THE EFFECT OF THE OFFICIAL PROHIBITION OF PLEA BARGAINING ON THE DISPOSITION OF FELONY CASES IN THE ALASKA CRIMINAL COURTS

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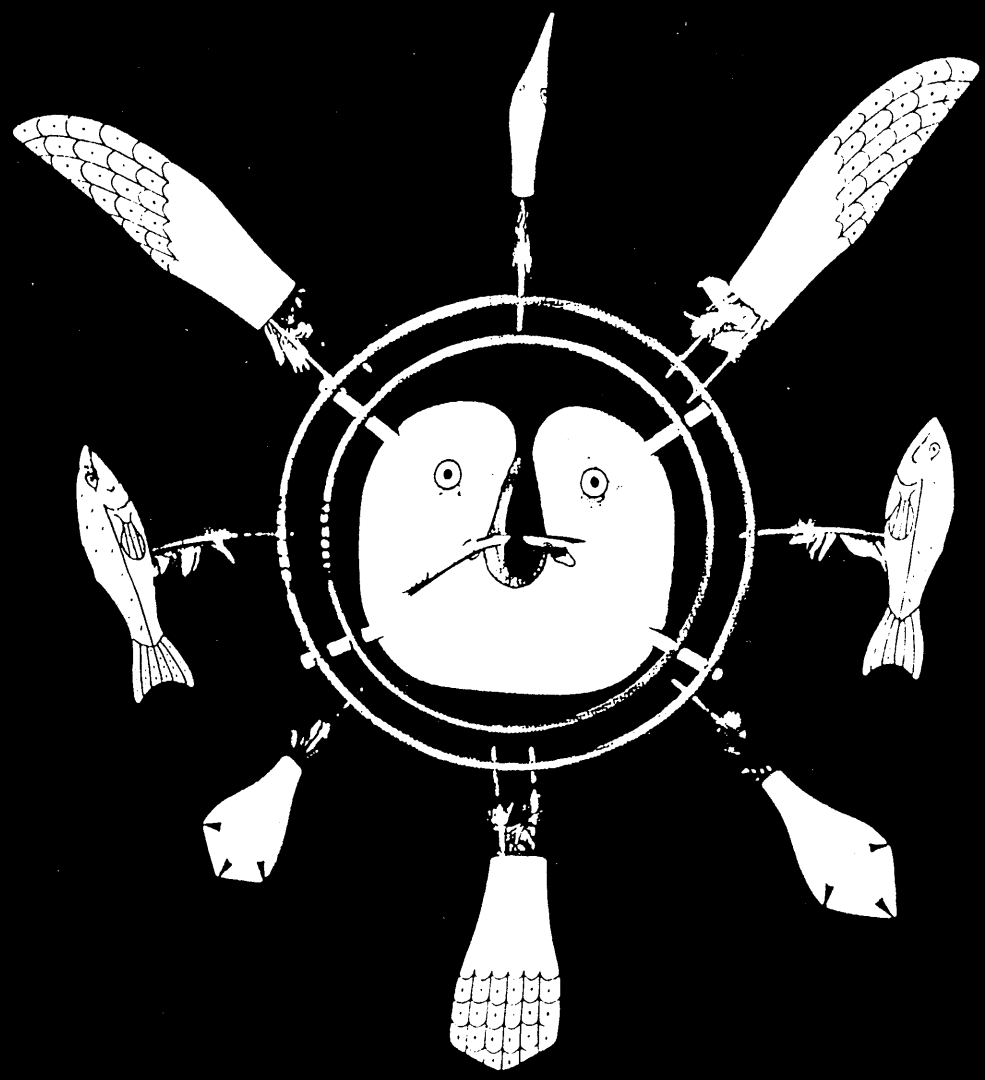

PLEA BARGAINING

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FINAL REPORT

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Our cover is an Eskimo ceremonial mask made by H. Shavings of Nunivak Island, in 1970. This one was carved of spruce; others may be of whalebone or driftwood. The central portion is the head of an animal, while the appendages represent other important animals--fish, the wings of birds, the foot of a bear. Masks were originally used during festivals, dances, and ceremonies to propitiate animal spirits. Most modern masks do not tell specific stories.

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FOREWORD

Our final report on the official prohibition of plea bargaining in Alaska surveys four years of practice in Alaska's three largest cities--Anchorage, Fairbanks, and Juneau. The interviews and felony statistical analysis which comprise this report summarize the results of hundreds of lengthy conversations about the effects of the prohibition, and the statistical analysis of nearly 3600 felony cases.

Our thanks must go to hundreds who helped to prepare this report, from the clerks in dozens of state offices who assisted in collecting data to heads of agencies who made their records available for inspection and their time available for interviews. The Plea Bargaining Project staff included Louis Menendez, Robin Binder, Marcia White, Peggy Viamonte, Colleen Smith, and Chuck Iliff, each of whom contributed hours of painstaking work. Martha Bender has earned our special thanks for her patience and care in typing and retyping this report. Two dozen coders for the felony statistical study pored for months through mountains of scattered records to track down each defendant and charge--their care and accuracy has made possible one of the most comprehensive studies of a criminal justice system ever undertaken.

Nearly every judge, prosecutor and criminal defense attorney in the three cities of our study donated time to us, describing the effects of the plea bargaining ban on his or her practice. Police investigators, patrolmen and probation officers added their views. Our Advisory Board members hypothesized, criticized, and helped make sense of some very complex and, at times, confused issues. Professor Gary Koch of the Department of Biostatistics at the University of North Carolina, Chapel Hill, assisted Stevens H. Clarke with the statistical analysis. Special thanks go to the members of the Judicial Council who supported our efforts in full through some very trying times. Attorney General Avrum Gross also deserves thanks for graciously donating his valuable time to Advisory Board meetings and providing us with much illuminating commentary on his policy. All of these people gave their best to the project; in doing so, they have helped to make for a fascinating and rewarding three years for us.

Finally, we thank the National Institute of Law and Enforcement and Criminal Justice and its staff who have assisted us at every step with funding, thoughtful analysis and encouragement.

INTRODUCTION

In July of 1975, when the attorney general of Alaska declared an official, statewide prohibition of plea bargaining, the announcement surprised analysts of criminal justice almost as much as it did most Alaskan practitioners. Plea bargaining had been partially and experimentally forbidden in a few American jurisdictions, but these experiments were marked by caution and were quite limited in scope. Alaska's prohibition, in sharp contrast, contained very few exceptions to a general rule made applicable to all felonies and all misdemeanors throughout the state. Moreoever, the attorney general instituted his "noble experiment" without the benefit of additional funding or added resources of any kind, and without delay. Made public on July 3, 1975, the policy took effect on August 15 of the same year.

The Alaska Judicial Council's evaluation of the new policy, funded by the National Institute for Law Enforcement and Criminal Justice, began soon after the experiment itself was initiated. The evaluation design included two perspectives on the policy's implementation and effect: it combined sophisticated statistical "modeling" with discursive, open-ended interviews to elicit the human practices and perceptions underlying the statistical evidence.

Our findings strongly suggest that current thinking about plea bargaining and the effects of reforming or abolishing it should be reconsidered. We found that the relationships thought to exist between the presence or absence of plea bargaining and any number of "evils" or "benefits" are apparently either absent, or accidental rather than causal associations. For example, although we concluded that the institution of plea bargaining was effectively curtailed in Alaska, and that it had not been replaced by implicit or covert forms of the same practice, we also found the following:

* Court processes did not bog down; they accelerated.
* Defendants continued to plead guilty at about the same rates.
* Although the trial rate increased substantially, the number of trials remained small.
* Sentences became more severe--but only for relatively less serious offenses and relatively "clean" offenders.

* The conviction and sentencing of persons charged with serious crimes of violence such as murder, rape, robbery, and felonious assault appeared completely unaffected by the change in policy.

* Conviction rates did not change significantly overall, although prosecutors were winning a larger proportion of those cases that actually went to trial.

* Local styles of prosecuting and judging were of overriding importance: Anchorage, Fairbanks and Juneau differed so greatly that we concluded the situs of prosecution had stronger associations with differences in the outcomes of court dispositions than whether or not those dispositions were subject to the policy against plea bargaining.

Most of our original hypotheses were disproven, and we were frequently surprised by the discrepancies between our expectations and the actual effects of the Alaska's prohibition. Perhaps some of these unanticipated findings will serve to open minds and lead to a reexamination of old beliefs about plea bargaining.

PART ONE

ANALYSIS OF INTERVIEWS

Michael L. Rubinstein

> After our lengthy and heated discussions of last week on [plea bargaining], I have given the matter a great deal of additional thought . . . . 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) . . . 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 . . .
>
> (4) . . . 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 [which] must be approved by Dan Hickey [Chief Prosecutor for the Attorney General] or myself. [Attorney General's memorandum to all district attorneys and assistant district attorneys, July 3, 1975]

I. Alaskan Practice Before the Ban on Plea Bargaining

The circulation of the above memorandum by Attorney General Avrum Gross initiated his attempt to ban plea bargaining in Alaska, where, for as long as most practitioners could recall, it had been taken completely for granted.[1/] The state supreme court had officially recognized the legitimacy of plea bargaining by amending the Rules of Criminal Procedure to provide in Rule 11(e) that the terms of all negotiated settlements had to be disclosed on the court record. This Rule also incorporated a guarantee that

if the judge decided to impose a sentence longer than the one bargained for, the defendant was permitted to withdraw his official admission of guilt and ask for a trial.[2/] We interviewed practitioners in justice-related fields in Anchorage, Fairbanks and Juneau to learn their perspectives on how, if at all, the Attorney General's new policy affected the administration of justice.[3/] Did the ban on plea bargaining make a significant difference?

First we asked how criminal cases were handled before the ban. How was plea bargaining conducted in 1975? How often did attorneys resolve criminal cases by negotiations? One judge said that before August 15, 1975 plea bargaining had been an institution.

> The institution of plea bargaining [was] the understanding, tacit or explicit, that [in] every case--unless it was crystal clear that you had a client who maintained his innocence--you went to the D.A. to see what could be worked out. You weren't doing your job unless you did go in there and make the effort to negotiate, and the D.A. wasn't doing his job unless he'd listen to a pitch and make concessions.

Defense attorneys almost always tried to negotiate with prosecutors; and the prosecutors would usually enter into the bargaining, although sometimes the parties would fail to reach an agreement. This occurred more often in aggravated cases where the state's best offer might be a long jail sentence, or where the judge could be expected to hand down

a stiff penalty regardless of any recommendation. In these circumstances some defendants calculated they had little to lose and everything to gain by gambling on a trial. Occasionally an accused person strongly maintained his innocence or simply refused to "cop out" as a matter of principle. Such cases were either tried or dismissed. Other cases went to trial because the parties held widely divergent views on the strength of the evidence and were therefore unable to arrive at common ground. But a trial was not the only response to the occasional failure to agree on a disposition. The defense might admit to guilt as charged within the context of the negotiations, but might nevertheless disagree strongly over what the case was "worth" in months or years of jail time, and therefore refuse to accept the district attorney's best offer. Rather than go to trial, the defendant might plead guilty and go to an "open" sentencing hearing at which each side might argue and sometimes call witnesses in support of its notion of a fair sentence.

> In effect you were betting that you could predict the judge's sentence better than the D.A. You didn't need the D.A.'s recommendation since you thought you would do better for your client than the D.A. was willing to offer anyway. If you were right, and your client got a lower sentence, this was an indication that the D.A. was out of line. He was out of touch with reality. If your guy got a higher sentence, maybe you were the one who was out of touch. [defense attorney]

Trials and open sentencings were exceptions to the rule; they were breakdowns in the institution of plea bargaining--in the basic principle of sitting down and working things out. One private attorney described the negotiation process this way:

> Two lawyers--reasonable people--got together, looked at their hole cards, worked out a proposed deal, went to the judge, and the judge said: 'Yeah, I think that sounds reasonable,' or 'No, I don't think that's right.'

Counsel had to negotiate according to their perceptions of the sentencing practices of the judge. It would be futile for two attorneys to settle upon a proposed disposition unless they had reason to believe their solution would receive ultimate judicial acceptance. A judge's rejection of the settlement would not only mean wasted effort and disappointment, but a diminution in credibility for the lawyers, especially the assistant district attorney, who probably had to appear before the same judge many times. In the words of one superior court judge who had had previous experience both as a prosecutor and as a defense attorney:

> Most of the bargains . . . were within six months of what the judge would've given the defendant without any bargain. You always had to read your judge.

If they mis-read their judge and he decided to impose a longer sentence, Rule 11(e), allowing the defendant to

withdraw his guilty plea, was good insurance against surprise.

Liberal rules permitting pre-trial discovery of the state's evidence gave defense counsel access to information which could form a factual foundation for plea negotiations over what the case was "worth."[4/] Preliminary hearings in the lower courts also encouraged settlements by providing live-witness previews of trials. These "dress rehearsals" brought about early dispositions well grounded in the evidence.

> [I]t was not unusual to have the sentence bargain arrived at shortly after the preliminary hearing, prior to the indictment even. . . .
>
> There was an attempt by both the attorneys and the client to sit in there, assess the evidence and to talk to your client. At that point or within the next few weeks there was generally some sort of agreement which would be worked out. . . . It was a situation where the assistant [D.A.] and you could see the evidence at the preliminary hearing. If there was pertinent defense information which might help dispose of the case you would generally share that information, at least in general terms. . . . And if it looked like you could work something out, then it would be to your benefit to go into specifics. . . . [assistant public defender]

Until the witnesses actually testify at trial a superior court judge is often in a poor position to know how strong the evidence is. Has the state located its essential witnesses, and are they credible? Are there inconsistencies

in the evidence? Are there any legal or constitutional infirmities in the underpinnings of the state's case? Is the defendant in a position to testify, and will he make a good impression on the jury? Partly because judges realized that only counsel possessed critical trial-related information of this nature, and partly in deference to the office of the district attorney as the state's representative--and the agency bringing the charges in the first instance--courts tended to follow prosecutors' recommendations.

> Sometimes the D.A. would give you a really good deal on a sentence, one that seemed a lot lower than the case was worth, but this would usually be in a case with a serious flaw in it from their point of view. Like their main witness is really squirrelly or confused, or maybe he has made a bunch of prior inconsistent statements to the cops or to other witnesses. The D.A. would usually hint to the judge at the sentencing that the case had 'problems of proof;' and this would justify the low sentence recommendation, so the judge would follow it. [defense attorney]

Attorneys were generally successful in "reading their judges;" they seldom asked them to swallow unpalatable sentence recommendations. Accordingly, judicial rejection of plea bargains was exceptional.

Another reason plea bargains were seldom rejected had to do with the practice of holding pre-plea conferences. About half the judges in the study probably participated in these meetings, usually conducted in the judge's chambers.[5/] A pre-plea conference might be requested, for example, if

the parties were close to working out a settlement but were stalled on some aspect of it. The judge might tip the scales by letting the parties see how the court was inclined to view the matter. Although judges sometimes held conferences to encourage settlements, more often they entered the negotiations after the parties had already concluded a deal; often the defendant or his attorney would seek some assurance that the judge would approve their arrangement before it was openly stated on the court record. Pre-plea conferences could be delicate affairs, but they were useful in preventing judicially unacceptable settlements from being publicly proposed in open court and rejected. Without such meetings to "nail down" negotiated settlements attorneys might have lost face more often, defendants might have experienced acute anxiety, and all the actors would have run an increased risk of being thrust unwillingly into trial by the unanticipated response of the judge.

Some practitioners advanced other explanations for why judges rejected very few plea bargains:

> The system was one of diffuse responsibility. When the D.A. decided to give in to the defense attorney's demands, he would say to himself, 'It's not really my decision--the judge will have to review the bargain.' At the same time, the judge would say to himself, 'The prosecutor represents the state. If he's happy with this sentence, why should I stand in the way?' [assistant district attorney]

* * *

> Whenever the judge rejected an agreement he had to allow the defendant to stand trial, and judges didn't like trials. As a result, they refused to depart from plea agreements even when those agreements were plainly unwarranted. It worked both ways. When a plea agreement called for piped-in sunshine and we recommended probation, the judges still stuck to the bargain. [probation officer]

Alaskan practitioners were generally comfortable with the system of plea bargaining, and there were few rumbles of discontent to presage the Attorney General's announcement. Plea bargaining allowed attorneys to know the outcomes of cases in advance, and thus to advise their clients of consequences, and to make professional decisions from a secure position.

> There were some bad things with plea bargaining. Occasionally, you would just really steal a case. But most cases didn't happen that way. They were done on the basis of what the chances were at trial. They were usually pretty slight. You would just factor [those chances] in and come up with a reasonable sentence. Most people would plead guilty knowing that their case was going to be treated in a reasonable manner. As a defense attorney, you were buying some insurance that the judge would not have had a bad breakfast or decide that your guy was suddenly the worst type of offender. [assistant public defender]

This assistant public defender expressed an attitude, almost a credo, that was shared by many defense counsel and prosecutors prior to the ban on plea bargaining: lawyers and

clients should work things out on their own; to leave the resolution of a case entirely in the hands of a judge is to risk an "off-the-wall" result desired by neither side.

There were certain abusive or potentially abusive practices associated with Alaskan plea bargaining. The system of negotiated pleas had clear administrative advantages for prosecutors who could manipulate its possibilities: it gave them better control over the management of their caseloads. A prosecutor could thin the ranks of file-folders on his desk either by offering defendants proposals too tempting to reject, or by the threat of escalating his sentence recommendation over time to discourage his adversary from raising obstacles in the path of the prosecution.

> In the past we could make deals all the way along. You can really use a plea negotiation system to make things very efficient. I was starting my own procedure just before the plea bargaining policy was announced. I would recommend my lowest sentences right after the case was filed. If the defendant filed a lot of motions or made me work a lot I would make my recommendations higher. I would accept no negotiated pleas during the last week prior to the date the case was set for trial. This was a very efficient system and I could control my caseload. The present system is very inefficient and out of our control once the case gets beyond intake. We have to prepare for each case as if it were going to trial. Then the defendant comes in at the last day, after the jury is picked, and pleads guilty. [assistant district attorney]

The plenary power of each assistant district attorney to encourage guilty pleas by reducing the charge, the sentence recommendation, or both, made it easier for the state to prosecute in marginal cases. Prosecutors could file criminal complaints or even seek felony indictments without close scrutiny of the evidence. The prosecutor knew that ultimately any case could be negotiated to a conclusion; and that the initial charge need not bear very much relationship to the final one, if any. An occasional defendant charged on the basis of uncertain evidence might be induced to plead guilty with the assurance of a minimal penalty rather than run the risk of more severe sanctions in the event a jury returned a surprise guilty verdict. However, we found little reason to believe that plea bargaining led to the conviction of innocent persons in Alaska.

> I only know of one case where a guy pled guilty to something, and I believe he may actually have been innocent--although I'm not really sure. It was my own case. The guy was offered a deal for an S.I.S. [suspended imposition of sentence] with straight probation, so he'd get no time and no criminal record. We were right at the trial, picking the jury. I thought that there was a chance he'd get convicted--although he had a good defense. And if he did, I knew the judge would give him at least 90 days. A couple of weeks later he insisted on withdrawing his plea; he was allowed to do so, and his case was eventually dismissed. [defense attorney]

Plea bargaining was also useful for avoiding conflicts and arguments with the police over the quality of their investigations:

> Before the new policy we were at fault in taking just about everything the cops would bring over here. [assistant district attorney]
>
> * * *
>
> Before, the cops would come to us with a very bad crime--say a guy is all cut up--or a bad rape. We would take them just because of the nature of the crime. Maybe the guy gave a confession but it was bad. Before, we would have charged the guy and dealt it out.[6] [assistant district attorney]

Plea bargaining could be abused by prosecutors who wished to avoid work. Some comments by assistant district attorneys seemed to reflect feelings of guilt centered on their own actions while the institution of plea bargaining was still thriving.

> The way it was before, negotiating was almost mandatory. We had so few trials, we were afraid of them. It was a traumatic thing--it's not easy to go in there and lose. I remember one prosecutor had eleven cases [set for trial] in one week. He hadn't even looked at one of the files. He dealt them all out on the last day, and he was proud of himself. I'm afraid we were giving away the farm too often. It was a little difficult to sleep at night. [assistant district attorney]
>
> * * *
>
> It's easier just to plea bargain something out than go through the hassle of a trial. We became too lax. [assistant district attorney]
>
> * * *

> The whole system became ridiculous. We were giving away cases we plainly should have tried. We often said to ourselves, 'Hell, I don't want to go to trial with this turkey; I want to go on vacation next week.' We learned that a prosecutor can get rid of everything if he just goes low enough. [assistant district attorney]
>
> * * *
>
> In negotiated pleas in the old days the D.A.'s would lie at sentencing to support their recommendations. Or they would withhold information from the judge. [assistant district attorney]

II. The Rationale for the New Policy

The Attorney General's July 1975 edict abolishing plea bargaining statewide was preceded in February of that year by a local experiment undertaken in Fairbanks on the initiative of the District Attorney for the Fourth Judicial District. The Fairbanks District Attorney's rationale for his own plea-bargaining ban was clear and simple: he was concerned with returning the sentencing function to the courts in order to bring about longer sentences.

> The excuse that the courts were giving to the public for their lenient sentencing was that their hands were tied by the district attorney's sentence bargaining. I wanted to return the sentencing function to the courts, and that was my main purpose in carrying out this policy.

Q. But what if the judges were more lenient than you? What if they took over the sentence function, as you say, but ended up giving sentences that you didn't like?

A. I would've attempted to focus public attention on their performance.

When the Attorney General later embraced the notion of restoring sentencing to judges as one of the primary goals of his policy, he denied that this was intended to encourage harsher penalties.

> The real question is whether the judge's independent judgment is producing any type of better sentencing than was going on prior to the policy when sentences were arrived at through deals. Now in terms of objective criteria I know none. Certainly, length of sentence is not a significant criterion; it may be exactly the same. They may be readjusted. Some people may be getting longer sentences. Some people may be getting shorter sentences. [Meeting of Advisory Board to Alaska Judicial Council's Plea Bargaining Project, March 31, 1978]

Even if longer sentences did result, the Attorney General was unconvinced that they were products of his policy.

> And I'm inclined to believe that if we hadn't done a thing in terms of plea bargaining, sentencing would still be higher today. I think the sentences are a reflection of the temper of the times. And people are more conservative; and I think they are just generally more antagonistic toward violent crime today than they were traditionally.
>
> * * *
>
> Yeah . . . times are changing very fast. Remember this is pipeline impact time and people are upset about the fact that rapes are taking place on the street in broad daylight. This isn't New York City. [Id.]

The Attorney General characterized plea bargaining as the "least just aspect of the criminal justice system." He said it was "degrading to deal," and that elimination of plea bargaining would be worthwhile for its own sake. In his view, plea bargaining inappropriately combined considerations of evidentiary strength and predictions of trial success or failure with other considerations pertinent to the treatment or punishment of the already convicted offender. The Attorney General said that the only legitimate issue in sentencing was how the court ought to respond to a proven instance of criminal conduct by an individual defendant; the strength of the evidence and questions of "triability" should be regarded separately from sentencing factors.

> Sentencing, in a nutshell, should be divorced from a decision on whether there will be a trial and whether an individual is guilty. But under sentence bargaining, the two are linked. [Attorney General Avrum Gross, paper for Special National Workshop in Plea Bargaining, June 16, 1978.]

* * *

> Sentencing should be judicial--it wasn't. A guy [who deserves ten years] shouldn't get five years just because you have a 50-50 chance of conviction. I wanted all extraneous factors eliminated so the judge was free to decide on the sentence considering only what's good for the defendant and what's good for society. [Attorney General Avrum Gross, Statewide Judicial Conference, Anchorage, Alaska, June 2, 1976.]

The Attorney General also wished to use no-plea-bargaining as an administrative tool to help him achieve better control over the regional district attorneys and their assistants, all of whom work for the Department of Law under his direction.

> The major concern I had after I was appointed Attorney General was the general level of performance of prosecutors' offices. There were lots of lag times, the conviction rates were appalling, especially in one office. It's very difficult to pinpoint what the problem was, whether police-D.A. relationships, court system procedures or what.[7]

These allusions to inefficiencies and weaknesses are consistent with the statements of some prosecutors reported earlier--admissions that they had become lazy and lax prior to the policy change. One Anchorage prosecutor explained the reasons behind the Attorney General's policy as he viewed them:

> Basically, there is nothing wrong with plea bargaining, and I don't think the A.G. believes that there is, either. What I'm saying is that when I was here in 1973 one of the top trial men in this office, who had a lot of felony files, and who is incidentally no longer with us, didn't try a single case in 1973. You can't tell me that every one of those cases had evidentiary problems.

Finally, the Attorney General believed that plea bargaining tended to obscure the individual contribution to justice of each of the components of the system; consequently

it hampered reform efforts by making proper allocation of responsibility more difficult. By means of narrowing the prosecutor's functions, and necessarily having a similar effect on the role of defense counsel, the Attorney General sought to bring about improvements in the quality of justice. Implied in his premise was that the system's heavy reliance upon settlement of criminal cases at the discretion of lawyers was producing--or at least hiding, injustice.

> Plea bargaining tends to be the glue that holds together all the loose joints of the system. For instance, if you start from a bad police investigation, what you do is you can plea bargain it down to something. That covers that up. If you get a D.A. who is a lousy D.A., who doesn't want to try cases, he covers it up by plea bargaining. If you have a judge who doesn't want to try cases because he's a bad judge, he's lazy, he gives all kinds of bad sentences, one thing or another, you plea bargain around him. You cover up all the deficiencies in the system by the device of plea bargaining.
>
> And when you eliminate it, what happens is the whole thing tends to start functioning. The police have to investigate the cases a little better, the D.A.'s have to try them better, they have to try them faster, the court system has to accommodate more cases coming through faster, and everything starts to run just a little bit better. [Meeting of Advisory Board of Alaska Judicial Council's Plea Bargaining Project March 31, 1978]

Some experienced practitioners doubted the Attorney General's premise that the quality of justice could be improved by changing the procedural ground rules.

> You see, you are assuming that under a no-plea-bargaining system people will suddenly become ethical and idealistic. Either they are or they aren't. The gimmick of eliminating plea bargaining isn't going to make that difference. There is nothing to prevent the district attorney's office from carefully weighing charges, from not overcharging, from carefully selecting cases that are to be prosecuted, if they so desire . . . with or without the plea bargaining system. If they don't, it's because they're . . . sloppy, unethical, careless, don't give a damn.
>
> * * *
>
> And what I'm saying to you is, the gimmickery of abolishing plea bargaining is neither going to improve nor otherwise noticeably affect the system for two reasons. Number one, because the realities of the situation will force substitutes which amount virtually to the same thing. And number two, the quality of justice that is produced is really a function of the quality of the minds and hearts that are involved, not of the rules or the procedures. And there is nothing inherently bad in plea bargaining. If it is abused, it is because there are people who abuse it, and these same people will abuse other techniques and other means.

The Problem of Charge Bargaining

The Attorney General's memoranda and subsequent statements distinguish between charge bargaining and sentence bargaining. Although the memos devote much attention to the former practice, it was repeatedly stressed that the curtailment of sentence bargaining was the central aim of the policy. First, attorney-negotiated dispositions stood out as the clearest obstacles to the stated goal of im-

proving justice by returning sentencing to judges; and second, as we shall see, it was far easier to prohibit sentence bargaining than to make discrete judgments on instances of "inappropriate" reductions or dismissals of charges.

In order to prevent the subversion of the sentence-bargaining policy the Attorney General instructed prosecutors that, except under certain limited circumstances, they were to make absolutely no recommendation concerning the length of a defendant's sentence.[8/] Assistant district attorneys were to "bring out all factors relevant to a consideration of sentence," but they were not to mention any numbers, nor were they to recommend any specific form of disposition, such as probation. The Attorney General explained the reasons underlying his position.

> By forbidding the district attorneys or assistant district attorneys to make sentence recommendations in terms of specific years, I tried to anticipate under-the-table bargaining that might go on. [For instance], you are defense counsel, you say to me, 'Look, I don't want to make a bargain with you, all I want to know is what you are going to recommend if the person pleads guilty.' 'Five years?' 'Gee, that seems awfully high to me. You know, if you were to recommend four years the guy would probably plead guilty, but five just sounds too high.' Then two weeks go by and the guy calls up and says: 'I've decided I'm going to recommend four years. Now, <u>you</u> do what you want.' All right? Lo and behold, the guy says, 'Okay, I'll plead.' That's an underhanded form of sentence bargaining. By forbidding

> them to make numerical recommendations of any kind, I cut out that possibility. [Meeting of Advisory Board of Alaska Judicial Council's Plea Bargaining Project, March 31, 1978]

* * *

Charge bargaining presented more complex problems, not only of definition, but of implementation and evaluation as well. An unhappy choice of language in the Attorney General's first memorandum created the impression that bargaining might not really be against the new rules.

> (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. [Memorandum of July 3, 1975. Emphasis supplied.]

The paragraph above seems to embrace implicitly contradictory propositions. First, that bargaining ("plea negotiations") is permissible in multiple-count complaints and indictments and "with respect to . . . the ultimate charge;" and second, that "reductions [in the charge] should not occur simply to obtain a plea of guilty." To many practitioners "plea negotiations" connoted, among other things, the practice of reducing charges or dismissing one or more counts in multiple-count pleadings in exchange for the defendant's guilty plea to the remaining charges, or to

a reduced offense. The Attorney General seemed to be saying that these "plea negotiations" were still permissible. On the other hand, he also said they "should not occur simply to obtain a plea of guilty." But why else reduce or dismiss charges if not in exchange for guilty pleas? To confer a benefit on the defendant by reducing charges--even though the reduction was justified by the evidence--seemed inconsistent with normal adversary relations unless payment were exacted in the form of a guilty plea. Can an assistant district attorney be expected to reduce a charge or dismiss certain counts in an indictment if he might still be forced to trial on the remaining counts, or on the reduced charge? If one was going to war in any event, why not use the biggest guns available? This charging policy proved hard to accept.

Two weeks after he circulated his first instructions, recognizing that his new policy on plea bargaining was attracting wide attention, the Attorney General took further pains to make himself clearly understood.

> 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. [Memorandum of July 14, 1975]

On the third page of the same memorandum the Attorney General discussed the portion of his previous memo that caused so much confusion.

> 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.

The Attorney General's reasons were, first, that it would "violate the spirit of what we are trying to do"--to make the administration of justice more fair. Second, he believed prosecutors "will have more chance of obtaining a guilty plea [if they] make the charge realistic in the first instance." And his third reason was that

> People who believe that this change cannot be accomplished, . . . 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 <u>only</u> reduce charges when the level of proof warrants. [emphasis in original]

Apparently, not even this explicit memorandum made a sufficient impression upon some prosecutors. On June 30, 1976,

a year after the second memo, the Attorney General issued still a third memorandum to his staff.

> 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. [emphasis in original]
>
> * * *
>
> 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 [Assault With a Dangerous Weapon] to A & B? [Assault and Battery] 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 preceding quotations from the Attorney General's three memoranda show the complexity of the issue and suggest some of the difficulties confronting a policy-maker who attempts to eliminate the abusive aspects of charge bargaining and still leave room for the legitimate exercise of professional discretion. The statements that follow reflect even more clearly than his memoranda the Attorney General's thoughts on charge bargaining and how to control it. First, what exactly did he mean by "charge bargaining?"

> [B]y charge bargaining I mean it in the worst connotation, I mean sitting down and giving up on a case for the convenience of getting a guilty plea and avoiding a trial. . . . Charge bargaining [the way it has operated during] twenty and thirty years of prevailing practice [in] criminal cases is to charge high and negotiate down, or to charge a lot of counts and negotiate down. If you can change that philosophy on the part of prosecutors you will eliminate charge bargaining, but not through a memorandum. Because there is no objective criterion to control it. The only way to control it is to control the attitudes of the people who engage in it. And that cannot happen over night, and I didn't pretend that it would. I'm surprised that it's happening as much as it has. [Advisory Board Meeting, March 31, 1978]

The Attorney General re-emphasized that he did not oppose all charge reductions or dismissals but only those motivated by "the convenience of getting a guilty plea and avoiding a trial." The focus on the assistant district attorney's state of mind as the central issue leads to difficulties of administrative control: how to tell whether any instance of reduction or dismissal of charges was or was not motivated by mere convenience and the desire to avoid a trial? In an imaginary confrontation between himself and a member of his staff, the Attorney General dramatized the problem.

> Charge bargaining is almost impossible to track because any time you come to someone and confront them with the fact that such and such a charge has been reduced and a guilty plea has been shortly thereafter entered, and you say that obviously a bargain took place here, you get a response: 'Now wait a minute, you specifically said in your memorandum that we should reduce charges when we feel that it is justified.' And I stand behind that. 'The defense attorney came in and he told me his case. I listened to it, and I'm convinced that it was not second degree murder. I couldn't prove second degree murder. I had a one-in-ten chance of proving it. All right, therefore, under your policy I felt that it was proper to reduce it to manslaughter. I don't feel like I shouldn't do that simply because he is going to enter a guilty plea when I do, and it will look like charge bargaining.'
>
> Now that's the identical situation to when somebody comes in and says, or even signals, 'If you drop it to manslaughter, I'll enter a plea.' But I don't know

> how to tell the difference, short of putting somebody on a lie detector test. . . . . I mean, I'm not positive, for instance, that all charge bargains are necessarily bad.

In fact, the Attorney General was sure that charge bargains were bad. He repeatedly indicated that a prosecutor's decision to dismiss or reduce a charge should never be based on a bargain: it should not turn upon the agreement of the defense attorney to advise his client to change his plea. This exchange or quid pro quo is the essence of the "bargain" and was precisely what the Attorney General did not want. What he probably meant to say in the preceding quotation was that there were many situations in which charge reductions or dismissals were quite proper--even necessary--as long as they were not elements of a prearranged settlement for the purpose of getting a guilty plea. Inadvertent misuse of the terms "bargain" and "negotiations" were the kinds of unconscious mistakes that probably led to misunderstanding. Partly because of this ambiguity, and partly because the Attorney General's thoughts on charge adjustment were difficult to express in categorical and unqualified language, the policy was received by others with a measure of confusion and uncertainty, as evidenced by the following remarks:

> The Attorney General has given so damn many instructions that they [prosecutors] can follow any one of them. [defense attorney]

* * *

> The Attorney General's directives to the district attorneys were less than clear. The D.A.'s would try something, there would be a new meeting with the Attorney General at which he would tell them not to do it, then they would try something else. [private attorney]

* * *

> There has been real confusion about when we could reduce charges and when we could accept guilty pleas to less than all of the counts in a multiple-count indictment. [district attorney]

* * *

> Certainly, every time our head D.A. told us what the policy was it had a different twist to it, so you didn't ever really know. [assistant district attorney]

It is also significant that the Attorney General did not adopt any procedures for monitoring charging practices on a periodic basis in order to enforce policy compliance. In fact, he specifically rejected this option, as is evident from his memo of June 30, 1976.

> 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.

As we shall see in Section Two of this report, which describes a statistical analysis of the effects of the ban on plea bargaining, there was little change in patterns of charge adjustment between the year before the policy and the year after it. There is some statistical evidence that fewer pleas to reduced charges were entered during the first year following the new policy, and that fewer charges were dismissed in multiple-count cases. However, with the exception of some specific offense classes, (e.g. drug felonies), we found very little significant change in patterns of charge transformation associated with implementation of the policy against plea bargaining.[9/] Nevertheless, follow-up interviews in 1977 and 1978 strongly suggest, at least in one location, that reductions in charges have become quite restricted and uncommon. The comments of some Fairbanks defense counsel illustrate the point:

> In Anchorage, and almost everywhere else, there are more loopholes than here. [Fairbanks] As time goes on I keep seeing the loopholes get tightened up here, to the point where your only advice to a client is, 'Well, you can plead guilty, or you can go to trial.' It seems to me that what you've done is you've just blocked everyone into a lock step. [assistant public defender]

* * *

> In Fairbanks, the district attorney's standard phrase is, 'Let the jury decide.' They'll never reduce the charge once they've made the initial determination. They make work for themselves; they have a lot of unnecessary trials. There is very little discretion given to the individual attorneys. [private attorney]

These comments applied to Fairbanks only, and they were consistent with many others from that city. However, most Anchorage and Juneau subjects were not nearly so sure that major changes in charge adjustment occurred. This is but one of several areas in which interview data and statistics both suggested marked variations among the three cities in important aspects of policy implementation.

III. Was Plea Bargaining Eliminated?

The answer to this question depends mainly on how one defines "plea bargaining," and on what one means by "eliminated." The following sections describe some of the effects of the Attorney General's policy and the extent to which these can be said to evidence the demise of the institution of plea bargaining.

A. General Observations

The Attorney General's policy had very substantial effects on the institution of plea bargaining, at least in Anchorage and Fairbanks. This was clear from interviews conducted from 1975 through 1978 with judges, assistant public defenders, private defense counsel and assistant

district attorneys. Some of these practitioners were initially quite skeptical of the possibility of enforcing the plea-bargaining ban; others were ideologically opposed to the notion of abolishing the practice. Even so, most lawyers and judges--however reluctantly--conceded a level of implementation that surpassed their expectations. The following remarks typify the responses.

> If you were to say there's no plea bargaining, then it's all shot full of holes. But if you were to say there's a substantial reduction in plea bargaining--sure. [assistant public defender]

* *

> Only about 5 to 7 percent of my cases are actually plea bargained. Most times, the district attorney's response is, 'We can't plea bargain.' Other times, it's, 'We'll check and see.' I don't know who they're checking with, or whether they check with anyone at all. More than 90 percent of the time, they don't say that. [They don't bargain.] [assistant public defender]

* *

> I don't think plea bargaining has been eliminated totally, but I think it's been reduced to where it's miniscule--and those exceptions go to the district attorney for his decision. Assistant district attorneys are human--sometimes they'll back away from a trial too. [assistant district attorney]

* *

> My impression is that the policy is being carried out in a relatively pure form; and that it's good. [superior court judge]

* *

At first, I tended to go over and discuss cases with them [the Fairbanks district attorney's office] and see if we could work something out one way or the other. Almost uniformly it's been turned against me, to where I regretted even going over to share the information. It's a mental chore talking to the assistants now; and it makes the practice not more adversarial, but pettier. They'll make you go through written motions which really serve no purpose, other than to produce a lot of paperwork. [assistant public defender]

* *

The D.A. has less input at sentencing now. I see injustices. I see people forced to go to trial because we are not permitted to negotiate. [assistant district attorney]

* *

Nobody talks to anybody and nobody settles anything. [superior court judge]

* *

I think they're doing a pretty good job of drying up plea bargaining in general. . . . I have only in one instance since entering private practice [subsequent to the policy change] gotten to the point on negotiation where we were talking numbers. [private attorney]

* *

The rule is that in 65 percent of your cases there's no discussion. The D.A.'s input is insignificant; who the defense attorney is is insignificant. It's the judge! . . . . There's not that much that can be done [for the client]. I mean, 15 minutes . . . at the most, trying to soften the D.A. before the sentencing. A lot of times you're just processing people through. In a large percent of your cases you've done absolutely nothing for your client. [assistant public defender]

* *

> Seventy-five to eighty percent of the cases that are initiated seem to make their way through the system without any significant discussion or negotiation; and although anyone who does a lot of criminal practice can think of a lot of examples in which there are multiple defendants and multiple counts, and some sort of negotiated disposition, I think you have to take those in the context of the number of cases involved. [assistant public defender]

We conclude that plea bargaining as an institution was clearly curtailed. The routine expectation of a negotiated settlement was removed; for most practitioners justifiable reliance on negotiation to settle criminal cases greatly diminished in importance. There is less face-to-face discussion between adversaries, and when meetings do occur, they are not usually as productive as they used to be. This is how an assistant public defender in Anchorage described his attempts to negotiate with the local district attorney's office after the new policy went into effect.

> I mean, to me it's wasted energy. Like I've said this before; there isn't a lot to talk about with felony cases. The cases that come through now are well screened. What can you do? I mean the district attorney says: 'Look, it's a good case, I'm not going to plea bargain, I can't plea bargain, I have nothing to offer you.'
>
> As a defense attorney you have nothing to offer them. It's going to be a change of plea if it's a bad case for you as a defense attorney. What's there to talk

> about? The D.A. isn't the one who sentences the person anymore. The critical factors are the pre-sentence report and the judge; and the D.A. doesn't have anything to do with it. Because he doesn't recommend any time at the sentencing.

* * *

B. The Impact of the Policy on the Unexceptional Case

> [A] lot of relatively clean kids are being surprised by jail time which they never would've gotten before. [private attorney]

When plea bargaining was an established institution district attorneys and their assistants were psychologically prepared to negotiate. They usually agreed to make specific sentencing recommendations that reflected their perceptions of "going rates" adjusted for the individual circumstances of the case and the identity of the sentencing judge. Sometimes they recommended leniency for reasons apart from weaknesses in the evidence, for instance, out of a humane concern for the defendant, or simply because certain cases were customarily evaluated as being "worth" certain penalties. Negotiation was the normal way to handle these matters and frequently "going rates" seemed so clearly and reasonably applicable to the circumstances that settlement was virtually automatic. A strong case against the defendant did not necessarily mean the assistant district attorney would refuse to settle. Many such unexceptional cases--let us say the "average" case--involved few aggra-

vating factors: low-value property crimes, sales and possessions of small quantities of non-narcotic drugs, non-residential burglaries, bad checks, etc.[10/] There was an expectation that most of these cases would be resolved by specific sentence recommendations--frequently lenient ones--even if conviction was virtually assured by the evidence. However, after the demise of institutionalized bargaining most prosecutors ceased to be concerned with the issue of sentencing; they no longer had any reason to listen to defense counsel tell them that the defendant was really a "nice kid." Since they could not, and did not make specific recommendations of probation, for example, they had no incentive to support their recommendations by telling judges good things about people who were, after all, criminals. In the words of one defense attorney:

> Now that there's no plea bargaining, it's no longer cool to be a mellow D.A.

Under the Attorney General's new policy against plea negotiations if the state perceived no significant impediment to obtaining a conviction, the assistant district attorney was more likely to refuse to negotiate. Unless there was a real problem of proof, the assistant district attorney often had nothing to discuss. The average case was more likely to have been resolved at an "open" sentencing, with the difference that, unlike former days, the judge would receive

no sentence recommendation at all from the state.

We asked an experienced assistant public defender how he would represent his client in an "average," unexceptional case--a hypothetical 19-year-old first offender charged with a non-residential burglary. Suppose the lawyer saw no defenses against the charge--what could he do for his client?

Q. Well, what I'm trying to get at is what do you do with a case like that?

A. You don't do much. I mean there isn't much you can do. You prime the guy up for the pre-sentence officer. I mean, you tell him, 'Look, when you go to the pre-sentence officer be polite, give him all the information he needs, tell him this, when you write up your statement--he's going to ask you to write a statement--bring it by my office and let me review it with you.' The pre-sentence officer is the one, if he recommends probation, your client is going to probably get probation.[11] If he recommends time to serve it's a real rare case where the D.A. is going to come up and disagree with that pre-sentence officer and say, 'Well, I know this pre-sentence officer thinks the guy should get time to serve, I think he's wrong, and I think the kid should get probation.' I mean I just don't see that happening.

* * *

A lot of your cases are just so cut and dried that there's nothing you can do with them. I would say that in fifty or sixty percent of your cases there's nothing you're going to do with them. You are not filing omnibus motions, you are not trying them, you are not doing anything with them, you are merely preparing for sentencing.

C. Some Areas of Greater Flexibility

> I think the consideration of whether or not there is going to be plea bargaining is always going to be determined by the realities of the case. [private attorney]

Implementation of the policy against plea bargaining tended to follow paths of least resistance. In the unexceptional case with no obvious defenses it was more likely that the policy against plea bargaining would be strictly implemented. In these cases it was relatively convenient for prosecutors to be inflexible and to justify their stance by reference to the policy. However, when aspects of the case made negotiated settlement especially inviting, or when there were apparent obstacles to conviction, implementation of the policy sometimes became less certain. The following discussion concerns some of the circumstances which might result in a case's being considered a more likely prospect for a negotiated settlement of some kind. Some factors, such as the number and nature of the charges, are intrinsic to the individual case. Other factors, such as type of defense attorney, the identity of the individual prosecutor, and local administrative practices, are no less important to the outcome, although they are extrinsic to the factual and legal aspects of the prosecution.

1. The Defense Attorneys

Criminal defense attorneys in Alaska were classified into four groups for purposes of this study: assistant public defenders, private attorneys appointed by the court, private attorneys retained directly by their clients, and private attorneys under contract with labor union pre-paid legal services plans.

