) provides:

> Electronic recording equipment shall be installed in all courts for the purpose of recording all proceedings required by rule or law to be recorded. Such electronic recordings shall constitute the official court record. It shall be the responsibility of each judge or magistrate to require that the electronic recording equipment in his court be operated only by qualified personnel in such manner and under such conditions as to insure the production of a readable record of all proceedings.

We recognize that it is a common practice in the trial courts to conduct informal conferences in chambers. So long as all parties are in attendance or adequately represented, so as to avoid improper ex parte communications, there is nothing wrong with this practice. It has the advantage of allowing many of the routine matters surrounding any case to be disposed of quickly in a relaxed setting, and promotes the efficient use of court facilities by leaving courtrooms available for ongoing trials and other proceedings

where more formality is required. Nevertheless, in most cases a record should be made of such conferences.

REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

CONNOR, Justice, dissenting.

I respectfully dissent. I do not believe that the rationale of our recent decision in State v. Carlson, 555 P.2d 269 (Alaska 1976), requires us to extend its holding to the significantly different facts of this case.

In Carlson, the proposed disposition was the result of two-party negotiations between the defendant and the trial judge, after the prosecutor had refused to accept the defendant's offer. The proposed disposition included a plea of guilty to a lesser offense included in the one which the prosecutor had charged.

We held that form of bargain impermissible for two reasons. First, the judge's reduction of the charge without the consent of the prosecutor constituted an invasion of the prosecutorial function of charging defendants, and hence a violation of the constitutional principle of separation of powers. 555 P.2d at 271-72 and n.3. Second, we were concerned with possible unintended coercion of the defendant when the judge who will try him if he does not plead guilty acts essentially as the surrogate of the prosecution in the bargaining process. Id. at 272.

The circumstances of the instant case are significantly different.[1/] No "plea bargaining" in the usual sense of that

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1/ I concur in my colleagues' comments concerning the practice of holding hearings off the record.

term took place, with either the judge or the prosecutor. The defendant did not go to the judge with an offer which the prosecutor had refused to accept. Instead, Judge Buckalew informed the defendant of the type of sentence he could expect if he decided to plead guilty to the charged offense, contingent upon the presentence report not revealing additional information adverse to the defendant.

This judicial participation in no way concerned the charging function. I view it as an exercise of the judicial function of disposing of cases.[2/] Hence separation of powers considerations do not support a decision that the trial judge's conduct here was improper.

2/ The dictum in Public Defender Agency v. Superior Court, 534 P.2d 947, 950 (Alaska 1975), that the disposition of cases is an executive function refers, at most, to the discretion of the prosecutor to dismiss pending criminal cases. Read in light of the authorities cited to support it, it does not support an extension of the Carlson holding, which relied on Public Defender, to the instant case.

In Carlson itself we said,

> "[A]lthough the court may judicially determine the disposition of a charge based on the evidence, the law and its sentencing power, it may not, in effect, usurp the executive function of choosing which charge to initiate based on defendant's willingness to plead guilty to a lesser offense." 555 P.2d at 271-72.

Nor do I believe that the other basis of the Carlson decision, the fear of unintended judicial coercion of the defendant, supports the state's position in this case. Judge Buckalew did not give the defendant reason to believe he was the surrogate of the prosecution. He did not participate in give-and-take negotiating.

If anything, Judge Buckalew's indication to the defendant of his tentative sentencing decision enabled the defendant and his counsel to make a better-informed decision on whether to plead guilty. One of the consequences of the rule adopted by the majority is "paradoxically, to deny the defendant important and relevant information which might be helpful in choosing a plea. Such a rule enforces the defendant's . . . right to plead in the dark." Comment, Official Inducements to Plead Guilty, 32 U. Chi. L. Rev. 167, 183 (1964).

The general sentencing proclivities of trial judges are often well known to criminal defense attorneys. No one suggests that attorneys do not or should not use this information in advising their clients whether to plead guilty. See People v. Earegood, 162 N.W.2d 802, 809 (Mich. App. 1968). Here, Judge Buckalew gave the defendant and his counsel the benefit of his sentencing attitudes as applied to the circumstances of this defendant and this crime. In my view, this has more in common with attorneys' generalized

knowledge of judges' sentencing standards than with the negotiated disposition which we held improper in the Carlson case. See D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial 48, 92-94 (1966); Note, Guilty Plea Bargaining, 112 U. Pa. L. Rev. 865, 893 (1964).