We found that the Alaska Public Defender Agency handled about fifty to sixty-five per cent of the felony cases in our sample.[12/] Assistant public defenders usually had large caseloads requiring the establishment of clear priorities. Clients facing long prison sentences, or cases promising reasonable chances of trial or appellate victory had first call on attorneys' resources and energies. As implied by the assistant public defender in the preceding discussion of the unexceptional case, there may be little time and energy left over for routine matters of lesser seriousness after the more pressing cases are disposed of.

Time pressures aside, under the ban on plea bargaining there may have been a built-in negotiating disadvantage to public defender representation, particularly in average cases of the kind described in the earlier discussion.

> I think a lot of it comes from the fact that if you're a public defender the district attorneys have to deal with you every day, and anything they do in one

> particular case starts becoming a controlling precedent for other cases. I think that there's a common belief among district attorneys that when they're dealing with a public defender anything they do with that public defender becomes common knowledge in the public defender agency. . . . .
>
> I suppose you can say familiarity breeds contempt, but I don't think it's quite that strong. I think what it is, is that every decision they make on a case [with public defender representation] has implications for perhaps forty or fifty other cases that they're handling over that immediate time span in their office; and I think that consequently, they have to be very careful in terms of what they do--they're less flexible with public defenders.
>
> * * *
>
> Well take, for example, the typical, ordinary, first-offender burglary case. The public defender has too much familiarity with everyone in the district attorney's office. If you talk to the district attorney about your first-offender burglar and that's the 50th time in the month that you have had a similar conversation with that individual district attorney, you end up having nothing left to say to him. There's nothing new for you to tell him.
>
> In private practice, you don't have that much familiarity on a day-to-day basis; you don't have the volume of work, and the constant contact. . . . . At any rate, it makes each case a little bit easier to deal with.

Some prosecutors agreed that public defender clients, in particular, were adversely affected by the policy against plea bargaining. One very experienced Anchorage prosecutor said:

> The public defender clients are not getting any break for their pleas, but 80 per cent of them still plead anyway. I think these clients may be getting screwed.[13/]

Court-appointed private counsel are selected from a list on an ad hoc basis when there is a potential conflict of interest inherent in public defender representation. Usually this occurs in cases involving multiple defendants who may have adverse interests and should not be represented by the same office. Appointed counsel are sometimes inexperienced in representing persons charged with serious crimes and there were claims that inexperience or low fees led some of them to plead their clients guilty--perhaps too quickly.[14/]

> These guys [court-appointed counsel] often get in over their heads. They've never had any felony experience before. They just walk in and plead their clients guilty at open sentencing. With the no-plea-bargaining situation it really makes a difference who your attorney is, a lot more than before. [private attorney]

When plea bargaining was an institution, and most lawyers reasonably expected some degree of flexibility, it was not always necessary for an attorney to represent his client vigorously in order to better the defendant's position in some respect. However, if our interview respondents are correct, the new policy placed a higher premium on diligent and skillful criminal defense work. Lenient dispositions for "clean kids" were no longer taken for granted;

under the new policy it took some special effort to bring them about.

Although we had difficulty determining how many defendants were represented by lawyers working under union pre-paid legal services plans, we estimate they accounted for about six to ten per cent of the caseload. The balance of the cases were handled by private attorneys who were mainly general practitioners, as well as a few criminal defense specialists.

It appeared from discussions with counsel that the plea-bargaining policy had a decided effect on the economics of criminal defense. For example, we discussed legal economics with an experienced criminal lawyer associated with a labor union pre-paid legal services plan. This is how he described the economic impact of the new policy:

> It's robbed the lower-middle income people of good representation. If they happen to hire a good lawyer, he can't afford to do as good a job as he ought to do. Criminal law is not a profit-making proposition for the private practitioner unless you have plea bargaining.
>
> Say you've got two clients on a flat fee, say, $5,000. This is what you charge them no matter what the result. Let's say you do a good job on one case and work out a good arrangement for a client. You can tell him he'll be pleading guilty only to what he actually did, for a sentence that he deserves. In other words, he won't have to plead guilty to the original charge, and he will be getting what he deserves and not be at the mercy of some penal-oriented judge. But on an hourly rate you actually would not have

> used up all of your $5,000 fee. Yet your second client's case may require you to go to trial. You may end up putting in far more than the $5,000 in terms of hours. But the excess of hours from the first case you can spend on the trial.
>
> Now, [under the ban on plea bargaining] the average attorney has got to figure that he'll go to trial in every case. So unless he has the good fortune to be in my kind of situation [under a pre-paid legal services plan] where he can use full investigative resources and research in order to out-work the D.A. into a dismissal, I don't know how he can get along.

A number of practitioners and judges said that the guaranteed fees provided by pre-paid legal service plans contributed to better results for clients, particularly under the new policy. Pre-paid attorneys had economic incentives to be diligent and tenacious in every case, even when sentencing exposure appeared relatively small and the state's evidence was strong.

> As far as the policy is concerned, because we are working for the Teamsters under a pre-paid plan we have enough resources not to be hurt by it. We just out-work the other side. I don't see how you can do it on regular, non-pre-paid cases. The most felony files I've ever worked on at once is eight. I have my own investigator, my own pre-sentence officer, and with judicious use of a mag-card machine and a form file we actually have more resources than the state. We just out-work them. I send out tremendous amounts of paper in every case.
>
> Teamster cases are 100% paid by the union through the trust fund. Up until July 1 [1977] we have been billing hourly at

> $65.00 per hour. The average billing in a felony, including costs, is about $8,600. That's a pretty good deal for the Teamsters. The guy off the street who comes in with a felony case, we charge about $10,000. Of course, from the Teamsters we can collect 100%. In criminal cases, normally, you always have trouble collecting a bill.

This attorney's opinions were shared by some prosecutors. One prosecutor said: "Pre-paid plans have undoubtedly increased the number of trials." Another one said: "One pre-paid firm hires legal interns to crank out bullshit memos. The firm handles lots of cases--we're getting sunk on memos." One judge said: "There's more investigation in pre-paid cases--some pretty innovative ideas. I don't know if there's a greater chance of trial, it depends on who the pre-paid lawyer is." Another judge had a different attitude: "Pre-paid cases stand a better chance of going to trial and a better chance of getting screwed up at trial. Everyone is entitled to his day in court, but it's objectionable to screw a case up with the use of [non-lawyer] interns."

It would be simplistic and wrong to conclude that a defendant was necessarily better-off simply because he had a "pre-paid" attorney. But the incentive of a guaranteed hourly fee regardless of the seriousness of the charge or the likelihood of conviction was bound to have some impact. Guaranteed hourly fees encouraged lawyers to devote extra time to matters which might otherwise have received more

cursory treatment, and this probably counter-balanced the tendency of the policy against plea bargaining to place the unexceptional case at a disadvantage from the defendant's perspective.

Under the new policy we were told that a great deal of defense work was sometimes necessary to achieve a result that might have come more easily in previous times. One criminal defense specialist, not associated with any union plan, described his post-policy experiences as follows:

> There is absolutely no motivation for them [assistant district attorneys] to discuss a case with me unless it is one that involves a substantial amount of work for them, and a risk that they will have a conviction either subject to attack, or no conviction at all. I rarely get charge reductions unless I knock out an indictment or suppress some evidence. At that stage, then it is imperative that they re-evaluate their case, and at that point they're actually open as to how to recharge it. But I have had no case yet--I don't believe--in which I've been able to get them to voluntarily allow me to plead to a lesser charge without having knocked out the indictment or suppressed some evidence.
>
> * * *
>
> I am having to clog up the courts with motions and appeals which I would certainly have foregone previously in exchange for more certainty in sentencing. Now it's important to file a motion against, say, Count III of the indictment, even if doing that doesn't have any effect on the other two counts--for which they appear to have the defendant pretty solidly. Before the policy change, if you could simply point out to the dis-

> trict attorney the legal weaknesses in Count III, chances are they'd just drop it and stick with the other two counts only; since in most cases that gives them sufficient sentencing latitude. Now I have to go through a whole lot of paper shuffling attacking each and every count.
>
> Generally, I have to keep the cases going until they have better things to do and just get tired of them. I have to wait until judges are out of town, ask for "change of plea judges," and do other things with the calendar, if I can, to get a little more certainty. I have to play the longshots now because my guy is probably facing one to ten [years] and I can't really be sure who I'm going to be drawing for a judge. At least if I make a lot of motions or prolong the case in a variety of ways I have a better chance to get an appeal point.
>
> I find that we are winning in a surprising number of longshots. Some very bad guys are getting acquittals at trial and on motions where previously we wouldn't have hesitated to plead them guilty. That's a surprising good side to the policy.
>
> Few assistant public defenders have the time, and none had the economic incentive, to take all of these steps in the routine, open-and-shut, non-serious felony. [private criminal defense specialist]

Even if a case was not considered triable and the assistant district attorney did not negotiate, the defendant's lawyer might attempt to better his client's position by focusing on the pre-sentence hearing. Accordingly, the defense attorney might seek some alternative to incarceration suitable to his client's circumstances, find people in the community willing to offer employment or other support,

or find witnesses to testify about the defendant's prospects of rehabilitation on probation.

Q. Now, some public defenders have told me that where they get cases in which the guy is clearly guilty and doesn't seem to have many defenses, there doesn't seem to be anywhere to go--they just simply advise him to plead guilty and tell him there's nothing that can be done.

A. That's true of a lot of cases. I don't tend to do that as much in private practice, unless when I'm hired the person expressly understands that they're hiring me to be a sentencing lawyer only. Because it's a little harder when somebody's paid you money to defend them, for you to lay around and tell them that it's a dead loser case, and to go in and plead guilty, and lie down. It's just not politic, I suppose, if nothing else.

Now, I'll certainly discuss with them the fact that I've got the following motions that I've researched; and that I think their chances of winning are as follows, but that perhaps in litigation of those motions we can develop possible appeal points, especially if it's a crime in which I feel the person can stay out on bail [pending appeal] and continue to look better and better from a sentencing perspective.

I will sometimes file a motion that may not win, but may be a point on appeal, and utilize that to eventually reduce the sentence on a client.[15/] I'll also certainly disclose to the client that I think the motions are losers, and that the better fight might be at sentencing, and that perhaps that's where we should concentrate our resources.

2. The Prosecutors

How any policy is carried out will largely depend on the attitudes and predispositions of the people in charge of its daily administration--here, the prosecutors and judges in their interactions with the defense bar. Anyone who spends time in Alaska observes that Anchorage, Fairbanks and Juneau are more different than they are alike. The weather and terrain are very different, the political and social atmospheres differ, and we learned that each city also differed strongly from the other two in how the justice process was administered. In Fairbanks the prosecution and defense tended to be contentious and quite adversarial, while Fairbanks judges were considered by both sides to be relatively tough and unsentimental. On the other hand, in Juneau prosecutors and defense attorneys prided themselves on their harmonious relationships, and Juneau superior court judges had rather more lenient reputations as sentencers. They were considered "reasonable" by attorneys on both sides. Anchorage is the largest and most cosmopolitan of the three cities and the most heterogeneous in prosecutorial and judicial attitudes. Anchorage has more judges, more prosecutors and more defense attorneys. It was neither as "civilized" as Juneau nor as adversarial as Fairbanks.

Throughout the interviews attorneys stressed the impact of individual personalities on policy interpretation and implementation. For example, some prosecutors could be

styled "humanistic." These enjoyed discussion and negotiation with opposing counsel and did not find bargaining offensive to their natures. The humanistic prosecutor before the policy change was more likely to recommend a lenient disposition if he believed it was fair, even if the defendant had no realistic prospects of trial acquittal.

Other prosecutors could be called "technicians." These considered negotiation to be a burden and viewed discussions with defense counsel as a waste of time. They expressed relief in that the new policy lessened the importance of informal dealings with defendants' lawyers. While humanistic prosecutors valued their pre-policy freedom to make specific sentence recommendations to "individualize" justice, technicians were more likely to echo the idea--so often expressed by the Attorney General--that sentencing is strictly a judicial function. Here is a technician speaking:

A. I find practice to be preferable under the new system. Much less time is spent haggling with defense attorneys. It's a more logical approach to the position, because you have to be a prosecutor rather than a bargainer. Bargaining is probably inherently inconsistent with the job. I was spending probably one-third of my time arguing with defense attorneys. Now we have a smarter use of our time. I'm a trial attorney, and that's what I'm supposed to do. The haggling wasn't merely as to the strengths and weaknesses of cases, it was as much to do with sentencing--what I thought a person should get. The judges should do

that. I would rather spend my time on the case.

Q. Do you think it's desirable to have a plea bargaining system in order for D.A.'s to have enough flexibility to do substantial justice when they're confronted with inflexible and sometimes illogical laws?

A. That position actually promulgates the idea that enlightened law enforcement means going beyond the rules. I'm opposed to that.

Q. But what about prosecutorial discretion, isn't that part of your job?

A. The Rule 43(a) dismissal represents prosecutorial discretion to me. If you encouraged public officials to go beyond the rules, then the only controls you have are in the minds of the public officials, or in a recall at the next election. [assistant district attorney][16]

In Fairbanks there was little informal communication between prosecution and defense; relationships between legal adversaries were marked by hostility and mistrust. Defense attorneys referred to Fairbanks prosecutors as "robots" and "soldiers."

> The district attorney only knows a few words: "We'll take it up on appeal," and "Take them to trial!" There were those who exercised some independent judgment, but because so many people have quit, the D.A. has been able to hire all those soldiers who will do just what he says. [defense attorney]

Another defense attorney in Fairbanks said:

> As they keep tightening the screws, fewer and fewer things are going on at all.

> What there is [of plea bargaining] that goes on, does so without being brought into full view. But even that is getting rare. The people in the district attorney's office are getting afraid--regardless of how logical it is--to say anything other than, "Well, do you want to go to trial; or do you want to plead guilty?"

Some Fairbanks defense counsel said that it was risky to discuss a case with the district attorney's office because anything one said was, in effect, used against one's client.

> When I first started working I tended to go over [to the district attorney's office] and discuss cases with them to see if we could work something out one way or the other. And almost uniformly it's been turned against me, to where I have regretted even going over to share the information. It just hasn't done any good and it has put me at a tactical disadvantage in some respect.
>
> It's in part maybe a hardening of the process [the policy against plea bargaining]. In part it's the particular district attorney tightening his reins over the discretion of everybody in the office, and partly the fact that there are new people there that just won't exercise that discretion. [assistant public defender]

In contrast to the distant and distrustful relations reported in Fairbanks, Juneau prosecutors and defense attorneys referred to one another as "gentlemen;" they emphasized the feelings of good will prevailing between people who were merely formal adversaries. They also believed that Juneau's judges were the "best in the state."

We are not trying to trick each other. It's very clear that we are adversaries, but it's all good, clean, stuff. The attorneys are tough--they are prepared. But you can come out of a trial here feeling good about the other attorney. I would never practice in Anchorage. I don't like that atmosphere. It's more of a back-alley type of practice.

In misdemeanor cases in district court we have a formal in-chambers conference procedure. And the same thing is done at a more informal level for superior court cases. The word in-chambers conference is a misnomer. Following arraignment, usually a week or two after arraignment, the judge schedules one of these conferences. It happens in every single case, and the meeting takes place in our office. We get together with the defense and talk about the merits of the case. The defense attorney will tell you that the defendant has certain things going for him. He may point out what he perceives to be weaknesses in the state's case. He may mention factors on behalf of his client that he wants to emphasize. He may want to have some clarification of certain matters that may be ambiguous in the police report. For example, was there a video tape taken of the defendant in a drunk driving case? If so, we'll go down and look at it immediately. It's a very informal meeting.

* * *

If we are going to reduce the charge, we will tell the defense attorney in advance. Then the defense attorney will talk to his client and see what he wants to do--whether he wants to go to trial or plead. If it is clearcut that he has been overcharged, we will reduce the charge, even if the client decides not to plead.

* * *

> In felony cases, there is no formal in-chambers conference scheduled by the court, but the same process takes place nevertheless. The same type of things go on. A defense attorney would say: "My client is thinking about pleading. Are you going to recommend jail time?" Typically, I'm not going to take any position on sentencing. I've got two guys in Haines now, both young, who have pled guilty to five or six counts of burglary each. I'm going to be recommending jail time. I told that to the assistant public defender. But we have consented in putting off the sentencing for a long time, so that she can work out some sort of alternative disposition for them.

The humanistic approach to prosecution is clear in the following remarks of a Juneau assistant district attorney who objected to being forbidden from making a specific sentence recommendation in a pending case. He thought the policy against sentence recommendations was preventing him from exercising proper and responsible professional discretion.

> The district attorney has less input at sentencing now. I see injustices. I see people forced to go to trial because we are not permitted to negotiate.
>
> For example, I have a second degree homicide case going right now. It's a rather weak case, and I would be disposed to accept a plea to manslaughter. I personally feel that a year to serve [in jail] in this case would be an appropriate sentence. The guy is an old, beaten, chronic alcoholic. He is not a violent person. He didn't get into fights or anything like that. The crime is very unlikely to be repeated.

> The community has to condemn people for shooting other people--not for this particular guy--but for society in general, or the system makes no sense. However, in this case, another eight or nine months to serve in addition to the three months he's already served in jail seems adequate to me. Nevertheless, with no assurances as to the sentence the assistant public defender is concerned that the trial judge may give him three or four years.
>
> So the assistant public defender thinks that he has nothing to lose at this point by going to trial. The man may even be acquitted. If he is, it would be a question of jury nullification, rather than based on any real defenses. I would like to handle this as a negotiated plea. [assistant district attorney]

Differences in professional outlook among prosecutorial staff tended to vary from city to city, with Fairbanks providing the most hospitable environment for the policy against plea bargaining, Juneau the least,[17/] and Anchorage falling somewhere between the two. Where technicians were predominant the policy reinforced existing professional attitudes and it was carried out in relatively pure form, as in Fairbanks. In general, the more humanistic the predisposition of the prosecutors, and the more individual discretion permitted them within each local office, the less the likelihood that the policy against plea bargaining was implemented in a strict (or mechanical) fashion. Juneau, where the new policy caused hardly any change, is the best example of a humanistic office with great discretion vested in the assistants.

3. Administrative Practices and Office Procedures

Administrative practices and procedures sometimes created opportunities which either supported policy implementation or, by encouraging negotiation, actually tended to thwart it. One administrative practice that seemed to work against the policy was the pre-trial conference procedure in Juneau described above, at which lawyers would meet to "talk about the merits" of cases. In Fairbanks, however, some administrative practices appeared to favor the policy against plea bargaining.

> There are a lot of factors in this [Fairbanks] D.A.'s office that combine to make it relatively inflexible. They get assigned to particular courtrooms. It is uncommon for the same D.A. to do the preliminary hearing in a case, the grand jury, and the trial work. This contributes to the D.A.'s paranoia; they are less willing to bargain because they don't know who will see the case after them. [assistant public defender]

Some defense attorneys in Anchorage said that under the new policy, though it was useless to try to speak with prosecutors far in advance of trial, if one waited, the prosecutor himself might initiate the dialog.

> If you approach the prosecutor yourself for a deal, they'll tell you that they're not allowed to bargain. However, if you wait until about a week before trial, they might call you and start making some kind of offer. This is getting to be more and more common. [private defense attorney]

When the interviewer confronted an experienced assistant district attorney with the foregoing comment, this assistant explained that court-calendaring procedures in Anchorage sometimes tended to invite plea bargains.

> Last-minute calls from the prosecutor concerning the status of the case are a function of the new court calendaring system we 'bought' from Portland. The system is set up so that the public defender is never required to be in two places at once. The assistant district attorney may find, as a result of calendar call, that two or three of his cases have been scheduled to go to trial simultaneously in different coutrooms. These 'conflict' cases must be reassigned to other assistant district attorneys, who will then have no more than a few working days plus the weekend in which to prepare a felony case for trial, where they've never seen the file before. It is at this point that the assistant district attorney may become most vulnerable and susceptible to negotiating some kind of a deal.

When a prosecutor has worked on a case for a long time he may be better prepared for trial and less inclined to flexibility. However, if the assistant feels that the case is not really "his," if it has been "dumped" on him by another assistant--and particularly if it shows signs of having problems--the trial attorney may be more receptive to overtures from defense counsel.

> I think that the easiest way to get a deal from a D.A. is when you get somebody who has had a case dumped on him at the last minute and he doesn't feel like he should

> have to work on it. Like this week is a real good example of a lot of people being gone. The D.A.'s that are left are covering everyone else's cases, and they don't feel as much like trying them as the person who was originally assigned to them might feel, so that you have an easier time getting some sort of a deal. I, unfortunately, haven't had any cases set for trial during this period. It would be an easy time. [assistant public defender]

Trial prosecutors may find themselves with cases they believe to have been improperly charged due to an oversight in the intake process. We asked an experienced Anchorage prosecutor what he would do if he were scheduled for trial in a case that had been badly prepared.

> Sometimes it's not humanly possible to do all these things--interview all the witnesses--be completely prepared--then it [the policy] doesn't work. You just call Juneau and get an exception, or go in and do it--live with the problem. But I resent living with problems that should have been resolved at the intake level. I think we should have a few more prelims [preliminary hearings] and see how people do on the witness stand.

Sometimes simple "overwork" produced plea bargains, even when the state had a strong case.

> On one case, the assistant district attorney reduced the charge to a simple misdemeanor. I suspect that being worn out and disappointed from the previous verdict [of acquittal] had a lot to do with it. [In this instance, the two cases were set for trial "back to back."]

> On another case, there were four defense attorneys involved against one assistant district attorney. We just wore him out. There was nothing wrong with these cases, and they [the district attorney] could have won them if they had been willing to go through lengthy trials and motions to do so. [assistant public defender]

* * *

4. Multiple Charges

> I have never had a case, be it from a prosecutor's standpoint or a defense counsel's standpoint, that in the process of working out the case for trial, you didn't uncover new ideas, new witnesses and new thoughts which either strengthened or weakened your case. [Attorney General, Advisory Board Meeting, March 31, 1978]

* *

> One intake attorney is a 13th-Century scribe--he looks in the statutes. If there are 35 charges that could be made, he makes them. [assistant district attorney]

* *

> Charging has always been flexible. You can find six different laws applying to a given set of facts. The end result should be a charge which gives the judge the option of a reasonable range of sentences, given the facts. [Attorney General Avrum Gross, Statewide Judicial Conference, June 2, 1976]

Multiple charges have always invited settlement because they present a situation that allows everybody to "win." The prosecutor wins because he obtains at least one conviction against the defendant. The defendant and his lawyer also win because they have succeeded in getting rid

of one or more charges alleged in the original indictment or information. Since everybody wins by negotiating, why fight? This civilized approach to doing justice is nourished by the circumstance that multiple charges, as our statistical analysis indicates, are especially prevalent in forgery and bad check cases (Class 4), and in drug felonies (Class 5).[18/] Perhaps because these kinds of cases usually do not provoke the same outrage as, say, rapes, robberies or felonious assaults, dropping one or more counts from multiple-count pleadings may not be seen as making much of a difference, especially if dismissing some charges leads to a conviction and the end of litigation.

In drug and check cases in particular, multiple charges may not be taken as an indication that the defendant is a professional criminal or an especially bad actor. For example, an otherwise inoffensive person, sometimes under the influence of alcohol, may go on a spree of check writing. Since each bad check constitutes a separate felonious act, if convictions were obtained on each, and the sentences ordered to run consecutively, very lengthy terms of imprisonment would be commonplace. But this approach to sentencing never prevailed in Alaska, either before or after August 15, 1975.

Before the Attorney General's policy went into effect--and after it as well--a common prosecutorial response was to accept guilty pleas on less than all counts of

multiple-count indictments. After the defendant is sentenced on the counts to which he has pled guilty, the prosecutor customarily dismisses the remaining counts. Under the former practice of plea bargaining there was usually an explicit agreement that dismissal of certain counts would follow upon guilty pleas to others. Under the new policy, however, the defendant may have to plead guilty to certain counts with an expectation--but without any assurance--that the state will dismiss the remaining charges. This is how an Anchorage prosecutor described typical negotiations in a multiple-count indictment under the new policy:

> The defense attorney calls up and says, 'Look, he's charged with three counts of sale of marijuana--I'm going to plead him to one. Do you object to that?' I say, 'Why should I object?' He says, 'What are you going to do?' I say, 'I'll have to re-evaluate the case.' Even though the result is the same [as under the previous system] you don't have the getting-together-and-working-it-all-out bargaining. So I don't have to listen to an hour of what a great guy his client is.

While the defendant's expectation that the remaining counts will be dropped is usually satisfied, he will have no legal recourse in the event he is surprised. Since the district attorney has not made an explicit agreement, the defendant cannot rely on Rule 11(e) and may be unable to withdraw his guilty plea if the prosecution continues to press the remaining charges. Although this is rare, we heard that it did occur at least once or twice.

It is important to realize that typically, the state's response in dismissing some charges following pleas of guilty to others is not motivated by evidentiary considerations. It may not be any more difficult or costly to obtain convictions on, say, six charges, than on three. Frequently there are few evidentiary differences among the counts charged--or no real differences at all. As the Attorney General observed in a quotation preceding this discussion, the main concern is that "the end result should be a charge which gives the judge the option of a reasonable range of sentences, given the facts." For instance, if a single conviction for passing a bad check permits the judge to impose a sentence of up to ten years, and if the parties and the court consider five years to be the absolute outer limit of the defendant's deserved punishment under the circumstances, there may be little practical reason to insist that he admit guilt with respect to an entire series of checks. Even in Fairbanks, according to the District Attorney, assistants were permitted some flexibility with multiple counts.

> If the defendant pleads guilty to seven out of ten counts, that will be enough to show a continuing course of conduct on his part. It's very important to make it clear that dismissal is not strictly a quid pro quo. What we will tell him is that from an economic standpoint, and from the standpoint of doing justice, we don't think it's worth our while to try the other three counts.

Prosecutors were sometimes reluctant to discuss multiple-count charge dismissals. Where assistant district attorneys used to make very clear bargains along the lines of, "If you plead to Counts I and II, I'll dismiss Counts III and IV," they have now developed a new, somewhat fuzzier vocabulary. The new language accomplishes the same thing, although with a bit less certainty, and no Rule 11(e) guarantee.

> If a guy enters a plea to one count, then you take a close look at it and take it from there. If the defense attorney says he's willing to plead to one or two counts, I'll take a hard look at the case and re-evaluate the situation. [assistant district attorney]
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> * * *
>
> Even if they dismiss a couple of counts, or half, they'll mention all of them at sentencing. Some attorneys would say that's a good deal, because three is better than five. I would say they're not really offering anything, because there's no real change in the sentence. [assistant public defender][19]
>
> * * *
>
> They tend to stack their charges. Let's say the charge is forgery, and there are ten checks involved. They would charge each of the ten as separate counts, and then offer to dismiss a couple, or half, or whatever. I think they tend to do it when they get substantive charges that reflect each and every thing that they have alleged. If they are alleging a guy engaged in forgery, it doesn't make any difference to them whether he pleads to each of the ten counts. He could plead to seven of them, and they'll mention all

ten at the sentencing. That's something you might get from their office--that would be the only thing you'd get. [assistant public defender, Fairbanks]

* * *

Q. I heard that Av Gross is allowing you to tell the defense attorney that you will dismiss certain counts of an indictment if his client pleads to the other counts. Is that true?

A. If the guy enters a plea to one count, then you take a close look at it to determine whether the possible five or ten-year sentence for that count is appropriate, and take it from there. I just heard an example in Ketchikan where one of the public defenders copped somebody out to one of four charges or counts, and they're going to go ahead and try the other counts.

Q. What do you tell the defense attorney who comes to you and says that he is willing to plead his client guilty to one or two counts, and asks you what you are going to do?

A. You know the rule. I'll take a hard look at the case if that's done. I'll re-evaluate the situation.

Drug-sale cases are frequently filed in multiple-count indictments or informations. These prosecutions are usually founded upon the evidence of undercover officers or criminal informants who approach defendants with offers to purchase drugs. Partly to make sure that police surveillance of the purchase results in strong evidence of at least one "controlled buy," and partly to obtain more leverage over the defendant to induce him to plead guilty, the informant or undercover officer may be sent back to repeat

the purchase transaction several times. If the defendant is indeed a willing seller there is theoretically no limit on the number of sales that could be repeated; and each one constitutes a separate felony charge.

But numerous sales do not necessarily mean the defendant was a "big dealer." He may have been a small dealer who thought he had found at least one good customer. Because prosecutors usually understand this situation they may tend to be flexible with multiple-count drug charges, although reportedly with somewhat less willingness than in check cases. Again, the real justification for the dismissal of some counts following the defendant's plea to others usually bears little or no relationship either to the economics of prosecution or to the strength of the evidence. The following interview illustrates the point.

A. Take the case of Mrs. "Doe." We had her for three separate counts. The undercover man went in on three days. Each day he bought a baggie of marijuana from her. They were willing to plead her to one count. We told Av that since the other counts were similar, it's just not worth the time and money to try her on the other two counts. So Av agreed that he would accept the plea to one count and we would dismiss the other two.

Q. That sounds like nonsense. It doesn't cost the state any more time or money to try three counts of a drug sale case than it does to try one. You're dealing with the same undercover witness and the same chemist who has analyzed the substance in the baggies. This can all be done in one day. So I don't buy the 'time and money' argument at all.

A. Av [Gross] authorized the reduction. It's his policy, and he can do what he wants with it.

Sometimes when the police want to make sure that a defendant receives a long jail sentence they will instruct an undercover informant to return for many purchases. This makes the defendant appear more culpable and places the prosecution in a stronger position since the defense must face apparently overwhelming evidence of guilt and a sentencing exposure that can be quite astronomical, at least in theory. If the defendant is not allowed to plead guilty to some charges in exchange for the dismissal of others his attorney may have difficulty convincing the judge that his client does not deserve a long sentence.[20/] Here is how one defense attorney described such a case:

> Gross hasn't done anything about the overcharging situation, although he said that he was going to. For example, I have a client right now charged with six counts of sale of drugs to the same informant within a very short period of time. This is extremely unrealistic. The number of offenses has been totally controlled by the actions of the police.
>
> I had a case recently where the policeman was claiming that my client was the biggest heroin dealer they had ever arrested. He testified that he had arrived at this conclusion by adding up, one by one, the total amount of heroin he had sold to their undercover officer over the length of their investigation. I pointed out that they could easily have called him the biggest heroin dealer in the United States, if they had just continued to

> make a new buy from him day after day, year after year, before they finally decided to close the case.
>
> This is a ridiculous situation. The crime for which he is presumably to be punished is for being a dealer in heroin. The fact that the police choose to deal with him repeatedly over and over again, in order to add up counts, does not make him a bigger dealer. [private defense attorney]

Usually, however, the police are not so adamant in multiple-count drug cases. In fact, we were told they occasionally encouraged plea bargaining.

> The Metro Unit people have the idea that once a person sells drugs, he'll be selling drugs over and over again as long as he is alive. They believe that if they don't get all they want out of a conviction on any one arrest, they'll have another chance at it, inevitably. Therefore, they'd rather take a quick settlement, even for less than they originally hoped for, than spend their time hanging around outside of courtrooms waiting to testify on suppression motions, or motions having to do with the credibility or background of their informants. In my experience they've always been very willing to deal. [private attorney]

Another form of multiple-count charging which is analytically different from the check or drug situation occurs where the state alleges the commission of two or more different offenses arising out of a unitary criminal event or transaction. Sometimes this practice is justifiably termed "over-charging."

> One district attorney approaches his job as if it were a law school exam: 'How many crimes can I find in this fact situation?' That will include in one transaction, for example, Flourishing a Firearm, Carrying a Concealed Weapon, Possession of a Firearm While Under the Influence, and God knows what else.
>
> Now, if you assume that this is the way prosecutorial decisions should be made then my criticisms are probably all wrong. But I don't think that's right. Statutes are narrowly drafted and precise, and that's a good thing. Because they are so narrow you have to have statutes to cover a variety of evils in different situations. But there are cases where one single activity will overlap several statutes. Just because the facts happen to fit several statutes, this does not necessarily lead you to the conclusion that you have to prosecute on all possible charges at the same time. This is a matter of attitude. [assistant public defender]

But the "overcharge" label is not always deserved. For example, in order to obtain a conviction for burglary the prosecutor must have proof beyond a reasonable doubt not only that the defendant made an unauthorized entry into premises, but also that he did so "with intent to steal or commit a felony therein." The person who enters lawfully in the first place, even if he then proceeds to steal something, has not committed burglary. On the other hand, though it may be easily proved that the accused entered without permission from the owner, it may be hard to show his intent to steal unless he is caught with the goods. Depending on the strength of the evidence for each necessary element of the offense the prosecutor may be unsure whether the best

charge is burglary or larceny. Under these circumstances he may play it safe and file both charges together. The Attorney General dealt with exactly this situation in his memorandum of June 30, 1976.

> 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.

Even in these burglary-larceny cases, however, an assistant district attorney may violate the spirit of the Attorney General's policy, if not the letter. For example, this might occur when there is really little doubt about the strength of the evidence to prove burglary, but a larceny count is added anyway, as a "loss leader" to stimulate negotiation. This is how one assistant public defender assessed the situation:

> Typically, they'll charge a burglary and a larceny where somebody's broken into a building and taken something. . . . .
>
> But I think in fact it's double coverage because they know a defense attorney is likely to say, 'Look, my client is willing to plead guilty to the burglary if you drop the larceny, or vice versa.' I assume that is why they do it. They usually retain the right to pick which counts the client is going to plead guilty to.

> In my experience, we usually end up going along with it unless there is some good reason not to. I think, typically, they prefer to have the burglary pled to if there is a burglary and a larceny charged. I think this is clearly anticipated from the beginning in many cases.

The state of mind of the prosecutor is all-important under the policy: if he is worried about the evidence to prove burglary he may add a count of larceny to protect the conviction; but if he uses the added larceny count just to encourage a burglary plea then he is cheating--although nobody will be able to tell the difference.

In Fairbanks the prosecution response to multiple charges was often more rigid than in Anchorage or Juneau. The following remarks were made by a defense attorney working under the new system. This person had also been a prosecutor in Fairbanks before the new policy went into effect.

> A couple of years ago, if there were two counts and the defense attorney said to you, 'I'll plead to one,' you could use that as an incentive to drop the other. If as a defense attorney you now go to the D.A. and say, 'I'll plead to one of your two counts,' that's the kiss of death. It's taboo to say that. They get more self-righteous than ever, and feel that they can't dismiss the other count because it would <u>look</u> like a plea bargain.

Contrast the rigid Fairbanks approach with the following statement by an assistant district attorney in Anchorage:

> It's becoming more and more apparent that the Attorney General didn't have that much against charge bargaining. It's becoming more common now, especially in serious cases. I could name three in the last couple of weeks. At the last D.A.'s conference the Attorney General expressly told us that if the defendant says he'll plead to one count, we can indicate in advance that we'll dismiss the others. The same goes for lesser included offenses of a single count--this does not require any approval at all.

* * *

Charge dismissals in multiple-count cases continue to be prevalent probably because they make sense in so many situations. Multiple count indictments or informations may accurately reflect events in the real world; but if cumulative felony convictions appear unnecessary to reflect the degree of the defendant's culpability according to the prevailing norms of the courthouse, the system will probably respond by adjusting the number of counts to show a level of societal condemnation in keeping with those norms.

Charge adjustment can be accomplished by reducing a single charge as well as by dismissing "extra" counts.[21/] Charge reduction, too, may be "permissible" or "impermissible" under the Attorney General's policy depending on the prosecutor's state of mind. Practitioners often told us, however, that charge reductions were usually based on legitimate interpretations of the evidence rather than the mere desire to induce a guilty plea in order to avoid a trial. It was claimed that this was true even before August 15, 1975. The

problem here is the same as with the multiple-count situation: it may be virtually impossible to distinguish between charge reductions based on the evidence and those motivated merely by the desire to obtain a guilty plea. Some practitioners took a cynical view of the Attorney General's policy in this regard, while others earnestly said there was a real difference between "legitimate" and "illegitimate" charge reduction.

> Suppose a guy is charged with Shooting with Intent to Kill, Wound or Maim. His attorney comes to me and points out some facts which I was unaware of that convinced me he really didn't have any intent to kill. I tell him that I agree, and I will reduce the charge to Assault with a Dangerous Weapon. I know deep inside that the moment I make the charge an ADW he is going to plead to it. Does this make it a charge bargain? We have to have the flexibility to respond to facts that come to our attention after indictment.22/ [assistant district attorney]

* * *

> In cases where there are substantial questions of law or fact, a lot of times the charges are modified downward. But this is usually more or less of a unilateral process and not really a bargain. I had one case where the guy was charged with robbery, but it was modified to petty larceny at about 3:00 p.m. on the Friday preceding the Monday of trial. I didn't learn about the modification until 5:00 p.m. on Friday. I had continued to prepare and was planning to prepare over the weekend. I learned they had signed the motion to dismiss the robbery at 3:00 p.m. that Friday.

To get them to do these unilateral modifications you have to put a lot of pressure on them. You have to keep showing them weaknesses in their case. But it's not a deal in the sense of, 'If you reduce the charges, then I'll plead.' But a reasonable person would probably see that a plea would arise in light of the reduction. [assistant public defender]

* * *

My experience is that the district attorney's office always overcharges, just because of a bureaucratic desire to play it safe. And the only difference at that point then is, can I go in as a defense attorney and make a bargain? Or do I go in there and tell them, 'Look, I think that you have overcharged my client and here are the facts,' and he says, 'Yeah, you're right, I will reduce it to this.' What's the difference? Again, we are playing charades. [defense attorney]

5. Officially-Sanctioned Sentence Bargaining Under "Exceptional Circumstances"

Like any general rule, there are going to be some exceptions to this policy. Any deviation, however, must first be approved by either [the Deputy Attorney General in charge of the Criminal Division] 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 heavily on the recommendation of the District Attorney, but permission for sentence bargains will be given sparingly if at all. [Attorney General, memorandum of July 3, 1975]

* * *

> We don't want to be looking at this in a totally absolute fashion. In many sexual offenses, D.A.'s have complete freedom for plea bargaining.[23]
>
> With drug problems, there's another good place to have discretion, for sending the guy to programs. [Attorney General, Statewide Judicial Conference, June 2, 1976]

The Attorney General indicated a few specific areas in which explicit sentence bargaining under Criminal Rule 11(e) was still allowed, and he set up a formal procedure for handling these "exceptional circumstances." Written permission was supposed to be asked of either the regional district attorney or the Deputy Attorney General in charge of the Criminal Division. It was contemplated that records of all exceptions that were granted would be kept on file in Juneau at the Criminal Division offices.

We reviewed the records of special exceptions, which contained only about thirty cases, and found that the greatest number of them involved charges of sexual misconduct against children. Sentence bargains were permitted in order to conclude the proceedings rapidly and avoid further emotional harm to the child-victims. (A variation on this theme appeared in one case against a rural police officer charged with molesting juvenile girls. Here the exception may have been granted to protect the police as much as the girls.)

Defense attorneys informed us of some cases in which permission to sentence bargain had been authorized by

the Attorney General or the Deputy, but which were not included in the exceptions file. When we inquired about these "unofficial" exceptions they were not denied. This has led us to conclude that exceptions to the policy against sentence bargaining were somewhat more numerous than the files indicate, although we do not believe they were commonplace.

We did hear of at least one drug case (not in the file) in which exceptional circumstances were "created" by the defense through investigation revealing that a criminal informant had committed new crimes and otherwise behaved outrageously while acting as a police agent. It further appeared that certain police officers may have attempted in earlier proceedings to minimize the extent of their agent's misconduct. When the full range of the informer's activities and the police response became known to the assistant district attorney assigned to the trial, he reportedly sought an exception to the policy, allegedly to limit police embarrassment. Defense attorneys and investigators told us that a number of explicit (and attractive) sentence bargains were offered to several defendants who had been charged with selling drugs to this informant.

Although the Attorney General mentioned "drug problems . . . sending the guy to programs" as an area where policy exceptions might be allowed, we found no such cases recorded in the files. There were, however, records of

cases involving defendants suffering from apparent mental or emotional problems in which prosecutors asked for, and received, permission to recommend special rehabilitative treatment.

Some lawyers believed that "exceptional circumstances" was a label of convenience, mutable according the expediencies of prosecution.

> 'Exceptional circumstances' is undefined. It is an ambiguous term in the policy. It creates a suspect class of defendants. In my experience, any time the D.A. wants to deal a case, he'll deal. And then he will find the exceptional circumstance to back him up.

Despite the tenor of the foregoing remarks, even this defense attorney conceded that special exceptions were granted infrequently. The gist of the grievance with respect to this, as well as other aspects of the policy against plea bargaining, was that rules were applied strictly or with relative laxity to suit the convenience of prosecutors. There was some feeling that the policy against negotiating with counsel was used by district attorneys as an effective device for driving harder bargains when circumstances made it expedient for them to negotiate. Yet, in cases that presented no prosecution problems, some defense attorneys said that prosecutors seldom failed to become rigid and self-righteous about the need to comply with the policy against plea bargaining.

IV. The Screening Decision

The Attorney General emphasized tighter screening of cases as an integral part of his policy against plea bargaining. By "screening" he meant the careful review of all police charges to eliminate cases based on insufficient evidence, or cases which, for any valid reason, ought not to be prosecuted. He stressed that assistant district attorneys were to assert their independence and should refuse to prosecute if they believed police investigations were inadequate. The Attorney General did not want prosecutors to placate the police by filing felony charges, expecting to "wash out" these cases later in the proceedings through plea bargaining.[24/]

In the year preceding the Attorney General's new policy, Anchorage showed by far the highest screening rate. About 13 per cent of Anchorage felony arrests never reached any courtroom because they were turned away by the prosecutors. By contrast, in the same pre-policy year, Fairbanks district attorneys were accepting almost everything: they rejected only 4 per cent of the cases brought to them by the police.

Since the Attorney General placed so much emphasis on screening, and it was frequently mentioned by prosecutors, we expected to find strong changes in all locations. Nevertheless, in the year after the policy went into effect the Anchorage screening rate rose only very slightly--from 13

per cent to 14.7 per cent of all felony arrests. At the same time, in tough, adversarial Fairbanks, although the screening rate never reached the level even of pre-policy Anchorage, there was a much more dramatic change. Fairbanks screening rates more than doubled: they went from 4 per cent to about 9 per cent.

In contrast to these statistical findings were the impressions we received from many Anchorage police officers, prosecutors and judges. Interviews with these officials led us to believe the policy against plea bargaining had caused massive and unprecedented refusals to prosecute. For example, one Anchorage assistant district attorney said: "I check my conscience at the door when I screen cases now." Another Anchorage prosecutor told us:

> The social cost is pretty substantial. I have declined many cases where I know that a crime has occurred--people have suffered, but we don't take the case. The public is not served to the extent those violations are not dealt with.

The Chief of Police of the Anchorage Police Department said, "Prosecutors are turning down far more cases than they are prosecuting." A year after the policy change, the largest Anchorage newspaper published an article claiming that under the policy against plea bargaining the local district attorney was refusing to prosecute armed robbers;[25/] consequently, the story asserted, criminals were being "turned loose" to prey on local merchants. The Attorney General was accused

of "ruining" the criminal justice system. Relations between prosecutors and police in Anchorage reached a low ebb over the alleged impact of tighter screening--an impact we measured at only 1.7 percent over the prior year.[26/]

This situation was quite different in Fairbanks, where police-prosecutor relations were better to begin with. Although under the policy against plea bargaining the Fairbanks rate of case rejection more than doubled, prosecutors there made no special claims to be screening more strictly than before. There were also far fewer complaints about rejected cases from Fairbanks police officers. Had the Fairbanks police been disposed to complain, the doubling of the screening rate there certainly would have given more basis for complaint than the 1.7 per cent increase claimed to underlie the controversy in Anchorage.

In Anchorage several different assistants performed the screening function in rotation. Each assistant was largely autonomous in his decisions and usually did not have to obtain clearance from the chief district attorney before deciding to reject a case. Nor did assistants in any city have the benefit of uniform standards to follow, since the Attorney General did not promulgate any guidelines to control screening decisions statewide. He left each office to develop its own notion of how to apply the policy on screening. The following interview with an Anchorage prosecutor illustrates the reality of the situation:

Q. What kind of standard do you use for screening felony cases?

A. It's kind of a hybrid . . . It's in between probable cause and beyond a reasonable doubt. I don't think it is quite as restrictive as beyond a reasonable doubt.

Q. These words are meaningless to me. What's beyond a reasonable doubt to one person may be probable cause to the next one. What does that really mean?

A. I agree with you. They are meaningless.

Although the preceding discussion has emphasized the evidence to the exclusion of other factors bearing upon the screening decision, non-evidentiary considerations may have been at least equally important. In fact, as the statistical analysis reported in Part Two will show, evidence may not have played the largest role in screening. Screening or charging decisions were sometimes influenced by the prosecutor's evaluation of the defendant's personal characteristics.

> We had an 18-year-old girl who was charged with grand larceny--stealing over $250. It was her first offense. She saw the school teacher's purse open and she grabbed the money. The money was returned. The question was: should she be convicted of a felony? The Attorney General said, 'If you feel that she should not have a felony just change it to petty larceny.' There was no defense attorney involved here at all. This was not a bargaining situation. We did this on our own.

One private criminal defense specialist characterized the screening practices of the Anchorage office in this way:

> Screening totally depends on the intake [assistant] D.A. If you have a weak-willed guy, the cops run over him and he takes cases with holes in them. If you have a moralistic guy, he may take weaker cases just because he thinks the defendant is a 'bad guy,' or the crime is particularly serious. On the other hand, if you have a guy with a strong ego, or one who has high credibility with the cops, you tend to get tighter screening and better cases from the prosecution standpoint.

In contrast to Anchorage where assistants were given autonomy in screening, the District Attorney of Fairbanks personally exercised final review over most screening decisions. This probably resulted in a more uniform application of the policy, and thus in a greater change in overall screening rates in comparison with Anchorage, where different assistants tended to "neutralize" one another. Still, Fairbanks remained a "tougher" jurisdiction; notwithstanding a doubled rate of case rejection they continued under the new policy to prosecute a larger proportion of police charges than Anchorage. This willingness to prosecute more cases probably contributed to the good police-prosecutor relations in Fairbanks.

One explanation for the fairly low screening rates in all locations during both years of our study can be found in the requirement of Alaska Criminal Rule 5 that all defendants be brought to court for their first appearance no later than 24 hours after being taken into custody. Under this rule, if there is no complaint in the file the judge or

magistrate must discharge the defendant immediately. Thus, if a prosecutor wishes to "screen out" an arrested defendant (about 97 per cent of all the cases in the study were initiated by arrest) he must make his decision not to file a complaint within the 24 hours between arrest and the first appearance. The intake prosecutor's judgment is generally based on the police report alone, since it is not usual practice to speak with "civilian" witnesses at this stage. The police report may have been hastily prepared, may be incomplete, and may contain an optimistic assessment of the evidence against the accused. Even so, since someone has been arrested for an alleged felony, and since the case can always be dismissed later on, there is probably a tendency for prosecutors to support the arrest by filing a complaint. Often there was simply insufficient time for an assistant district attorney to make the kind of critical evaluation of the evidence the Attorney General wished to encourage. In addition the police sometimes thwarted the Attorney General's intentions by acting, in effect, as their own lawyers.

> We try to have the police come over here with their reports for review before the complaint is filed. The city police are generally very good about this, but now the state police are bad about it. Just because the person is arrested doesn't automatically mean we file a complaint. Sometimes we just turn them loose at arraignment. We have at the most 24 hours to make that decision. In 1975 the police used to bring us most of their felony reports for review prior to filing a complaint. Now the state police are doing

> most of their own complaints themselves. Prior to the 1:30 p.m. arraignments on arrested persons the complaint shows up in our office all typed with the trooper's signature on it. More and more of these are turning up lately. It wasn't that way in 1975. [assistant district attorney, Anchorage]

Although in this discussion, and in the statistical analysis reported in Part Two, we have treated screening as an activity limited to the 24-hour period between arrest and the first court appearance, from a prosecutor's perspective the screening function extends over a longer period: it may be seen as including decisions to dismiss made at any time up to the grand jury presentation. This was the view of an experienced Anchorage intake officer.

> The most critical [screening] is the decision on what goes to grand jury and what doesn't. This includes a hard look at the case. You begin looking at availability of witnesses before the grand jury. Usually I read the police report, try to talk to the officer, sometimes have the officer find out more facts to fill in the holes.

Thus, it may be more realistic to include district court dismissals in any consideration of screening rates. At present we merely wish to note that although the Attorney General urged closer attention to the evidence in all cases <u>before filing</u>, he established no new procedures to assure this result. Since existing requirements of the criminal rules allowed little time to scrutinize the evidence closely before a complaint was filed, much of this scrutiny was inevitably postponed to a later stage of the proceedings.

V. The Decision to Plead Guilty or Go to Trial

> Despite the serious questions raised by a system of negotiated pleas, there are important arguments for preserving it. Our system of justice has come to depend on the steady flow of guilty pleas. There are simply not enough judges, prosecutors or defense counsel to operate a system in which most defendants go to trial. [The President's Commission on Law Enforcement and Administration of Criminal Justice, Task Force Report: The Courts, 10 (1967)]

When the Attorney General announced that he would no longer permit district attorneys and assistants to encourage guilty pleas by offering plea bargains, many of the judges and lawyers in Alaska believed the new policy would bring about an unmanageable increase in trials. If defendants were not given some assurance as to what would happen to them if they surrendered, it was assumed that a great many more would fight. Some people expected the Public Defender Agency to demand trials in all cases.[27/] These expectations proved unfounded.

In fact, guilty pleas continued to flow in at nearly undiminished rates. Most defendants pled guilty even when the state offered them nothing in exchange for their cooperation. We asked a superior court judge why this was so.

> I am sure there's a greater reluctance to enter a plea, which reluctance does not result in significantly fewer pleas

being entered. Human nature doesn't want to engage in a fruitless act.

Many lawyers agreed with this judge. As we observed earlier on, in neither study year did the average felony case involve a particularly serious charge or a defendant with a serious prior record. Once the weaker cases were screened out or reduced to easily provable levels, often there were few remaining obstacles to conviction. In short, most defendants continued to plead guilty because, whether or not they were afforded the certainty of binding prosecutorial commitments, the alternative of going to trial seemed "a fruitless act." Here is how an experienced public defender described the situation:

Q. I just don't understand why people who face all this uncertainty are going to give up all their rights. I don't understand what their inducement is.

A. Well, where you've got a 19-year-old kid who's ripped off somebody else's stereo and he confessed to it, what do you gain from going to trial? You can go to jury trial and your client gets on the stand and says, 'I didn't do it,' and you say, 'Well you confessed to it, and we found the stereo in your house.' You know, what's going to happen then? I mean your client is either going to have to perjure himself, or he's not going to take the stand. And if he doesn't take the stand, and if it takes you four days to try the case, you have nothing to argue at the end. The judge is going to say, 'What happened here?' 'Why did you waste thousands of dollars putting us all through this?' You know, they're going to pay a price for this--it's only natural.

Another assistant public defender, in a different city, told essentially the same story:

> You know, a lot of times they have the person cold, and it doesn't matter how bad the D.A. is, or anything else. The person is going to get convicted. And I think that there are cases where it is worse for the person to go to trial and have the judge see all the evidence. Because no matter how much the D.A. informs the judge, or what is said in the presentence report, it looks worse when the judge sits for three or four days and listens to the evidence.
>
> So, if they have the guy cold, as much as the defense bar would like to screw up the system by taking every case to trial, everybody has realized that if the guy is just going to get convicted anyway, because they couldn't possibly bungle it so badly, then you really haven't done your client any service. One judge will punish him because he doesn't think the man should've gone to trial. Other judges will simply have learned more of the facts. The facts will be more vivid when they have heard them from the stand for three or four days. So I am not surprised by the continuing rate of guilty pleas. I would not take a case to trial now just for the sake of showing them that I'm going to try all my cases.

Still another defense attorney said the same thing:

> You stand the most to lose by going to trial where you've got a first offender who has no defense, and he's probably not going to get a serious sentence. If they go to trial in that situation I think the odds are fairly high that one way or the other the judge is going to hold it against him to some extent. They are going to get somewhat longer to serve, perhaps they won't get a suspended imposition of sentence, whereas they might have had they pled.[28]

The new policy did not seem to make any essential difference in the way attorneys evaluated cases for trial or plea. If the case seemed hopeless it probably would not be tried unless the defendant was substantially certain to receive a long sentence in any event. In a losing case with heavy sentencing exposure a trial might be preferred if only on the slim chance of the jury's failing to reach a unanimous verdict or the judge's committing an error of law leading to reversal on appeal. It was apparent that aggravated cases or cases with serious charges were more likely to go to trial.[29/]

> If they are going to get a maximum sentence no matter what happens, or a sentence that's going to be very long, there is usually no reason not to go to trial. And I will frankly tell them, 'Look, you've got nothing to lose by going to trial. There's always a chance that some sort of appeal will result.' And usually the client says, 'Yeah, let's go to trial.' Typically, that sort of client has been around before. You often don't have to give him those recommendations. He'll make the decision himself, independently, because he's been through the process once or twice. It's the more serious criminal who is going to decide that. [assistant public defender]

The decision whether to go to trial or to plead guilty in Alaska clearly depended more on the nature of the case and on the client than on whether plea bargaining was permitted.[30/]

> Cases can be divided into categories. First you have dead-bang losers with a fairly attractive client--only property cases, or cases where nobody is hurt. These guys usually plead guilty to an open sentencing.

> Next is the dead-bang loser with a client who is going to get burned--robberies, rapes, drug sales. Even with a confession, you are pretty much forced to trial. It doesn't help to plead guilty so that you can characterize your client as a "cooperative rapist."
>
> Third are homicides. Of all cases, homicides are the ones in which deals are most readily available. Even when there is a confession, it doesn't preclude a meritorious defense based on the particular degree of homicide. There are so many issues of criminal intent in these cases that you can usually get a good jury question.
>
> Then there are also cases presenting substantial questions of law or fact. There, you just do your work and get ready for trial. In these cases, maybe ten percent of the time, the charges are reduced, but this is usually a unilateral process, and not really a bargain.

The first category of cases, the "dead-bang losers with fairly attractive clients," probably comprised the bulk of the public defender caseload in Anchorage, Fairbanks and Juneau. These were the unexceptional cases we have referred to before. The 19-year-old who "rips off" the stereo fits neatly into this category. Nobody was hurt, the property can be returned, and the defendant is not likely to be regarded as a menace to society. On the other hand, the case itself is a "dead-bang loser" because the evidence seems overwhelming. Perhaps a highly motivated defense attorney with sufficient time, resources, and luck could dig deeply enough to find a credible defense. But since most defendants are not fortunate or wealthy enough to be defended in this manner, they usually plead guilty.

Some defendants were advised to plead guilty because putting up a fight appeared inconsistent with their previous postures of compliance and cooperation. In effect, lawyers hoped that if their clients "rolled over" and assumed submissive positions they would be rewarded for their positive attitudes by receiving rehabilitation rather than punishment.

> Now if the guy is a 'boy scout,' I might advise him to enter a guilty plea. Keep the image consistent. He cooperated all the way. [assistant public defender]
>
> * * *
>
> Take this recent case I had where a guy was charged with a first offense of burglary in a dwelling. He confessed when he was arrested and he helped the cops retrieve the property. He had no real defenses. If he had exercised all his constitutional rights it would have hurt him. He'd have gone to jail. I could advise him that if he continued in the cooperative mode in which he had already begun when I started representing him he'd have the best chances of probation. He got straight probation and a suspended imposition of sentence. He could never have gotten that disposition if he had exercised his constitutional rights. [private attorney]

Some defense attorneys frankly acknowledged that an occasional client gained no advantage by entering a guilty plea, though he was advised to do so by counsel. The advantage, they allowed, was at times only in that the lawyer himself avoided the three or four grueling courtroom days usually required for a felony trial, not to mention more

time spent in pre-trial preparation.[31/] One attorney said he had to remain constantly on guard against a natural tendency to advise clients to plead guilty when to do so would benefit only himself.

> You really have to watch yourself if you have three or four trials scheduled over the next month, and you are picking up new cases. If a case looks bad you may automatically say, 'Well, that person is going to plead guilty.' There is only so much you can take.
>
> As a defense attorney you have a wide range of rationalizations for not going to trial. The defense attorney does not misrepresent, so much as he comes up with rationalizations why clients shouldn't go to trial. And it isn't difficult to do this in any given case. [assistant public defender]

Ironically, some prosecutors were critical of defense attorneys for capitulating too quickly to the charges.

> Many defense attorneys are pleading when they shouldn't. They are doing their clients a disservice by not going to trial. There is always the off chance of a hung jury, and then we probably wouldn't retry the case.
>
> Even if the defendant is convicted, he would probably get bail pending appeal. If the appeal is affirmed, he can move for re-sentencing after the decision comes down. By that time he has spent a year and a half out of jail. And if he hasn't gotten into any more trouble, he has a good chance of getting his sentence lowered. The defendant is giving up a lot to plead guilty, and not getting anything in return, except a slight chance the judge will sentence him more leniently. [assistant district attorney]

Discussions of the guilty plea/trial decision usually ignore a very important human reality: no lawyer likes to make a fool of himself in public. A felony trial is a public contest in which each side attempts to persuade twelve strangers that his version of the facts is true. If the defendant does not have a credible response to the state's evidence, or if his lawyer is unable to show that the state's case is deficient, then the contest will be very one-sided. A defense attorney may end up after several days of trial with a final argument to the jury that sounds quite foolish. Therefore, lawyers sometimes advised their clients to plead guilty when there was no apparent chance of acquittal, even though by admitting guilt they waived recourse to the post-trial remedies mentioned by the assistant district attorney on the preceding page. One public defender explained how he had to overcome the fear of appearing foolish and force himself to go to trial.

> Fear of embarrassment was one of the big things that I have had to get over as a trial attorney. Some cases are just embarrassing. . . . .
>
> Yes, but that's what ought to be done because if you plead him guilty they aren't going to give you any brownie points over there--not to him anyway. You know, they might pat the attorney on the back: 'Boy, you sure helped out the court's calendaring problem. Thanks for helping out the system.' But I think it is pretty clear that your duty is to your client, unless he is asking you to help him commit perjury or something.

Another attorney agreed.

> You know, that's got to be the toughest thing, when you just don't have very much to argue at all, and you're sitting through a trial just searching for something to say at the end of the case. There are a lot of attorneys that wouldn't subject themselves to that, who would rationalize that their clients would gain something by entering their pleas. It's a rationalization process. [assistant public defender]

Another factor bearing on the trial/plea decision was the perception that a defendant convicted after putting the state to the trouble of proving its case would pay a price in the form of a longer sentence than he would have received had he pled guilty. Statistical analysis appeared to support this differential-sentencing hypothesis in sentences for crimes involving violence, including robbery, rape, felonious assaults, and the like. A large trial/plea sentencing differential was apparent in this offense class both in the year before and in the year after the policy against plea bargaining took effect. (See Table VII-10) Therefore, statistical analysis gives us no reason to believe the new policy eliminated differential sentencing for violent crimes. For property crimes the situation was quite different and will be discussed in detail in Part Two.

Nor is it certain that differential sentencing for violent crimes actually represented the punishment of defendants for the exercise of their consitutional rights.

Many Alaskan attorneys believed that longer sentences following trial of these cases were attributable to a number of other elements. Recall the words of the assistant public defender who described a hypothetical three or four-day felony trial in which his client had no arguable defenses. This attorney thought the defendant would "pay a price," and that this was "only natural." Practitioners usually distinguished between trials in which defendants asserted reasonable defenses and those in which they seemed to be in court only to "put everyone through the motions."

> Usually they can't take the stand, and they don't have any witnesses. It's simply a matter of sitting there and cross-examining the state's witnesses, tying up three days of court time. In those cases most judges will hold something against them. [defense attorney]

A superior court judge in Anchorage, when asked whether he would penalize a person for going to trial under such circumstances, replied: "I try not to let it prejudice me, but I am intolerant of waste."

Some practitioners said that although before the policy against plea bargaining judges may have had a tendency to penalize defendants for wasting time in fruitless trials, after the new policy this tendency was reduced. In Part Two we present statistical evidence that this interpretation was correct with regard to crimes against property.

> Prior to the policy change there would have been at least a subconscious inclination to punish more heavily after trial. But I don't think this exists much any more. At sentencing I have no hesitation about telling the judge that I advised this man to go to trial. I tell the judge I advised it because there was nothing to be gained from dealing with the D.A.'s office, just the hope that at trial perhaps a certain witness wouldn't show up. I tell the judge that he shouldn't take it out on my client if I wasted his time.
>
> * * *
>
> I just let the judge know that this was my idea to go to trial, not my client's. You know, my client just wanted to sit here quietly to make sure the witnesses are going to show up. And I told him it made sense for him to do this. [assistant public defender]

Some attorneys believed that plea/trial sentencing differentials were real, and that they did encourage guilty pleas. However, they believed these differentials were caused more by prosecutors than by judges.

> Prosecutors have been much more likely to penalize the exercise of the right to trial than have judges. They really mind when a defendant has wasted their time and made them work harder. [private attorney]

If a defendant was convicted after trial, the assistant district attorney was not prohibited under the new policy from making a sentence recommendation; since there was no guilty plea, obviously no plea bargain could be involved.

> With one judge, if you went to trial the D.A.'s office would recommend more time. But they would make no recommendation at all if you pled guilty. With this judge you took a real chance with your client [going to trial] because he would follow the D.A.'s recommendation. [assistant public defender]

Another common explanation for longer post-trial sentencing in some cases was that the trial process exposed judges more intensely to unpleasant facts and information concerning the crime. They were therefore less disposed toward leniency if the defendant was convicted. Earlier on we quoted an assistant public defender in Fairbanks who said

> Other judges will simply have learned more of the facts. The facts will be more vivid when they have heard them from the stand for three or four days. So I am not surprised by the continuing rate of guilty pleas.

A superior court judge agreed with this public defender.

> Very probably a judge sentences heavier for going to trial--but that's because he hears a full description of a broken, bleeding victim.

Another assistant public defender said:

> In violent crimes the judge sees the victim and hears the whole ugly story. Naturally he's going to give a tougher sentence. In fraud crimes the judge has a chance to sit and think, 'Boy, this guy really premeditated this fraud; he's too slick to trust.' On the other hand,

> most property and drug crimes are not capable of creating that sort of excitement.

Finally, at least one superior court judge frankly acknowledged the existence of plea/trial sentencing differentials *per se*. This judge did not believe differential sentences were wrong; nor did he take refuge in the familiar argument that a guilty plea was the "first step on the road to rehabilitation." Rather, he characterized the decision to go to trial as a conscious gamble undertaken by the defendant and saw nothing wrong in making a loser pay the price.

> The defendant played the odds; they went against him. He played, and he declined to plead. He put the state to the burden of proof, and the state won. There's nothing wrong with that.

VI. Sentencing

It was the Attorney General's official position that sentencing should be strictly a job for judges without "extraneous" influences brought to bear by attorneys. In short, the Attorney General wanted sentencing to be wholly divorced from tactical and legal considerations pertaining to the prosecution and defense of criminal cases. He hoped that the elimination of attorneys' participation would produce a higher quality of justice.

> I see sentencing as a judicial function. When it's exercised by prosecutors and defense counsel the judiciary is stripped of that function, which results in some weird things happening. [Attorney General, August 1977]
>
> * *
>
> The real question is whether judges' independent judgment is producing any better type of sentencing than when sentences were arrived at through deals. [Attorney General, Statewide Judicial Conference, Anchorage, Alaska, June 2, 1976]

A review of the in-court deputy clerks' log notes in all sentencing proceedings during the two-year period of this study showed that the Attorney General was quite successful in sharply reducing the incidence of explicit sentence bargaining. Interview responses agreed with the statistical finding that sentence bargaining had been essentially terminated under the new policy. In fact, respondents were more emphatic on this point than the statistics alone would warrant; we believe the statistical evidence probably understates the occurrence of sentence bargains in the year before the new policy went into effect.[32/] Nor did our investigations uncover substantial evidence that sentence bargaining either continued on a covert basis or assumed some new guise under the new policy. In short, most prosecutors complied rather closely with this aspect of the Attorney General's policy; indeed, assistant district attorneys may have had a tendency to exceed Mr. Gross's instructions by displaying a strictly "hands off" attitude at presentence hearings.

The abrupt cessation of sentence negotiations between attorneys and the termination of prosecutorial sentence recommendations were two of the clearest and most immediate changes brought about by the new policy. Essentially, these changes probably did have the effect of turning sentencing into a strictly judicial function, as the Attorney General wished.[33/] Full responsibility for most criminal sentences was squarely thrust upon the judges.

> Now they have to take the responsibility. They can't blame the sentence on the prosecutor. The judges say that the reason for the increase in sentences is increased public concern rather than the change in the plea bargaining policy. That is hypocritical. The increased public concern started six or seven years ago. The major factor in the increase in sentences is the end of plea bargaining. [assistant district attorney]

This assistant district attorney was correct in two respects: there was a clear increase in the severity of sentences for some kinds of offenses--but not for all of them. Also, as will be discussed in Part Two, statistical analysis indicates that these enhanced punishments apparently were a consequence of the new policy itself, rather than of any other factor we measured. Sentencing increases appeared to be distributed rather selectively. For instance, although sentences for charges involving violent crimes such as robbery, rape and felonious assault were not affected in any way, we did find a 117 per cent increase in average sentence

lengths for charges involving bad checks, forgeries, frauds and embezzlements. There was also a very large (233 per cent) increase in the length of drug sentences. Moreover, after the change in policy it became more likely that drug and check and fraud charges would result in prison sentences in excess of 30 days, as opposed to probation, or jail terms less than 30 days long. For violent-crime charges, however, no increased likelihood of receiving a substantial jail sentence was found to be associated with the new policy.

The new policy had a particularly selective impact on the severity of certain sentences for burglary, larceny and receiving and concealing stolen property. In this group of property offenses it appeared that only relatively "clean" offenders were punished more severely as a result of the policy. Detailed discussion of this finding will be reserved for the statistical analysis reported in Part Two.

We have previously emphasized that the Attorney General's policy had its greatest impact in the disposition of unexceptional cases involving few aggravating factors. These cases may have been of the kind one assistant public defender had in mind when he referred to "dead-bang losers with fairly attractive clients;" they probably made up a substantial portion of the caseloads of most criminal attorneys, particularly assistant public defenders. Since these cases were candidates for probation under institutionalized plea bargaining, light sentences could be predicted with

some confidence. However, after August 15, 1975 "dead bang losers" could not tempt prosecutors to stray from the Attorney General's policy, and few concessions of any kind were available to these defendants. Accordingly, sentencing in these cases became strictly judicial and penalties increased.

Defense attorneys frequently commented that the withdrawal of prosecutors from the sentencing process seemed to have the effect of producing longer sentences.

> Previously, when there was actual plea bargaining, you would stick to the bargain and he [the prosecutor] would be committed to saying certain things. Now there is no reason for the prosecutor to take up his time interviewing the victim and talking to everybody to figure out what he should say in a humanitarian, prosecutorial discretion-oriented sort of way. Instead, it's just another case, and it's off his trial calendar. The prosecutors don't put any time into sentencing at all unless it's a heavy case. [private attorney]

* *

> The only person that really has any chance to evaluate the case--the district attorney--the person who talks to the police and interviews the victim and figures out really what the harms of the case are, and who is able to figure out what it is worth in comparison with other cases--is not allowed to speak.
>
> And the judge is drawing a number out of the hat, sort of looking around and figuring out what other people are sentencing to, and scanning the pre-sentence report quickly. He is largely shooting from the hip. And I don't think that it is producing a better result. [private attorney]

* *

> Before the policy change if you had an equitable argument on your side you could more frequently get the district attorney to present it to the judge at the sentencing hearing. If the judge tended to have more confidence in the district attorney, this would operate to limit the sentences on some crimes where there is no limiting factor now. [private attorney]

Many lawyers said that the participation of counsel in sentencing decisions was inherently superior to the more strictly judicial decision-making process that prevailed under the new policy. The gist of their assertion was that the participation of counsel allowed for fuller consideration of the case. At the least, more people spent more time discussing each sentence. Negotiations between attorneys could be initiated, broken off, and sometimes resumed over a period of days, weeks or even months. When a case reached the courtroom, although the sentencing proceedings themselves might be brief, the prosecutor's recommendation was often the product of protracted discussions.

> The thing was, you dealt with the client, you got to know the case, you and the D.A. had done the preliminary hearing. You have seen the evidence. You talk about it. On the hard ones, you certainly did spend a lot of time, and you didn't have to do it on a particular day.
>
> If you were in a bad mood, or the D.A. was in a bad mood, you didn't have to talk. Or if the talks were unfruitful, you could say, 'Let's talk about this some other day.'
>
> Now, you don't have that option with the judge. You are in court, and if he is having a bad day, or is in a bad mood,

> or if he has just seen some guy he took a chance on come back for another arraignment or something--little things like that can affect the sentence. You are just throwing yourself in there. [assistant public defender]
>
> * * *
>
> It all happens too fast. It's all too cold. He [the judge] gets to hear some facts at the sentencing hearing, and our recommendations, as kind of a one-shot deal. It doesn't produce the same quality of justice. [assistant public defender]

Discussion of sentencing considerations by attorneys--far from being extraneous--was said to have increased the prosecutor's "feel" for the case. He could then translate his impressions into more appropriate and detailed recommendations at the time of sentencing. Many defense attorneys believed that the plea bargaining system exerted a humanizing influence lacking in the sentencing process under the Attorney General's policy.

> I don't think that judges are as aware of the intangibles in a case as are the two lawyers who have been dealing with each other over a long period of time. For example, over my course of dealings with the district attorney's office I have built up a certain reputation with them. If I tell them how I honestly perceive my client and his role in a particular crime, I have some credibility. Together, we can convey the sense of this information in the form of a sentence recommendation to the judge. Right now, a judge doesn't get the benefit of these kinds of intangibles. [assistant public defender]
>
> * * *

> The defense attorney would talk to the district attorney and in the process convey the humanity of the defendant to the district attorney, who might never even have considered the person as a human being, or as having done anything other than continually kidnapping or raping. And when that humanity was conveyed, it would soften up the district attorneys a little bit, and they would kind of temper their recommendations. But this isn't going on now, so we get harsher sentences. [assistant public defender]

Some judges regretted that district attorneys no longer negotiated sentences with defense counsel and no longer made specific recommendations. Although they conceded the potential for abuse under the former system, they did not believe that abuse was by any means inevitable.

> What's wrong with judges' getting the facts from the parties before conviction and accepting a proposed disposition if the judge really thinks it's reasonable? What is wrong with plea bargaining is when a judge abdicates his functions and doesn't do his duty. When he approves a bad deal just because the D.A. doesn't want to go to trial, instead of using his own judgment. [superior court judge]

Not every prosecutor agreed with the Attorney General's position that sentencing ought to be a purely judicial function. Those who disagreed with him pointed out that judges received no special training in criminal sentencing. In essence, they observed that judges were simply lawyers appointed to the bench; their experience in criminal law was frequently less extensive than that of many assistant district attorneys or public defenders.

> The whole policy depends on reasonable judges, and that is where it can fall down. One of the theories behind the policy is, 'Let's leave sentencing to the judges.' I think there is a fallacy in this, since I believe that the D.A.'s have as much expertise in sentencing as judges. When plea bargaining is handled responsibly it's better than the present system. [assistant district attorney]

Other attorneys said that since the new plea bargaining policy placed more responsbility for sentencing upon the courts, judges therefore ought to devote increased attention to the sentencing process. These lawyers complained that most judges had not taken up the challenge, and that the practice of carrying on business as usual in the face of increased responsibilities had brought about a decline in the quality of justice.

> You still have the same judges on the bench with the same idiosyncracies, taking less and less time at sentencing hearings. The pre-sentence unit does the pre-sentence reports the day before and gives them to you with very little time to respond to them. The judges strongly discourage hearing witnesses at sentencing hearings or giving you sufficient time to develop sentencing arguments. They still seem to feel that their time is being taken up, and they want to hurry you along because the calendar is crowded. . . . . If the abolition of plea bargaining was being coupled with a sincere effort to do a more thorough job on pre-sentence investigation, and to do these pre-sentence investigations far enough in advance of the hearings to allow all parties to be heard and respond, then I think I might be more favorable towards the ban [on plea bargaining].

> But right now I find them to be doing the same things they were doing before. [private attorney]

At least one superior court judge agreed that the abolition of sentence bargaining heightened the importance of the pre-sentence hearing, and he complained that existing practices and procedures appeared inadequate to the new responsibilities.

> The real problem in abolishing plea bargaining--and it oughtn't to be a problem --is that in our system legal determinations are supposed to follow the building of a factual record. In plea bargaining, as a practical matter, the actual decision lay with the parties and their attorneys, and the judge simply rubber-stamped the results, possibly with an eye on the media to avoid an unpopular result. The practical effect of this was that under plea bargaining the factual basis for the sentence was not really relevant to the court.
>
> The effect of abolishing plea bargaining is to throw the ball back to the judge. The problem is: what is the factual record on which he is to make the decision? If the parties are not to agree on an appropriate alternative, you must have some provision for providing the court with sufficient information, and legal principles to determine what information is relevant to the decision to apply a particular sanction. [superior court judge]

Nor did this judge believe that the sentence appeal decisions of the Supreme Court of Alaska were effective in establishing basic ground rules for sentencing decisions.

> I don't believe the supreme court has carried out its major function in using appellate decisions as vehicles for suggesting results in future cases: in other words, the development of non-statutory legal principles. They give standards and no principles. A legal principle states the legal result that automatically follows the finding of certain facts. An extreme example would be the statute of limitations. At the opposite end of the spectrum is what the supreme court calls standards or guidelines.
>
> The Chaney[34/] case has a laundry list of factors to be found by a judge in sentencing. But there is no set of findings that actually gives you the result. All the supreme court is saying is, 'Think about these things.' But where are you? Nowhere. There is still a decision to be made on the basis of 'whatever is fair.' The supreme court has an emotional reaction to violence, so they have apparently said that the maximum sentence is five years, except where you find violence, then anything goes.

VII. Effect on Disposition Times

> The calendar problem is, of course, real. The administration of justice has become so dependent on plea bargaining that it could not be eliminated *instanter* by decree. To do so would inundate our presently over-taxed prosecutorial and judicial facilities. This, of course, is a matter of realistic concern--as is the fundamental soundness of a system of justice whose very ability to function is said to depend on [plea bargaining]. *People v. Byrd* 162 N.W.2d 771, 782 (Mich. App. 1968), (Levin, J., concurring)

Supporters and detractors of plea bargaining have both shared the assumption that, regardless of the merits of the practice, it is probably necessary to the efficient ad-

ministration of justice. The findings of this study suggest that, at least in Alaska, both sides were wrong.

On August 15, 1974, before the Attorney General's policy was announced, the average time required to dispose of an Anchorage felony case from filing to final superior court disposition was 192 days. By the end of the first year following the abolition of plea bargaining, disposition time for the average Anchorage felony case had dropped to 89.5 days. Similar, though somewhat less dramatic reductions in disposition times also occurred in Fairbanks and Juneau.[35/] This decline in the time required to dispose of felony filings cannot be attributed directly to the policy against plea bargaining: the downward trend became evident in February of 1975, before the new policy was announced. However, contrary to all expectations, the curtailment of plea bargaining did not in any way tend to impede court efficiency--and it may even have had the reverse effect.

A variety of different influences probably combined to make the courts more efficient. In November of 1975 the superior court in Anchorage changed from a system in which each judge controlled his own calendar to a master calendar under the control of the Presiding Judge and his Area Trial Court Administrator. The new system in Anchorage also coincided with the appointment of a new Presiding Judge, a man with a reputation as a tough administrator. Under the new calendar arrangement all motions, including

requests for continuances, were referred directly to the Presiding Judge for decision. A special effort was made to reduce the granting of continuance motions. One judge said: "We'll only grant a continuance if the lawyer has a heart attack and two broken legs." The Attorney General also discouraged prosecutors from asking the court for continuances, and attorneys agreed that they became much more difficult to obtain after the new policy went into effect.

On December 18, 1975 the supreme court promulgated Order No. 226, an amendment to the Rules Governing the Administration of Courts. This order, applicable to all trial courts, required presiding judges to "maintain a current list of all matters under advisement in the superior and district courts in [each] judicial district." On this current list were to be included the name and the nature of each case under advisement and the name of each judge responsible for its decision; the list was to be circulated among all judges, with copies to the Administrative Director of the Alaska Court System. If a judge held a motion under advisement for more than ten days after the date the matter was submitted to him for decision, he was required to file a written report with the Presiding Judge including "an explanation of the circumstances justifying the delay."

Although a master calendar, a new Presiding Judge and strict control over motion practice undoubtedly contributed much to the acceleration of court dispositions in

Anchorage, these changes cannot supply the explanation for more efficient processing elsewhere. Fairbanks became more efficient without instituting similar changes. Nor can Order No. 226 take full credit, since motions under advisement probably accounted for only a small portion of criminal court delay.

The Fairbanks reduction in processing times is especially interesting for two reasons: the policy against plea bargaining was most strictly enforced in that city, and the rate of trials rose most sharply there. Without any specific procedural reforms or personnel changes to account for the acceleration, Fairbanks still became much more efficient. Perhaps the faster case processing in that city was brought about by people simply working harder in anticipation of the deluge of trials expected to result not only from the curtailment in plea bargaining, but also from the social impacts of trans-Alaska pipeline construction, which were more obvious in Fairbanks than Anchorage or Juneau.

Another possible explanation, supported by some defense attorney interviews, is that plea bargaining itself encouraged dilatory tactics which became less frequent as the Attorney General's ban took effect. Formerly, when it was expected that routine cases would "settle" we were told that attorneys would seek delays for tactical purposes associated with the negotiations. For example, if one delayed long enough perhaps the facts would become stale in the memories

of the assistant district attorney and the witnesses; the facts might seem less serious with the passage of time, or the case might be displaced by the press of later business. When bargaining was out of the question these motives for delay no longer applied.

PART TWO

A STATISTICAL ANALYSIS OF THE EFFECT OF THE PLEA BARGAINING BAN

Stevens H. Clarke

I. Questions Addressed by the Analysis

In the previous part of this report we presented a study of the effects of Alaska's prohibition of plea bargaining based on extensive interviews with lawyers, judges, and others involved in the criminal process. The perceptions of participants and observers as revealed in interviews may disclose information about a major policy change that statistical analysis could not bring out. On the other hand, perceptions may be incorrect or distorted. The statistical analysis discussed in the following pages deals with data collected in a uniform manner for felony cases initiated during the year before and the year after the plea bargaining ban went into effect. The data do not include some subtle or intangible features of the criminal process to which interviews would be sensitive, but they provide a basis for making general statements about the routine processing of criminal cases which participant-observers sometimes overlook. Thus, the interview and statistical analysis are intended to complement each other.

The statistical analysis deals with the policy established by the Attorney General of Alaska, effective August 15, 1975, prohibiting all state prosecutors from plea bargaining. (The history, development, and announcement of the new policy are described in Part One.) The analysis asks these questions: (1) was the policy implemented? and (2) what effect did it have? Because in the study data it

is not really possible to distinguish the implementation of the new policy from its effects, we investigated any changes in the dispositions of felony cases that could be attributable to the new policy--either to its implementation or its results--in the three largest cities of Alaska (Anchorage, Fairbanks, and Juneau). No single definition of "plea bargaining" was used in this study; instead, we looked for information relevant to any commonly-used definition of the term. However, as a general working definition, we may say that plea bargaining involves the state's dismissing or reducing one or more charges, or promising to recommend to the court some agreed-upon sentence, in return for the defendant's plea of guilty to one or more charges.

If the Attorney General's new policy was implemented either partially or fully, we expected that, in general, defendants would receive less lenient and more punitive treatment, the state would "win" a greater proportion of cases, and fewer charge reductions and dismissals would take place. (Our expectations are stated in more detail in later sections.) The statistical analysis was aimed at determining whether the expected changes occurred by comparing data on felony dispositions in the year before adoption of the new policy with similar data from the first year after the effective date of prohibition of plea bargaining. The reason why the post-plea-bargaining-ban analysis

was limited to cases initiated in just one year--August 15, 1975 to August 14, 1976--was that felony cases typically required several months to be disposed of; data collection had to be completed by the end of 1977 to allow time for data reduction, computer processing, and analysis.

The analysis tested for possible effects of the new policy on several kinds of outcomes in the processing of felony cases:

* the screening (rejection) of felony cases by prosecutors after arrest;
* the type of disposition received when the felony case went to court, including dismissal, plea of guilty, reduction of the charge, and trial;
* the sentencing of convicted defendants;
* the overall disposition; i.e., considering all the possibilities from arrest to final disposition, whether the defendant was convicted and received a prison sentence; and
* the average disposition time for felony cases that went to court.

The conclusions of the statistical study are summarized in the next section of this part of the report. Section III describes the plan of the analysis and statistical methods. Sections IV through VII report the findings in greater detail.

II. Summary of Conclusions

Comparing felony case dispositions in the years before and after the Attorney General prohibited plea bargain-

ing in Alaska, and statistically neutralizing other factors that could confuse the comparison, what changes can be attributed to the Attorney General's action? Changes have occurred in three respects: final case outcomes, sentencing of those convicted, and the disposition process. The changes found by statistical analysis are summarized in this section. As in any summary, the details of the findings are abbreviated or simplified. Readers who are unsure of the meaning of statements in the summary or interested in more detail should consult Sections IV through VII below.

A. Final Case Outcomes

One way of looking at the handling of felony cases is to classify them in terms of this final result: whether the case ended in conviction plus an active prison sentence of 30 days or more, rather than conviction with a lesser sentence, dismissal, acquittal, or rejection of the case by the prosecutor after arrest (post-arrest screening). After adjusting for other important factors, we found that the likelihood of conviction plus imprisonment of 30 days or more increased as an apparent result of the plea bargaining ban, but only in cases involving burglary, larceny, and receiving stolen property (the most common type of felony). The overall rate of conviction and imprisonment of 30 days or more increased from 12.9 to 18.1 per cent in cases of this type. Further statistical tests showed a significant increase attributable to the plea bargaining ban itself

(after other factors influencing this outcome were controlled for). Thus, if one objective of the Attorney General's policy was to "get tougher" in terms of convictions and prison sentences, it was achieved, at least in cases involving burglary, larceny, and receiving and concealing stolen property.

B. Sentencing Those Convicted

A primary goal of the new policy against plea bargaining was to end the prosecutor's role in sentencing and let the sentence be the product of an independent decision by the trial judge. The analysis shows good evidence that this goal was at least partially achieved. Court records showed that sentence recommendations by prosecutors declined greatly in the first year after plea bargaining was prohibited (see Table II-1). Also, sentencing became more severe in certain kinds of cases (this was revealed by statistical tests in which the change in severity from one year to the next was estimated separately from the effects of other factors that could change from year to year). These facts indicate that judges were, in fact, making sentencing decisions more independently after plea bargaining was banned. Also, there was evidence that the discrepancy in sentencing between defendants who pled guilty and defendants who were convicted by trial was eliminated in cases involving burglary, larceny, and receiving stolen property.

The statistical analysis showed that sentencing became more severe--i.e., the probability of active (rather than suspended) prison terms increased, and the lengths of active terms increased--in cases involving drug, fraud, forgery, embezzlement, and bad check charges, and in "low-risk" cases involving larceny, burglary, and receiving stolen property. Sentences did not become more severe where the original charge was a violent felony and in "high-risk" larceny, burglary, and receiving cases. ("High-risk" larceny, burglary, and receiving cases were those in which at least two of the following factors were present: (1) the case was accompanied by at least one other felony charge against the same defendant; (2) the specific offense of conviction was burglary or felonious larceny (rather than a less serious offense such as receiving stolen property); and (3) the defendant had a record of prior felony convictions. All other larceny, burglary, and receiving cases were "low-risk" for purposes of the sentencing analysis.)

Why did this selective increase in sentence severity occur? Our interpretation is that defendants in these types of cases received more severe sentences because they had been more likely in the past (when plea bargaining was practiced) to receive prosecutorial recommendations of leniency than defendants in cases involving violence or certain other aggravating factors. In "low-risk" burglary, larceny, and receiving cases the absence of the aggravating

factors mentioned in the previous paragraph probably made a recommendation of probation or a short prison term more likely before plea bargaining was banned. Thus, when the prosecutor's power to recommend sentences was sharply curtailed by the plea bargaining ban, defendants in nonviolent, low-risk cases tended to lose the advantage they had formerly enjoyed, and received more severe sentences.

Drug cases experienced the greatest increase in sentencing severity after plea bargaining was forbidden. One reason for this may be that because the apportionment of punishment for drug offenses is inherently more subjective than for offenses involving clear injury or property loss, drug cases lent themselves more to the exercise of prosecutorial discretion (such as recommending a lenient sentence) than other kinds of cases--a distinction which was greatly reduced by the policy against plea bargaining. Another reason may be that a more punitive attitude toward drug offenders was developing about the same time as the plea bargaining ban.

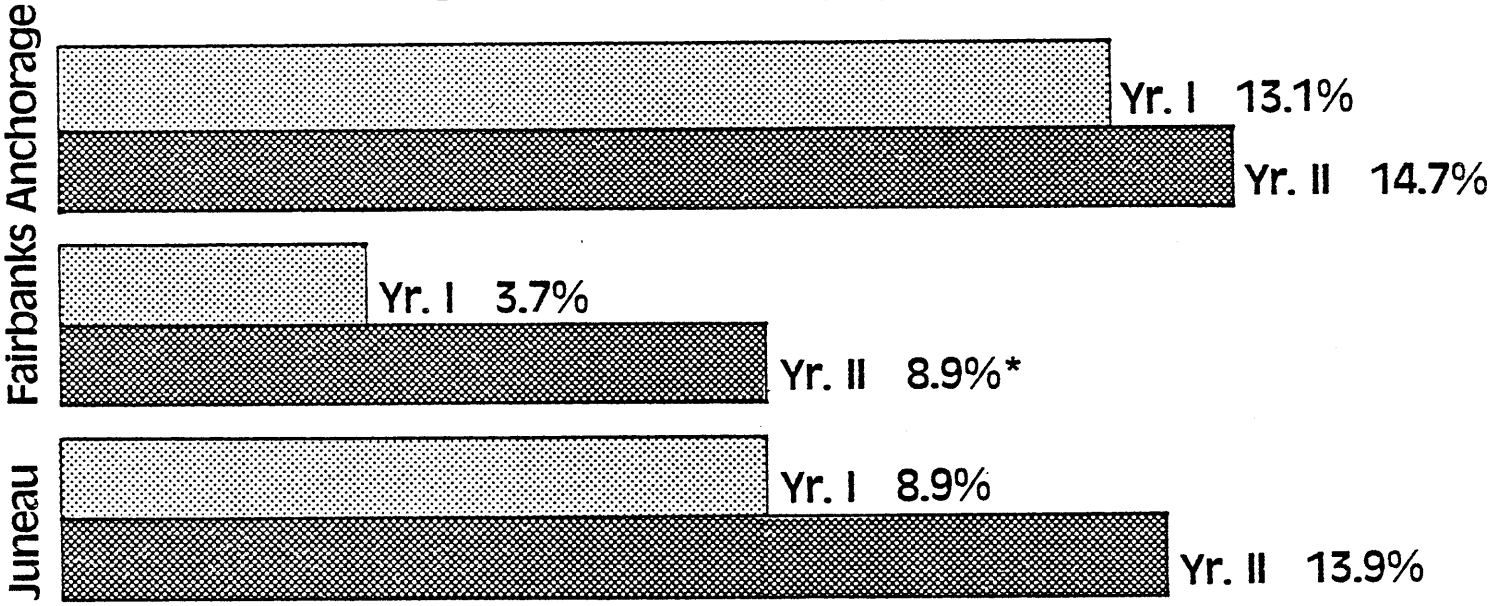
Defendants convicted of certain offenses after a trial tended to be sentenced more severely than those who pled guilty. After other characteristics in which tried and guilty-plea cases differed were controlled for, tests were made to determine whether this "plea/trial sentence differential" existed, and if so, whether the prohibition of plea bargaining affected the differential. There were too few

trial convictions in fraud, drug, and morals cases to perform these tests. In cases involving violent felonies other than murder and kidnapping, 41 trial convictions occurred in the year before the plea bargaining ban and 46 in the year after. There was a very distinct plea/trial sentence differential in such cases: sentences imposed after trial conviction were an estimated four and one-half times longer than those imposed after a guilty plea, other things being equal. (Also, in such cases, the mode of conviction--plea or trial--explained more of the total variance in sentence length than any other factor: 16 percentage points out of the total of 53 per cent explained by all factors.) This differential did not change significantly from Year One to Year Two and therefore was not affected by the plea bargaining ban.