I have serious doubts whether it is a wise response to the much-maligned practice of "plea bargaining" to require that it occur, if at all, away from ongoing judicial scrutiny. See generally Enker, Perspectives on Plea Bargaining, in Pres. Comm. on Law Enforcement & the Adm. of Justice, Task Force Report: The Courts 108, 110-12, 117-18 (1967); Note, Restructuring the Plea Bargain, 82 Yale L.J. 286 (1972). The defendant may feel as much, or more, coercion from the prosecutor during bargaining as from a judge. Note, supra, 82 Yale L.J. at 299, 305. See also Note, The Unconstitutionality of Plea Bargaining, 83 Harv. L. Rev. 1387, 1393 (1970).

I agree that trial judges should not engage in the type of conduct we held improper in Carlson, but disagree with the conclusion that the trial judge's conduct in this case should be prohibited. Accordingly, I would deny the writ and other relief requested by the state.

Rule 45. Speedy Trial.

(a) **Priorities in Scheduling Criminal Cases.** The court shall provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings and the trial of defendants in custody shall be given preference over other criminal cases. Trial dates in criminal cases in the superior court shall be set at the time of arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set for a date certain.

(b) **Speedy Trial Time Limits.** A defendant charged with either a felony or a misdemeanor shall be tried within 120 days from the time set forth in section (c).

(c) **When Time Commences to Run.** The time for trial shall begin running, without demand by the defendant, as follows:

(1) From the date the defendant is arrested, initially arraigned, or from the date the charge (complaint, indictment, or information) is served upon the defendant, whichever is first. The arrest, arraignment, or service upon the defendant of a complaint, indictment, or information, relating to subsequent charges arising out of the same conduct, or the refiling of the original charge, shall not extend the time, unless the evidence on which the new charge is based was not available to the prosecution at the time the defendant was either initially arrested, arraigned, or served with the original charge, and a showing of due diligence in securing defendant for the original charges is made by the prosecution; or

(2) If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, from the date of mistrial, order granting a new trial, or remand.

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for trial:

(1) The period of delay resulting from other proceedings concerning the defendant, including but not limited to motions to dismiss or suppress, examinations and hearings on competency, the period during which the defendant is incompetent to stand trial, interlocutory appeals, and trial of other charges.

No pre-trial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period.

(2) The period of delay resulting from an adjournment or continuance granted at the timely request or with the consent of the defendant and his counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal offenses. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial under this rule and of the effect of his consent.

(3) The period of delay resulting from a continuance granted at the timely request of the prosecution, if:

(a) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(b) The continuance is granted to allow the prosecuting attorney in a felony case additional time to prepare the state's case and additional time is justified because of the exceptional complexity of the particular case.

(4) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his whereabouts are unknown and in addition he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained or he resists being returned to the state for trial.

(5) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance in order that he may be tried within the time limits applicable to him.

(6) The period of delay resulting from detention of the

defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial. When the prosecution is unable to obtain the presence of the defendant in detention, and seeks to exclude the period of detention, the prosecution shall cause a detainer to be filed with the official having custody of the defendant and request the official to advise the defendant of the detainer and to inform the defendant of his rights under this rule.

(7) Other periods of delay for good cause.

(e) **Rulings on Motions to Dismiss or Continue.** In the event the court decides any motion brought pursuant to this rule, either to continue the time for trial or to dismiss the case, the reasons underlying the decision of the court shall be set forth in full on the record.

(f) **Waiver.** Failure of a defendant represented by counsel to move for dismissal of the charges under these rules prior to plea of guilty or trial shall constitute waiver of his rights under this rule.

(g) **Absolute Discharge.** If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, the court upon motion of the defendant shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense within the offense charged. (Amended by Supreme Court Order 131 effective September 1, 1971; by Supreme Court Order 151 on March 9, 1972, nunc pro tunc as of September 1, 1971; by Supreme Court Order 227 effective January 1, 1976; and by Supreme Court Order 240 effective February 4. 1976)