In cases involving larceny, burglary, and receiving stolen property, few convictions occurred by trial (10 in Year One and 24 in Year Two), but enough for statistical tests that revealed a significant plea/trial sentence differential. In these cases, sentences imposed after trial conviction were an estimated six and one-half times longer than those imposed after plea of guilty <u>in Year One</u>, <u>but not in Year Two</u>. The statistical analysis indicates that the differential was nullified in Year Two, presumably by the plea bargaining ban. Thus, in burglary and larceny cases, the policy against plea bargaining was apparently successful

FIGURE 1

Table IV-1 **Screening Rates** (All offenses, by City and Year)



*Year I-Year II differences are significant at .05 or less.

in eliminating the tendency to penalize defendants who exercised their right to trial and to reward those who did not assert this right. (See further discussion of this subject in Section VII(E) below.)

C. Disposition Patterns

1. Post-Arrest Screening

Post-arrest screening (rejection of cases by the prosecutor's refusal to file a formal complaint) was expected to increase after plea bargaining was banned, so that cases in which evidence was weak or which were assigned a low priority for other reasons (e.g., the offense was minor, unaccompanied by aggravating circumstances, and the defendant did not have a prior record) could be kept from going to court. In fact, post-arrest screening did increase, but only in certain kinds of cases and--apparently--not primarily because of evaluation of evidence or of aggravating factors.

The overall screening rate did not increase significantly; it rose slightly from 10.0 per cent in Year One (the year before plea bargaining was banned) to 12.9 per cent in Year Two (the first year after the ban). Screening rates varied among the three cities (see Table IV-1 and Figure 3). The overall screening rate in Fairbanks increased significantly from a low 3.7 per cent in Year One to 8.9 per cent in Year Two, approaching the rate in the other two cities. (Increases occurred from 13.1 to 14.7 per cent in Anchorage and 8.9 to 13.9 per cent in Juneau, but neither

was statistically significant.) The largest increases in the screening rate occurred in "morals" felony cases in Anchorage (from 6.5 to 40.9 per cent), and in drug felony cases in all cities (regardless of "risk factors" present in the case). This may have been because the harm in drug offenses is more subjective--and thus encouraged more exercise of discretion by the prosecutor--than violent and property crimes. Also, "morals" cases were explicitly mentioned by the Attorney General as possible exceptions to the general prohibition against sentence bargaining. The increase in screening seems to have had little to do with the evidentiary strength of cases, except in property crimes in Fairbanks, where a large increase in the screening rate--from 0.0 to 25.9 per cent--occurred selectively in cases lacking certain "risk" factors (such as more than $100 property loss, an eyewitness, and a defendant on probation or parole) but not in cases where such factors were present. (See Section IV for details).

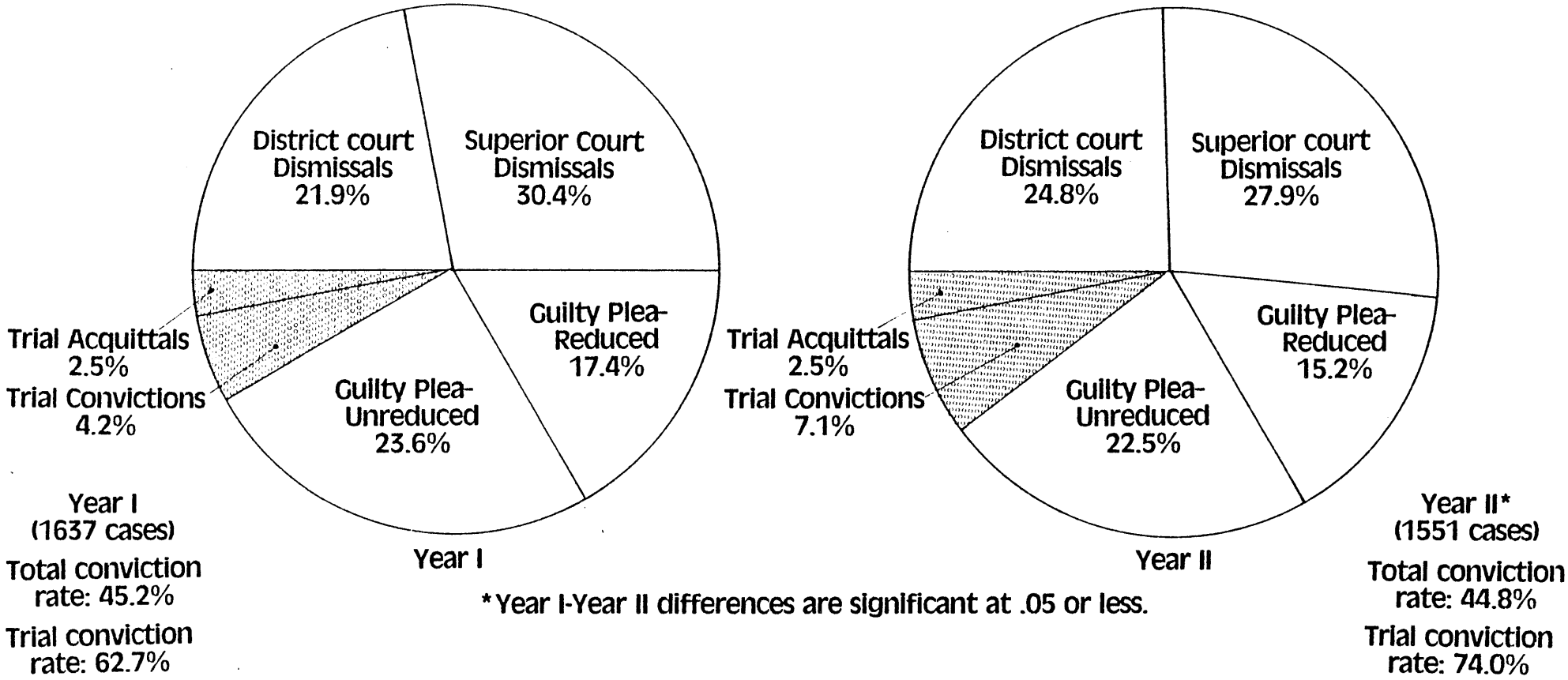
2. Trends in Court Disposition and Delay

Contrary to expectations, trials did not become much more frequent in the year after plea bargaining was banned. The proportion of cases receiving trials increased from 6.7 per cent (of cases that went to court) in Year One to 9.6 per cent in Year Two. All of this increase occurred in trial convictions, which increased from 4.2 to 7.1 per cent (trial acquittals remained at 2.5 per cent of cases

FIGURE 2

Table V-1 **Changes in court disposition patterns.**

All offenses;
All cities;
All cases going to court



Year I
(1637 cases)
Total conviction rate: 45.2%
Trial conviction rate: 62.7%

*Year I-Year II differences are significant at .05 or less.

Year II*
(1551 cases)
Total conviction rate: 44.8%
Trial conviction rate: 74.0%

that went to court). The conviction rate for tried defendants increased from 62 to 74 per cent, and the rate of conviction for tried defendants without any reduction of the charge increased from 50 to 60 per cent. (See Table V-1 and Figure 4).

Although the trial rate did not increase much, the absolute number of trials increased 37 per cent (from 109 in Year One to 149 in Year Two). Since trials generally require so much more effort than other kinds of dispositions, the 37 per cent increase in trials meant that prosecutors, defense attorneys, and other court officials were noticeably busier with trials than formerly.

Dismissal continued to be the most prevalent form of court disposition, accounting for about 52 per cent of the cases in both years. However, one apparent result of the plea bargaining ban in Anchorage was that dismissal tended to occur earlier--in district court rather than superior court--which can be seen as a gain in efficiency. Guilty pleas continued to occur nearly as frequently as before the ban; the total plea rate was 41.0 per cent in Year One and 37.7 per cent in Year Two. (Pleas to substantially reduced charges went from 17.4 to 15.2 per cent, and pleas to unreduced charges went from 23.6 to 22.5 per cent.)

With little change in disposition rates, and with earlier dismissals counterbalancing more frequent trials, it is not surprising that court disposition time--measured from

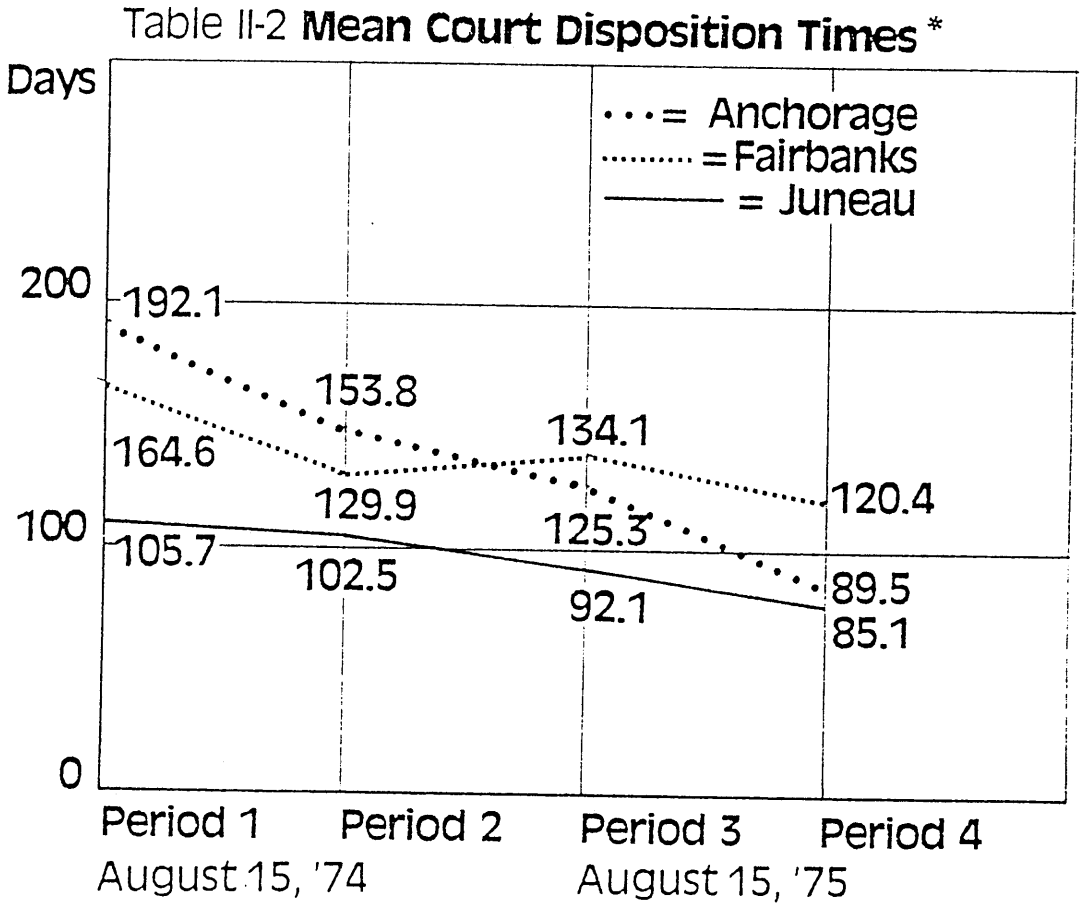
filing until final trial court disposition exclusive of any appeal and retrial--did not increase after plea bargaining was prohibited. In fact, disposition time decreased (see Table II-2 and Figure 1). A downward trend in court delay had apparently begun even before the new plea bargaining policy was announced, in all three cities, and in all six classes of felony cases (see Table III-2 and Figure 2). This decrease showed little sign of being interrupted by the new policy. (Possible reasons for the downward trend in court delay are discussed in Part One of this report.)

There was no indication that Alaskan prosecutors attempted to circumvent the Attorney General's prohibition of plea bargaining by increasing the number of charges filed against defendants to make it easier to dismiss some charges in return for guilty pleas to others. In each of the six classes of felonies, the mean number of felony charges per defendant in all three cities declined somewhat from Year One to Year Two (see Table II-3). The same pattern is generally found within each of the three cities considered separately. Thus, multiple charging does not seem to have increased, but rather to have decreased somewhat after plea bargaining was forbidden.

3. Analysis of Changes in Court Disposition Patterns

We expected that the plea bargaining ban would result in less frequent dismissals, more frequent convictions, more trials, and fewer pleas of guilty to reduced

FIGURE 3



*MEAN COURT DISPOSITION TIMES IN DAYS

charges; furthermore, we expected that these changes would be strongest in "aggravated" cases--where the charge was especially serious, the harm caused was substantial, the defendant had a serious record, etc. In fact, we did not find a consistent pattern of changes of the expected kind. In order to investigate dispositional changes in detail, we grouped cases on the basis of factors shown to be strongly related to court disposition in both years studied, including the type of offense charged, the city where the case was filed, the quality of evidence available, whether a case was accompanied by other felony charges against the same defendant, whether the defendant had a criminal record, and the like. We then looked for dispositional changes from Year One to Year Two over all groups of cases so defined, and within each group separately.

In cases involving murder and kidnap charges, there were no significant changes in disposition patterns, but some indications of more stringent prosecution: in Anchorage, guilty pleas became less frequent and trials increased, while in Fairbanks, trials remained frequent (the trial rate remained about 50 per cent), while guilty pleas increased and dismissals declined. However, in other violent cases--those involving felonious assault, robbery, rape, etc.--we found no effect of the plea bargaining ban on court disposition after controlling for type of offense, city of filing, and other important characteristics. We also found no effect on "morals" felony cases.

In cases involving burglary, larceny, and receiving stolen property, we found no consistent and significant dispositional changes over all groups of cases defined in terms of statistically important factors. However, there were significant changes in some groups of cases, with Anchorage and Fairbanks showing quite different responses to the plea bargaining ban. In Anchorage, pleas to reduced charges became less frequent and pleas to unreduced charges occured more often. The total conviction rate either increased or remained the same with less charge reduction, except in the least aggravated cases. Trials increased very little. Dismissals did not decline, but were more likely to occur earlier (in district rather than superior court), thus eliminating some delay. In Fairbanks, change occurred only in the most aggravated cases: dismissals decreased, pleas (both reduced and unreduced) increased, trial acquittals ceased, and trial convictions increased (see Table V-2). In Juneau, dispositional changes were not significant.

In cases involving fraud, bad checks, forgery, and embezzlement, the plea bargaining ban was not associated with any consistent dispositional change affecting all groups of cases. In Anchorage, prosecution became on the whole less vigorous, with dismissals (including superior court dismissals) increasing, convictions decreasing, and trials remaining very infrequent (see Table V-2). The same sort of change occurred in Fairbanks, with more late dis-

missals occurring, conviction declining, and trial acquittal increasing. (No results could be obtained for Juneau because there were too few cases of this type filed there during the study period.)

In cases involving drug felonies there were no consistent overall shifts in disposition patterns, but some changes--in opposite directions--occurred in Anchorage and Fairbanks. In Fairbanks, risks became higher for the drug defendant, with dismissals declining and trials and trial convictions increasing in both the least and most aggravated cases, and less charge reduction associated with guilty pleas in the least aggravated cases. In Anchorage, on the other hand, there were indications of less efficient and more lenient prosecution of drug crime suspects; in the most aggravated drug cases, late dismissals increased, unreduced pleas decreased, and the total conviction rate dropped. Again, no significant changes could be measured in Juneau.

D. Conclusions

The clearest change attributable to the prohibition of plea bargaining was an increase in the severity of sentences in some kinds of cases. These increases took the form of reducing the sentence concessions formerly received by defendants convicted of drug, fraud, and "low-risk" burglary and larceny offenses, rather than adding to the punishment of those convicted of violent crimes. Because this selective increase in sentence severity was probably a

direct result of the great reduction in the frequency of sentence recommendations by prosecutors, it indicates success in shifting responsibility for sentencing to the judge. The fact that sentencing did not become more severe in violent crime and "high-risk" burglary and larceny cases may mean that the sentences received before plea bargaining was banned were thought to be sufficiently punitive. The plea bargaining ban apparently achieved another important change by eliminating the increment in sentence length associated with being convicted by trial rather than guilty plea in cases involving burglary, larceny and receiving stolen property. The elimination of the plea/trial sentence differential in these cases can be regarded as a gain in fair treatment of defendants.

If one goal of the plea bargaining ban was to increase the felony defendant's chance of conviction and imprisonment, the prosecution was partly successful in achieving it: in the most common type of felony case--involving burglary, larceny, and receiving stolen property--the probability of conviction plus imprisonment of at least 30 days increased significantly regardless of other relevant factors. However, no such result occurred in cases involving charges of violent felonies, bad checks, fraud and forgery, drugs, or "morals" offenses.

Analysis of the court processing of cases revealed some changes consistent with expectations, but also some

contrary to expectations, and some in conflict with each other. There were signs of movement toward earlier weeding-out of weak or unaggravated cases (by post-arrest screening or early dismissal), less reliance on guilty pleas to reduced charges, more pleas to unreduced charges, more trials, and more convictions. (These expected changes occurred generally in burglary, larceny and receiving cases in both Fairbanks and Anchorage, and in drug cases in Fairbanks.) There were also indications that the response to the plea bargaining ban followed the path of least resistance. Post-arrest screening increased after the ban, but mainly in "morals" and drug cases, in which prosecutors probably retained more discretion than in other kinds of cases. The increased screening of drug and morals felony cases apparently had little to do with their evidentiary strength; rather, it may reflect a conscious prosecutorial decision simply to reject more cases of these types because there was not a high priority assigned to winning them. When fraud and drug cases went to court, defendants tended to receive more vigorous prosecution if certain aggravating factors were absent from their cases than if those factors were present. Surprisingly, violent felony cases (other than murder and kidnapping, which showed some indication of more punitive treatment) showed no changes attributable to the plea bargaining ban in either post-arrest screening, court disposition, or sentence.

In Year One, 17.4 per cent of all cases going to court ended in a guilty plea to a substantially reduced charge; this rate dropped only slightly (to 15.2 per cent) in Year Two. The fact that so little change occurred in the frequency of pleas of guilty to reduced charges can be interpreted in several ways. (1) Alaska prosecutors may not have favored charge reduction as a technique of plea bargaining during the time when plea bargaining was allowed, and thus even at that time, their decision to reduce charges often may have been for other reasons than to obtain a plea. (The interview study described in Part One supports this explanation; most prosecutors and defense attorneys reportedly favored sentence recommendations over charge bargains.) (2) Despite the Attorney General's emphasis on filing a charge that could be proved so that it did not have to be reduced later on, post-arrest screening and charging practices may not have been effective enough in Year Two to alter the need to reduce charges later in the proceedings for evidentiary reasons. (3) Charge reductions in Year Two may in fact indicate that plea bargaining was going on in violation of the Attorney General's orders. Interpretations (1) and (2) are strongly supported by the interview data. Interpretation (3) is undoubtedly true to some extent, but the interview data suggest that (except for Fairbanks during the first part of Year Two) bargaining for charge reduction *per se* was not very frequent after plea bargaining was banned.

The new policy against plea bargaining was not implemented uniformly. Changes in handling felony cases after the policy went into effect evidently depended very much on the special characteristics of the cities studied, and especially on the groups of people who prosecuted, defended, and judged in the three locations. Aside from this observation about diversity in responding to the new policy, the overall impression left when one studies the statistical results is how much inertia there evidently was in the process of adjudicating felony cases. After all the fanfare over the new policy, dismissals still remained at 52 per cent, guilty pleas continued about as usual, and trials increased only slightly. On the other hand, it is remarkable that the prohibition of plea bargaining had the significant effects it had, given these handicaps: there was no systematic preparation of prosecutors as to how to function when they could no longer bargain, there was no procedure to monitor adherence to the new policy, and there were no new resources expended on implementing it.

III. Plan and Method of Analysis

A. Before-and-After Design

Statistical analysis followed a before-and-after plan in which the new plea bargaining policy was treated as a factor in the study along with many others. That is, the new policy was considered a factor that could either be absent (if a case was filed before the prohibition), or

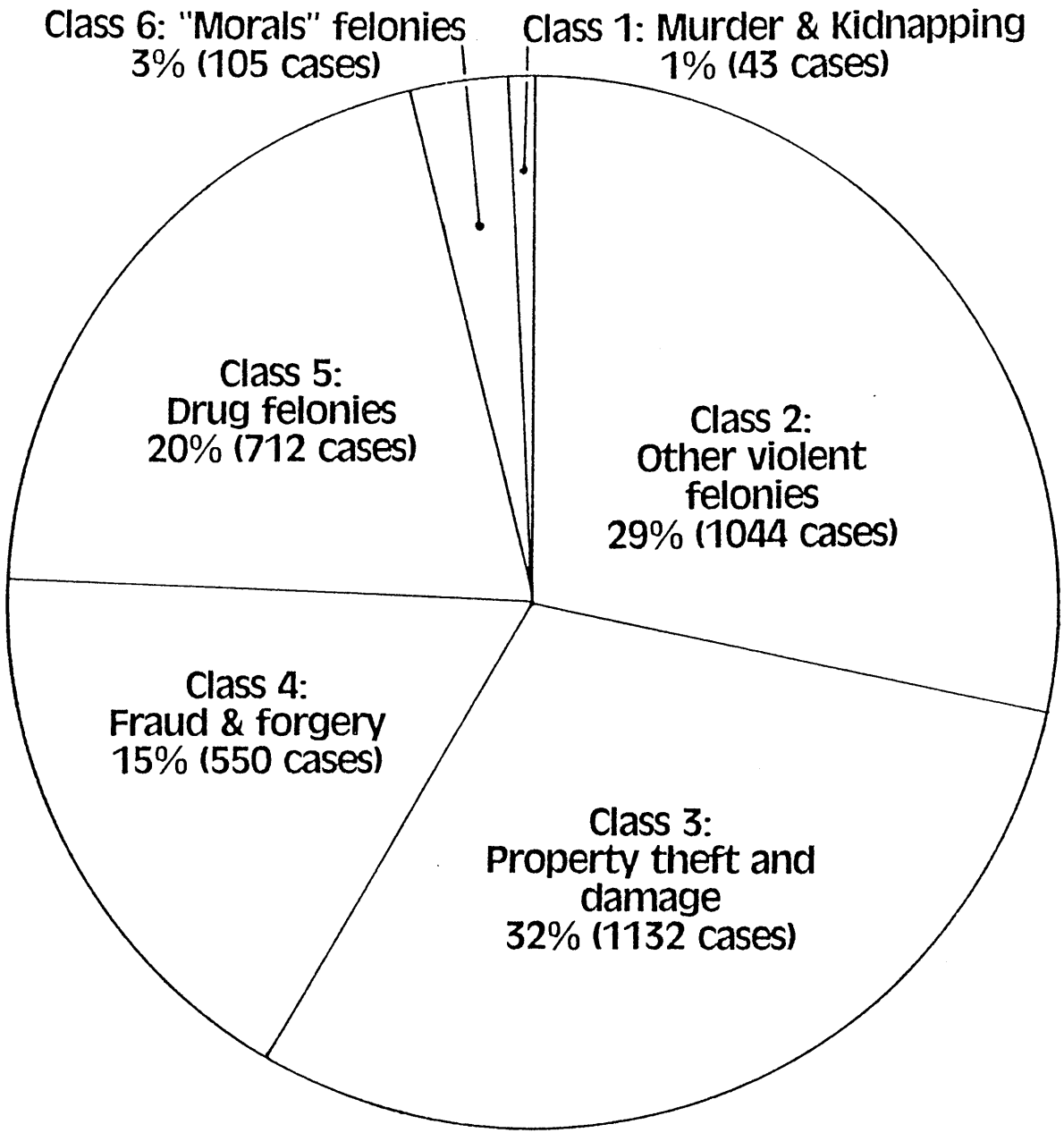
present (if the case was filed after the prohibition). Since the policy was associated with the time a case was filed, controlling for other factors that might change over time helped to isolate possible effects of the policy itself. For example, since the proportion of cases in which the defendant had a criminal record might change from Year One to Year Two, it was important to adjust for the effect of a criminal record on the disposition of cases, among many other factors, before attempting to determine the independent effects of the plea bargaining ban. Although we were fairly sure that such factors as the defendant's criminal record, the type of offense charged, and the location of the court strongly influenced felony dispositions, we were uncertain about other variables that might be important. Accordingly, the first step in the analysis was to identify all such important factors--aside from the new policy--that influenced felony outcomes in both years.

B. The Data

We studied 3,586 felony cases (single charges against single defendants) that arose in Anchorage, Juneau, and Fairbanks during Year One and Year Two. Our objective was to obtain data from police, jail, and court records on every felony case that originated during this period. To the best of our knowledge, only 81 cases were omitted (47 because their records were in an appellate court, and 34 because they had not received trial court disposition by the

FIGURE 4

Table III-1 **Definition of Felony Classes and Frequency**



Year I-Year II
Total cases= 3586

time the data collection ended.) As in any study of this type, it was impossible to obtain all the desired data on every case.

C. Factors Studied

1. Policy and Time Period

The official policy on plea bargaining, as explained earlier, was treated as one factor among others in the study. The "policy factor" had the value zero if a case was begun in Year One (when plea bargaining was still allowed) and the value one if the case was begun in Year Two (and was thus subject to the plea bargaining ban).

2. Type of Offense

In each case, we recorded not only the specific offense charged initially but also any changes in the charge that occurred at each successive stage in the criminal process up to the final disposition. The felony offenses in the study were grouped into six classes, as shown in Table III-1 and Figure 2. Class 1 consisted of murder and kidnapping; Class 2 consisted of other violent felonies such as rape, robbery, and several kinds of felonious assault; Class 3 comprised burglary, larceny, receiving stolen property, and similar property offenses; Class 4 included crimes of deceit such as forgery, bad checks, credit card fraud, and embezzlement, as well as extortion; Class 5 was drug felonies; and Class 6 consisted of "morals" felonies, principally

lewd and lascivious acts toward a minor. (Two of the six classes were very small--Class 1 (43 cases), and Class 6 (105 cases). We were not able to analyze cases in these classes in much detail.)

3. Characteristics of the Case

We hypothesized that a variety of factors would enter into the evaluation of any case by an assistant district attorney, including the type of offense charged, the strength of the evidence against the defendant, aggravating and mitigating aspects of the crime, and facts about the defendant himself. We also thought that the victim's characteristics and relationship to the defendant, administrative factors, and the presence of co-defendants or "companion" cases (other charges against the same defendant) were likely to affect the disposition of a given case. Official records were not a reliable source for all of the data we wanted to use in the study. For example, information on the defendant's use of alcohol, the defendant's education, and the prosecutor's reasons for initial rejection or later dismissal of a case was available only in a small proportion of the cases.

The information we were able to collect included:

(a) Evidence

The investigative police report (usually prepared before arrest but sometimes supplemented later) was the source of information about the type and quality of evidence. Some examples of evidence data are the amount of time between the alleged offense and the arrest and booking of the defendant; whether there was an eyewitness to the

offense; whether a police officer witnessed the offense; whether the defendant made any statement to the police; whether he made an incriminating statement or confession; whether identifiable stolen property was recovered; whether there was any physical evidence--such as fingerprints, weapons, and the like--linking the defendant with the alleged offense; and whether a search warrant was issued in the case. In drug cases, evidence factors also included the type and amount of drugs involved.

(b) Injury and Damage Factors

Information was collected on the condition of the victim in a violent crime, the value of the stolen property and of recovered stolen property, if any, and the type of weapon used in the offense.

(c) Criminal Record Factors

Data were collected on the defendant's criminal record, including the number of felony and misdemeanor convictions before each case arose and whether the defendant was on probation or parole at the time of the alleged offense.

(d) Demographic, Social, and Economic Factors

These factors included the defendant's age, race, and sex; his monthly income; his occupation; whether he was employed; his marital status; the number of years he had lived in Alaska; and his family ties in Alaska. The defendant's monthly income was unknown in about half of the cases. In these cases a monthly income was estimated by multiple regression, based on the defendant's age, employment status, and occupation.[36]

(e) Victim's Characteristics and Relationship to Defendant

We collected information about the victim of the crime in each case, including the victim's age, race, and sex, whether the victim was a business or organization (or an employee of a victimized business or organization), and whether the victim was related to the defendant through marriage, other family ties, friendship or acquaintance, or employment.

(f) Administrative Factors

We recorded the identity of the judge presiding at the final disposition of each case, as well as what type of attorney the defendant had (appointed, public defender, privately paid, or none). Data were also obtained on psycho-

logical examinations the defendant received, pre-sentence recommendations in the case, whether the defendant was released on bail pending the disposition of his case, and the amount of time he spent in pre-trial detention. These latter factors were not used extensively in the present analysis (although they will be used in later research) because we consider them "co-dependent factors"--that is, they probably are as much a result of the criminal process as they are a cause of the criminal court's final disposition.

(g) Information on "Companion" Cases and Co-Defendants

We expected that the disposition of a case would be strongly associated with that of other charges filed against the same defendant, and with what happened to cases of co-defendants charged in the same criminal incident. Therefore, the data for each case included whether there were companion cases and co-defendant cases, and if so, their disposition.

D. Unit of Analysis: The "Case"

About half (56 per cent) of the 2,283 defendants in the study were charged with only one felony offense. Fifteen per cent of the defendants were charged with one or more misdemeanors in addition to a single felony charge, and the remaining 29 per cent had two or more felony charges filed against them at the same time. There are two ways to analyze the outcomes of cases involving several charges against one defendant. One could analyze dispositions in terms of the defendant, combining information about each charge and simplifying the several outcomes into one outcome. Another approach--which we chose--is to consider each charge separately. We preferred this approach because (1) we wanted an analysis sensitive to information (concerning evidence, for example) specific to each charge; and (2) we

wanted to study the response of the criminal court system to individual crimes. In other words, we chose to study the criminal court's response to the alleged criminal act as well as to the actor.

The unit of data in this analysis was a "case": a single charge against a single defendant, including all available information on that defendant, as well as all information regarding that particular charge. When we speak of the outcome of a particular case, we are talking about what happened to a defendant with particular characteristics charged with a specific offense under certain circumstances. If a defendant had several felony charges against him he was considered to be in several "cases"--one for each charge.

The outcomes of cases defined in this way generally do not occur independently of each other. If two cases involve the same defendant, the disposition in one case usually will affect the disposition of the other case, and vice versa. We controlled for such "companion case" behavior by taking into account whether or not each case was accompanied by other cases involving the same defendant. (Also, as explained in Section V(B) of this part of the report, we analyzed the interactive effects of multiple charges. We found that although the court dispositions of companion cases did affect each other in the expected ways, these effects did not change significantly from Year One to Year Two.)

E. Statistical Methods

Most outcomes and processing decisions (dependent variables) considered in this analysis were categorical, that is, they fell into two or more discrete categories. Loglinear multiple regression was adequate to analyze the length of prison sentences, but for the categorical outcomes, we used other methods.

1. Stepwise Selection

The effect of the new plea bargaining policy could not be tested without first knowing which other factors had a major influence on case outcomes in the two-year period studied. In selecting these factors our approach was first to choose the most important factor, then to control for it and look for the effects of others, select the next most important factor, control for it, and so on. The Pearson Chi-Square statistic divided by its degrees of freedom was used as a measure of strength of association to make the first selection.[37/] After the initial selection, in each successive step, the Mantel-Haenszel partial correlation statistic was used to measure the significance of the association of each factor with case outcome after controlling for the factors already selected.[38/]

Factors were considered in the stepwise selection process in an order determined by our judgment, but they were selected only if they showed a strong statistical association with the outcome. We first looked at the city

where the case arose (Anchorage, Fairbanks, or Juneau), the type of offense charged, the defendant's criminal record, and the presence of companion and co-defendant cases. After testing for the effects of this first group of factors, we considered data on evidence, injury to persons, and property damage or loss.

2. Looking for Policy Effects

We adjusted for the most important factors affecting the outcomes studied and then tested for the effects of the new policy prohibiting plea bargaining. We looked for both overall effects and "localized" effects. We thought that while the new policy might have some overall effect on all kinds of cases ("kinds" being defined in terms of the factors selected as statistically important), it also might have a stronger effect on some kinds of cases than others. In particular, we believed that the new policy would vary greatly in its effect depending on the city where the case arose, the quality of the evidence in a case, the extent of the defendant's criminal record, the amount of injury or damage caused by the crime, and similar factors.

IV. Analysis of Post-Arrest Screening

A. Screening by the Prosecutor

Most of the felony cases studied (3,483 out of 3,586, or 97 per cent) began by arrest of the defendant rather than by indictment or information followed by issuance of a

summons or warrant. Alaska law requires that an arrested defendant be taken to the district court or before a magistrate within 24 hours for initial appearance and the setting of bail conditions.[39/] The court cannot exercise jurisdiction over the defendant without a complaint. In practice, an assistant district attorney usually prepares and files this complaint. If the assistant district attorney in charge decides not to file a complaint, and no one else does, the defendant must be released by the district judge or magistrate at his initial appearance. Thus, the prosecutor may refuse to draw a complaint as a way of "screening out" or rejecting certain cases after arrest. We expected that this post-arrest screening would increase under the new policy because of the Attorney General's emphasis on it in his memoranda, especially in cases where the evidence was not strong and aggravating factors were absent.

> . . . it is a prosecutor's function to decide what charge can be proven in court rather than a policeman's function. . . . you should . . . hold off filing cases which should not be filed in the first instance. [Memo to District Attorneys, July 24, 1975]

For the purpose of this study, an arrest was considered to have occurred only if it was confirmed by two independent records: the booking sheet prepared at the jail after arrest, and the police report. If these records showed that an arrest had been made, but a careful search of

court files showed no court record, and thus no complaint filed, then we considered the case to have been "screened out" (i.e., rejected) by the prosecutor.

B. Trends in Post-Arrest Screening

Table IV-1 and Figure 3 show overall screening trends. Taking all types of offenses in all three cities together, it can be seen that there was a very slight increase in the screening rate from Period 1 to Period 4, from 10.0 per cent in Year One to 12.9 per cent in Year Two. Screening rates varied strongly among the three cities. A relatively high screening rate in Anchorage during Year One (13.1 per cent) increased very little (to 14.7 per cent) in Year Two. The Fairbanks screening rate was quite low initially (3.7 per cent), but increased to 8.9 per cent in Year Two, approaching the rate in Anchorage. Juneau also showed an increase in the screening rate (from 8.9 per cent to 13.9 per cent). The increase in the screening rate was statistically significant only in Fairbanks.

The remainder of Table IV-1 shows trends in the screening rate by type of offense and city. Class 1 offenses (murder and kidnapping) are not shown in the table since almost all of these cases went to court (only one was screened out). In Class 2 felony cases (involving violent felonies other than murder and kidnapping), the screening rate in all three cities did not change from Year One to Year Two. Though the rate did increase in Fairbanks and Juneau--to about twice its previous value--neither increase was statistically significant.

The overall screening rate for Class 3 cases (burglary, larceny, and receiving stolen property) remained constant at about 12 per cent, but there were changes in Fairbanks and Juneau. The screening rate in Fairbanks for these cases increased sharply from Year One to Year Two, approaching the Year One levels in Anchorage and Juneau. On the other hand, the Class 3 screening rate in Juneau appears to have dropped very sharply in Year Two. Neither change was statistically significant. In cases involving fraud, forgery, and embezzlement (Class 4), there was no significant change in the screening rate, but a sharp and significant increase (from 1.9 to 10.5 per cent) in Fairbanks.

There were large and significant increases in the screening rate for drug felonies (Class 5) and "morals" felonies (Class 6). The jump in the overall screening rate for drug cases from 10.7 per cent to 18.1 per cent resulted from large increases in Anchorage and Juneau. In morals cases, the rise from 3.4 per cent to 22.0 per cent was almost entirely due to a very large increase in Anchorage; Fairbanks and Juneau had too few morals cases for their rates to be meaningful.

C. Factors Strongly Associated with the Post-Arrest Screening Rate

The city in which a criminal case was filed had a stronger statistical relationship with the post-arrest screening rate than the specific offense charged, the

defendant's criminal record, and the strength of the evidence as we measured it. This is shown by the large value of the Chi-Square statistic per degree of freedom (approximately 20) for the crosstabulation of city with whether or not cases went to court after arrest--larger than the corresponding values for offense, criminal record, evidence, damage, injury, and victim factors. This underlines the finding in the interview portion of the study that (1) prosecutorial styles and relationships among prosecutors, defense attorneys, and judges varied greatly among the three cities, and (2) the variation remained after plea bargaining was prohibited.

After identifying the city in which the case arose as an important factor, we tested for effects of other factors across all three cities. Although a number of other factors showed a significant relationship to post-arrest screening, we chose offense class as the next factor of importance. We expected that factors such as type of evidence and prior record might vary in their importance depending on the nature of the charge, and that their effects would be more visible once we had controlled for type of offense.

Our next objective was to find factors associated with the likelihood of post-arrest screening in all three cities both before and after the plea bargaining ban. This analysis enabled us to classify cases as inherently "low-

risk" or "high-risk" from the defendant's point of view, in terms of the likelihood of a court complaint being filed after arrest. For this purpose, we analyzed each offense class separately and controlled for city within each class. We then examined the effects of a number of factors, and found that only the following were important to the likelihood of acceptance or rejection by the prosecutor:

Type of Crime	Defendant's Chances of Going to Court Increase If:
Class 2 (violent felonies other than murder and murder and kidnapping)	* Defendant on probation or parole
Class 3 (burglary, larceny, receiving stolen goods): "high-risk" if two or more factors at right are present	* Defendant on probation or parole * Defendant had co-defendant * Defendant had been unemployed for 90 days or more at time of charge * There was an eyewitness to alleged offense * Value of property stolen was over $100 * Victim was not a friend or acquaintance of defendant
Class 4 (fraud, forgery, embezzlement, worthless checks): "high-risk" if one or more of factors at right are present	* Defendant on probation or parole * Defendant had been unemployed for 90 days or more at time of arrest * Search warrant was issued in the case
Class 5 (drug felonies): "high-risk" if one or more of factors at right are present	* Defendant had been unemployed for 90 days or more at time of arrest * More than 24 hours elapsed from offense until arrest and booking
Class 6 ("morals" felonies)	None (City is the only important factor in this offense class)

The analysis of factors associated with prosecutorial screening of cases after arrest shows that the strength of the evidence--insofar as this can be measured with our data--was not as important as some other circumstances, especially whether the defendant was on probation or parole at the time of the alleged offense. Factors related to evidence that were identified as important included whether there was an eyewitness to the offense (in Class 3 cases), whether a search warrant had been issued (in Class 4 cases), and in Class 5 cases (drug felonies) whether more than 24 hours elapsed from the offense until arrest. When the offense-to-arrest delay was more than 24 hours it was more likely that the defendant had been "set up" for a drug purchase by a police agent, and that evidence in the case would therefore be convincing. Where there was less than 24 hours delay from offense to arrest, the case was more likely to have involved a situation in which the police fortuitously observed a drug offense occur and then made an arrest; here they were not as likely to have the strong evidence that an undercover drug purchase would provide.

The fact that the defendant was on probation or parole was associated with a greater likelihood that the case would be accepted for prosecution; this was true in Class 2 cases (violent felonies), in which it was the only factor of importance once city was taken into account, as well as in Class 3 (property) and Class 4 (check and fraud) cases. The fact that the defendant had been unemployed for

90 days or more was also associated with a greater probability of prosecution in Class 3, 4, and 5 cases. This may reflect a judgment by the assistant district attorneys that a person who steals, engages in bad check passing, or sells drugs, and is not legitimately employed, may well be committing these crimes for a living--i.e., as a professional. The value of the property stolen was also positively correlated with the likelihood of prosecution. The importance of the probation-parole, employment, and property value factors suggests that the seriousness of the defendant's involvement in criminal activity had more influence on whether prosecutors would accept his case than the quality of the evidence.

D. Was the New Policy Important in Screening Decisions?

The new policy apparently had an effect on post-arrest screening decisions, but only in certain kinds of cases. We tested for independent effects of the new policy within each offense class, grouping cases according to the city in which they arose and whether they were "high-risk" or "low-risk" cases as defined in subsection C(1) above (except in Class 6, where it was necessary only to group cases by city). The results can be summarized as follows:

Class 2 (violent felonies):
Policy had no effect on screening in any city or type of case.

Class 3 (property felonies):
Policy was associated with large increase in screening only in "low-risk" cases in Fairbanks.

Class 4 (check and fraud felonies):
Policy had no significant effect on screening in any city or type of case. In Fairbanks, screening rate increased (but not significantly) from 4.8 to 13.2 per cent in "low-risk" cases and from 0.0 to 4.3 per cent in "high-risk cases.

Class 5 (drug felonies):
Policy was associated with increased screening in all cities and both "risk" categories except "high-risk" cases in Fairbanks [all such cases in Fairbanks were accepted for prosecution (went to court) in both Year One and Year Two].

Class 6 ("morals" felonies):
Policy was associated with large increase (from 6.5 to 40.9 per cent) in screening only in Anchorage. In Juneau and Fairbanks, all morals cases were accepted for prosecution in both years.

Although the increases in screening associated with the plea bargaining ban were somewhat scattered, let us consider how the pattern that emerged can be interptreted. It was clear that no increases in screening occurred in violent felony cases. In Fairbanks, the screening rate increased significantly in burglary and larceny (Class 3) cases, from 0.0 to 25.9 per cent, and also increased (although not significantly) in check and fraud (Class 4) cases. These results in Fairbanks suggested that Fairbanks prosecutors, in a general way, decided that under the new policy the less serious sorts of property felonies were simply less important to prosecute than other offenses, and could be rejected for reasons that might not justify the rejection of other kinds of cases (such as those involving violence). The same kind of decision may have been made by Anchorage prosecutors with regard to morals felonies, whose screening rate increased enormously. The most consistent

increase in screening (in all three cities) occurred in drug cases. Such cases probably allowed more exercise of discretion than did cases involving violence and property loss, and thus were easier for prosecutors to reject. On balance, then, the increases in screening that did occur suggest that rather than an increase in the systematic evaluation of evidence and aggravating factors in preparation for trial, there was a deliberate prosecutorial decision that some kinds of cases were "expendable."

V. Analysis of Court Dispositions

A. Possible Court Dispositions

We analyzed the data for possible effects of the plea bargaining ban on the entire pattern of court dispositions. For this purpose, court dispositions were grouped into six categories, as follows:

	Both Years--All Cities	
1. Dismissal in district court	23.2%	(744)
2. Dismissal in superior court	29.2%	(931)
3. Guilty plea to substantially reduced charge	16.3%	(520)
4. Guilty plea to unreduced charge	23.1%	(735)
5. Trial acquittal	2.5%	(80)
6. Trial conviction	5.6%	(178)
Total cases that went to court (i.e., were accepted for prosecution)	100.0%	(3,188)

Before considering the six disposition categories in more detail, it should be noted that dismissal--which was primarily the result of a decision by the prosecutor---was the most common disposition. It occurred more often (52.2 per cent of the time in both years combined) than any form of conviction (which occurred 45.0 per cent of the time). The dismissal rate did not change from Year One (52.3 per cent) to Year Two (52.7 per cent).

1. District Court Dismissal

Most felonies entered the judicial process on a district court complaint filed by the prosecutor. Seven hundred forty-four of them (23.3 per cent of the total) were dismissed at this stage. Dismissal in district court took the following forms:

* Dismissal by the prosecutor--65 per cent.
* Deferral of prosecution by prosecutor (we treated this procedure as a dismissal because, to the best of our knowledge, no deferral ever resulted in a later prosecution)--7 per cent.
* Dismissal at the preliminary hearing for lack of probable cause--11 per cent.
* Dismissal by the judge other than at preliminary hearing--13 per cent.
* Other forms of dismissal--4 per cent.

Thus, nearly three-quarters of the district court dismissals were entered by the prosecutor rather than the court. We were not able to collect reliable information on reasons prosecutors and judges had for dismissing specific cases.

2. Superior Court Dismissal

Another 931 cases (29.2 per cent of the total) reached the superior court but were dismissed there, in the following ways:

* Dismissal by the prosecutor--57 per cent.
* Dismissal by the judge (mostly before trial)--27 per cent.
* Deferral of prosecution--14 per cent.
* Dismissal by grand jury ("No True Bill")--2 per cent.

Like district court dismissals, nearly three-quarters of superior court dismissals (including deferrals of prosecution) were by the prosecutor.

3. Guilty Plea to Substantially Reduced Charge

A dismissal may reflect one form of plea bargain: the dismissal of some charges in multiple-count pleadings in exchange for guilty pleas to others. In prosecutions involving a single charge there is also the possibility that the prosecutor may change the original charge to allege a less serious or different offense. This may be part of a bargain or a unilateral decision of the prosecutor. Benefit to the defendant may result because (1) the new charge carries a lower maximum penalty, which reduces the total length of time to which the defendant could be sentenced; or (2) the new charge, while not subject to a lower maximum than the original charge, is considered less serious by sentencing judges.

In this study, we defined reduction of charges in terms of maximum statutory penalties. A "substantially reduced" charge is one carrying a statutory maximum term prison term less than 75 per cent of the statutory maximum term for the offense originally charged. (A legal maximum of life imprisonment was treated as 40 years.) Consider, for example, a charge of robbery, with a legal maximum prison term of 15 years or 180 months. Seventy-five per cent of the robbery maximum is 135 months. If the original charge were robbery, a plea to assault with a dangerous weapon (punishable by a maximum of 120 months) or any other offense punishable by a maximum of less than 135 months would be considered a plea to a substantially reduced charge, or, for brevity, a "reduced plea," while a plea to any charge carrying a maximum of 135 months or more would be considered an "unreduced plea."

Five hundred twenty cases (16.3 per cent of all cases that went to court in both years) ended in pleas to substantially reduced charges. There was no significant difference in the rate of reduced pleas in Year One (17.4 per cent) and Year Two (15.2 per cent).

4. Guilty Plea to an Unreduced Charge

Seven hundred thirty-five cases (23.1 per cent of all cases that went to court) ended in guilty pleas to unreduced charges. The proportion did not change significantly between the two years (23.6 per cent in Year One and 22.5 per cent in Year Two).

5. Trial Acquittal

Eighty cases (2.5 per cent of those that went to court) ended in acquittal at trial in both years. (These figures include six mistrials.)

6. Trial Conviction

Conviction at trial was considerably more likely than trial acquittal. One hundred seventy-eight cases, or 5.6 per cent of the cases that went to court in both years together, ended in verdicts of guilty. Ninety-eight per cent of all trials (including acquittals) were by jury, and 94 per cent occurred in superior court. Six per cent of the trials were held in district court because the original felony charge had been reduced to a misdemeanor.

B. Hypothesized Changes in Dispositions Due to Plea Bargaining Ban

We expected that the prohibition of plea bargaining would generally result in more vigorous prosecution and fewer concessions to defendants--changes that would be reflected in altered patterns of court dispositions. For example, we expected trials to become more frequent after plea bargaining was banned. Since one purpose of the new policy was to reduce unjustifiable concessions to the defendant, we expected dismissals to become less frequent and convictions to become more frequent. We expected a sharp reduction in the proportion of pleas of guilty to substan-

tially reduced charges. Finally, we expected that the magnitude of these effects on trials, dismissals, and pleas of guilty would be greater in "aggravated" cases--i.e., where the charge was especially serious, the evidence was strong, the harm caused was substantial, the defendant had a serious record, etc. Our expectations were supported to some extent by the statistical analysis, but not consistently.

C. Trends in Court Disposition Patterns

1. Overall Rates, All Offenses and All Cities

Table V-1 and Figure 4 show the proportion of court cases resulting in the six different kinds of dispositions for all three cities and all offenses, by period and year. There is a significant, but small, difference between the Year One and Year Two disposition rates as a whole. Consider trials first. The absolute number of trials went from 109 in Year One to 149 in Year Two, an increase of 37 per cent. Twenty-five trials occurred in Period One, 84 in Period Two, 64 in Period Three, and 85 in Period Four. Thus, trials evidently began to increase before plea bargaining was formally banned. Trials as a proportion of all dispositions increased somewhat, from 6.7 per cent in Year One to 9.6 per cent in Year Two. All of this increase occurred in trial convictions, which increased from 4.2 per cent to 7.1 per cent of all dispositions; trial acquittals stayed at 2.5 per cent in both years. Thus, the conviction rate of defendants who went to trial increased from 63 to 74 per cent.

Guilty pleas showed very little overall change in frequency from Year One to Year Two. The total guilty plea rate was 41.0 per cent in Year One and 37.7 per cent in Year Two. The rate of pleas to substantially reduced charges changed very little, dropping from 17.4 per cent to 15.2 per cent. The rate of unreduced pleas also changed little (23.6 per cent in Year One and 22.5 per cent in Year Two). Thus, the plea of guilty was still being heavily relied on as a means of disposing of cases in the year after the policy against plea bargaining was announced.

Dismissal continued to be the most common form of court disposition. As noted earlier, the courts' dependence on dismissal did not change in Year Two; the dismissal rate for cases accepted for prosecution was about 52 per cent both before and after the plea bargaining ban. There was a slight shift toward earlier dismissals, with district court dismissals becoming slightly more frequent in Year Two, and superior court dismissals slightly less frequent.

2. Court Disposition in Anchorage

A small but statistically significant shift in the Anchorage court disposition pattern occurred between Year One and Year Two. Looking at trials first, a small but steady increase in the proportion of cases resulting in trial and conviction can be seen from Period One to Period Four. This trend seems to have begun in Period Two, perhaps in anticipation of the prohibition of plea bargaining. The

trial rate, including both acquittals and convictions, rose from 2.9 per cent in Year One to 6.1 per cent in Year Two. The rate of conviction for those who went to trial increased from 62 to 72 per cent.

Anchorage cases ending in guilty pleas declined somewhat, from 40.6 per cent in Year One to 34.5 per cent in Year Two. Most of this decrease, consistent with our expectations, occurred in guilty pleas to substantially reduced charges; the reduced plea rate dropped from 17.6 per cent to 12.6 per cent. Total dismissals in Anchorage showed very little change, going from 56.4 per cent to 59.3 per cent in Year Two. However, the figures in Table V-1 show very clearly that dismissals in Anchorage tended to occur at an earlier stage in Year Two than in Year One. While the superior court dismissal rate declined from 37.6 per cent to 31.5 per cent, the district court dismissal rate increased from 18.8 per cent to 27.8 per cent. Like the increase in trials, the shift toward earlier dismissals apparently began before the new policy went into effect, as Table V-1 indicates.

How should the shift of dismissals to an earlier stage be interpreted? On the one hand, dismissal at any stage can be regarded as a loss for the prosecution. On the other hand, if one takes the view that the prosecutor inevitably has to dismiss a number of cases that have gone to court, and that the sooner this is done, the better, then

the shift can be seen as an improvement in the prosecutor's efficiency. The increases in the district court dismissal rate in Anchorage can be regarded as having the same function as post-arrest screening (which, was more frequent in Anchorage than elsewhere before the new plea bargaining policy went into effect). However, there is no indication in the general disposition rates that dismissing some cases at an earlier stage helped in prosecution of other cases. The total dismissal rate did not decrease in Anchorage (in fact, it increased slightly, from 56.4 to 59.3 per cent), and the total conviction rate did not increase (in fact, it went down slightly, from 42.4 to 38.9 per cent). Computing rates as a fraction of just those court cases that were not dismissed in district court, the rate of dismissal in superior court remained nearly unchanged (46.3 per cent in Year One and 43.6 per cent in Year Two), as did the total conviction rate (52.3 per cent in Year One and 54.0 per cent in Year Two). The only improvement in conviction rates was in cases that actually went to trial; this rate increased from 62.1 per cent to 71.9 per cent.

3. Court Disposition in Fairbanks

Fairbanks also showed a small but statistically significant change in court disposition patterns. Its court had the highest trial rate (14.1 per cent) of any of the three cities before the new policy went into effect, and continued to be the leader in trials in Year Two, with a

slightly higher trial rate of 17.2 per cent. The chance of a trial resulting in conviction increased from 68 per cent in Year One to 76 per cent in Year Two in Fairbanks.

The total guilty plea rate in Fairbanks showed no change from Year One to Year Two, staying at about 41 per cent. The rate of pleas to substantially reduced charges increased slightly (from 16.6 per cent to 19.1 per cent), and the unreduced plea rate declined slightly (from 24.4 per cent to 22.9 per cent).

The total dismissal rate in Fairbanks, which in Year One had been lower than that of Anchorage, declined slightly from 44.9 per cent to 40.7 per cent. The rate of dismissal in Fairbanks showed a trend opposite to that in Anchorage: it decreased very sharply in district court (from 27.1 to 18.7 per cent) but increased in superior court (from 17.8 to 22.0 per cent).

4. Court Disposition in Juneau

Juneau court disposition patterns varied little from Year One to Year Two. There were only ten trials in felony cases in Juneau in Year One and Year Two combined; eight of these trials occurred in Year One and two occurred in Year Two. The total dismissal rate in Juneau did not change either, remaining at about 44 per cent, and there were no changes in the rates of pleas to reduced and unreduced charges.

D. Testing for Policy Effects After Controlling for Other Important Factors

Adhering to our research plan, before testing for specific effects of the plea bargaining prohibition, we first sought to isolate the most significant factors influencing court dispositions in both study years--factors operating with or without plea bargaining.

Our first choice of a factor related to court disposition was the city where the case was filed. The city of filing proved to have a very strong association with court disposition, as shown by its Chi-Square statistic per degree of freedom (approximately 17)--an association stronger than that of either criminal record or type of offense. Controlling for city, we then determined that the offense class had a strong relationship to court disposition. The rest of our analysis took the form of controlling for city within each of the offense classes, looking for effects of other factors, defining "low-risk" and "high-risk" groups, and then testing for a policy effect after controlling for "risk".

1. Policy Effect in Class 1 Cases (Murder and Kidnapping)

* The new policy had no measurable effects on court dispositions in murder and kidnapping cases.

* Only the city in which a murder or kidnapping case arose showed any relation to court disposition patterns. In Anchorage, trials rose sharply and

guilty pleas dropped. In Fairbanks, guilty pleas rose while trials remained essentially static.

There were only 43 arrests involving Class 1 offenses in the study data for both years, and 42 of them went to court. (No Class 1 cases were filed in Juneau in either year.) Because Class 1 was so small, we tested only for the effects of city of filing, companion cases, co-defendant cases, and criminal-record factors. However, when city was taken into account, none of the other factors showed any significant relationship to court disposition. The plea bargaining ban was not associated with any significant change in court disposition patterns considering both Anchorage and Fairbanks together.

With respect to Class 1 cases in Anchorage, the figures in Table V-1 show a change in the disposition pattern. The proportion of Class 1 cases going to trial--which always resulted in conviction in Anchorage--increased from 0.0 per cent in Period 1 to 16.7 per cent in Period 2, and then to 54.5 per cent in the last two periods. The rate of both reduced and unreduced guilty pleas came down sharply. In Fairbanks, guilty pleas (to both reduced and unreduced charges) increased while dismissals decreased, and trials showed little increase. In both cities the number of Class 1 cases was too small for these differences to be statistically significant. However, the changes do suggest more punitive prosecution in murder and kidnapping cases after plea bargaining was forbidden.

2. Policy Effect in Class 2 Cases (Robbery, Rape, Felonious Assault and Other Felonies Involving Violence Against Persons)

* The new policy had no significant overall effect on court dispositions in cases involving rape, robbery, felonious assault and other crimes against the person, and no local effects that we could measure.

In cases involving Class 2 offenses (violent felonies other than murder and kidnapping) as well as in cases involving other kinds of offenses, whether the case was accompanied by other felony charges against the same defendant ("companion" cases) proved to be strongly associated with court disposition. If a felony case was accompanied by other felony cases, the risk for the defendant in each case was higher in many respects than for a defendant who had no companion cases. The existence of companion felony cases was generally associated with a lower probability of district court dismissal, a higher probability of conviction, a lower probability of a plea to a lesser offense, and a higher probability of trial and trial conviction. (See subsection E below.)

After controlling for city and whether or not a companion felony case was present, only one other factor proved to have a clearly important relationship to court disposition in Class 2 cases. This factor, called "warrant-plus-evidence," was whether some sort of physical evidence

had been found and a search warrant had been issued. In other words, if the "warrant-plus-evidence" factor was present, two things had occurred: (a) a search warrant had been issued in the cases, and (b) some sort of physical evidence, such as stolen property, weapons, fingerprints, hair or tissue samples, etc., had been obtained by the police. Presumably, in most cases the physical evidence had been obtained with the search warrant, although the data we collected did not allow this to be verified in individual cases.

In the 12 sets of Class 2 cases grouped according to city, companion felonies, and the "warrant-plus-evidence" factor, we found no significant overall effect of the policy against plea bargaining on court disposition. Looking at each group separately, we found almost no significant changes in court disposition and no meaningful trends in these violent felony cases that were attributable to the new policy.

3. Policy Effect in Class 3 Cases (Burglary, Larceny, Receiving Stolen Property, etc.)

The new policy had no significant overall effects on court dispositions in cases involving burglary, larceny, receiving stolen property, and similar offenses. However, the statistical analysis suggests that some effects occurred in some types of cases.

* Anchorage:
  (1) Dismissal became less frequent in superior court and more frequent in district court.
  (2) Reduced pleas occurred less often, while unreduced pleas occurred more often.
  (3) The conviction rate either increased or remained constant with less charge reduction, in cases that were "high-risk" or accompanied by other felony cases.

* Fairbanks:
  (1) In "high-risk" cases accompanied by other felony cases, guilty pleas of all kinds and trial convictions became much more frequent, while dismissals (especially in district court) dropped sharply and trial acquittals ceased.
  (2) No changes occurred in other kinds of cases.

* Juneau: There was no change of any importance, except possibly in "high-risk" cases accompanied by other felony cases.

In cases involving charges of burglary, larceny, and receiving stolen property, when the city of filing and the companion felony factor were controlled for, two other factors proved to be significantly related to the court disposition pattern: the "warrant-plus-evidence" factor, as defined in the previous subsection, and whether the value of the property stolen or damaged was more than $500. If either one of these two factors was present in a Class 3 case it was considered "high-risk;" otherwise, it was a "low-risk" case.

We tested for an effect of the prohibition of plea bargaining on court disposition patterns in Class 3 cases taking city, companion felonies, and the risk factor just described into account. No significant overall effect was found. However, considering Class 3 cases in Anchorage separately, there were very distinct changes (see Table V-2, Part A). In each of the four categories defined according to companion case and risk, court disposition patterns showed both an improvement in efficiency from the prosecutor's point of view and an increase in outcomes unfavorable to the defendant. Although there was little change in the total dismissal rate in each category, dismissal became less frequent in superior court and more frequent in district court, suggesting more expeditious handling of "bad" cases by the prosecutor. The rate of pleas to substantially reduced changes fell sharply in all but one category, while that of pleas to unreduced charges went up considerably. The rate of trials showed a small increase, except in cases which were both "high-risk" and accompanied by one or more other felony cases; in these cases, trials actually declined sharply, from 12.1 per cent to 2.1 per cent (see Table V-2, Part A, row 4). (It seems likely that most of the defendants in this category who would have gone to trial in Year One entered pleas to unreduced charges in Year Two.) The total conviction rate increased for the "intermediate" cases (those that were either "high-risk" or had companion felony

cases, but not both), from 46.4 to 54.0 per cent and from 27.8 to 46.6 per cent, respectively (see Table V-2, Part A, rows 2 and 3). The total conviction rate did not increase in cases that were both "high-risk" and accompanied by other felony cases (it remained at about 48 per cent), but the convictions were less likely to involve substantial charge reduction in Year Two.

In Class 3 cases in Fairbanks, as Part B of Table V-2 indicates, the only significant change in the disposition pattern was in "high-risk" cases accompanied by other felony cases (row 4), and the pattern was quite different from the pattern in Anchorage. Dismissals fell in those cases in Year Two, especially district court dismissals; both reduced and unreduced pleas increased; trial acquittals disappeared; and trial convictions increased from 0.0 to 10.5 per cent. Total convictions more than doubled, increasing from 33.3 to 76.3 per cent. These changes, occurring only in one out of the four categories, could be an accidental result of the way in which the data were organized. However, this change in Fairbanks does conform to our expectation that when plea bargaining was banned, prosecutors would "get tougher" selectively--i.e., in the most aggravated cases.

No changes of any significance occurred in Class 3 cases in Juneau, except in "high-risk" cases accompanied by other felony cases (not shown in Table V-2), where dismissals

decreased from 100.0 per cent (3 out of 3 cases) in Year One to 20.0 per cent (1 out of 5 cases) in Year Two, and guilty pleas increased from 0.0 per cent (0 out of 3) to 80.0 per cent (4 out of 5). This last difference, statistically significant at .07, may be an accidental result of the way in which the data were categorized, but (like the change in Fairbanks discussed in the previous paragraph) it is consistent with the notion of "getting tougher selectively."

4. Policy Effect in Class 4 Cases (Forgery, Bad Checks, Fraud, Embezzlement, etc.)

The new policy had no significant overall effect on court dispositions in cases involving forgery, bad checks, embezzlement, and similar offenses. There were indications of some local effects, however.

* Anchorage:
  (1) In cases unaccompanied by other felony charges, dismissals shifted from district court to superior court, reduced pleas became less likely and unreduced pleas more likely, and the total conviction rate declined.
  (2) In cases that were accompanied by other felony cases, dismissals increased, unreduced pleas declined sharply, reduced pleas increased somewhat, and the total conviction rate went down.
* Fairbanks: An apparent policy effect was measurable only in cases accompanied by other felony charges. In these cases, conviction declined and trial acquittal increased, and dismissals shifted from district court to superior court.

The only factors found to be significantly related to the court disposition pattern in cases involving charges of fraud, felonious bad checks, forgery, embezzlement, etc. (Class 4 offenses), were the city where the case was filed and whether or not it was accompanied by one or more other felony cases. Controlling for these two factors, we found no significant overall effect of the policy against plea bargaining.

In Class 4 cases in Anchorage (see Table V-2, Part C), there was a significant change in disposition rates that differed depending on whether there were companion felony cases. Where there were none, district court dismissals decreased, superior court dismissals increased, pleas to substantially reduced charges fell, and pleas to unreduced charges rose. Where there were companion felony charges, district court and superior court dismissals both went up, reduced pleas increased, and pleas to unreduced charges became less frequent. Trials were virtually nil. Thus, in Class 4 cases in Anchorage, the policy against plea bargaining was associated with <u>less</u> expeditious and <u>less</u> lenient treatment of single-charge defendants, as shown by the shift of dismissals to a later stage and the decline of charge reduction, and <u>more</u> lenient treatment of multiple-charge defendants. In other words, contrary to what we expected, the less aggravated Class 4 cases seem to have borne the brunt of the new "tougher" policy in Anchorage. (The same

result emerged in sentencing, as will be shown later.) Yet, at the same time, the overall disposition pattern became less risky for the defendant in Anchorage in Year Two: the dismissal rate in Class 4 cases increased (from 56.4 to 68.6 per cent for cases without companion cases and from 49.2 to 68.4 per cent for cases with companion cases), and the total conviction rate declined sharply (from 43.5 to 31.4 per cent for unaccompanied cases and from 50.0 to 31.6 per cent for cases with companions).

In Class 4 cases in Fairbanks (Table V-2, Part D), there was a significant change in disposition patterns only in cases accompanied by other felony charges. Although the total dismissal rate in such cases remained about 60 per cent, dismissals shifted from district court to superior court. The total conviction rate declined (from 38.8 to 25.8 per cent), trial acquittals increased, and trial convictions fell. Here again, the apparent change was not as expected, because it was in the direction of less punitive and less efficient treatment of defendants with multiple charges, rather than the reverse.

5. Policy Effect in Class 5 Cases (Drug Felonies)

The new policy had no significant overall effects on court disposition in cases involving drug felonies. The analysis suggests some local effects.

* Anchorage: There was a shift from unreduced guilty pleas to superior court dismissal in "high-risk" cases accompanied by other felony charges, and the total conviction rate dropped.

* Fairbanks:
  (1) In "low-risk" cases without companion felony charges, convictions of all kinds increased, unreduced pleas increased enormously, while dismissals and reduced pleas became less frequent.
  (2) In "high-risk" cases accompanied by other felony charges, dismissals and guilty pleas declined, while trial convictions and the total conviction rate increased sharply.

In cases involving drug felonies, besides city of filing and whether there were companion felonies, two other factors turned out to be important: (a) whether the specific offense charged was sale or possession for purposes of sale of narcotics, rather than some other drug felony; and (b) whether more than 24 hours elapsed between the time of the alleged offense and the time the defendant was arrested and booked. When more than 24 hours elapsed between offense and arrest, we believe the case was more likely to have resulted from a "controlled buy" by a police agent or informer, and thus to have been a stronger case. A drug case was considered "high-risk" if either one of these factors (narcotics charge or arrest delay over 24 hours) was present.

We found no significant overall effect of the policy against plea bargaining on the court disposition

pattern in drug cases, after taking into account the city of filing, whether there were companion cases, and the risk factor just described. However, some effects were discernible in Anchorage and Fairbanks. In Anchorage, the only significant change occurred in "high-risk" cases accompanied by other felony charges (Table V-2, Part E, row 4): there was a shift from unreduced guilty pleas (whose rate dropped from 43.8 to 21.1 per cent) to dismissal in superior court (this rate increased from 47.9 to 71.1 per cent), with the total conviction rate dropping from 46.9 to 27.7 per cent. In other words, these data indicate that, contrary to expectations, the most aggravated drug cases in Anchorage apparently received more lenient--but less expeditious--treatment after plea bargaining was forbidden. In other (less aggravated) Anchorage drug cases, although no significant changes in disposition patterns occurred, there was a trend toward fewer guilty pleas involving substantial charge reduction and more trials (Table V-2, Part E, rows 1, 2, and 3).

In drug felony cases in Fairbanks, significant changes in disposition pattern occurred only in the least and most aggravated kinds of cases (Table V-2, Part F, rows 1 and 4). In "low-risk" cases without companion felony charges, dismissals and pleas to reduced charges became less frequent, while trial convictions became more frequent and unreduced guilty pleas increased sevenfold. In "high-risk" cases with companion felony charges, dismissals and guilty

pleas declined, trial convictions increased from 0.0 to 34.1 per cent, and the total conviction rate rose from 40.9 to 58.5 per cent. In the "intermediate" Fairbanks cases (Table V-2, Part F, rows 2 and 3), there were no significant changes, but there was an apparent trend toward later and more frequent dismissals, fewer guilty pleas, more trials, and more trial convictions, with total convictions declining. On the whole, the dispositional changes in drug felony cases in Fairbanks show a pattern of greatly increased "toughness" in the most aggravated cases, but also--surprisingly--in the least aggravated cases as well.

6. Policy Effect in Class 6 Cases ("Morals" Felonies)

* The new policy was associated with no significant change in the court disposition pattern for morals charges.
* The only measurable change was a large increase in post-arrest screening (refusals to prosecute), an impact largely confined to Anchorage (see Section IV).

In cases involving "morals" felonies (Class 6), after taking into account city of filing and companion cases--the only factors that proved to be important statistically--we found that the plea bargaining ban was not associated with any significant change in the disposition pattern. This was true in each of the three cities considered separately as well as for the three cities as a

whole. The apparent ineffectiveness of the plea bargaining ban in morals cases may well be because most of the exceptions approved by the Attorney General were in cases involving sex offenses against children; 53 per cent of all morals cases were of this type. The only measurable result of the new policy in Class 6 cases was the large increase in post-arrest screening, in Anchorage only (see Section IV above).

E. Policy Effects in the Multiple-Charge Situation

* The court disposition of a felony case was strongly affected by whether or not it was accompanied by other charges against the same defendant and how these companion charges were disposed of.

* The new policy against plea bargaining had no measurable effect on multiple-charge disposition patterns.

As explained earlier, the unit of our analysis was the case: a single charge against a single defendant, combining all the information specific to that charge with all the information about the defendant. Where a defendant has more than one case against him, one would expect the outcome in each case to be affected by the outcomes of the other cases and, in general, that a case would receive more severe treatment if it is accompanied by other cases. There are two kinds of influences operating simultaneously in this multiple-charge situation. On one hand, cases against the same defendant tend to be disposed of in the same way in court, because they are the same with regard to the defen-

dant's characteristics and history, and because they are likely to be similar with respect to evidence, injury, damage, and victim-factors, since they usually arise from the same criminal incident or a series of related incidents. On the other hand, the multiple-charge situation involves a potential trade-off: the prosecution may be willing to trade dismissals in some of the companion cases in return for guilty pleas in the others.

1. The Effects of Companion Case Dispositions on Each Other

Table V-3 shows the relationship of various single and multiple-charge situations to the court disposition pattern in both years of the study combined. To discover the effect of various multiple-charge situations on court dispositions we can compare each row with row 1, which tabulates unaccompanied cases (i.e., cases where the defendant had only one charge).

Row 2 of Table V-3 includes each case that was accompanied by one or more companion cases (felony or misdemeanor), where at least one of the companion cases resulted in a plea of guilty to a charge at least as serious as the charge in that case. Comparing these dispositions with row 1 of the table, we see that the total dismissal rate (50.0 per cent) was about the same as that for unaccompanied cases (47.3 per cent). However, the dismissals tended to occur later; that is, they took place in superior

court rather than district court. This suggests that when dismissals did occur, they were much more likely to occur as trade-offs, after the defense had had time to think things over and enter a guilty plea to a substantially equally serious companion charge. The cases in row 2 involved more risk to the defendant than the unaccompanied cases in row 1: they had nearly the same conviction rate (about 40 per cent), but were much less likely to be disposed of by a guilty plea to a substantially reduced charge, and much more likely to be disposed of by a guilty plea to an unreduced charge. The trial rate of cases in row 2 (2.4 per cent) was substantially lower than that in unaccompanied cases (7.2 per cent).

Each case counted in row 3 had one or more companion cases, at least one of which resulted in a guilty plea, but only to a charge less serious than the charge in that case. (An example of this situation would be a burglary case where the defendant was also charged with a misdemeanor larceny, to which he pleaded guilty.) The total dismissal rate for cases in this situation (52.9 per cent) was slightly higher than the rate for unaccompanied cases (47.3 per cent), and the dismissals tended to occur more often in superior court than in district court--again suggesting that the dismissal was a trade-off. These cases had a somewhat lower rate of guilty pleas to unreduced charges, (14.6 per cent) than unaccompanied cases did (20.6 per cent), but their total

conviction rate was about the same (46.3 per cent, compared with 50.4 per cent). Trials were somewhat less frequent in this situation than in unaccompanied cases (row 1). To sum up: when the defendant in a certain case pleaded guilty to a less serious companion charge, his risk in that case was about the same as if he had only had one charge.

Row 4 of Table V-3 describes cases that had companion cases in which no guilty pleas were entered, but in which at least one companion charge ended in a trial conviction. It is clear that when a case was accompanied by another charge resulting in a trial conviction, the case was in a much riskier situation. Its likelihood of resulting in a trial conviction was 67.2 per cent (as compared with only 4.8 per cent for unaccompanied cases); its likelihood of ending in some kind of a conviction, including a guilty plea, was 79. 3 per cent (as compared with 50.4 per cent for unaccompanied cases); and its dismissal rate was only 15.5 per cent (as compared with 47.3 per cent for unaccompanied cases).

Cases accompanied by other cases, where none of the companion cases resulted in any kind of conviction, were more likely than unaccompanied cases to end favorably for the defendant. In row 5 of the table we see that cases in this situation had a total conviction rate of 29.3 per cent (as compared with 50.4 per cent in unaccompanied cases), and a total dismissal rate of 66.2 per cent (as compared with

47.3 per cent). Also, when such cases did go to trial, the defendant had a two-to-one chance of being acquitted, as compared with a two-to-one chance of being convicted at the trial in unaccompanied cases.

2. Companion Case Dispositions Before and After the New Policy

We compared disposition patterns in single- and multiple-charge situations in Year One and Year Two to see whether there was any indication of a shift attributable to the new policy against plea bargaining. Before plea bargaining was banned, concessions were often made to a defendant who pleaded guilty to another charge. We thought that such concessions would become less frequent after the ban, resulting in lower dismissal rates and higher unreduced plea and trial rates in cases in this situation. This did not occur, as shown by rows 2a, 2b, 3a, and 3b of Table V-4. In fact, there was practically no change, as the rest of the table indicates. This finding suggests that whatever bargaining leverage the prosecution and defense possessed in the multiple-charge situation was not lost when plea bargaining was banned.

F. Summary: Effect of New Policy on Court Disposition

There was no large change in overall court disposition patterns in the first year after plea bargaining was prohibited. Trials remained rare, showing little increase

in relative frequency; the rate of guilty pleas (to both reduced and unreduced charges) stayed about the same; and the dismissal rate continued to be about 52 per cent.

Tests for possible independent effects of the plea bargaining ban were made after identifying factors having a major influence on the court disposition of a case. These salient factors included the city where the case was filed, the type of offense charged, whether the case was accompanied by other felony cases, whether there was physical evidence and a search warrant, the value of the property stolen, received or damaged, and, in drug cases, the time that elapsed between offense and arrest and whether the offense involved a narcotic rather than some other drug.

Controlling for these factors, we found no apparent effects of the prohibition of plea bargaining in cases involving violent felonies other than murder and kidnapping (Class 2 offenses) and none in cases involving "morals" felonies (Class 6 offenses). In murder and kidnapping (Class 1) cases, we found no statistically significant changes, but some trends: in Anchorage, guilty pleas became less frequent and the trial rate rose to the already high (50 per cent) rate of Fairbanks; in Fairbanks, the trial rate remained high, guilty pleas increased, and dismissals decreased. Thus, the figures suggest "tougher" prosecution in Class 1 cases.

In cases involving Class 3 offenses such as burglary, larceny, and receiving stolen property, while no overall effect of the plea bargaining ban was found, changes in disposition patterns after the ban were found in Anchorage and Fairbanks, looking at each city separately. While these changes were somewhat different, they generally suggest that prosecution in Class 3 cases in these two cities became more vigorous and more expeditious when plea bargaining was prohibited. In Anchorage, dismissals tended to occur at an earlier stage of the proceedings, pleas to reduced charges became less frequent and pleas to unreduced charges more frequent, but trials increased very little and actually decreased in the most aggravated cases. The total conviction rate either increased, or remained constant with less charge reduction, except in the least aggravated cases. In Fairbanks, the new policy apparently affected only the most aggravated Class 3 cases, and in a different way from Anchorage: dismissals decreased (especially in district court), pleas (both reduced and unreduced) increased, trial acquittals ceased altogether, and trial convictions increased. Effects in Juneau were marginal or nil.

With respect to cases involving fraud, bad checks, forgery, and embezzlement (Class 4 offenses), we could measure no overall dispositional change attributable to the plea bargaining ban. In Anchorage, Class 4 cases unaccompanied by other felony charges apparently received somewhat

more severe treatment in that reduced pleas decreased and unreduced pleas increased, although the total conviction rate declined; they were also handled less efficiently, in that dismissals occurred later. Surprisingly, the more aggravated Class 4 cases in Anchorage (those accompanied by other felony charges) received more lenient handling in Year Two (dismissals increased, unreduced pleas dropped sharply, reduced pleas increased somewhat, and the total conviction rate dropped). Trials remained virtually nonexistent. On the whole, Class 4 cases received less vigorous prosecution in Anchorage in Year Two: dismissals increased and convictions declined. In Class 4 cases in Fairbanks, there were also indications of less vigorous prosecution. The only significant change was in cases accompanied by other felony cases: dismissals tended to occur later (in superior rather than district court), convictions declined, and trial acquittal increased. (Little can be said of Juneau because only 19 Class 4 cases went to court there during the study period.)

The new policy had no overall effect that we could measure on drug felony (Class 5) cases, but it did have local effects in Anchorage and Fairbanks. In Anchorage, the disposition pattern moved in the direction of less efficiency and more leniency in the most aggravated drug felony cases (those involving companion felony cases and either a narcotics charge or a possible "controlled-buy" situation): in

these cases, dismissals in superior court became more frequent, and unreduced pleas and all forms of conviction became less frequent. In contrast, drug cases in Fairbanks experienced dispositional changes that generally suggest more vigorous prosecution after plea bargaining was forbidden: (1) in the most and least aggravated types of cases, dismissals occurred less often and trial convictions became more frequent; (2) guilty pleas became less frequent in the most aggravated cases, and in the least aggravated cases guilty pleas were much less likely to involve substantial charge reductions; and (3) in other Fairbanks drug cases, there was an indication of movement toward fewer pleas, more trials, and more trial convictions, although the change was not statistically significant. In Juneau, we found no signicant changes in disposition of drug felonies.

To sum up the results of the analysis of court dispositions, we can say that after plea bargaining was banned, we expected that, in general, dismissals and guilty pleas to reduced charges would decline, the total conviction rate would increase, and trials (especially trial convictions) would increase; we also thought these changes would be most pronounced in the most "aggravated" cases. The analysis only partially confirmed our expectations. There were no generalized, statistically confirmed shifts in disposition patterns. Changes did occur in certain cities and types of cases--some in the expected direction and some in the opposite direction.

VI. Analysis of Final Case Outcome: Conviction and Active Sentence

A. Definitions

In this section we consider what was perhaps the most important outcome of felony prosecutions: whether or not the defendant was convicted and went to prison. All 3,586 cases in this study were divided into two groups: (1) those that resulted in conviction and the imposition of an active prison sentence of 30 days or more; and (2) all other cases. The second group includes any case that (a) resulted in conviction but less than 30 days of active imprisonment, (b) resulted in conviction with a probationary sentence and no active imprisonment, (c) went to court but did not result in conviction, or (d) was kept out of court by post-arrest screening. In selecting the dividing line of 30 days of imprisonment, our intention was to try to separate cases in which a substantial punishment was imposed from cases in which the defendant was not convicted or received only light punishment, including probation. Also, because sentence length as defined in this study included "time served" sentences--that is, sentences to the amount of time the defendant had already spent in detention before conviction and imposition of sentence--we thought that 30 days would be a long enough period to include most of the sentences in which the judge imposed "time served" and nothing more. In analyzing the outcome of conviction and active sentence, our

objective was to look at overall results. Consequently, in this part of the analysis we paid no attention to the process involved as a case reached its final disposition, and little attention to variations among the three cities studied.

B. Trends

As can be seen in Table VI-1, over the four time periods there was a slight but continual increase in the proportion of cases resulting in conviction and active imprisonment of 30 days or more: 16.8, 17.7, 18.5, and 19.3 per cent for Periods One through Four, respectively. Comparing Year One with Year Two, almost no increase is seen; the conviction and active sentence rate went from 17.2 per cent to 18.9 per cent. Looking at the six classes of felonies separately, little change in the rate can be found, except in Class 3 cases (involving burglary, larceny, and receiving stolen goods). In those cases, the rate was 12.9 per cent in Year One, and increased significantly to 18.1 per cent in Year Two. In other words, the risk of substantial punishment to defendants in Class 3 cases increased by about half. This increase was the result of a gradual trend from Period One to Period Four that apparently began in Period Two, before the new policy went into effect. Drug felony (Class 5) cases showed signs of an increase in the conviction and active sentence rate in Period Two and Period Three; but the rate declined sharply in Period Four, with the net result of

very little increase from Year One to Year Two. In Class 6 ("morals") cases, the rate increased from 16.7 per cent in Year One to 20.0 per cent in Year Two, but the change was not statistically significant.

C. Effect of the Prohibition of Plea Bargaining on the Rate of Conviction-Plus-Active-Sentence

The figures just considered (Table VI-1) indicate very little change from Year One to Year Two in the probability that a case would result in conviction and active imprisonment of 30 days or more. However, we thought that there might be substantial increases in this probability in certain groups of cases. In order to define these groups appropriately, as in our analysis of court dispositions, it was first necessary to analyze the contribution of other factors in the study to see which were importantly associated with the probability of conviction and active prison sentence regardless of the new policy.

The first factor selected as important was offense class. It is clear from inspection of Table VI-1 that the defendant's chances of being convicted and receiving active imprisonment varied greatly depending on the type of offense charged, although most of the variation in the probability was accounted for by the relatively high risk in Class 1 cases (about 50 per cent) and Class 2 cases (about 22 per cent). In other words, cases involving violent felony charges were clearly much riskier for the defendant than

cases involving property, drug, and morals felony charges. This held true over both study years.

In Class 1 cases (involving murder and kidnapping), there was clearly no significant increase in the likelihood of conviction and active sentence from Year One to Year Two. The number of cases in Class 1 was too small to permit further investigation. A detailed analysis was done for Class 2 cases (involving other violent felonies such as rape, robbery, assault with intent to kill, and assault with a dangerous weapon). In these cases, a number of factors proved to be significantly related to the defendant's chances of conviction-plus-active-sentence. The two most important factors were (a) whether the Class 2 case was accompanied by another felony case, and (b) whether the defendant was on probation or parole at the time of the alleged offense or had a record of prior convictions or both. (Factor (b) was actually a 3-point scale combining probation-parole status and prior convictions.) Taking these two factors into account, a number of other factors were also found to significantly increase the defendant's risk of conviction-plus-imprisonment in Class 2 cases: (1) whether the specific offense was one of the more serious Class 2 offenses, including rape, robbery, assault and shooting with intent to kill, the use of firearms to commit robbery, etc.; (2) whether there was at least two hours' delay between the time of the alleged offense and the time of arrest and booking;

(3) whether a search warrant was issued, coupled with some physical evidence linking the defendant with the crime; (4) whether stolen property was identified as evidence; (5) whether the value of the property stolen in the crime exceeded $100; (6) whether the victim of the crime and the defendant were unrelated (that is, not spouses, relatives, friends, or acquaintances); (7) whether the ultimate victim of the crime was an organization rather than an individual person; and (8) whether the victim of the crime was female.

Some of these factors require explanation. The amount of time that elapsed between the offense and the arrest may have been important for this reason: when arrests were made very quickly after the offense occurred, at least in Class 2 cases, the police may not have had as strong a case against the suspect as when more time was allowed to consider and prepare the evidence before the arrest was made. A relationship between the offender and the victim often acts as a mitigating factor in criminal court disposition, sometimes because it indicates that the offense was not a predatory one but rather the product of uncontrolled emotion (for example, a lovers' quarrel), and sometimes because the victim decides not to testify against his assailant-friend-lover, or the prosecutor anticipates that such a decision by the victim may occur.

The fact that the defendant ran a higher risk when the ultimate victim of his crime was a business or organiza-

tion--for example, when he robbed a grocery store clerk rather than an isolated individual not acting as part of an organization--may indicate either that crimes against organizations were considered more professional or premeditated, and, therefore, more serious, or that crimes against individuals were discounted somewhat as crimes of passion. When the victim of the alleged crime was female, we found that the defendant was more likely to be convicted and imprisoned. This effect of the victim's sex was not confined to rape cases. (Two hundred and forty-two of the 1,044 Class 2 cases involved female victims, and Class 2 includes only 69 rape cases.)

If two or more of the eight factors mentioned in the previous paragraphs were present in a Class 2 case, it was considered "high-risk." We tested for the impact of the policy against plea bargaining over all combinations of the companion-felony factor, probation-parole status and prior criminal record, and the "risk" variable just described. We found no significant indication of any overall effect of the new policy on the likelihood of conviction and active sentence in Class 2 cases. Also, looking at each of the 12 groups of Class 2 cases formed by the combinations of factors selected initially as important (companion felonies, probation-parole and criminal record, and "risk"), we found no significant changes attributable to the new policy.

Following the same kind of procedure in Class 3 cases (involving burglary, larceny, receiving, and the

like), we selected as important (1) whether the case was accompanied by another felony case, and (2) whether the defendant was in a "high-risk" category. A Class 3 case was considered "high-risk" if it (a) involved a charge of burglary (this being apparently regarded as the most serious offense in Class 3), or (b) if a search warrant had been issued in the case and some kind of physical evidence had been obtained, or (c) if the value of the property stolen, received, or damaged exceeded $500. The plea bargaining ban turned out to be significantly associated with an increase in the likelihood of conviction and active sentence over all 12 groups of Class 3 cases defined in terms of the factors we selected as being statistically important. In other words, our statistical tests indicated that the chance of conviction and active sentence was greater for cases in Year Two regardless of other relevant characteristics of those cases. There was no clear interaction of the new policy with the other characteristics of Class 3 cases. We had expected that where the defendant had a more serious record, or where the evidence was stronger, or the property loss greater, the prohibition of plea bargaining might have had more of an effect on his case than on other cases, but this did not turn out to be true.

The factors significantly related to conviction and active sentence in Class 4 cases (involving fraud, forgery, bad checks, embezzlement, etc.) were (1) the de-

fendant's probation-parole status, (2) his criminal record, (3) whether he was charged with forgery (a relatively serious offense), and (4) whether there was an eyewitness to the alleged offense. Controlling for these factors, no significant effect of the new policy on Class 4 cases was found, and there was no effect of the plea bargaining ban on any group of these cases defined in terms of the statistically important factors.

In Class 5 (drug felonies) we could find no significant contribution of the policy against plea bargaining to any change in the probability of conviction and active sentence of 30 days or more. This was confirmed after first controlling for the following important factors: (1) companion cases, (2) probation-parole status, (3) prior criminal convictions, (4) whether the specific offense was sale of narcotics, and (5) whether more than 24 hours had elapsed from the time of the offense until arrest and booking. (The last factor, as explained in the previous section, meant that a case was more likely to have involved a "controlled buy" by a police agent, and thus to have been a stronger case.) There was no consistent pattern of policy effects among the groups of Class 5 cases defined in terms of various combinations of statistically important factors.

In "morals" felonies (Class 6 cases), the variables associated with the likelihood of conviction and active sentence were (1) the city where the case arose (Fairbanks

was especially severe in its handling of morals cases), (2) whether the specific offense charged was the relatively serious one of lewd and lascivious acts toward a child, and (3) whether the defendant made a confession. Taking these factors into account we found no significant overall effect of the new policy on morals cases. Considering Fairbanks separately, we found that the odds against the defendant in a morals felony case increased (although not significantly) in Year Two: in "low-risk" Fairbanks cases defined in terms of the three factors just mentioned, the proportion resulting in conviction and imprisonment of 30 days or more increased from 0.0 per cent in Year One to 50.0 per cent in Year Two; and in "high-risk" cases the proportion increased from 36.4 per cent to 62.5 per cent. (The "low-risk" change was marginally significant at .08, but the "high-risk" change was not.)

D. Comments

If Alaska's prohibition of plea bargaining is regarded as a policy of "getting tougher" with criminal suspects, then the analysis of conviction-plus-active-imprisonment shows that the new policy was at least partially successful. Although the prohibition apparently did not achieve any overall increase in the felony defendant's likelihood of being convicted and receiving at least 30 days of active imprisonment, quite a substantial increase did occur in felonies of the most common type--burglary, lar-

ceny, and receiving stolen property. The reason the new policy did not produce any changes at all with regard to conviction and active sentence in violent felony cases may have been that the treatment those cases was already receiving before the policy change was perceived to be as severe as the resources of the prosecution system could produce. We have no explanation of why there was no increase in the probability of conviction and active sentence in cases involving fraud, forgery, embezzlement, and drug felony charges.

VII. Analysis of Type and Length of Sentence In Cases Where Defendant Was Convicted

A. Background

It was reasonable to expect that sentencing of defendants convicted in felony cases in Alaska would become more severe under the policy against plea bargaining, since sentences were no longer allowed to be arrived at by negotiation between the defense and the prosecution. As shown in Section II, the recommendation of specific sentences by assistant district attorneys was, in fact, greatly curtailed in the first year after announcement of the new policy. The apparent result was that sentencing judges, acting without prosecutorial recommendations, sentenced more punitively in certain respects.

Our analysis dealt with the sentence imposed on the defendant considered in two different ways: (1) whether

or not active imprisonment of 30 days or more was imposed, and (2) the length (in months) of the active prison or jail term, which was treated as zero if the sentence was suspended, if the defendant was fined, or if he received another form of sentence not involving confinement.

Only the 1,433 felony cases that resulted in some sort of conviction were considered in the sentencing analysis; we refer to these as "convicted cases." All of these cases began with a felony charge, although the defendant ultimately may have been convicted either of a less serious felony or of a misdemeanor. We assigned each convicted case to the offense class of the original felony charge. Usually, where a charge reduction occurred, the type of offense remained the same. (For example, a violent felony charge if reduced upon conviction, tended to be reduced to a less serious violent felony or a misdemeanor such as assault and battery; property felonies tended to be reduced to other property felonies or property misdemeanors such as petty larceny; etc.) Our analysis took into account the offense of which the defendant was actually convicted as well as the offense originally charged, along with many other relevant factors.

B. Trends

1. Mean Sentence Lengths

Table VII-1 shows that there was no striking increase in mean (average) sentence length except in drug cases. The absence of strong trends in mean sentences

obscures some important increases in sentence severity associated with the policy against plea bargaining, which became apparent only after further analysis. These are discussed in subsections C and D below. Before turning to that analysis, let us briefly consider the comparison of sentence means before and after the new policy.

The mean sentence in murder and kidnapping (Class 1) cases increased in Year Two, but not significantly. In cases involving violent felonies other than murder and kidnapping (Class 2) there was a strong increase in sentence length in Anchorage (from 13.9 to 24.6 months), but this was offset by a decrease in Fairbanks (from 38.9 to 22.1 months); both changes were statistically significant. In cases involving burglary, larceny, receiving, etc. (Class 3) there was no significant change in sentence means in Anchorage or Juneau, and actually a significant drop (from 11.3 to 5.0 months) in Fairbanks. Sentences changed very little in cases of fraud, forgery, embezzlement, bad checks, etc. (Class 4), except for a decline from 8.5 to 3.1 months in Fairbanks. In drug cases (Class 5), although no changes occurred in Anchorage and Juneau, sentences in Fairbanks increased enormously--from 0.9 to 47.1 months. In morals cases (Class 6) none of the differences in mean sentence were statistically significant.

Table VII-1 also shows mean sentences by year for some of the more numerous specific offenses of which defen-

dants charged with felonies were actually convicted. Although some of these appear to have undergone substantial change from Year One to Year Two, none of the changes was statistically significant except for the increases in sentences for narcotics sales (Fairbanks) and marijuana misdemeanors (Anchorage).

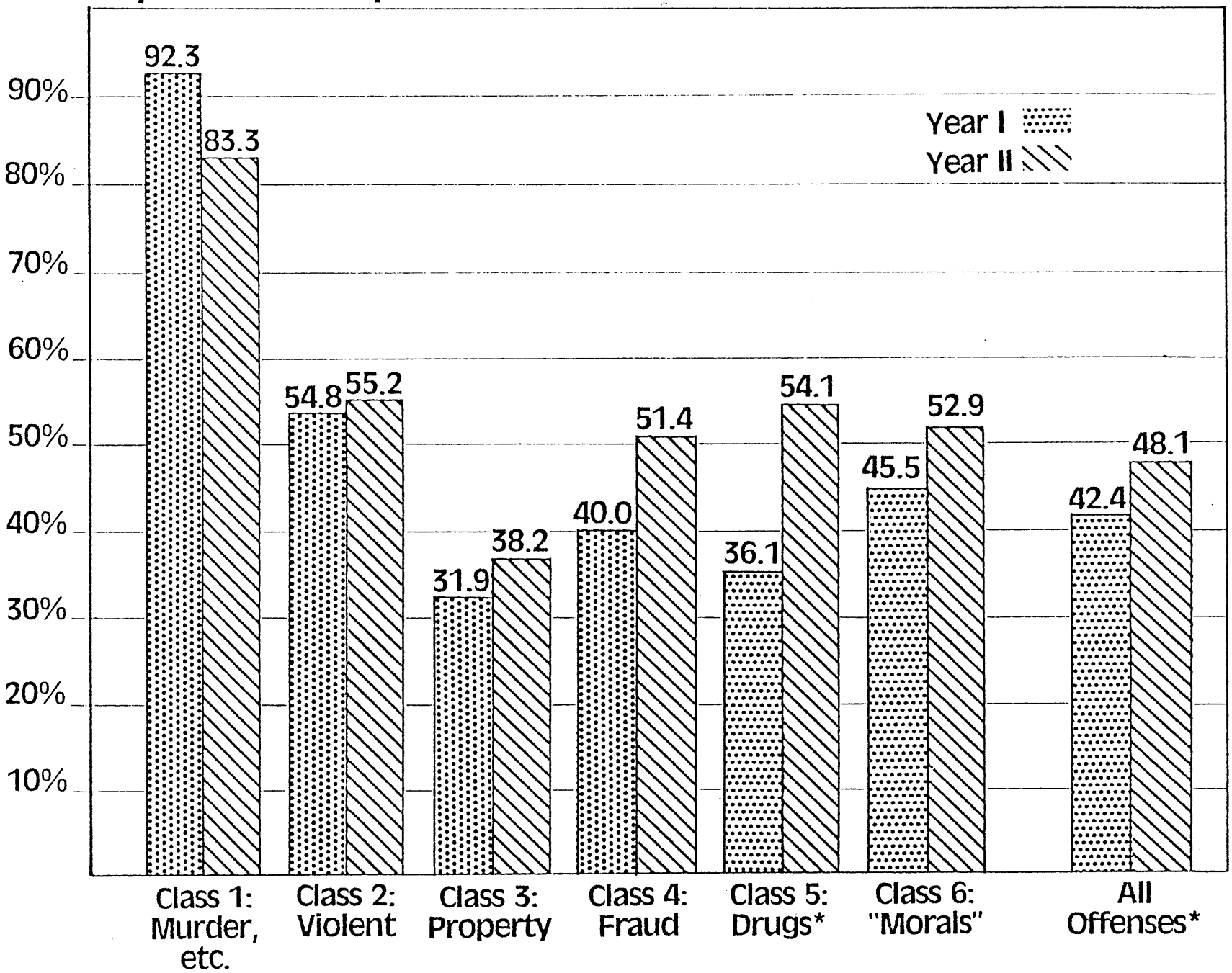
2. Proportion of Sentences Involving Active Imprisonment of Thirty Days or More

In Table VII-2 and Figure 5, Year One and Year Two were compared with respect to the proportion of convicted cases where a sentence involving 30 days or more of active imprisonment was imposed. With regard to all 1,433 convicted cases, there was a very small but statistically significant increase, from 42.4 per cent in Year One to 48.1 per cent in Year Two. In other words, the felony defendant's chance of receiving an active sentence of 30 days or more, if convicted, increased by about one-seventh from Year One to Year Two. Considering the various offense classes separately, the only significant increase occurred in cases involving drug offenses (Class 5).

C. Multiple Regression Analysis of Active Sentence Length

The techniques used in our analysis of active sentence length, analysis of variance and loglinear multiple regression, provide an estimate of the contribution to sentence length of each factor in our study, adjusting for

Table VII-2 % **of convicted cases in which active time of 30 days or more is imposed. All cities.**



*Year I-Year II differences are significant at .05 or less.

all the factors of importance. These statistical procedures work best when the variable being analyzed is distributed "normally," i.e., conforms to the well-known "bell-shaped curve". The variable studied here--sentence length--is not normally distributed. It has a skewed distribution in the sense that most defendants are not clustered in the middle range of sentence, but rather at the lower end of the scale. Although multiple regression is not best suited to analyzing skewed data, it is sufficiently reliable in this situation to give us an indication of which factors are of major importance and which are of little or no importance, and to indicate in a general way the strengths of different factors in relation to one another. Our separate analysis of the prison/probation decision (see Subsection D below) provides a check on the validity of the regression results, using a different statistical method.

The initial step in the analysis of sentence length was to perform a one-way analysis of variance in which we separately tested the contribution of each factor studied. The offense class proved to be significantly related to sentence length, explaining 31 per cent of the total variance (but only 6 per cent if Class 1 cases were excluded). Because we expected other factors to affect sentence length differently depending on the offense class, we did a separate analysis of sentence length <u>within</u> each of the offense classes. Classes 1 and 6 were left out of

this analysis because there were too few convicted cases in those classes. Within each remaining class a further one-way analysis of variance was done to determine which factors, considered separately, showed a significant contribution to sentence length. In the multiple regression computations we performed later, we generally included only those factors shown to be of some importance in the one-way analysis of variance.

Before considering the results of the multiple regression analysis, some explanation is in order. If a factor does not appear in the tables showing the result of the regression analysis (Tables VII-3 through VII-7 and Figures 6 through 9), it means that it turned out not to make a significant contribution to sentence length--i.e., that the factor was eliminated either in the one-way analysis of variance or in the multiple regression computations.

Most of the factors we considered in analyzing sentences have been defined in previous sections of the report, but there are two not mentioned thus far: "strict judge" and "lenient judge." We theorized (and so did most observers) that who the judge was could have a strong influence on the sentence in a case. We decided to define a "judge factor" in such a way as to distinguish judges who were "outliers"--that is, at apparent extremes in their sentencing--from other judges. Within each class of offense judges were divided into three groups: "strict," "lenient,"

and "other." A judge was considered "strict" if he imposed sentence in at least ten cases in a particular class and the average of his sentences was 50 per cent or more longer than the mean for the whole class. (Actually, in most instances, judges classified as "strict" imposed sentences averaging at least 100 per cent more than the mean for the offense class.) Judges were considered "lenient" if they imposed sentences in at least ten cases within a certain class and the mean of the sentences they imposed was 50 per cent or more shorter than the mean for the entire class. (Actually, with respect to most of the judges considered "lenient", their mean sentences were considerably more than 50 per cent shorter than the mean for the entire class.) Judges who did not sentence at least ten cases in one offense class, or who could not be classified as "strict" or "lenient" by the foregoing definitions, were counted in the "other" category.

The figures in Tables VII-3 through VII-7 and Figures 6 through 9 also require some explanation. The percentages shown with plus or minus signs represent <u>estimates</u> of the percentage increase (plus sign) or decrease (minus sign) when the indicated factor was present. For example, in Table VII-3, Item 1, if a defendant was convicted of the specific offense of rape, this alone would have made his sentence an estimated 4,152 per cent longer than it would have been had he been convicted of one of the other Class 2 offenses not listed in the table, including assault with a

dangerous weapon and negligent homicide. If convicted of robbery, his sentence would have been an estimated 878 per cent longer than if he had been convicted of one of the offenses not listed. Thus, the effect on sentence length of a conviction of robbery (+878 per cent), although large, was not as powerful as that of rape. Note especially that the percentage figures in the tables do not indicate a percentage difference in the means for any specific offenses shown, or for any of the other factors shown; rather, they are an estimate of the independent effect of each of the factors shown, adjusted for all combinations of other factors found to have a significant contribution to sentence length.

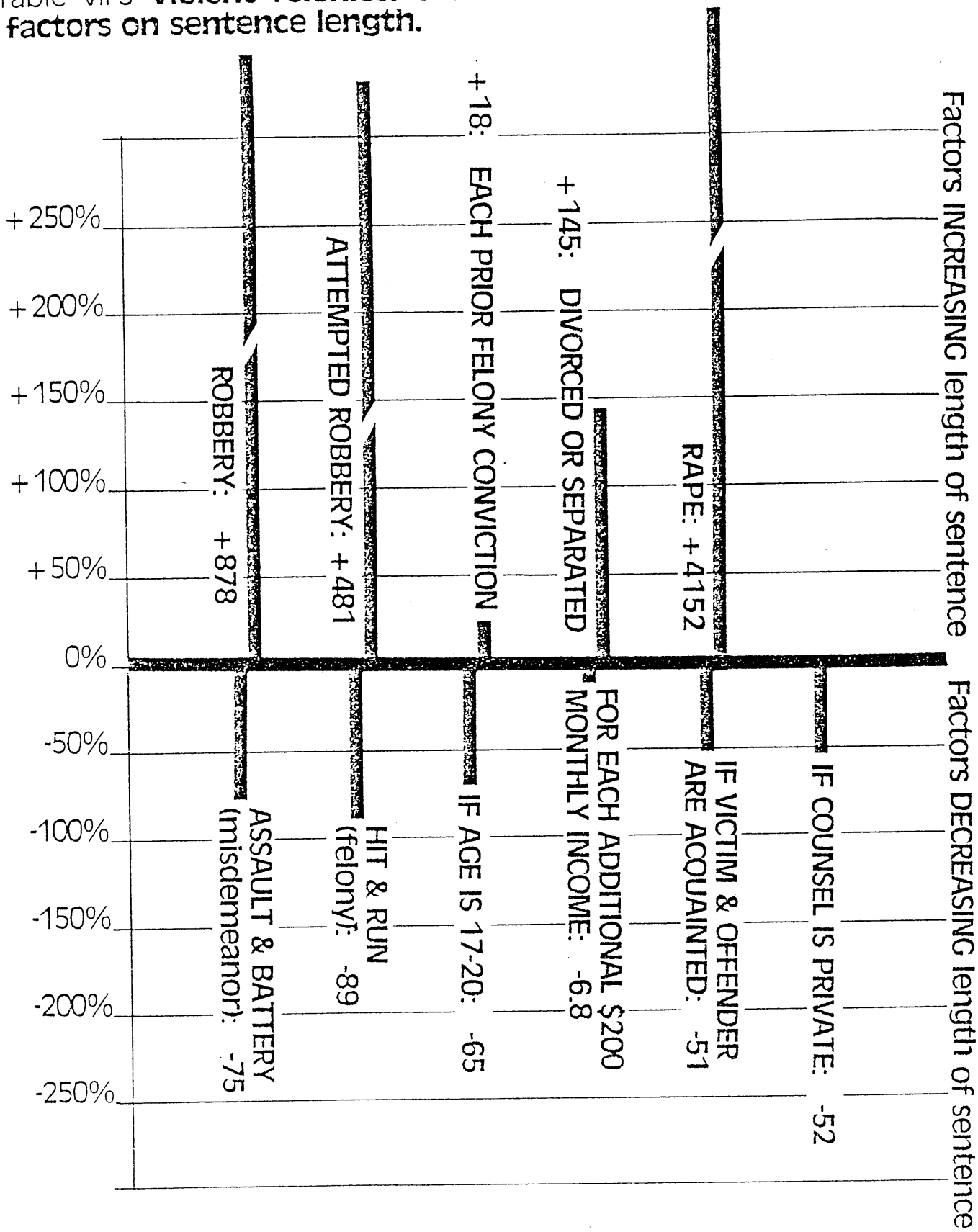
1. Sentence Length in Class 2 Cases

The results of multiple regression analysis of the 420 convicted cases in which the original charge was a violent felony other than murder or kidnapping (Class 2) are shown in Table VII-3 and Figure 6. Taking all the other important factors into account, the new policy forbidding plea bargaining did not have a significant effect on sentence length in Class 2 cases.

A number of other factors did have significant and substantial effects on sentence length in Class 2 cases during the two-year study period. For example, the sentence tended to be much longer if the defendant was convicted of certain very serious Class 2 offenses, and shorter if--although initially charged with a felony--he was convicted

FIGURE 6

Table VII-3 **Violent felonies: estimated effects of various factors on sentence length.**



of a misdemeanor such as disorderly conduct or careless use of firearms. Criminal record was associated with longer sentences, the sentence length increasing by an estimated 18 per cent for each prior felony conviction. As might be expected, sentences tended to be shorter if the defendant's age was under 21. Being divorced or separated was associated with longer sentences; or to put it another way, the defendant was sentenced more leniently if he was married, other things being equal. The defendant's income was apparently associated with the length of his sentence. The sentence was reduced somewhat (an estimated 6.8 per cent) for each additional $200 of monthly income. If the victim of the crime and the defendant were related, acquainted, or associated by employment, the sentence was an estimated 51 per cent shorter than otherwise. Finally, if the defendant had privately-retained counsel (this included counsel furnished under a pre-paid assistance plan, as well as counsel paid directly by the defendant), his sentence tended to be shorter. Multiple regression in Class 2 cases provided a fairly good "model," or mathematical description, of the variation in sentence length. Fifty-one per cent of the total variance was explained (i.e., R^2 was .51).[40/]

2. Sentence Length in Class 3 Cases

The results of the multiple regression analysis of the 499 convicted cases involving burglary, larceny, and receiving (Class 3) charges are shown in Table VII-4 and

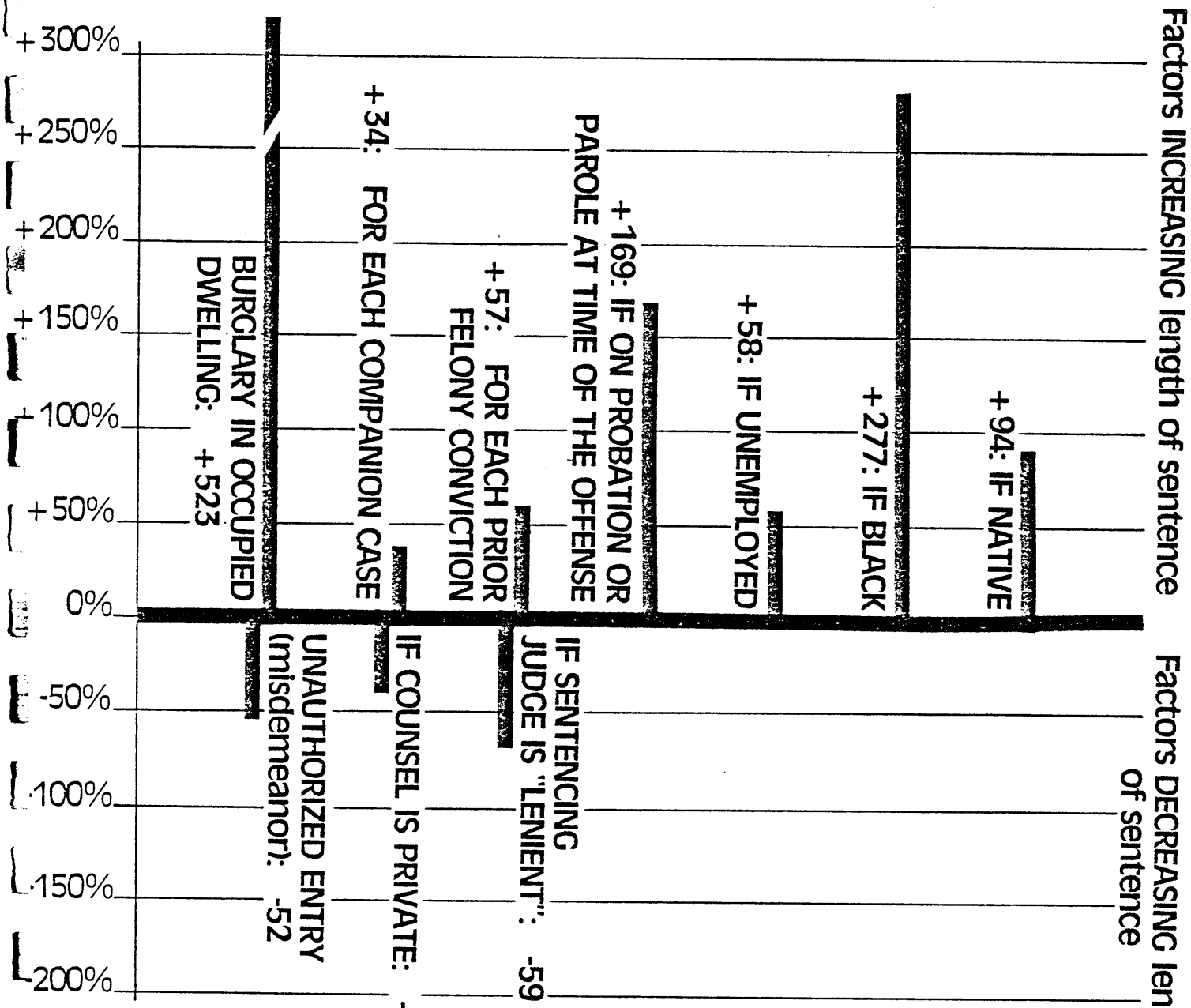
Figure 7. When other important factors were taken into account, the plea bargaining ban was not shown to have any significant independent effect on sentence length. However, because of the results of our analysis of the prison/probation sentence (see subsection D below), and because of responses in interviews conducted as a part of the study, we suspected that sentences might have increased in Year Two for defendants in a "low-risk" situation--i.e., defendants who, when plea bargaining was permitted, would have been likely to receive probation or short active sentences because their charge was not especially serious, or because they had no criminal records, or for other similar reasons.

Based on the results in the prison/probation sentence analysis, we defined "low-risk" Class 3 cases as those in which either none, or no more than one, of the following risk factors was present: (1) the case was accompanied by at least one other "companion" felony case; (2) the specific offense of conviction was burglary or felonious larceny (rather than receiving, malicious mischief, misdemeanor larceny or unauthorized entry); and (3) the defendant had a record of prior felony convictions. Considering just these 281 "low-risk" Class 3 cases, we found that sentences did increase by an estimated 52 per cent in the year after plea bargaining was prohibited (see Table VII-5).

Our explanation of why the plea bargaining ban was associated with increased sentences in Class 3 cases only if

FIGURE 7

Table VII-4 **Property felonies: estimated effects of various factors on sentence length.**



they were "low-risk" cases is more fully treated in Part One of this report which discusses the results of the interviews we conducted. We believe that such cases ceased to receive the favorable prosecutorial recommendations they would have received when plea bargaining was allowed. When plea bargaining was banned, the prosecutor was no longer allowed to recommend (and thus take some responsibility for) a specific lenient sentence, and thus lacked an incentive to emphasize factors in the defendant's favor at the sentencing hearing.

The other factors that contributed to sentence length in Class 3 cases (including low-risk as well as other cases) are listed in Table VII-4. Unemployment was associated with longer sentences. This may have reflected a judgment that the defendant's character was bad if he was unemployed, or the perception that if a defendant stole and was unemployed he was stealing as a means of livelihood, or that the prospects of rehabilitation were worse for defendants with poor work histories. The sentence also tended to be longer if the defendant was Black or an Alaskan native (Eskimo, Indian or Aleut). The multiple regression model in Class 3 cases did not provide as complete a description of variation in sentence length as that in Class 2 cases. Only 27 per cent of the total variance is explained. This may mean that sentencing decisions in these kinds of cases are more strongly influenced by a greater number of "random" factors or "intangibles" less susceptible to statistical

analysis than the factors influencing violent crime sentences.

3. Sentence Length in Class 4 Cases

The multiple regression analysis shows (see Table VII-6 and Figure 8) that the new policy against plea bargaining contributed to a significant and sizeable increase in sentence length--estimated at 117 per cent--in the 194 convicted cases involving charges of fraud, forgery, embezzlement, and bad check (Class 4 offenses). The "judge factor" was of enormous importance in Class 4 cases; if the judge was in the "strict" category, the sentence was an estimated 18 times longer, other things being equal. Female defendants tended to receive shorter sentences than males. Defendants in the 21-to-26 age group tended to receive longer sentences than those under 21 and those over 26. Black and native Alaskan defendants apparently suffered a substantial disadvantage in sentencing in Class 4 cases; other things being equal, their sentences tended to be much longer than those of other defendants. The regression model explained 58 per cent of the total variance in Class 4 sentence length.

4. Sentence Length in Class 5 Cases

The largest estimated increase in active sentence length attributable to the new plea bargaining policy--233 per cent--was found in the 255 convicted cases involving drug felony (Class 5) charges (see Table VII-7 and Figure 9).

FIGURE 8

Table VII-6 **Check and Fraud felonies: estimated effects of various factors on sentence lengths.**

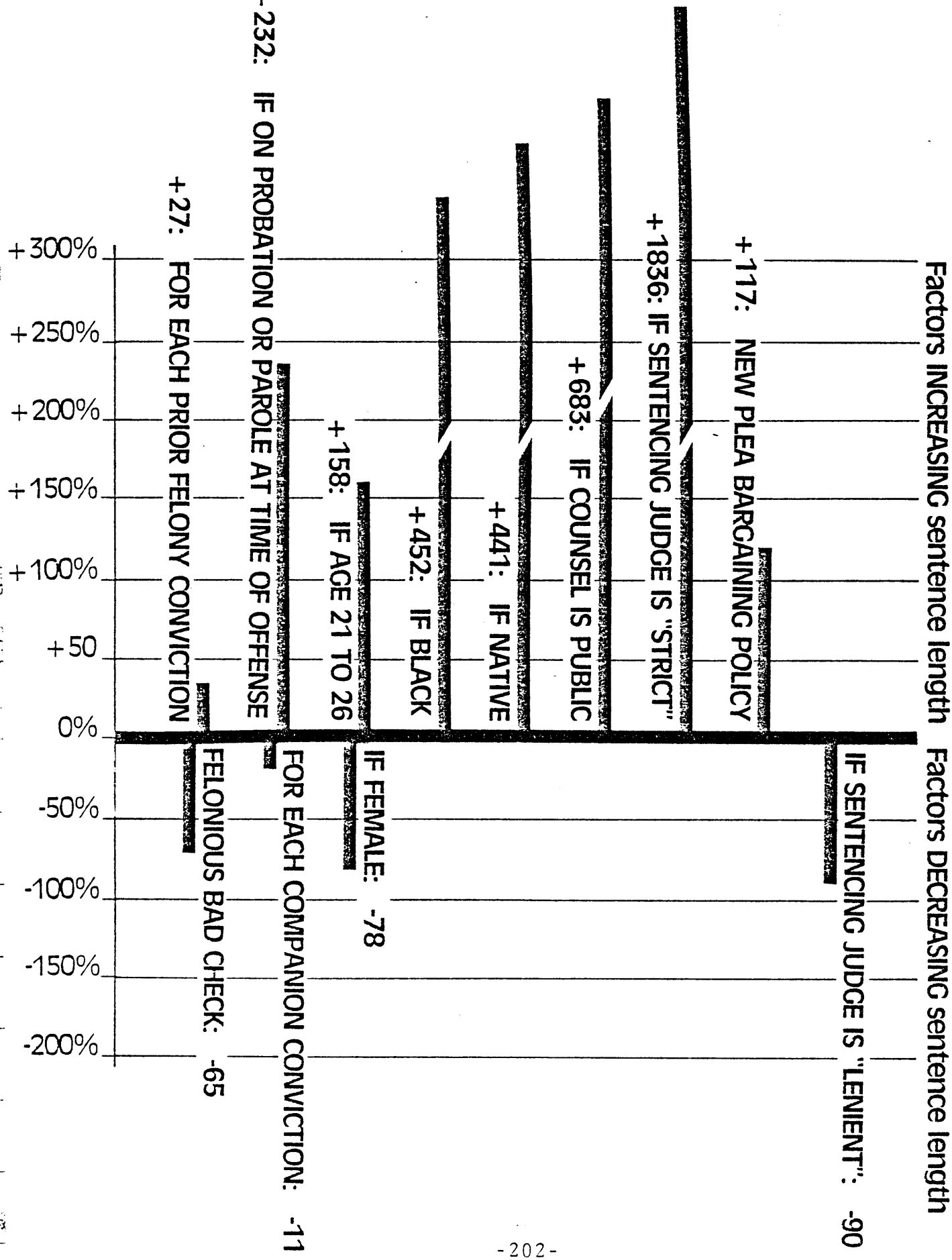
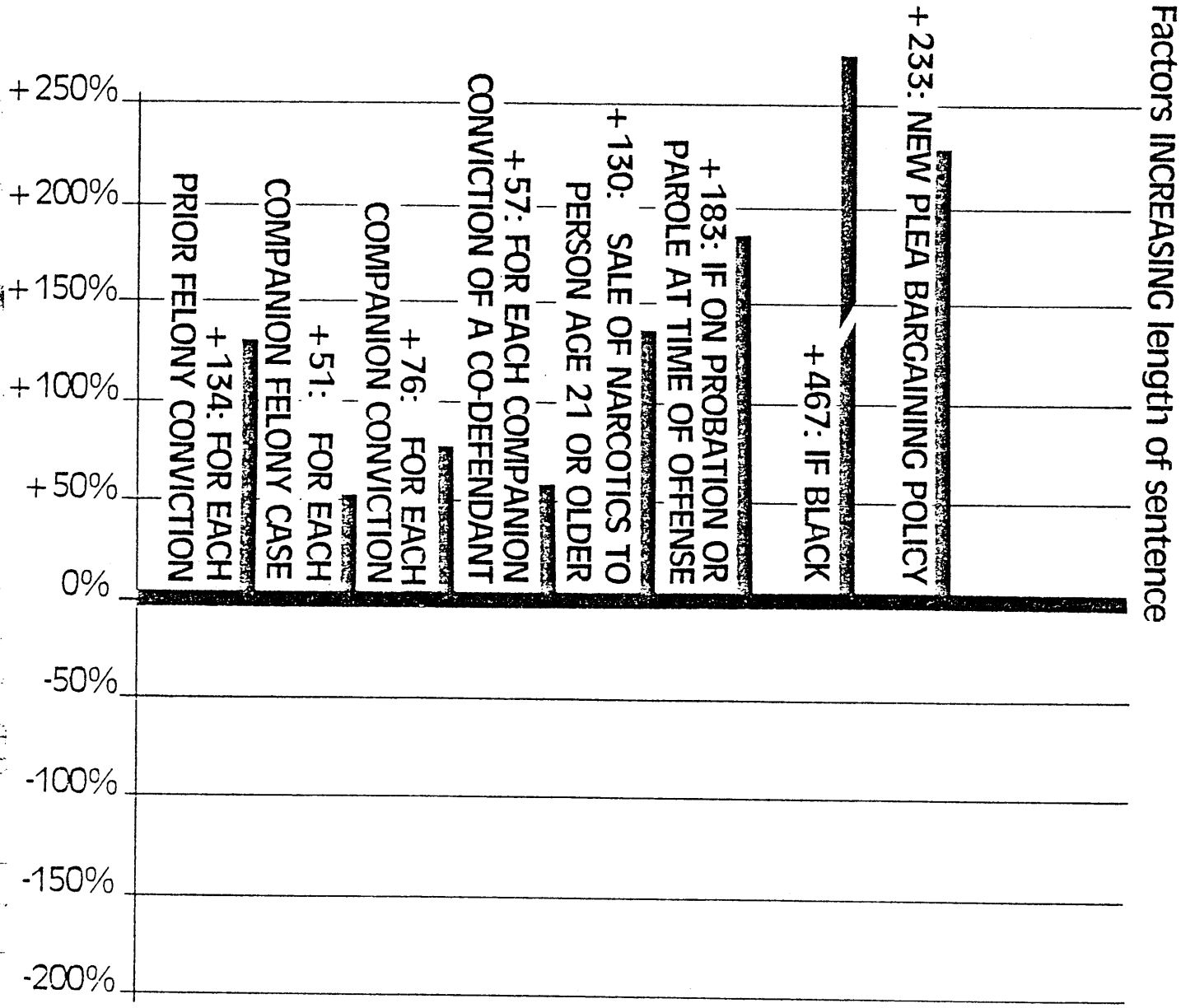


FIGURE 9

Table VII-7 **Drug felonies: estimated effects of various factors on sentence lengths.**



The regression model, which explained 49 per cent of the total variance in sentence length, also indicates that drug defendants suffered a severe disadvantage if they were Black, and indicates that, other things being equal, sentences tended to be about 50 per cent shorter in Fairbanks than in Anchorage and Juneau. (This latter result is because drug sentences were quite low in Fairbanks in Year One, before the new policy was announced. As shown in Table VII-1, they increased very greatly in Year Two.)

5. Interpretation of Sentence-Length Analysis

In interpreting the multiple regression analysis of sentence length, we note first that the new policy against plea bargaining was not associated with any increase in active sentences where the initial charge was a violent (Class 2) felony such as assault with a dangerous weapon, robbery, rape, etc. One reason for this may have been that the sentences for such offenses were already considered severe before the new policy went into effect. If there were few concessions granted by the state in violent felonies under the previous bargaining system, the prohibition of bargaining may have produced correspondingly little change.

In Class 3 cases, involving charges of burglary, larceny, and receiving stolen property, there was no overall increase in sentence length associated with the new plea bargaining policy, but there was a large and statistically

significant sentence increase in "low-risk" cases which would have been good candidates for probation or very short jail sentences when plea bargaining was allowed. The defendants in these "low-risk" Class 3 cases tended to receive more severe sentences in Year Two, when prosecutors were forbidden to make specific sentence recommendations and lacked the incentive to suggest leniency. Sentence length also apparently increased in Class 4 cases (involving fraud, bad checks, forgery, embezzlement, etc.) as a result of the prohibition of plea bargaining. The reason for the increase may have been that cases involving bad checks, forgery, etc., like "low-risk" burglary and larceny cases, tended to receive prosecutorial leniency in sentence recommendation when plea bargaining was allowed, but lost this advantage when plea bargaining was forbidden.

That the largest increase in sentence length occurred in drug cases was perhaps no accident. Subjective judgment on the part of the prosecutor, judge, and others probably plays more of a role in the handling of drug cases than it does in cases involving demonstrable harm or measurable loss to actual victims. It is also apparent that the strongest policy effect occurred in Fairbanks, where drug sentences increased enormously (see Table VII-1). Thus, one reason for the increase in drug sentences may have been that so much more discretion--and consequently, leniency--had been exercised before plea bargaining was prohibited.

Another reason may have been a new and more punitive attitude toward drug offenses and offenders, which may or may not have had anything to do with the new policy against plea bargaining.

In considering the sentence increase in drug cases, as well as the increase we found in the probability of an active sentence rather than probation (see subsection D), it should be remembered that drug cases also experienced the clearest increase in post-arrest screening. As Section IV explained, the likelihood that a drug case would be rejected for prosecution increased after plea bargaining was banned, regardless of which city the case arose in and regardless of other relevant characteristics of the case. Could the removal, through screening, of the less aggravated kinds of drug cases be responsible for the harsher sentencing of those remaining? This is a possibility, but we do not think it very likely. Our estimate of the increase in sentences for cases ending in conviction was independent of other factors affecting sentencing that could have changed from Year One to Year Two. That is, the multiple regression and contingency table analyses we performed indicated a significant increase in sentence severity separate from the effects of other characteristics of drug cases that affected sentencing in both Year One and Year Two. These characteristics included, for example, companion felony cases, prior convictions, and being convicted specifically of a narcotics

felony rather than a "soft" drug offense. However, the increase in screening could have removed from the sentencing process cases that would have been good candidates for lenient sentences because of some (unknown) factor which we failed to take into account in our study.

It should also be noted that, although those convicted in drug felony cases received harsher sentences in Year Two, there was no increase in the overall risk of conviction-plus-active-sentence for the drug defendant (see Section VI). In other words, increases in post-arrest screening and shifts in court disposition patterns counterbalanced the increase in sentence severity, with the result that there was no greater probability of conviction and an active sentence of 30 days or more for a person charged with a drug felony after plea bargaining was banned.

D. Effects of the New Policy on the Prison/Probation Decision

We analyzed the effect of the new policy on sentencing not only with regard to sentence length, but also in terms of whether active imprisonment of 30 days or more was imposed (rather than a shorter period of imprisonment or probation). As in the multiple regression analysis just described, the class of offense was initially found to be quite important statistically, so that the remainder of the analysis was carried out separately within each offense class. Table VII-8 lists the factors we found to be signi-

ficantly related to the convicted defendant's likelihood of receiving an active prison sentence of 30 days or more.

In convicted cases involving charges of violent felonies other than murder and kidnapping (Class 2 offenses), after taking into account the three most important factors associated with active sentence in both study years (companion felony cases, specific offense of conviction, and prior felony convictions), we found no significant association between whether a case arose under the new policy forbidding plea bargaining and the probability of an active prison sentence of 30 days or more. Nor did we find any localized effect of the new policy. That is, looking at each of the eight groups of violent felony cases formed by all combinations of the three most important factors, we found no differences attributable to the new policy. Otherwise, the analysis of active sentence probability shows that, for the most part, the same factors associated with upward or downward variation in sentence length were also associated with the probability of receiving imprisonment of 30 days or more. (There were some exceptions to this general rule: the defendant's age, income, and marital status did not prove to have any significant relationship to the probability of a sentence of 30 days or more, although each of these factors apparently did have an influence on sentence length in Class 2 cases.)

In convicted cases involving charges of burglary, larceny, and receiving stolen property, (Class 3 offenses),

the plea bargaining ban apparently had no overall effect on the probability of an active sentence of 30 days or more. Otherwise, as Table VII-8 indicates, the factors found to be significantly related to the likelihood of an active sentence were about the same as those found to contribute to sentence length (see Table VII-4).

Looking at each of the eight groups of Class 3 cases formed by all the combinations of the three most important factors (companion felony cases, specific offense of conviction, and prior felony convictions), we found that the prohibition of plea bargaining appeared to be associated with an increase in active sentence probability in "low-risk" Class 3 cases only. In Table VII-9, cases are classified according to whether they had companion felonies, whether the offense of which the defendant was convicted was burglary or felonious larceny (rather than a less serious Class 3 offense), and whether or not the defendant had a record of prior felony convictions. It can be seen in Table VII-9 that the percentage of cases in which imprisonment of 30 days or more was imposed underwent a much greater increase in Year Two if the likelihood of imprisonment for more than 30 days was relatively low in Year One. We can see especially sharp increases in rows 1, 3, and 5 of the table. On the other hand, for the relatively higher-risk cases in the last three rows of the table, the percentage of cases receiving 30 days or more actually declined somewhat from one year to the next.

In statistical analysis one must be quite cautious about looking for localized effects. The apparent results of the new policy may simply be an accidental outcome of how one groups the cases. However, in this situation we feel there is a priori justification for considering "low-risk" cases apart from other cases. A number of knowledgeable people interviewed in this study said that under the new policy, "routine," unexceptional cases involving defendants with generally clean records and without aggravating factors were receiving stiffer sentences than they would have received when plea bargaining was allowed. Another way of interpreting the more punitive sentencing in "low-risk" Class 3 cases is to regard it as the path of least resistance in response to the prohibition of sentence bargaining--i.e., the largest increase in sentence severity in Class 3 cases may have occurred at the lower end of the sentencing continuum because it was easier to reduce leniency than to increase severity.

A separate analysis was performed including only those convicted Class 3 cases in the "low-risk" category--that is, those included in rows 1, 2, 3, and 5 of Table VII-9. (The "low-risk" cases were those in which none or no more than one of the following risk factors was present: companion felony case, burglary or felonious larceny charge, and prior felony convictions.) Within this group of 75 cases, taking into account the companion felony, specific

offense, and prior felony conviction factors, the new policy was found to be associated with an increase in the probability of receiving an active sentence of 30 days or more. Our partial correlation statistic showed this association to be statistically significant at the .02 level. This means that the association had only a 2 per cent chance of being accidental. The finding that "low-risk" property crime defendants experienced an increase in the probability of receiving an active sentence, while other property crime defendants did not, concurs with the multiple regression analysis (see subsection C above), which indicated that the bargaining ban was associated with an increase in sentence length only in the same "low-risk" Class 3 cases.

In cases involving charges of fraud, forgery, embezzlement, and bad checks (Class 4 offenses), the new plea bargaining policy was found to be significantly associated with an increase in the probability of receiving an active sentence of 30 days or more, just as it was with an increase in sentence length. This policy effect was evident after controlling for the two most important factors associated with active sentence probability--(1) prior convictions, and (2) whether the specific offense of which the defendant was convicted was forgery of debt rather than a less serious offense. As shown in Table VII-8, the other factors that turned out to be significantly associated with active-sentence probability once the first two had been controlled for

were about the same as those determined to contribute to sentence length. The fact that the results of two different statistical techniques agree increases our confidence in each of them.

In cases where the original charge was a drug felony (Class 5 offense), the new plea bargaining policy was also associated with a marginally significant increase in the likelihood of receiving an active sentence of 30 days or more. This association was found after taking into account the three most important factors: (1) whether there was a companion felony case, (2) whether the specific offense of conviction was a narcotics felony rather than another drug offense, and (3) whether the defendant had prior felony convictions. The association of the new policy with the probability of an active sentence was significant at .12; this means that the association we observed had a 12 per cent chance of being simply an accident of the way in which the study data were selected. (In most of the other associations here reported as "statistically significant," there was a chance of only 5 per cent or less of their being accidental.) Aside from the new plea bargaining policy, the other factors found to be significantly related to active-sentence probability are listed in Table VII-8; these were generally the same as those found associated with active sentence length (see Table VII-7).

E. Were Defendants Penalized for Going to Trial Rather Than Pleading Guilty, and Did the Prohibition of Plea Bargaining Make A Difference?

The manner in which the defendant was convicted, that is, whether by pleading guilty or by trial, was very strongly associated with the length of his active sentence as well as the likelihood of his receiving an active sentence of thirty days or more. For example, looking at all the 1,433 cases in which the defendant was convicted, we find that when the defendant pled guilty he had a 39.9 per cent chance of receiving an active sentence of thirty days or more; but when he was convicted after trial, this likelihood was 82.0 per cent. Defendants in the 178 Class 2, 3, 4, and 5 cases who were convicted after a trial had a mean active sentence length of 63.5 months, as compared with a mean of 10.3 months for those in the 1,255 cases involving a guilty plea.

We did not include the mode of conviction (plea or trial) as a potentially causal factor in the general analysis of sentencing patterns discussed earlier in this section of the report. The reason for excluding it was that the mode of conviction is probably as much a result of the criminal process as it is a cause. It is a "process variable" that cannot be treated in the same way as other variables such as whether the defendant has prior convictions, whether he has other charges, the value of property he has stolen, and the

like, which are potential causes of sentencing and not part of the criminal court process. The fact that a defendant elects to go to trial may be associated with his receiving a longer sentence, but his decision to put the state to its proof may be largely compelled by a variety of factors in his case. These may include not only the factors we have been able to capture in our study data, but also other factors we were not able to capture. Despite our reservations about including the mode of conviction as a factor in the analysis of sentencing, we did so for the limited purpose of measuring the effect of the plea bargaining ban on the plea/trial sentence differential.

To confirm whether a real differential existed between sentences imposed after a guilty plea and sentences imposed after a trial conviction it was necessary to perform statistical tests that could take into account the differences in important characteristics between cases that resulted in guilty pleas and cases that went to trial and ended in conviction. These tests could be performed only in the types of cases where sufficient numbers of trial convictions occurred. Too few convictions occurred by trial in Class 1 (only 13 convictions by trial in both years), Class 4 (only 11 convictions by trial), Class 5 (30 convictions by trial, but only two in Year One), and Class 6 (only three convictions by trial). However, in the two largest classes of cases--Class 2 (involving violent felonies other than

murder and kidnapping) and Class 3 (involving burglary, larceny, and receiving stolen property)--there were enough trial convictions for further analysis: 87 in Class 2 cases (41 in Year One and 46 in Year Two), and 34 in Class 3 cases (10 in Year One and 24 in Year Two).

In cases involving Class 2 offenses multiple regression analysis showed that when conviction was by trial rather than plea of guilty, sentences were about four and one-half times longer, other things being equal (see Table VII-10). The mode of conviction was the strongest single factor influencing sentence length in Class 2 cases, in the sense that it explained more of the total variance (16 percentage points out of the total of 53 per cent explained by the model) than any other factor. In Class 3 cases, the analysis indicated that sentences were about six and one-half times longer when conviction was by trial rather than plea, other things being equal, <u>but only in Year One</u>. The most rigorous analysis we could perform showed that the sentencing disadvantage suffered by Class 3 defendants who went to trial apparently disappeared in Year Two. The disappearance of the sentence differential in Year Two was confirmed by significance tests, even though there were only 10 convictions by trial in Year One and 24 in Year Two in Class 3 cases. (In statistical terminology, the year the case was filed "interacted significantly" with the mode of conviction.)

The findings prompt some further reflection about the plea/trial sentence differential. The differential can be interpreted in several ways. (1) The more severe sentences in cases that go to trial may be a form of punishing the defendant for inconveniencing the court system--or the prosecutor--by insisting on his right to trial. To put it another way, the benefit of lenient sentencing may be denied to those who resist authority by putting the state to its legal burden of proof. (2) When a case goes to a formal trial circumstances tending to aggravate the sentence may become more vivid by the testimony of witnesses and by other evidence that would not be brought out (or presented so strongly) when the client pled guilty. (3) The guilty defendant who insists on going to trial and is subsequently convicted may more likely be the defendant who has the most to fear from conviction; thus, defendants who exercise their right to trial and are convicted may be more likely than others to have aggravating factors in their cases. (4) The defendant who pleads guilty may receive a more lenient sentence because he is thought to have "taken the first step toward reform." With these various interpretations of the plea/ trial sentence differential in mind, let us consider why the differential was apparently nullified by the plea bargaining ban in burglary and larceny cases but not in cases involving violent crime. The answer may be because the sentence differential occurred for different reasons in the two different kinds of cases.

In assaultive (Class 2) cases, the difference between sentences imposed for a plea of guilty and sentences imposed after a trial conviction may have been due not to concessions given for pleading guilty, but to an enhanced penalty imposed because of facts brought out by the trial. Sentence concessions seemed to have been comparatively rare in assaultive cases before the plea bargaining ban, as indicated by our finding that the ban did not increase sentence severity in such cases. The fact that defendants convicted of assaultive crimes received more severe sentences if convicted by trial, and the fact that this greater severity persisted after plea bargaining was prohibited, may indicate that interpretations (2) and (3) mentioned in the previous paragraph apply to such defendants, rather than interpretations (1) and (4). In cases involving violent crime, there often is evidence of how threateningly or dangerously the defendant behaved, how vulnerable the victim was, the "gory details" of the injury, etc., that would be brought out by testimony only at a trial. Thus, <u>whether or not plea bargaining is permitted</u>, the violent-crime defendant who is convicted at trial may receive a harsher sentence because of evidence revealed or emphasized at trial; also, he may have decided to risk a trial primarily because of aggravating factors in his case which made it unlikely that he would be treated leniently no matter how his conviction were obtained.

Now let us consider cases involving burglary, larceny, and receiving stolen property. In these, aggravating circumstances such as physical injury, threatening behavior, and the like are not usually present. Therefore, one would expect no "gory details" to be revealed by a trial. Defendants charged with theft crimes--especially those in the "low-risk" category (see subsections C and D above)--were probably more likely than those charged with violent crimes to receive sentencing concessions for pleading guilty when plea bargaining was allowed. Such concessions may have been rationalized either because these theft defendants were sparing the state the inconvenience of a trial, or because they were perceived to be taking the first step toward rehabilitation, or simply because under the institutionalized plea bargaining system recommendations of leniency were the norm in certain kinds of cases. If these were the rationales of the plea/trial sentence differential in burglary and larceny cases, they would have been removed by the prohibition of plea bargaining. The result would be that the plea/trial sentence differential would disappear, as our analysis indicates. If our explanation for the elimination of the plea/trial sentence differential is correct, at least in cases involving burglary, larceny, and receiving stolen property, the Attorney General's new policy apparently removed the sentence concession given for waiving the right to trial and the penalty imposed for insisting on a trial.

APPENDIX B

Tables

PART THREE

CONCLUSIONS

Michael L. Rubinstein
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We conclude that the Attorney General was successful in bringing about considerable change in the system of plea bargaining which was fully institutionalized in Alaska prior to August of 1975. The principal aim of his policy--the prohibition of sentence negotiations and, indeed, of all sentence recommendations to the court by prosecutors--was substantially accomplished.

Although the Attorney General instituted no formal controls or procedures to monitor compliance, the rule against sentence bargaining was rather closely followed by prosecutors, and there was little evidence of under-the-table negotiation. There are a number of explanations for this high level of compliance; primary among these was the early recognition by prosecutors that their lack of involvement in the sentencing decision was to their advantage most of the time.

The average or unexceptional felony case reaching the superior court in either the year before the new policy or the year following it did not involve criminal conduct of a major or threatening kind. More than fifty per cent of all convictions in both study years resulted in active jail sentences of less than thirty days, indicating cases of an unaggravated nature. When plea bargaining was the norm, these routine cases were settled by agreement between counsel, usually by a specific sentence recommendation. Prosecutors and defense attorneys spent much of their working time

discussing such cases in an attempt to arrive at acceptable sentence recommendations, often for probation or very short periods of incarceration. Prosecutors were willing to negotiate routine cases to conclusion, not because the defense made credible threats of going to trial, but simply because under an institutionalized system of plea bargaining a willingness to "settle" was the custom of the courthouse. Occasionally this general expectation of negotiability--the essence of institutionalized plea bargaining--would spill over into other, more serious cases. But in most really serious cases, unless the prosecutor perceived problems of proof making the outcome of the contest sufficiently doubtful, it was unusual for him to agree to a sentence recommendation that was a true "concession." That is, in a serious case he would seldom make a recommendation substantially more lenient than the sentence the judge could be predicted to hand down in any event.

Not only did the negotiation process take up a good deal of the assistant district attorney's time, but since it was likely that his recommendation would be followed, it also placed much of the burden for the defendant's fate on the prosecutor. Under the new policy, however, direct dealings with defense counsel were much less frequent, and the prosecutor was also relieved of major responsibility for the sentence. Assistant district attorneys found that routine cases which used to be settled by bargained-for guilty

pleas were being condluded by pleas of guilty even under the new policy. The rate of guilty pleas did not diminish appreciably despite the curtailment of plea bargaining. Moreover, these guilty pleas could be obtained without additional delay, without any promises to defense counsel, without a specific recommendation to the court, and thus without responsibility for the defendant's fate. In short, prosecutors learned that they could achieve the same results under the Attorney General's new system, but with less time spent on routine cases, and with less responsibility for the outcome.

There were other reasons for strict compliance with the sentence bargaining policy. First, the Supreme Court of Alaska's decisions in State v. Carlson, (1976) and State v. Buckalew, (1977) in effect prohibited judges from dealing directly with defense counsel in ways which could have circumvented the Attorney General's aims. Second, because all pre-sentence hearings in Alaska are electronically recorded and Alaska Criminal Rule 11(e) requires the judge to inquire specifically as to the existence of any negotiated arrangements between counsel, a statement by the prosecutor in contravention of the Attorney General's policy would be subject to detection. Nevertheless, because district attorneys usually found themselves satisfied with the new policy, most of them would not have wished to evade their instructions in any event.

We conclude that the efficient operation of Alaska's criminal justice system did not depend upon plea bargaining. There is evidence that the curtailment of plea bargaining was accompanied by a marked acceleration in case processing which, if not engendered by the policy, was not impeded by it either. Also, many practitioners said that the felony cases which survived initial screening and district court dismissal under the new policy were better prepared for trial than those of the previous year. In general, it was claimed that the effect of the policy had been to compel more thorough case preparation by police and prosecutors, more painstaking factual and legal investigation by defense attorneys, and closer attention to calendar control by judges. Closer attention to the calendar included, for example, the centralization of motion practice under a strong presiding judge, limitations on the granting of continuances, and the use of relatively inflexible "day-certain" trial settings in criminal cases. All of these approaches combined effectively against dilatory tactics which the Attorney General's policy otherwise might have encouraged--and which the practice of plea bargaining itself probably used to encourage.

Had a greater number of felony cases gone to trial, as many practitioners anticipated, trials might have overwhelmed the Alaska criminal justice system. However, this drastic increase never materialized; by an overwhelming margin, the prevailing modes of disposition continued to be

dismissal and plea of guilty. We conclude that plea bargaining had never been primarily responsible for the Alaska criminal justice system's heavy dependence upon dismissals and admissions of guilt. Plea bargains undoubtedly made pleas of guilty more attractive to defendants; but in the final analysis, most guilty pleas and dismissals were entered because the parties simply did not perceive any better alternatives. With or without "insurance" or "concessions," most defendants and counsel apparently believed that, when their charges were not dismissed, pleading guilty was their best recourse. There was little desire to insist on a trial that was most likely to result in conviction. (The conviction rate for trials was 63 per cent in the year before plea bargaining was banned and 74 per cent in the year afterward; in absolute numbers, trial convictions increased from 68 to 110 in the three cities studied, while trial acquittals totalled 41 before the ban and 39 afterward.) We repeat the words of one superior court judge: "Human nature doesn't want to engage in a fruitless act."

Most criminal cases--the routine or average cases referred to earlier--were not likely to result in severe sentences. Therefore, most defense attorneys lacked sufficient motivation to assert the rigors of superior court jury trials. Perhaps, if sufficiently hopeful outcomes had been perceived in these cases--if trial victories seemed realistic possiblities in more of them--more trials would have occurred.

However, in a system in which 52 per cent of the felony cases filed in court were eliminated by outright dismissal, one would not expect to find a great number of evidentiary weaknesses in the cases that survived. We repeat the words of one assistant public defender:

> You know, a lot of the times they have the [defendant] cold, and it doesn't matter how bad the D.A. is, or anything else. The person is going to get convicted.

In short, we conclude that the motivation for most pleas of guilty in Alaska lay more in the intrinsic realities of the cases than in any prosecutorial concessions or guarantees offered to defendants in the form of plea bargains. With or without plea bargains, guilty pleas continued at substantially the same rate.

How many pleas of guilty were motivated by so-called "implicit plea bargaining?" Did defendants plead guilty because they expected that if they exercised their rights to trial they would risk much harsher sentences? Undoubtedly this consideration influenced some guilty-plea decisions. We were told that defendants who had exhibited cooperative or repentent attitudes--by confessing, returning stolen property, agreeing to testify against co-defendants, etc.--were thought of as "naturals" for guilty pleas. A demand for trial by such a defendant would appear inconsistent with his past behavior. Especially if they had fairly

clean records, defendants expected to be rewarded with light sentences for continuing to cooperate with the system by admitting guilt.

Statistical evidence that trials were associated with more severe sentences was present in cases involving violent crimes other than murder and kidnapping (Class 2 offenses) and in cases involving burglary, larceny, and receiving stolen property (Class 3 offenses). The magnitude of this "plea/trial sentence differential" did not change in violent crimes, remaining quite large both before and after the plea bargaining ban. However, in cases involving burglary, larceny, and receiving stolen property, although few convictions occurred by trial in the three cities (10 in the year before the ban and 24 in the year afterward), careful statistical tests indicated that the sentence differential disappeared in the year after the ban. These findings suggest that the plea/trial sentence differential may have had different causes in violent and theft-crime cases. In cases involving burglary and larceny, the harsher sentences for those convicted by trial may have been due to the loss of the customary "break" given to those who pled guilty (rather than to aggravating factors brought out by trial); this difference could be expected to be erased by the prohibition of plea bargaining. In cases involving violent crime, on the other hand, sentences imposed after trial conviction may have been harsher because of aspects of violence or injury

to victims brought out by trial testimony, a situation which the plea bargaining ban could not be expected to change. Thus, our data suggest that in cases involving burglary and larceny, "implicit plea bargaining" based on differential sentencing disappeared after plea bargaining was prohibited. Differential sentencing persisted in cases involving violent crimes, and although our interpretation is somewhat speculative, we think the differential was the result of factors other than plea bargaining, implicit or otherwise.

We conclude that the Attorney General was quite successful in removing prosecutors from active participation in the determination of criminal sentences. Responsibility for sentencing, which had previously been shared among the attorneys for both sides and the judge, became a much more strictly judicial function. How did this redistribution of authority affect the actual sentences imposed upon convicted persons? In many areas there were no changes at all. We believe that this absence of change was as revealing as some of the clear changes that did occur in other kinds of offenses. Using statistical methods to "hold equal" other important variables, we found that there was absolutely no change in sentences for cases involving violent crimes such as rapes, robberies, felonious assaults, and the like. Nor did we find any across-the-board changes in sentences for most property crimes, particularly the more serious ones, or those involving defendants with prior felony convictions.

Apparently, with respect to these offenses, there was a striking degree of congruence between the value systems of attorneys and judges in Alaska's criminal justice system. Even when attorneys refrained from participating in the sentencing process, judges continued to impose very much the same kinds of penalties, and under the same circumstances as when, in the Attorney General's words, they had acted only as "rubber stamps" for sentencing decisions arranged in advance between counsel. This suggests that attorney-negotiated arrangements in Year One, at least for many kinds of offenses, did represent very accurate projections of judicial sentencing behavior. Attorneys apparently did "read" their judges with some skill. The negotiated arrangements in these kinds of cases were, therefore, more in the nature of insurance against an unexpectedly harsh sentence than true "concessions" or "bargains."

There were certain kinds of cases, however, in which judges, unaided by the bargained-for recommendations of prosecutors, imposed sentences that were substantially longer than those handed out in plea bargaining days. The "low-risk" property offenses fell into this category.[41/] In this group of relatively non-serious charges, holding other statistically important factors equal, sentences increased in length by an estimated 53 per cent over the prior year. Defendants within this low-risk group also ran four times greater odds of receiving jail sentences of 30

days or more compared with their previous risk of receiving such sentences. Oddly, the more aggravated "high risk" property cases were not treated with any greater severity under the new policy. All of the increased severity fell upon the "cleanest" defendants in the class. We theorize that it was these low-risk defendants who had derived the greatest benefits from the previous system of institutionalized plea bargaining--who had, in fact, received "bargains." Under the institutionalized plea-bargaining system prosecutors were most apt to grant concessions and to recommend probation or very lenient sentences for these defendants. As long as judges did not have sole responsibility for the decision, they were willing to go along with the negotiated recommendations. However, when prosecutorial recommendations came to an end, judges acting on their own initiative were not disposed to be as lenient.

Another clear sentencing change occurred in charges involving drug felonies. Holding other factors constant, we estimated a 233 per cent increase in the lengths of drug sentences after the new policy went into effect. This striking increase in sentences may indicate that Alaskan judges acting alone in Year Two had more punitive attitudes toward drug offenses than did prosecution-defense negotiating groups in Year One. Perhaps this can be attributed to judges as a group being older than prosecutors, and consequently less accepting of drug use. On the other hand, it

may simply have been that with the responsibility for sentencing more clearly vested in the judiciary, judges responded more strongly to their perceptions of what the Alaskan public wanted to see done with drug offenders. When the sentencing responsibility was diffuse, and no single individual or branch of government stood clearly answerable for lenient sentences, the parties were content to take a more liberal view of drug cases. At any rate, drug offenders apparently were true beneficiaries of the plea bargaining system who lost their benefits under the new policy.

A large increase in sentence length (estimated at 117 per cent) appeared in cases involving bad checks, forgeries, credit-card frauds, embezzlements and other crimes of deceit. We have no ready explanation for why sentences in this area more than doubled under the Attorney General's policy. However, perhaps these cases should be grouped together with the low-risk property offenses discussed above. In other words, these non-threatening cases may have been perceived as "naturals" for probationary and other lenient dispositions as long as sentencing responsibility was shared, but, for much the same reasons as applied to the drug cases, defendants could no longer count on leniency once sentencing had become more purely a judicial function and the "buck" stopped with the judge.

One intriguing finding of this study concerned the high dismissal rates--approximately 52 per cent in both

years--which were not affected by the change in the plea bargaining policy. Whether or not plea bargaining was officially sanctioned, more felony cases were disposed of by dismissal than by any other means, including pleas of guilty. Most of these dismissals were filed by the prosecutor rather than ordered by the judge. Although in the year following the institution of the new policy there was some tendency for dismissals to take place earlier in the process rather than later on, the overall dismissal rate did not change. Why were so many cases initially accepted by prosecutors only to be thrown out later on in the process by the same officials? A partial explanation may be found in the common practice of charging multiple counts and dismissing some of them in exchange for pleas to others. (There is no reason to believe that this practice--discussed in the following pages--increased after plea bargaining was banned.)

Another reason for the high dismissal rate may be that dismissal was viewed as a form of delayed post-arrest screening. (In the statistical analysis we found that, although post-arrest case screening did become more frequent in apparent response to the plea-bargaining ban, the increase did not generally take the form of culling out cases with weak evidence, but rather of rejecting more drug and morals cases as a group--perhaps because there was not a high priority assigned to prosecuting many such violations.) The practical limitation on the prosecutor's ability to evaluate

a case before a formal court complaint is filed can be better understood when one remembers that under Alaska law the prosecutor has, at the very most, 24 hours in which to decide whether to accept a case or to reject it by refusing to file a complaint. In making a decision he usually relies upon the facts stated in the police incident report prepared by the arresting officer. Rarely do prosecutors interview live witnesses during this screening period. The police report is prepared to "clear" the case, and not to make any decision about prosecution. It is often hastily done and may be incomplete or overly optimistic with respect to the evidence. Having to make a rapid choice, most prosecutors probably begin by supporting the judgment of the police officer embodied in the fact of the arrest and backed up by the report. This course is the safer one, because if the assistant district attorney is proved wrong there will still be ample opportunity to dismiss the case at a later stage of the proceedings--perhaps at the preliminary hearing, or just prior to indictment. Thus we conclude that high dismissal rates in felony cases may be understood, at least in part, as a form of delayed screening.

The Attorney General's policy on charge bargaining was sophisticated, not very susceptible of succinct and unequivocal definition, and--since it depended very much on the state of mind of the individual prosecutor--difficult to enforce. The following statements indicate what the Attorney

General considered to be the objectionable aspects of charge bargaining:

> I reiterate that I do not want charges reduced or dismissed <u>in order to obtain a plea</u>. [Memorandum of June 30, 1976. Emphasis supplied.]
>
> * * *
>
> [B]y charge bargaining I mean it in the worst connotation. I mean sitting down and giving up on a case for the convenience of getting a guilty plea and avoiding a trial. [Meeting of Advisory Board to Alaska Judicial Council's Plea Bargaining Project, March 31, 1978.]

On the other hand, there are some good reasons for allowing charges to be reduced in seriousness from their initial levels at filing. When charges are first filed the prosecutor may know relatively little about the case as compared with the information he acquires later on. The charging authority must be free to respond to changing circumstances and perceptions. Although he may subsequently decide to file more serious charges than those originally brought, the chances are that an assistant district attorney will start out by charging too high rather than too low.

> My experience is that the district attorney's office always overcharges, just because of a bureaucratic desire to play it safe. [private attorney]

The Attorney General recognized that a certain amount of post-filing charge readjustment was necessary when the

prosecutor received new information; therefore, he refused to promulgate any blanket rule which might have tended to inhibit the justifiable exercise of discretion by prosecutors.

> I have never had a case, be it from a prosecutor's standpoint or a defense counsel's standpoint, that in the process of working out the case for trial, you didn't uncover new ideas, new witnesses and new thoughts which either strengthened or weakened your case. [Meeting of Advisory Board to Alaska Judicial Council's Plea Bargaining Project, March 31, 1978.]

With the complexity of the charge-bargaining issue and the Attorney General's refusal to promulgate specific charging guidelines, it is not surprising that the statistical evidence showed relatively little change in charge-adjustment patterns between Year One and Year Two. However, we conclude that the kinds of charge adjustments that occurred in both years were, for the most part, different from charge bargaining "in the worst connotation," by the Attorney General's definition. Prosecutors and defense counsel tended to agree that most charge readjustments reflected responses to perceived changes in the nature of the evidence; the reasons for those reductions and dismissals usually did not fit the Attorney General's model of "giving up on a case for the convenience of getting a guilty plea and avoiding a trial."

Interview respondents tended to agree that the closest most prosecutors came to actual bargaining over

charges was in multiple-count indictments and informations. In these kinds of cases it was fairly routine to dismiss one or more counts following the defendant's plea of guilty to other counts. Dismissals in these cases in Year One were clearly pre-arranged and intended to encourage guilty pleas. In Year Two, dismissals were rewards for defendants who had already entered guilty pleas to other charges on faith that prosecutors would dismiss the "extra" counts. These dismissals usually were not related to any perceived weaknesses in the evidence supporting the dismissed charges, and in this respect they were unjustified under the new policy. However, there was evidence that the Attorney General did not object to this approach to multiple-count prosecutions.

> You can find six different laws applying to a given set of facts. The end result should be a charge which gives the judge the option of a reasonable range of sentences, given the facts. [Attorney General, Statewide Judicial Conference, June 2, 1976.]
>
> * * *
>
> At the last D.A.'s conference the Attorney General expressly told us that if the defendant says he'll plead to one count, we can indicate in advance that we'll dismiss the others. The same goes for lesser included offenses of a single count--this does not require any approval at all. [assistant district attorney]

Also, there was no evidence that prosecutors tried to circumvent the plea-bargaining ban by deliberately increased use of multiple charges. The average number of charges per

felony defendant actually declined somewhat from Year One to Year Two. (See Part Two, Table II-3.)

Throughout this study we were often struck by how differently the Attorney General's policy affected the three largest Alaskan cities. Though the rule on charge bargaining had relatively little effect on post-filing adjustment of charges in Anchorage and Juneau, it had a much greater impact in Fairbanks. We do not mean to imply, however, that prosecutors in Anchorage and Juneau did not comply with the spirit of the Attorney General's pronouncements: as we observed above, the kind of charge bargaining the Attorney General objected to was probably not very prevalent to begin with and therefore may not have needed much change to conform with the Attorney General's policy.

In Fairbanks practitioners said that during the first eight months of the year immediately following the policy change (Year Two) there was "rampant" charge bargaining of a sort that had not existed before; this was deliberately utilized to "fill the gaps" left by the prohibition of sentence bargaining. These same practitioners said that the district attorney in Fairbanks later put a stop to charge reduction and prohibited it even under circumstances in which the Attorney General himself probably would not have objected. There was some statistical confirmation of these statements: the proportion of Fairbanks felony cases accepted for prosecution that resulted in guilty pleas to substantially

reduced charges, which had been steady at about 17 per cent during the two six-month periods before the plea bargaining ban, increased suddenly to 23 per cent with respect to cases filed during the first six months after the plea bargaining ban. This proportion then dropped back to 16 per cent with respect to cases filed in the subsequent six months (Part Two, Table V-1). However, even during the first six-month period after the ban, there was no surge in the number of charges filed per defendant in Fairbanks, which suggests that there was no large attempt to circumvent the new policy by systematic overcharging. (No statistics are available for 1977 and 1978.)

Other evidence of differing approaches to the administration of justice in Anchorage, Fairbanks, and Juneau may be illustrated by some examples drawn from the statistical analysis. The rate of post-arrest screening was much lower in Fairbanks in Year One than in the other two cities, although it increased in Year Two after plea bargaining was banned. Anchorage prosecutors apparently responded to the plea-bargaining ban by dismissing felony cases earlier (in district court rather than in superior court), but there was no such reaction in the other two cities. One response to the new policy in Fairbanks was an increase in the trial rate, which was already markedly higher there than in either Anchorage or Juneau. Drug sentences were much less severe in Fairbanks than in the other two cities before the ban,

but they became much more severe afterward. In Juneau there was little statistical evidence of change in response to the new policy.

Strong differences among Anchorage, Fairbanks and Juneau were also brought out by the interview study. Fairbanks provided the most hospitable environment for the policy against plea bargaining, and it was in that city that the Attorney General's mandates were most strictly complied with. This is not surprising, since the Fairbanks District Attorney had himself instituted a local policy prohibiting plea bargaining in the Fourth Judicial District several months before the Attorney General made the statewide pronouncements which prompted this research. Prosecutors, defense attorneys and judges in Fairbanks had not been reputed to enjoy particularly harmonious working relationships even before the new policy was announced. Thus, the new policy's restrictions on the interaction between prosecutors and defense counsel in Fairbanks did not meet with much resistance from the actors in that city.

In almost every respect Juneau was the opposite of Fairbanks. Where Fairbanks had strict judges, Juneau's judges were lenient by comparison. Relations between the prosecution and defense in Juneau had been easy and harmonious prior to the policy change and continued to function smoothly thereafter. A system of pre-trial conferences for both felonies and misdemeanors continued to operate on a

regular basis, even under the new policy. As a result, nearly every case became the subject of discussions between counsel for the defense and for the state. In such a medium the Attorney General's policy had difficulty taking root, as the statistics show.

The policy against plea bargaining had substantial effects on the practice of criminal law in Alaska. On the prosecution side, although there was an initial negative reaction, most assistant district attorneys soon began to look favorably on the new rules for the reasons discussed in the preceding pages. When prosecutors had difficulty marshalling the evidence to support the initial charges, they generally remained free to dismiss one or more counts or to reduce the charges to a provable level. Such reductions or dismissals often would be followed by pleas of guilty, without necessarily implying any "deals" or prearrangements. The defendant may have balked at the higher charge but have been satisfied that he was guilty of the reduced offense; or his lawyer may have concluded that although the original charge could have been defended against, the charge in its reduced form could not be beaten. For example, if the state could not prove "intent to kill, wound or maim" in order to convict under the original charge, perhaps it could easily be proved that, regardless of his intent, the defendant assaulted the victim "with a dangerous weapon." If the only issue originally in doubt was the defendant's state of

mind, when the sole doubtful area was removed from the contest, a quick plea--with no "gory details"--was often seen as the best recourse.

On the other hand, if charges clearly could be proved as originally filed, the prosecutor simply prepared for trial. But in nearly all cases in Anchorage and Juneau we found that where the charges were not dismissed, the defendant would eventually plead guilty; trials still remained uncommon. Moreover, the occasional case that was actually taken to trial under the new policy was more likely than formerly to end in a prosecution victory. Assistant district attorneys showed strong improvement in trial success rates between Year One and Year Two. For prosecutors, at least in Anchorage and Juneau, the policy made work easier.

In Fairbanks the situation was different: the prosecutor's lot was made harder in Year Two because of the greatly increased number of trials. After the first half of Year Two, Fairbanks prosecutors became inflexible in their charging practices; this undoubtedly contributed to the relative inflexibility of the defense bar and led to more courtroom battles. The high level of trial activity in Fairbanks may also be explained in part by the fact that its superior court judges were considered by defense attorneys to be tough and unsympathetic sentencers. If attorneys and defendants expected stiff sentences they were more prone to gamble on trials. This was particularly so in charges

involving violence or firearms, especially if the defendant had a "record."

The Attorney General's policy had strong effects on the criminal defense bar--effects which they perceived as negative. Although prosecutors in Anchorage and Juneau still continued to reduce and dismiss charges when justified by the law or the evidence, defense attorneys had to work much harder under the new policy in order to convince them to act. They had to show prosecutors very clearly that there were enough weaknesses in the state's case to support action favorable to the defense. Often this meant more legal research, increased filing of motions, and more investigation and pre-trial discovery than was necessary to achieve similar results in Year One. This in turn increased the size of billings to clients and reportedly put an added financial burden on the middle-class defendant who was not eligible for public-defender representation. On the other hand, assistant public defenders said that they simply lacked the time and resources to make such efforts in the average, unaggravated cases that comprised a large portion of their workloads. When plea bargaining was the norm it was customary for many routine cases to be "dealt out" for lenient sentence recommendations, often without the necessity of a great deal of preliminary legal work. Under the new policy, we were told that unless a prosecutor dismissed a case or unilaterally reduced the charges there was little

many assistant public defenders could do other than to prepare for the sentencing hearing. The routine, unaggravated case was no longer negotiable. By comparison, attorneys associated with law firms representing labor union members under pre-paid legal services plans claimed that they were relatively unaffected by the new policy in their representation of average, unaggravated cases. This was because, as recipients of guaranteed hourly fees, and not burdened with the heavy caseloads of assistant public defenders, union lawyers could afford to devote extra time even to cases of a relatively minor nature.

Judges remained mixed in their reactions to the Attorney General's policy. There were some complaints in Fairbanks that the rigidity of prosecution policy led to "unnecessary" trials: that is, to one-sided contests in which there was really very little for the jury to decide, but which were fought on the slim chance that the jury would "hang up," the state's principal witness become unavailable, the judge commit reversible error, or that luck would favor the defendant in some other way.

Under Alaska law the sentencing authority of judges is vast. Most felonies in this study were punishable by terms ranging from probation up to five, ten, fifteen or twenty years. Statutory law was largely silent as to how this discretion should be exercised in any individual case. At least one judge complained that the sentence appeal

decisions of the Supreme Court of Alaska offered insufficient guidance to the sentencing judges of the superior court.[42/] In this context, some judges thought that the termination of negotiated recommendations and the absence of active prosecutorial participation created a greater void where there were already too few clear guideposts to follow. Judges' responsibilities had been increased by the Attorney General's instructions to prosecutors, but judicial officers were given no better tools with which to discharge their weightier duties.

Criminal sentencing has never been an empirical, scientific endeavor. Perhaps, the best that can be done under present law is to give each case the most serious and thoughtful consideration possible under the circumstances and to allow room for a number of different viewpoints. Under the system in effect before the Attorney General's new policy, Alaskan courts employed a negotiated sentencing process in which the defendant and the attorneys for both sides attempted by discussion, argument, the marshalling of facts, cajolery or bluff to come up with a suitable resolution of the case. When they were satisfied, the product of their negotiations still had to receive the approval of a judge. The Attorney General's more judicially controlled system of determining sentences reduced the length of time spent in each case for consideration of the final disposition; it also reduced the number of individual viewpoints informing that disposition. In this sense, it impoverished

the sentencing process. In Alaska, the end result of this focus on the judge to the exclusion of the attorneys was that more non-serious offenders were denied probation, and more of them went to jail for longer periods. Persons convicted of drug felonies also received much longer sentences. Rapists, robbers, muggers, and the like, were completely unaffected by the change.

Although the Attorney General got what he asked for in that responsibility for sentencing was restored to judges, he probably did not expect what he got: a denial of leniency to the minor offender and the drug offender without any increase in the severity of punishment for violent or dangerous criminals. The Attorney General proved that it was possible to make large and significant statewide changes in an institutionalized plea-bargaining system, that this could be done rather quickly and without spending a lot of money, and that the curtailment of plea bargaining would not necessarily bring about a breakdown in the administration of justice. He did not prove, however, that plea bargaining was the "least just aspect of the criminal justice system," as he said it was; and it is far from clear that his successful prohibition of plea bargaining brought about the "better kind of sentencing" that the Attorney General was looking for.

FOOTNOTES

1 The Attorney General wrote the following in his memorandum of July 24, 1975 at p.4:

> 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.

2 Rule 11(e), based on the Federal Rules of Criminal Procedure provides in part that the attorney for the state and for the defendant

> may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the state will move for dismissal of other charges or will recommend or not oppose the imposition of a particular sentence, or will do both.

If a settlement is reached, the rule provides that the judge "require the disclosure of the agreement in open court. . . ." If the judge rejects the agreement and decides to impose a stiffer penalty, he must "afford the defendant the opportunity to withdraw his plea." Neither the plea agreement itself, nor any discussion leading up to the agreement, are admissible against the defendant "in any criminal or civil action or administrative procedure."

3 We interviewed nearly every judge, prosecutor, assistant public defender, and most private attorneys with substantial criminal practices, at least once. Many of them spoke with us several times at length. Police investigators, court administrators, pre-sentence reporters, and defendants also contributed their views on the old and new plea bargaining policies.

Most interviews were open-ended. We conducted two series of structured interviews with attorneys, judges, police, and defendants; we followed these with a series

of more discursive, unstructured interviews. We also conducted a mail survey of the entire Alaska Bar (with a 50% response rate) and a survey of patrolmen in various police agencies. The results of these surveys and of some of the earlier, structured interviews are contained in Appendix II.

4 Alaska Criminal Rule 15 provides that with a court order either party may take the deposition of a prospective witness and that any "book, paper, document, record, recording or other material not privileged may be subpoenaed at the time and place of the taking of the deposition." It has long been customary for prosecutors in Alaska to provide defense counsel with a full set of police reports relating to the case immediately after arraignment, or sometimes even earlier. These reports are usually handed over routinely, on oral demand.

Alaska's Criminal Rule 16 provides, among other matters, that defense counsel has a right to inspect and copy:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;
(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;
(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;
(iv) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;
(v) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial which were obtained from or belong to the accused; and
(vi) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

5 Pre-plea conferences were held by some judges even after the plea bargaining ban went into effect. There had never been any suggestion of impropriety in connection with these meetings. Occasionally, if prosecutors refused to make recommendations, judges would deal

directly with defense counsel by indicating what they would do if the defendant decided to enter a guilty plea.

In State v. Carlson, 555 P.2d 269 (1976), the defendant sought leave of court to enter a guilty plea to manslaughter as a lesser-included offense to the charge of murder filed by the district attorney. Judge Carlson, deciding the case did indeed look like manslaughter to him, ruled that he would permit a plea to the lesser offense over the objection of the district attorney. The prosecutor sought relief in the nature of a writ of prohibition to prevent the judge from proceeding further with the case. The supreme court held that the doctrine of separation of powers prevented Judge Carlson from interfering with the charging function, a power reserved to the executive.

In State v. Buckalew, 561 P.2d 289 (Alaska 1977), a second-year law student pleaded guilty to the possession with intent to sell of a large quantity of marijuana. He faced possible imprisonment for up to 25 years. During an in-chambers conference attended by both counsel, Judge Buckalew indicated to the defendant that he could expect a maximum sentence of 90 days in jail and a deferred imposition of sentence, allowing the student to clear his criminal record if he successfully completed a period of probation. The district attorney objected to the explicit sentence agreement by the judge and sought prohibition. Although the Supreme Court of Alaska found that Judge Buckalew acted out of a concern for substantial justice, and that he was not attempting to coerce the defendant, they upheld the prosecutor's position. The Court expressly forbade all trial judges from 'either charge or sentence bargaining.' The supreme court held that permitting judges to engage in these practices would place an intolerable burden on defendants and tend to cast doubt on the fairness of any subsequent plea or sentence. 561 P.2d 289, 292.

It is somewhat ironic that in Buckalew the district attorney--and not defense counsel--asked the supreme court to prevent the judge from coercing the defendant into a plea by stating what the sentence would be. Far from feeling coerced, one suspects that most defendants and their attorneys would like to know exactly what sentence to expect if they plead guilty. This is what defense attorneys told us during their interviews.

6 Most of these comments come from Anchorage prosecutors; their preference for anything but a trial is reflected in the data. In the year preceding the policy change only 2.9% of all Anchorage felony cases went to trial, with a conviction rate of 62%. In sharp contrast, 14.1% of Fairbanks felony cases went to trial in the same year, with a conviction rate of 68%.

7 It seems likely that the Attorney General was referring to Anchorage, where only 42.4% of the felony cases filed in court were convicted (by guilty plea or trial) in Year One. (This includes all cases filed as felonies; some were dismissed in district court, some in superior court, and some acquitted at trial.) The comparable figure for Fairbanks is a Year One conviction rate of 50.6%. Ironically, during the year after the policy change, the Anchorage conviction rate dropped to 38.9%. The Fairbanks rate went up to 55%.

8 The Attorney General said that "permission for sentence bargains [would] be given sparingly, if at all." Memorandum of July 3, 1975 at p.3.

9 Table V-1 shows that for all offenses in the three cities studied, the rate of reduced pleas dropped very slightly from 17.4% in Year One to 15.2% in Year Two. The decline in superior court dismissals from 30.4% to 27.9% of all cases filed suggests that fewer charges were being dismissed in exchange for guilty pleas. Page 7 of the same table indicates large declines in the reduced plea rate in both Anchorage and Fairbanks felony drug cases.

10 Sixty-seven per cent of the cases filed during both of our study years were Class 3 (burglary, larceny, receiving), Class 4 (fraud, forgery, worthless checks), or Class 5 (drug felonies). Eighty per cent of the Class 3 and Class 5 cases involved defendants with no prior record of felony convictions; in 62% of Class 4 cases there was no prior felony record. Other indicators of seriousness--the specific offense charged or the number of companion convictions--occur in similar proportions. Thus, it is safe to say that half or more of all felonies charged could be considered "routine" and unaggravated by our definition.

11 When the pre-sentence report recommended jail for the defendant we found that he went to jail 80 per cent of the time. However, in 30 per cent of the convicted cases the pre-sentence report contained no recommendation at all.

12 Public Defender representation varied by race, with 57% of Black, 77% of native Alaskan, and 47% of other--mostly Caucasian--defendants represented by assistant public defenders. In about 8% of the cases in which the public defender was appointed, the court required that the defendant pay a portion of the costs, usually at the rate of $35 per hour. However, we were told that these costs are not usually recovered in actual practice.

13 This prosecutor's perception is supported by our data (Table VII-2 - VII-7). Public defender representation was associated with an enhanced probability of jail time, and also with longer sentences.

14 The Alaska Court System compensated criminal appointments at the rate of $35/hour during 1974-1976. This was substantially below the average hourly rates charged by private practitioners in Alaska during the same period.

15 Under Alaska Criminal Rule 35(a) the defendant may apply for an order reducing his sentence within the sixty-day period following either his original conviction or the affirmance of that conviction on appeal.

16 Criminal Rule 43(a) states in part:

> The prosecuting attorney may file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal shall not be filed during the trial without the consent of the defendant.

17 One prosecutor who had worked in both the Fairbanks and Juneau offices also believed that the isolation of Fairbanks from the Attorney General's office, located in Juneau, contributed to the rigidity with which the

policy was executed in Fairbanks. Conversely, the ease with which Juneau prosecutors could discuss policy matters with the Attorney General contributed to flexibility there.

18 The mean number of felony charges per defendant in Class 4 cases was 6.00 during Year Two of our study. For the same year, the average number of charges per defendant in Class 5 cases was 2.58. In comparison, Class 2 (violent felonies other than murder and kidnapping) had a mean of 1.73 charges, and Class 3 (burglary, larceny, and receiving stolen property) had a mean of 1.98 charges.

19 This attorney states the prevailing perception in Alaska: the number of companion convictions makes little difference in the sentence imposed. Our findings (Tables VII-3 - VII-7) dispute this conventional wisdom. For every type of case except Class 4, each companion conviction contributed significantly either to the likelihood that the defendant would go to jail for more than 30 days, or to the length of sentence, or both.

20 See Table VII-7. Companion felony charges (multiple counts) in drug cases are associated with significantly longer sentences for each case.

21 Guilty pleas to reduced charges occurred in 17.4% of the Year One cases and 15.2% of the Year Two cases. (Table V-1).

22 In a separate study (Alaska Felony Sentencing Patterns, April, 1977) the Judicial Council found that the statutory designation or "label" of the charge may contribute greatly to the length of sentence. The mean sentence for Shooting With Intent to Kill, etc. was 53.1 months; the mean sentence for Assault With a Dangerous Weapon was only 15.4 months. Sentences under either "label" included cases in which victims were seriously injured, and in which guns were used. Thus, it is well worth the defense attorney's time to convince the prosecutor that the charge should be reduced, even if no "bargain" has been involved.

23 Prosecutors apparently used this freedom to the fullest: in Class 6 ("morals" felonies, which included all sex-related offenses except rape) seven cases went to trial in Year One; 0 were tried in Year Two. (Table V-1, page 8.)

24 See Appendix A, Attorney General's memo of July 24, 1975.

25 Anchorage Times, Sept. 30, 1976, at p.1.

26 Some police objections may have arisen because changes in screening were uneven. In Anchorage, prosecutors rejected 14.2% of drug felonies brought by the police in Year One, but 21.9% of these cases in Year Two. The change in Class 6 ("morals" felonies, mostly lewd and lascivious acts against children and statutory rapes) was even more dramatic: it rose from 6.5% in Year One to 40.9% in Year Two. However, the press was complaining about screening, not in these types of cases, but mainly in violent felonies, including rape, robbery, and felonious assaults; here, the screening rate dropped from 15.0% to 12.5%.

Fairbanks prosecutors tightened screening drastically in several areas, sometimes giving the appearance of rejecting whole groups of cases. For example, Class 4 (forgery, worthless checks) cases had an extremely low (1.9%) screening rate in Year One; in Year Two it was up to 10.5%. Screening for Class 5 (drug felonies) rose from 5.4% to 25.9%. In sharp contrast to Anchorage, no Class 6 ("morals") felonies were rejected by Fairbanks prosecutors in either year. (See Table IV-1)

27 In his memo of July 3, 1975 the Attorney General wrote: "It is entirely possible that immediately after implementation of the policy the Public Defender's office and private counsel may simply balk at pleading anyone [guilty], with the result that we will have a temporary pile-up of cases."

28 See also page 213 for a discussion of the effects of a decision to go to trial on sentence length and likelihood of probation. While this attorney concludes that the first offender has most to lose by going to trial, our data indicates that his conclusion probably applies to any defendant going to trial.

29 Statistical analysis clearly shows that more serious offenses, particularly those against offenders with bad records, were more likely than other offense-offender combinations to go to trial. The most serious offenses in the two-year period of the study were murder and kidnapping (Class 1) and charges involving violence or threats of violence, such as rape, armed robbery, assault with a dangerous weapon, and the like (Class 2). Both these offense classes had notably high trial rates: 52 per cent in Class 1, and 23 per cent in Class 2.

Within Class 2 convictions (N=419) the most serious offenses, with statutory maximums of 15 years or longer, had the highest trial rates (63 per cent). Further, Class 2 convictions of charges against defendants who had no previous records of felony convictions were obtained by trial only 18 per cent of the time, whereas for defendants with two or more prior felonies the trial rate was 43 per cent. Similar results obtained looking at whether or not the defendant was on probation or parole at the time he was charged with a violent (Class 2) offense. Defendants already on probation or parole (and therefore likely to be in particularly serious trouble if convicted of a violent crime) went to trial in 40 per cent of the cases, as against a 22 per cent trial rate for other Class 2 defendants.

30 (See Tables V-1 and V-2) In general, Class 1 (murder and kidnapping), Class 2 (other violent felonies) and Fairbanks Class 5 (drug felonies) cases went to trial more frequently than property or worthless checks and fraud crimes. "High risk" cases (defined differently for each offense class; see Table V-2) went to trial more frequently.

Again, we found that race was associated with likelihood of going to trial. Nine per cent of Alaska native cases, 13% of Caucasian cases, and 26% of Black cases went to trial. This phenomenon will be described in a 1979 report on race and sentencing now in preparation by the Alaska Judicial Council.

31 Defense attorneys estimated that "three days is a relatively short trial; four days is about average; anything longer is somewhat unusual." They also estimated that it took about twice as long to prepare; so that the average time absorbed by a typical trial was at least twelve days. Prosecutors generally agreed with these estimates.

32 See Table II-1. In all three cities, the percentage of sentence recommendations declined greatly.

The percentage of sentence recommendations, especially in Year One, is almost certainly understated. Log notes kept by in-court deputy clerks responsible for electronic recording of all proceedings were our only information about such recommendations. They sometimes stated specifically that a recommendation had been made, but the clerks were not required to make a written note of this, and often did not. Coders were instructed to record only those recommendations specifically mentioned in the log notes.

33 Or, as has been said:

> My object all sublime--
> I shall achieve in time--
> To make the punishment
> Fit the crime.

Gilbert and Sullivan, The Mikado, Act II.

34 State v. Chaney, 477 P.2d 441 (Alaska 1970). The standards articulated in Chaney are: rehabilitation of the offender into a noncriminal member of society; isolation of the offender from society to prevent criminal conduct during the period of confinement; deterrence of the offender himself, as well as deterrence of other members of the community; and community condemnation of the individual offender, or in other words, reaffirmation of soceital norms for the purpose of maintaining respect for the norms themselves. 477 P.2d 441, 444. A detailed review of post-Chaney supreme court sentence appeal decisions has been undertaken by the Alaska Judicial Council and will be published in September, 1979.

35 See Table II-2.

36 The defendant's income was known in only about half (1,848) of the total of 3,586 cases. From these 1,848 cases, a formula for monthly income was developed based on multiple regression using the defendant's age, employment status, and occupation; this regression model explained 34 per cent of the total variance in actual monthly income in those 1,848 cases. The formula developed by regression was then used to estimate

monthly income for the 1,738 cases in which income was not known. We regard this as a somewhat suspect procedure, because the 1,848 cases were not a random sample of the total; but it was the only means available for estimating income under the circumstances.

37 "Pearson Chi-Square" refers to the common chi-square statistic. Just as there is a relationship between the F statistic and the corresponding squared multiple correlation coefficient (R^2), there is, for categorical data, an analogous relationship between chi-square and the proportion of variation in a categorical dependent variable explained by a categorical model. Further justification is available from the authors upon request.

38 The Mantel-Haenszel partial correlation statistic is based on the work of William G. Cochran ("Some Methods for Strengthening the Common Chi-Square Test," 10 Biometrics 417 (1954)), and by Nathan Mantel and William Haenszel ("Statistical Aspects of the Analysis of Data from Retrospective Studies of Disease," 22 Journal of the National Cancer Institute 719 (1959)), modified by Robert Campbell ("Driver Injury in Automobile Accidents Involving Certain Car Models," N.C. Highway Research Center, University of North Carolina at Chapel Hill, 1970) and Gary G. Koch and Donald Reinfurt ("An Analysis of the Relationship between Driver Injury and Vehicle Age" (N.C. Highway Safety Research Center, University of North Carolina at Chapel Hill, 1973). This statistic combines information with respect to the effect of a specific variable on a categorical dependent variable (such as whether the defendant receives an active sentence of 30 days or more in the present study) over all groups of cases defined in terms of combinations of variables already selected as important. Where the dependent variable is dichotomous, the Mantel-Haenszel statistic has a chi-square distribution with one degree of freedom.

39 Rule 5, Alaska Rules of Criminal Procedure provides in part as follows:

> (a) Appearance Before Judge or Magistrate.
> (1) Except when the person arrested is issued a citation for a misdemeanor and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without un-

necessary delay. Unnecessary delay within the meaning of this section (a) is defined as a period not to exceed twenty-four hours after arrest, including Sundays and holidays.

40 R^2 is a standard measurement of the amount of variance in a metric variable explained by a regression model. The closer the value of R^2 is to 100 per cent, the better "fit" the model is considered to have. The R^2 values in our regression analyses range from 25 per cent to 58 per cent, which are acceptable in studies of this kind. We can hardly claim that we have captured the entire reality of the sentencing process in our statistical description. On the other hand, a certain amount of purely random variation can be expected and is reflected in the large amount of unexplained variation. We feel that the "fit" of our regression models is adequate for the purposes of the present study.

41 For purposes of the sentencing analysis, we defined as "low risk" those property crimes in which either none of the following factors was present, or, at most, only one such factor: (1) the case was accompanied by at least one other felony charge; (2) the defendant was convicted of burglary or felonious larceny rather than a less serious offense; and (3) the defendant had a record of prior convictions. There were 291 such "low risk" cases in Class 3.

42 AS 12.55.120, enacted in 1969, provides that any sentence of imprisonment "lawfully imposed by the superior court for a term of for aggregate terms exceeding one year" may be appealed to the supreme court on the ground that the sentence is excessive. The state may also appeal, on the ground that the sentence is too lenient. However, unless the defendant also appeals, an appeal by the state alone cannot result in an increase in the sentence. The most the supreme court can do in an appeal by the state alone is to express its disapproval of the too-lenient sentence and give its reasons in a written opinion.

APPENDIX A

Attorney General's Memoranda

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: Judges
Alaska Court System

DATE: July 7, 1975

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Plea Bargaining

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

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

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

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

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

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

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

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

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

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

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

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

AMG:as

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 various District Attorney's

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

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

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

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

III. Miscellaneous Matters.

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

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

Table II-1. Prosecutor Sentence Recommendations in Cases Resulting in Guilty Plea, by City and Time Period.

	No Recommendation	Specific Sentence Length	Other Recommendation	(Total) (100.0%)
Anchorage				
Period 1	49.0%	25.2%	25.7%	(210)
Period 2	53.9	21.2	24.9	(193)
Period 3	87.4	6.3	6.3	(175)
Period 4	78.8	8.9	12.3	(146)
Fairbanks				
Period 1	66.3	15.1	18.6	(86)
Period 2	72.7	20.7	6.6	(121)
Period 3	94.9	4.3	0.9	(117)
Period 4	93.0	2.0	5.0	(100)
Juneau				
Period 1	21.4	28.6	50.0	(14)
Period 2	51.2	31.7	17.1	(41)
Period 3	79.2	4.2	16.7	(24)
Period 4	68.8	12.5	18.8	(16)

Table II-2. Mean Court Disposition Times for Cases that Went to Court, by Location, Felony Class,[1] and Time Period (Unit: Days)[2]

	Year 1		Year 2		
	Period 1	Period 2	Period 3	Period 4	All Periods
Anchorage					
Class 1	335.3	322.7	272.3	185.8	
Class 2	185.3	137.3	114.6	78.7	
Class 3	165.0	125.2	108.7	80.7	
Class 4	203.9	207.8	145.4	96.4	
Class 5	208.7	158.9	134.8	109.3	
Class 6	305.4	192.4	259.3	75.0	
All Felonies	192.1	153.8	125.3	89.5	143.1
Fairbanks					
Class 1	178.3	228.1	198.0	139.0	
Class 2	97.1	116.0	100.5	111.0	
Class 3	150.2	103.1	117.5	124.5	
Class 4	235.8	176.7	171.8	134.3	
Class 5	177.9	135.9	151.2	113.8	
Class 6	136.0	132.7	130.0	111.0	
All Felonies	164.6	129.9	134.1	120.4	135.1
Juneau					
Class 1	---	---	---	---	
Class 2	130.1	81.5	100.8	45.5	
Class 3	74.4	26.2	88.0	87.7	
Class 4	115.4	188.2	14.0	163.7	
Class 5	58.8	137.1	46.9	100.7	
Class 6	147.5	127.1	180.0	58.7	
All Felonies	105.7	102.5	92.1	85.1	97.6

1 Felony Classes: Class 1-Murder and kidnapping; Class 2-Other violent felonies including rape, robbery, and assault; Class 3-Burglary, larceny, and receiving; Class 4-Fraud, forgery, embezzlement, and felonious worthless checks; Class 5-Drug felonies; Class 6-Morals felonies.

2 N= 3143; excludes 45 cases that went to court for which time information was not available.

Table II-3. Mean Number of Felony Charges per Defendant by Felony Class, Location, and Year

	ALL CITIES		ANCHORAGE		FAIRBANKS		JUNEAU	
	1974-75	1975-76	1974-75	1975-76	1974-75	1975-76	1974-75	1975-76
Class 1: Murder and kidnapping	2.05	1.53	2.00	1.64	3.91	1.38	---	---
Class 2: Other felonies involving violence and risk of bodily injury	1.96	1.73	1.89	1.63	2.12	1.94	1.89	1.68
Class 3: Burglary, larceny, and receiving stolen property	2.13	1.98	2.34	1.87	1.66	2.26	1.75	1.44
Class 4: Fraud, forgery, embezzlement, felonious worthless checks, and extortion	6.22	6.00	4.29	4.43	9.52	8.53	1.55	1.75
Class 5: Drug felonies	2.94	2.58	3.03	2.81	2.59	2.30	3.19	1.41
Class 6: "Morals" felonies	2.95	2.24	2.42	2.57	4.10	2.00	2.22	1.80

Table III-1. Definition of Felony Classes and Frequencies, by Year

		Year I (1974-75)	Year 2 (1975-76)	Total
Class 1:	Murder and kidnapping	24	19	43
Class 2:	Other felonies involving violence and risk of bodily injury	547	497	1044
Class 3:	Burglary, larceny, and receiving stolen property	534	598	1132
Class 4:	Fraud, forgery, embezzlement, felonious worthless checks, and extortion	298	252	550
Class 5:	Drug felonies	352	360	712
Class 6:	"Morals" felonies	60	45	105
Total Felony Cases		1815	1771	3586

Table IV-1. Screening Rate (Percentage of Arrested Cases that Did Not Go to Court) by Time Period, Offense Class, and Location

(Percentage Base in Parentheses)

Felony Offense Class [1]	Court Location	Period 1	Period 2	Period 3	Period 4	Year 1 (1974-75)	Year 2 (1975-76)
All Offenses	Anchorage	11.2% (580)	15.1% (544)	14.1% (604)	15.5% (476)	13.1% (1124)	14.7% (1080)
	Fairbanks	3.4 (203)	3.8 (314)	10.7 (242)	7.4 (284)	3.7 (517)	8.9 [2] (526)
	Juneau	15.4 (52)	4.8 (83)	5.3 (57)	25.0 (44)	8.9 (135)	13.9 (101)
	Total	9.6 (835)	10.4 (941)	12.6 (903)	13.2 (804)	10.0 (1776)	12.9 (1707)
Class 2: Violent felonies other than murder and kidnapping	Anchorage	10.1 (148)	19.1 (178)	11.4 (167)	13.8 (145)	15.0 (326)	12.5 (312)
	Fairbanks	5.3 (57)	3.6 (112)	8.9 (56)	7.9 (89)	4.1 (169)	8.3 (145)
	Juneau	17.4 (23)	4.3 (23)	14.3 (14)	26.7 (15)	10.9 (46)	20.7 (29)
	Total	9.6 (228)	12.5 (313)	11.0 (237)	12.4 (249)	11.3 (541)	11.7 (486)
Class 3: Burglary, larceny, receiving	Anchorage	12.6 (206)	16.1 (155)	12.3 (203)	15.9 (151)	14.1 (361)	13.8 (354)
	Fairbanks	4.3 (46)	6.2 (81)	14.1 (92)	9.2 (109)	5.5 (127)	11.4 (201)
	Juneau	17.6 (17)	11.8 (17)	3.8 (26)	0.0 (5)	14.7 (34)	3.2 (31)
	Total	11.5 (269)	12.6 (253)	12.1 (321)	12.8 (265)	12.1 (522)	12.5 (586)

[1] Class 1 omitted; in all but one of 43 Class 1 cases begun by arrest, complaints were filed.
[2] Year 1 - Year 2 difference significant at .05 or less.

Table IV-1. (page 2)

Felony Offense Class	Court Location	Period 1	Period 2	Period 3	Period 4	Year 1 (1974-75)	Year 2 (1975-76)
Class 4: Fraud, forgery, embezzlement	Anchorage	10.3 (87)	3.7 (81)	7.9 (89)	4.0 (50)	7.1 (168)	6.5 (139)
	Fairbanks	1.6 (61)	2.2 (46)	20.6 (34)	2.4 (42)	1.9 (107)	10.5 [2] (76)
	Juneau	0.0 (5)	0.0 (5)	--- (0)	0.0 (7)	0.0 (10)	0.0 (7)
	Total	6.5 (153)	3.0 (132)	11.4 (123)	3.0 (99)	4.9 (285)	7.7 (222)
Class 5: Drug felonies	Anchorage	11.7 (111)	16.7 (114)	23.0 (126)	20.7 (116)	14.2 (225)	21.9 [2] (242)
	Fairbanks	4.5 (22)	3.3 (61)	2.0 (51)	9.1 (33)	3.6 (83)	4.8 (84)
	Juneau	20.0 (5)	3.1 (32)	0.0 (12)	46.7 (15)	5.4 (37)	25.9 [2] (27)
	Total	10.9 (138)	10.6 (207)	15.9 (189)	20.7 (164)	10.7 (345)	18.1 [2] (353)
Class 6: "Morals" felonies	Anchorage	9.1 (22)	0.0 (9)	41.7 (12)	40.0 (10)	6.5 (31)	40.9 [2] (22)
	Fairbanks	0.0 (13)	0.0 (7)	0.0 (4)	0.0 (8)	0.0 (20)	0.0 (12)
	Juneau	0.0 (2)	0.0 (6)	0.0 (5)	0.0 (2)	0.0 (8)	0.0 (7)
	Total	5.4 (37)	0.0 (22)	23.8 (21)	20.0 (20)	3.4 (59)	22.0 [2] (41)

Table V-1. Percentage of Cases Receiving Various Court Dispositions, by Time Period, Offense Class, and City (Excludes Cases Where No Court Complaint Was Filed)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
All Offenses	All Cities							
	Period 1	22.3%	34.3%	16.1%	24.1%	1.6%	1.7%	(772)
	Period 2	21.6	26.9	18.6	23.1	3.4	6.4	(865)
	Period 3	23.4	30.7	15.4	22.8	1.7	6.0	(833)
	Period 4	26.5	24.7	14.9	22.1	3.5	8.4	(718)
	Year 1	21.9	30.4	17.4	23.6	2.5	4.2	(1637)
	Year 2*	24.8	27.9	15.2	22.5	2.5	7.1	(1551)
All Offenses	Anchorage							
	Period 1	17.0	41.1	15.3	24.4	1.1	0.9	(528)
	Period 2	20.9	33.6	20.2	21.5	1.1	2.8	(470)
	Period 3	25.7	34.2	11.2	22.1	1.9	4.9	(529)
	Period 4	30.6	27.9	14.6	21.7	1.5	3.7	(405)
	Year 1	18.8	37.6	17.6	23.0	1.1	1.8	(998)
	Year 2*	27.8	31.5	12.6	21.9	1.7	4.4	(934)
All Offenses	Fairbanks							
	Period 1	34.0	17.0	17.0	26.0	2.5	3.5	(200)
	Period 2	22.8	18.3	16.3	23.4	5.8	13.5	(312)
	Period 3	16.6	24.7	23.1	24.7	1.6	9.3	(247)
	Period 4	20.7	19.6	15.6	21.4	6.5	16.3	(276)
	Year 1	27.1	17.8	16.6	24.4	4.5	9.6	(512)
	Year 2*	18.7	22.0	19.1	22.9	4.2	13.0	(523)

*Year 1 - Year 2 differences are significant at .05 or less.

Table V-1. (Page 2)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
All Offenses	Juneau							
	Period 1	31.8	31.8	20.5	11.4	2.3	2.3	(44)
	Period 2	21.7	21.7	18.1	31.3	7.2	0.0	(83)
	Period 3	31.6	24.6	21.1	21.1	0.0	1.8	(57)
	Period 4	24.3	27.0	13.5	32.4	2.7	0.0	(37)
	Year 1	25.2	25.2	18.9	24.4	5.5	0.8	(127)
	Year 2	28.7	25.5	18.1	25.5	1.1	1.1	(94)

Table V-1. (Page 3)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Class 1 (Murder and kidnapping)	Anchorage							
	Period 1	0.0%	50.0%	16.7%	33.3%	0.0%	0.0%	(6)
	Period 2	0.0	33.3	33.3	16.7	0.0	16.7	(6)
	Period 3	0.0	42.9	0.0	0.0	0.0	57.1	(7)
	Period 4	0.0	25.0	25.0	0.0	0.0	50.0	(4)
	Year 1	0.0	41.7	25.0	25.0	0.0	8.3	(12)
	Year 2	0.0	36.4	9.1	0.0	0.0	54.5	(11)
	Fairbanks							
	Period 1	0.0	25.0	50.0	0.0	0.0	25.0	(4)
	Period 2	14.3	28.6	0.0	0.0	14.3	42.9	(7)
	Period 3	20.0	0.0	40.0	20.0	0.0	20.0	(5)
	Period 4	0.0	0.0	0.0	0.0	66.7	33.3	(3)
	Year 1	9.1	27.3	18.2	0.0	9.1	36.4	(11)
	Year 2	12.5	0.0	25.0	12.5	25.0	25.0	(8)

Juneau - No Class 1 Cases.

Table V-1. (Page 4)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Class 2 (Violent felonies other than murder and kidnapping)	Anchorage							
	Period 1	14.5%	41.3%	13.8%	25.4%	2.2%	2.9%	(138)
	Period 2	30.6	27.8	19.4	14.6	2.8	4.9	(144)
	Period 3	28.2	28.2	12.8	19.5	3.4	8.1	(149)
	Period 4	41.7	15.7	17.3	16.5	3.1	5.5	(127)
	Year 1	22.7	34.4	16.7	19.9	2.5	3.9	(282)
	Year 2*	34.4	22.5	14.9	18.1	3.3	6.9	(276)
	Fairbanks							
	Period 1	33.3	18.5	20.4	24.1	0.0	3.7	(54)
	Period 2	23.9	10.1	16.5	16.5	8.3	24.8	(109)
	Period 3	18.9	7.5	37.7	20.8	3.8	11.3	(53)
	Period 4	29.1	8.1	14.0	16.3	8.1	24.4	(86)
	Year 1	27.0	12.9	17.8	19.0	5.5	17.8	(163)
	Year 2	25.2	7.9	23.0	18.0	6.5	19.4	(139)
	Juneau							
	Period 1	10.5	57.9	15.8	10.5	0.0	5.3	(19)
	Period 2	27.3	9.1	18.2	27.3	18.2	0.0	(22)
	Period 3	41.7	25.0	33.3	0.0	0.0	0.0	(12)
	Period 4	30.8	46.2	15.4	7.7	0.0	0.0	(13)
	Year 1	19.5	31.7	17.1	19.5	9.8	2.4	(41)
	Year 2	36.0	36.0	24.0	4.0	0.0	0.0	(25)

*Year 1 - Year 2 differences are significant at .05 or less.

Table V-1. (Page 5)

Class 3 (Burglary, larceny, receiving)	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Anchorage							
Period 1	22.7%	41.4%	22.7%	11.6%	1.1%	0.6%	(181)
Period 2	25.2	23.7	31.1	16.3	0.7	3.0	(135)
Period 3	36.9	17.9	15.1	26.3	1.1	2.8	(179)
Period 4	36.2	13.4	20.5	27.6	0.0	2.4	(127)
Year 1	23.7	33.9	26.3	13.6	0.9	1.6	(316)
Year 2*	36.6	16.0	17.3	26.8	0.7	2.6	(306)
Fairbanks							
Period 1	27.7	8.5	27.7	25.5	8.5	2.1	(47)
Period 2	24.7	15.6	28.6	23.4	2.6	5.2	(77)
Period 3	25.6	11.0	36.6	20.7	1.2	4.9	(82)
Period 4	12.3	19.8	25.5	30.2	1.9	10.4	(106)
Year 1	25.8	12.9	28.2	24.2	4.8	4.0	(124)
Year 2*	18.1	16.0	30.3	26.1	1.6	8.0	(188)
Juneau							
Period 1	42.9	7.1	28.6	14.3	7.1	0.0	(14)
Period 2	35.3	11.8	41.2	11.8	0.0	0.0	(17)
Period 3	24.0	20.0	20.0	32.0	0.0	4.0	(25)
Period 4	0.0	16.7	16.7	66.7	0.0	0.0	(6)
Year 1	38.7	9.7	35.5	12.9	3.2	0.0	(31)
Year 2	19.4	19.4	19.4	38.7	0.0	3.2	(31)

*Year 1 - Year 2 differences are significant at .05 or less.

Table V-1. (Page 6)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Class 4 (Fraud, forgery, embezzlement, felony bad checks)	Anchorage							
	Period 1	15.2%	27.8%	11.4%	44.3%	1.3%	0.0%	(79)
	Period 2	7.5	51.3	11.3	30.0	0.0	0.0	(80)
	Period 3	14.1	65.9	3.5	15.3	0.0	1.2	(85)
	Period 4	18.8	29.2	18.8	33.3	0.0	0.0	(48)
	Year 1	11.3	39.6	11.3	37.1	0.6	0.0	(159)
	Year 2	15.8	52.6	9.0	21.8	0.0	0.8	(133)
	Fairbanks							
	Period 1	54.1	14.8	1.6	26.2	0.0	3.3	(61)
	Period 2	26.4	24.5	3.8	35.8	0.0	9.4	(53)
	Period 3	7.7	59.6	5.8	26.9	0.0	0.0	(52)
	Period 4	38.1	28.6	4.8	4.8	16.7	7.1	(42)
	Year 1	41.2	19.3	2.6	30.7	0.0	6.1	(114)
	Year 2*	21.3	45.7	5.3	17.0	7.4	3.2	(94)
	Juneau							
	Period 1	60.0	20.0	0.0	20.0	0.0	0.0	(5)
	Period 2	0.0	66.7	0.0	33.3	0.0	0.0	(6)
	Period 3	100.0	0.0	0.0	0.0	0.0	0.0	(1)
	Period 4	28.6	0.0	0.0	57.1	14.3	0.0	(7)
	Year 1	27.3	45.5	0.0	27.3	0.0	0.0	(11)
	Year 2	37.5	0.0	0.0	50.0	12.5	0.0	(8)

*Year 1 - Year 2 differences are significant at .05 or less.

Table V-1. (Page 7)

		1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Class 5 (Drug felonies)	Anchorage							
	Period 1	13.5%	48.1%	7.7%	30.8%	0.0%	0.0%	(104)
	Period 2	12.5	41.7	11.5	34.4	0.0	0.0	(96)
	Period 3	13.9	44.6	8.9	25.7	3.0	4.0	(101)
	Period 4	14.0	64.5	0.0	16.1	2.2	3.2	(93)
	Year 1	13.0	45.0	9.5	32.5	0.0	0.0	(200)
	Year 2	13.9	54.1	4.6	21.1	2.6	3.6	(194)
	Fairbanks							
	Period 1	4.8	28.6	28.6	33.3	4.8	0.0	(21)
	Period 2	16.9	30.5	11.9	30.5	6.8	3.4	(59)
	Period 3	7.8	33.3	3.9	29.4	2.0	23.5	(51)
	Period 4	6.5	35.5	3.2	25.8	0.0	29.0	(31)
	Year 1	13.8	30.0	16.3	31.3	6.3	2.5	(80)
	Year 2*	7.3	34.1	3.7	28.0	1.2	25.6	(82)
	Juneau							
	Period 1	75.0	0.0	25.0	0.0	0.0	0.0	(4)
	Period 2	6.5	32.3	12.9	48.4	0.0	0.0	(31)
	Period 3	33.3	25.0	16.7	25.0	0.0	0.0	(12)
	Period 4	37.5	37.5	12.5	12.5	0.0	0.0	(8)
	Year 1	14.3	28.6	14.3	42.9	0.0	0.0	(35)
	Year 2	35.0	30.0	15.0	20.0	0.0	0.0	(20)

*Year 1 - Year 2 differences are significant at .05 or less.

Table V-1. (Page 8)

Class 6 ("Morals" felonies)	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
Anchorage							
Period 1	15.0%	50.0%	15.0%	20.0%	0.0%	0.0%	(20)
Period 2	22.2	33.3	33.3	0.0	0.0	11.1	(9)
Period 3	25.0	37.5	12.5	25.0	0.0	0.0	(8)
Period 4	50.0	16.7	16.7	16.7	0.0	0.0	(6)
Year 1	17.2	44.8	20.7	13.8	0.0	3.4	(29)
Year 2	35.7	28.6	14.3	21.4	0.0	0.0	(14)
Fairbanks							
Period 1	23.1	30.8	7.7	30.8	0.0	7.7	(13)
Period 2	14.3	14.3	28.6	0.0	28.6	14.3	(7)
Period 3	25.0	0.0	0.0	75.0	0.0	0.0	(4)
Period 4	12.5	37.5	12.5	37.5	0.0	0.0	(8)
Year 1	20.0	25.0	15.0	20.0	10.0	10.0	(20)
Year 2	16.7	25.0	8.3	50.0	0.0	0.0	(12)
Juneau							
Period 1	0.0	50.0	50.0	0.0	0.0	0.0	(2)
Period 2	57.1	0.0	0.0	14.3	28.6	0.0	(7)
Period 3	28.6	42.9	14.3	14.3	0.0	0.0	(7)
Period 4	0.0	0.0	33.3	66.7	0.0	0.0	(3)
Year 1	44.4	11.1	11.1	11.1	22.2	0.0	(9)
Year 2	20.0	30.0	20.0	30.0	0.0	0.0	(10)

Table V-2. Changes in Court Disposition Patterns in Class 3 and 5 Cases, Controlling for Companion Felonies and "Risk"[1]

A. Class 3 - Anchorage

Companion Felonies	"Risk"	Year	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
1. None	Low[1]	*Year 1	30.6%	19.7%	37.4%	10.9%	0.7%	0.7%	(147)
		Year 2	44.8	9.7	26.9	15.7	1.5	1.5	(134)
2. None	High[1]	*Year 1	14.3	39.3	21.4	25.0	0.0	0.0	(28)
		Year 2	29.7	16.2	5.4	40.5	0.0	8.1	(37)
3. One or more	Low[1]	*Year 1	22.2	49.1	17.6	9.3	0.9	0.9	(108)
		Year 2	35.2	18.2	17.0	27.3	0.0	2.3	(88)
4. One or more	High[1]	*Year 1	6.1	42.4	9.1	30.3	3.0	9.1	(33)
		Year 2	21.3	29.8	0.0	46.8	0.0	2.1	(47)

B. Class 3 - Fairbanks

1. None	Low[1]	Year 1	25.4	10.2	37.3	20.3	3.4	3.4	(59)
		Year 2	21.0	8.1	45.2	11.3	3.2	11.3	(62)
2. None	High[1]	Year 1	18.2	0.0	27.3	40.9	4.5	9.1	(22)
		Year 2	18.5	7.4	29.6	37.0	3.7	3.7	(27)
3. One or more	Low[1]	Year 1	25.0	25.0	17.9	21.4	7.1	3.6	(28)
		Year 2	21.3	27.9	18.0	27.9	0.0	4.9	(61)
4. One or more	High[1]	*Year 1	40.0	20.0	13.3	20.0	6.7	0.0	(15)
		Year 2	7.9	15.8	26.3	39.5	0.0	10.5	(38)

[1] Risk "high" in Class 3 case if search warrant issued and physical evidence obtained or if value of property stolen or damaged was over $500; otherwise "low".

* Difference in proportions significant at .05 or lower.

Table V-2. (page 2)

Companion Felonies	"Risk"	Year	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
C. Class 4 - Anchorage									
1. None	(N/A)	*Year 1	30.8	25.6	25.6	17.9	0.0	0.0	(39)
		Year 2	20.0	48.6	5.7	25.7	0.0	0.0	(35)
2. One or more	(N/A)	*Year 1	5.0	44.2	6.7	43.3	0.8	0.0	(120)
		Year 2	14.3	54.1	10.2	20.4	0.0	1.0	(98)
D. Class 4 - Fairbanks									
1. None	(N/A)	Year 1	56.3	0.0	12.5	18.8	0.0	12.5	(16)
		Year 2	33.3	44.4	22.2	0.0	0.0	0.0	(9)
2. One or more	(N/A)	*Year 1	38.8	22.4	1.0	32.7	0.0	5.1	(98)
		Year 2	20.0	45.9	3.5	18.8	8.2	3.5	(85)
E. Class 5 - Anchorage									
1. None	Low [2]	Year 1	26.8	26.8	24.4	22.0	0.0	0.0	(41)
		Year 2	34.3	34.3	5.7	20.0	2.9	2.9	(35)
2. None	High [2]	Year 1	3.2	51.6	6.5	38.7	0.0	0.0	(31)
		Year 2	20.0	40.0	4.0	24.0	8.0	4.0	(25)
3. One or more	Low [2]	Year 1	28.1	53.1	12.5	6.3	0.0	0.0	(32)
		Year 2	22.7	43.2	4.5	20.5	2.3	6.8	(44)
4. One or more	High [2]	*Year 1	5.2	47.9	3.1	43.8	0.0	0.0	(96)
		Year 2	0.0	71.1	4.4	21.1	1.1	2.2	(90)
F. Class 5 - Fairbanks									
1. None	Low [2]	*Year 1	21.7	17.4	34.8	8.7	13.0	4.3	(23)
		Year 2	18.8	6.3	6.3	56.3	0.0	12.5	(16)
2. None	High [2]	Year 1	20.0	0.0	40.0	20.0	10.0	10.0	(10)
		Year 2	0.0	42.9	14.3	0.0	14.3	28.6	(7)

Table V-2. (page 3)

Companion Felonies	"Risk"	Year	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
F. Class 5 - Fairbanks (Continued)									
3. One or more	Low [2]	Year 1	12.0	36.0	4.0	48.0	0.0	0.0	(25)
		Year 2	5.6	50.0	0.0	27.8	0.0	16.7	(18)
4. One or more	High [2]	*Year 1	4.5	50.0	0.0	40.9	4.5	0.0	(22)
		Year 2	4.9	36.6	2.4	22.0	0.0	34.1	(41)

[2] Risk "high" in Class 5 cases if charge was possession of narcotics for sale or sale of narcotics or if more than 24 hours elapsed from offense to arrest and booking; otherwise "low."

Table V-3. Relationship of Court Disposition to Disposition of Companion Felony or Misdemeanor Cases (Excludes Cases Where No Court Complaint Filed)

Disposition of Companion Cases	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
1. No companion cases	29.4%	17.9%	25.0%	20.6%	2.4%	4.8%	(1141)
2. One or more comp. cases result in guilty plea to charge as serious as (or more serious than) charge in this case	5.2	44.8	4.2	43.3	0.6	1.8	(616)
3. One or more comp. cases result in guilty plea, but only to charge(s) less serious than charge in this case	24.8	28.1	27.9	14.6	0.9	3.8	(452)
4. One or more comp. cases; no guilty pleas; but at least one trial conviction	6.0	9.5	0.9	11.2	5.2	67.2	(116)
5. One or more comp. cases, none resulting in any convictions	29.9	36.3	9.5	17.8	4.5	2.0	(863)
6. Total	23.3	29.2	16.3	23.1	2.5	5.6	(3188)

Table V-4. Year 1 - Year 2 Comparison: Relationship of Court Disposition of Case and Companion Cases.

Disposition of Companion Cases	1. Dist. Ct. Dismissal	2. Super. Ct. Dismissal	3. Guilty Plea -Reduced	4. Guilty Plea -Unreduced	5. Trial Acquittal	6. Trial Conviction	7. Total (100%)
1. No companion cases							
a. Year 1	27.3%	18.3%	29.5%	20.4%	1.8%	2.7%	(553)
b. Year 2	31.3	17.5	20.7	20.7	2.9	6.8	(588)
2. One or more comp. cases result in plea to equally or more serious charge							
a. Year 1	4.2	43.0	3.3	47.6	0.6	1.2	(330)
b. Year 2	6.3	46.9	5.2	38.5	0.7	2.4	(286)
3. One or more comp. cases result in plea, but only to less serious charge							
a. Year 1	25.2	30.3	26.5	14.5	0.4	3.0	(234)
b. Year 2	24.3	25.7	29.4	14.7	1.4	4.6	(218)
4. One or more comp. cases; no guilty pleas, but at least one trial conviction							
a. Year 1	2.2	8.7	0.0	10.9	4.3	73.9	(46)
b. Year 2	8.6	10.0	1.4	11.4	5.7	62.9	(70)
5. One or more comp. cases, none resulting in conviction							
a. Year 1	28.3	38.0	10.3	16.2	5.5	1.7	(474)
b. Year 2	31.9	34.2	8.5	19.8	3.3	2.3	(389)
6. Total							
a. Year 1	21.9	30.4	17.4	23.6	2.5	4.2	(1637)
b. Year 2	24.8	27.9	15.2	22.5	2.5	7.1	(1551)

Table VI-1. Percentage of All Cases Resulting in Conviction and Active Sentence of 30 Days or More, by Offense Class, Time Period, and Year

(Percentage Base in Parentheses)

Felony Offense Class	Period 1	Period 2	Period 3	Period 4	Year 1 (1974-75)	Year 2 (1975-76)
Class 1 (Murder and kidnapping)	60.0% (10)	42.9% (14)	58.3% (12)	42.9% (7)	50.0% (24)	52.6% (19)
Class 2 (Violent felonies other than murder and kidnapping)	21.9 (233)	22.0 (314)	24.2 (240)	20.6 (257)	21.9 (547)	22.3 (497)
Class 3 (Burglary, larceny, receiving)	11.7 (273)	14.2 (261)	15.7 (325)	20.9 (273)	12.9 (534)	18.1* (598)
Class 4 (Fraud, forgery, embezzlement, felony bad checks)	17.4 (155)	16.1 (143)	9.2 (152)	22.0 (100)	16.8 (298)	14.3 (252)
Class 5 (Drug felonies)	13.9 (144)	15.4 (208)	20.6 (194)	12.0 (166)	14.8 (352)	16.7 (360)
Class 6 ("Morals" felonies)	18.9 (37)	13.0 (23)	20.8 (24)	19.0 (21)	16.7 (60)	20.0 (45)
All Felonies	16.8 (852)	17.7 (963)	18.5 (947)	19.3 (824)	17.2 (1815)	18.9 (1771)

* Year 1 - Year 2 difference significant at .05 or less.

[illegible]ble [illegible]I-1 [illegible]ear [illegible]iv[illegible] [illegible]nte[illegible], [illegible]ont[illegible] for [illegible]ens[illegible] [illegible]las[illegible] and [illegible]ta[illegible]

Frequently Occurring Specific Offenses,[1] by City and Policy Year

Offense Class [2]		All Cities 1974-75	All Cities 1975-76
Class 1	Murder and kidnapping	171.2	238.8
Class 2	Other violent felonies	24.8	22.7
Class 3	Burglary, larceny, receiving	6.8	4.3
Class 4	Forgery, fraud, embezzlement	9.5	6.2
Class 5	Drug felonies	8.0	25.4*
Class 6	"Morals" felonies	25.5	16.6

	Anchorage 1974-75	Anchorage 1975-76	Fairbanks 1974-75	Fairbanks 1975-76	Juneau 1974-75	Juneau 1975-76
Class 1	93.4	258.4	262.0	211.2	----	---- [3]
Class 2	13.9	24.6*	38.9	22.1*	24.0	0.6
Rape	69.0	115.5	120.0	72.0	----	----
Robbery	32.3	25.8	108.0	35.6	----	----
Attempted robbery	4.8	33.5	----	----	----	----
Use of firearms in robbery, etc.	----	----	82.3	64.5	----	----
Assault with dangerous weapon	16.8	11.7	16.0	20.3	4.3	1.3
Misd. assault and battery	0.9	1.1	1.1	1.4	1.5	1.2
Misd. careless use of firearm	0.2	0.2	----	----	----	----
Class 3	5.0	4.0	11.3	5.0*	1.5	2.3
Burglary in dwelling-occupied	22.0	7.5	1.0	1.5	----	----
Burglary not in dwelling	2.5	6.1	4.4	12.1	6.5	5.2
Larceny over $100	5.0	3.7	37.2	10.0	----	----
Buying, receiving, concealing stolen property	4.0	2.7	13.5	5.7	----	----
Misd. unauthorized entry	0.6	1.7	0.1	1.8	0.4	0.4
Misd. larceny	0.9	0.6	0.5	0.3	----	----
Misd. buying, receiving, concealing stolen property	----	----	0.0	0.7	----	----

1 Specific offenses named are those of which defendant was actually convicted.

2 Indicates class of felony initially charged. Offense of which defendant convicted may be misdemeanor or lesser felony, but is usually of same type as original.

3 Dash indicates sample very small or no cases.

* Asterisk indicates that Year 1 - Year 2 difference is significant at .05 or less.

Table VII-1. (page 2)

	Anchorage		Fairbanks		Juneau	
	1974-75	1975-76	1974-75	1975-76	1974-75	1975-76
Class 4	10.2	7.8	8.5	3.1*	8.7	7.3
Forgery of debt	18.0	11.3	15.9	12.0	----	----
Bad check over $50	1.7	3.0	----	----	----	----
Embezzlement by employee over $100	3.4	12.0	----	----	----	----
Fraudulent use of credit card	----	----	0.0	0.0	----	----
Obtaining property by false pretenses	40.0	1.5	0.0	0.1	----	----
Class 5	11.0	10.0	0.9	47.1*	9.6	5.5
Possession of narcotic	0.0	21.0*	0.5	33.9	----	----
Sale of narcotic	18.5	9.6	3.0	71.6*	----	----
Possession of HDS drug for sale	5.5	13.7	----	----	----	----
Sale of HDS drug	14.6	9.6	0.7	0.0	----	----
Misd. simple possession of HDS (excluding marijuana)	0.5	0.0	----	----	----	----
Misd. use or poss. of marijuana in public	0.0	9.1*	0.0	0.0	----	----
Class 6	22.1	6.0	34.7	36.0	3.0	0.1

(Sample sizes for specific Class 6 offenses too small for comparison of means.)

Table VII-2. Percentage of Active Sentence of 30 Days or More in Cases Resulting in Conviction, by Policy Year and Offense Class

(Percentage Base in Parentheses)

	Year 1 1974-75	Year 2 1975-76
All Offenses	42.4% (739)	48.1%* (694)
Class 1	92.3 (13)	83.3 (12)
Class 2	54.8 (219)	55.2 (201)
Class 3	31.9 (216)	38.2 (283)
Class 4	40.0 (125)	51.4 (70)
Class 5	36.1 (144)	54.1* (111)
Class 6	45.5 (22)	52.9 (17)

*Year 1 - Year 2 difference significant at .05 or less.

Table VII-3. Class 2 Felonies [1] (Violent Felonies Other Than Murder and Kidnapping): Estimated Effect on Prison Sentence Length [2] of Various Factors

Factor	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown
1. Specific Offense of Conviction [3]	
Rape	+4152%
Robbery	+878
Assault with intent to kill, etc.	+1889
Use of firearms to commit robbery, etc.	+1869
Attempted robbery	+481
Careless use of firearms (misd.)	-89
Disorderly conduct (misd.)	-96
Assault & battery (misd.)	-75
Felony hit and run	-89
2. Defendant's Criminal Record	
For each prior felony conviction	+18
3. Defendant's Characteristics	
Age: if age is 17 to 20	-65
Marital status: if divorced or separated	+145
Estimated monthly income: for each additional $200 per month	-6.8
4. Victim-Offender Relationship	
If offender is spouse, relative, acquaintance, or employee or employer of victim	-51
5. Type of Counsel	
If private or pre-paid	-52
6. New Plea Bargaining Policy	
(1974-75 compared with 1975-76)	(None)

Number of cases: 420

Proportion of total variance explained (R^2): 51%

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1 Cases in which defendant initially charged with Class 2 felony; offense of conviction may have been misdemeanor.

2 Length of probation sentence treated as zero if no active prison imposed.

3 Increase or decrease for offenses listed is in comparison with sentence for other Class 2 offenses not listed, including assault with deadly weapon, escape, and negligent homicide; the combined mean sentence of the unlisted offenses was 11.9 months.

Table VII-4. Class 3 Felonies [1] (Burglary, Larceny, and Receiving): Estimated Effect on Prison Sentence Length [2] of Various Factors

Factor	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown
1. Specific Offense of Conviction [3]	
Burglary in occupied dwelling	+523%
Unauthorized entry (misd.)	-52
2. Companion Felony Case	
For each companion case	+34
3. Defendant's Criminal Record	
For each prior felony conviction	+57
If on probation or parole at time of offense	+169
4. Defendant's Characteristics	
If unemployed	+58
If black	+277
If native [4]	+94
5. Type of Counsel	
If private or pre-paid	-44
6. Sentencing Judge	
If "lenient"	-59
7. New Plea Bargaining Policy	
(1974-75 compared with 1975-76)	(None)

Number of cases (N): 499

Proportion of total variance explained (R^2): 27%

---

1 Cases in which defendant initially charged with Class 3 felony; offense of conviction may have been misdemeanor.

2 Probation treated as zero if no active imprisonment imposed.

3 Increase or decrease is in comparison with sentence for other Class 3 offenses not listed, including other burglary, larceny, receiving stolen property, and malicious mischief, whose combined mean sentence was 5.7 months.

4 Effects are as compared with "white" (non-native, non-black) defendants.

Table VII-5. "Low-Risk"[1] Class 3 Felony Cases: Estimated Effect on Prison Sentence Length of Various Factors.

Factor	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown
1. Specific Offense of Conviction[2]	
Burglary in occupied dwelling	+6212%
2. Defendant's Criminal Record	
For each prior felony conviction	+54%
If on probation or parole at time of offense	+434%
3. Defendant's Characteristics	
If unemployed	+101%
If black	+301%
If native[3]	+108%
4. Sentencing Judge	
If "strict"	+186%
5. New Plea Bargaining Policy	
(1975-76 compared with 1974-75)	+53%

Number of cases (N): 281

Proportion of total variance explained (R^2): 25%

---

1 "Low-risk" cases are those where no more than one of these "risk" factors were present: (a) companion felony case(s); (b) defendant had prior felony conviction record: (c) specific offense of conviction was burglary or felonious larceny.

2 Increase or decrease is in comparison with sentence for other Class 3 offenses not listed, including other burglary, larceny, receiving stolen property, unauthorized entry, and malicious mischief.

3 Effects are as compared with "white" (non-black, non-native) defendants.

Table VII-6. Class 4 Felonies [1] (Fraud, Forgery, Embezzlement): Estimated Effect on Prison Sentence Length [2] of Various Factors

Factor	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown
1. Specific Offense of Conviction [3]	
Felonious bad check	-65%
2. Companion Conviction	
For each companion conviction	-11
3. Defendant's Criminal Record	
For each prior felony conviction	+27
If on probation or parole at time of offense	+232
4. Defendant's Characteristics	
If female	-78
If age 21 to 26 (as compared with older and younger)	+158
If black	+452
If native [4]	+441
5. Type of Counsel	
If appointed	+683
6. Sentencing Judge	
If "lenient"	-90
If "strict"	+1836
7. New Plea Bargaining Policy	
(1974-75 compared with 1975-76)	+117

Number of cases (N): 194

Proportion of total variance explained (R^2): 58%

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1 Cases in which defendant initially charged with Class 4 felony; offense of conviction may have been misdemeanor.

2 Probation treated as zero if no active imprisonment imposed.

3 Increase or decrease is in comparison with sentence for other Class 4 offenses not listed, including forgery, false pretenses, embezzlement, credit card fraud, and related misdemeanors, whose combined mean sentence was 9.3 months.

4 Effects are as compared with "white" defendants.

Table VII-7. Class 5 Felonies [1] (Drug Offenses): Estimated Effect on Prison Sentence Length [2] of Various Factors

Factor	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown
1. Specific Offense of Conviction [3]	
Sale of narcotics to person age 21 or older	+130%
2. Companion Felony Cases	
For each companion felony case	+51
For each companion conviction	+76
For each companion conviction of a co-defendant	+57
3. Defendant's Criminal Record	
For each prior felony conviction	+134
If on probation or parole at time of offense	+183
4. Defendant's Characteristics	
If black	+467
5. City Where Court Located	
If Fairbanks (as compared with Anchorage and Juneau)	-49
6. New Plea Bargaining Policy	
(1975-76 compared with 1974-75)	+233

Number of cases (N): 255

Proportion of total variance explained (R^2): 49%

[1] Cases in which defendant initially charged with Class 5 felony; offense of conviction may have been misdemeanor.

[2] Probation treated as zero if no active imprisonment imposed.

[3] Increase is in comparison with sentence for other Class 5 offenses not listed, including possession of narcotics, sale and possession of "HDS" drugs, and related misdemeanors, whose combined mean sentence was 8.9 months.

Table VII-8. Factors Having Significant [1] Association [2] with Likelihood of Active Sentence of 30 Days or More, in Offense Classes 2, 3, 4, and 5.

A. Class 2 Cases (Violent Felonies Other Than Murder and Kidnapping)

1. Companion felony case (+)
2. Specific offense of conviction was Rape, Robbery, Assault with Intent to Kill, Assault with Dangerous Weapon, or Felonious Escape (+)
3. Prior felony convictions (+)

   Controlling for Factors 1, 2, and 3:

4. Companion convictions (+)
5. Defendant unemployed (+)
6. Defendant and victim had family, acquaintance, or employment relationship (-)
7. Defendant's counsel was appointed (+) or privately paid (-)

B. Class 3 Cases (Burglary, Larceny, and Receiving)

1. Companion felony case (+)
2. Specific offense of conviction was burglary or felonious larceny (+)
3. Prior felony convictions (+)

   Controlling for Factors 1, 2, and 3:

4. Defendant was on probation or parole (+)
5. Defendant was black or native (+)
6. Defendant was unemployed (+)
7. Defendant's counsel was appointed (+), public defender (+), or private (-); defendant had no counsel (-)
8. Sentencing judge was "strict" (+) or "lenient" (-)

[9. New plea bargaining policy (+) only in "low risk" cases; see text of report]

C. Class 4 Cases (Fraud, Forgery, Embezzlement, Bad Checks)

1. Prior misdemeanor and felony convictions (three groups: none, misdemeanors only, felonies) (+)
2. Specific offense was forgery of debt(+)

   Controlling for Factors 1 and 2:

3. Defendant was black or native (+)
4. Defendant was female (-)
5. Defendant had no counsel (-)
6. Sentencing judge was "strict" (+) or "lenient" (-)
7. New plea bargaining policy (+)

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1 All factors shown have association significant at .05 or less, unless otherwise indicated.

2 If factor is associated with increased likelihood of active sentence, it is marked (+); association with decreased likelihood is shown by (-).

Table VII-8. (Page 2)

D. Class 5 Cases (Drug Offenses)

1. Companion felony case (+)
2. Specific offense was sale or possession of narcotics (+)
3. Prior felony convictions (+)

   Controlling for Factors 1, 2, and 3:

4. Defendant was on probation or parole (+)
5. Defendant was black or native (+) [Significant at .07]
6. New plea bargaining policy (+) [Significant at .12]

Table VII-9. Class 3 Felonies (Burglary, Larceny, Receiving): Percentage of Convicted Cases in which Active Imprisonment of 30 Days or More was Imposed, Controlling for Risk Factors, by Policy Year

Companion Felonies	Type of Offenses	Prior Felony Convictions	Year 1 (1974-75)	Year 2 (1975-76)
None	RMM [1]	None	3.5%	16.1% [2]
None	RMM	One or more	20.5	24.3
None	BFL	None	25.0	42.9
None	BFL	One or more	45.8	51.7
One or more	RMM	None	7.1	21.1
One or more	RMM	One or more	60.0	45.2
One or more	BFL	None	72.2	53.1
One or more	BFL	One or more	85.7	56.3

[1] "BFL" means "burglary and felonious larceny"; "RMM" includes receiving, malicious mischief, and misdemeanor larceny.

[2] Year 1 - Year 2 difference significant at .05 or less.

Table VII-10. Estimated Increase in Sentence Length if Convicted by Trial[1] Rather than Guilty Plea, Compared for Year 1 and Year 2

Offense Class	Increase if Trial	Signif. Change, Year 1 to Year 2	Total Convicted Cases (N) Year 1	Year 2	Total
Class 2 (Violent felonies other than murder and kidnapping)	+445% (Both Years)	None[2]	(219)	(201)	(420)
Class 3 (Burglary, larceny, and receiving)	+655% (Year 1 Only)	Trial Effect Disappeared[3]	(216)	(283)	(499)
Class 4 (Fraud, forgery, embezzlement, worthless checks)	[Too few trials for comparison[1]]		(124)	(70)	(194)
Class 5 (Drugs)	[Too few trials for comparison[1]]		(144)	(111)	(255)

[1] Number of convictions by trial in Year 1 and Year 2: Class 2 - 41 and 46; Class 3 - 10 and 24; Class 4 - 7 and 4; Class 5 - 2 and 28.

[2] Indicates significance of Year 1 - Year 2 interaction effect in model including main effect of Year 2 (plea bargaining ban) and all other factors applied to cases from both years.

[3] Interaction of policy year and trial/plea variables was significant below .05 level (F=8.401, DF=1,481). See text, Section VII(E).

APPENDIX C

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APPENDIX D

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Carolyn L. Cooley

John C. Dawson

Robert Morgan Fox

Neal Fried

Toni R. Harsh

Tery Jones

Dianne Lee Marshall

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