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MUNICIPAL PLEA BARGAINING: RIGHT OR WRONG?

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Over a year has passed since the New Jersey Supreme Court prohibited plea bargaining in the municipal courts on all nonindictable offenses.[1] The time seems appropriate, therefore, to evaluate the policy change. This article will first explain the background which led to the decision to eliminate plea negotiations in municipal courts. A critique follows, which examines the rationale used by the State Supreme Court and the Administrative Office of the Courts to justify the change in prosecutorial policy.[2] Finally, this article concludes that if a major economy device such as the practice of plea bargaining is to be prohibited in the municipal courts, then, the merits of negotiated pleas notwithstanding, an injection of heavy State financial assistance must be provided to offset the inevitable increase in court costs. Otherwise, rather than enhancing the quality of justice on the local level, the administrative action has and will continue to serve merely to diminish the legal rights of the defendant and to undermine the integrity of the municipal courts as a viable component of the New Jersey court system.

Initially, the continued viability of the practice of plea bargaining appeared to be at issue in determining whether plea negotiations should be sanctioned at the municipal level. In this regard it is to be noted that although State and Federal prosecutors across the country have made this option available to defendants charged with violations of the law, plea bargaining is not a constitutional right. Therefore, the Supreme Court does have the legal prerogative to alter State prosecutorial policy so long as the method chosen to prosecute the case against the defendant is applied even-handedly.[3] *Santobello v. New York*, 404 U.S. 257 (1972).

If members of the New Jersey Bar, prosecutors, and judges have taken exception to the Court's prohibition of plea arrangements, it is largely because this device has served as a traditional means of reducing court backlog and costs. Court calendars are already unwieldy, with many courts having to contend with sizeable backlogs; let alone daily increases. National statistics indicate that over 90% of all criminal convictions result from guilty pleas rather than trials.[4] If municipal court plea bargaining was to be eliminated, then accomodation for the greatly inflated caseload could be made only at considerable expense to the taxpayer.

1 New Jersey Municipal Court Bulletin Letter #3-74, Hon. Arthur J. Simpson, State Court Administrator, Administrative Office of the Courts, State House Annex, Trenton, New Jersey 08625 – April 11, 1974.

2 *Study of Plea Bargaining in the Municipal Court of the State of New Jersey*. National Center for State Courts, August 31, 1974 – Hereafter referred to as NCST

3 Interestingly enough, 50 drunk driving cases were referred to the Essex County District Court in December 1975 by the Newark Municipal Court, of which the greater number were adjudicated through plea bargaining; the Newark Law Department served as the prosecution.

4 President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: *The Courts* (Washington, D.C. Government Printing Office, 1967)

Apart from reducing court costs, the negotiated plea is an important tool in the administration of criminal justice. In *Santobello v. New York, supra*, the United States Supreme Court states that, "[p]lea bargaining leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pretrial confinement for those denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned." *Id.* at 259. It is true, nonetheless, that a large number of abuses are associated with the practice of plea bargaining. The most notorious is the assumption that if innocent, the defendant would accept conviction for the lesser charge because he does not feel that he would be given a fair trial or that he could ultimately win acquittal. Or, if guilty, the defendant would accept conviction on the lesser charge to avoid a trial where his actual culpability would be elicited, perhaps resulting in an even harsher penalty. In the first instance, the individual is denied justice, while the public is deprived in the second example. The use of plea bargaining in either situation would seem highly undesirable.

Obviously, the Supreme Court did not eliminate plea bargaining from our judicial system. It is still widely practiced in the County and Superior Courts. This result may seem paradoxical because any decision calling for the measured availability of plea bargaining as an option to the defendant would be most readily defendable if predicated upon the implication of a conviction for a defendant's liberty and property. To wit, if plea bargaining must be used, then it is to be available only in those cases where the result of the criminal conviction would not pose as serious a punitive consequence for the defendant as in the higher courts.

Trials tend to be costly, arduous and time consuming affairs, and the use of plea bargaining where such minor criminal charges are at stake can only save the community valuable resources; the prosecutor's office, the travail; and the defendant, the ordeal. The savings, moreover, resulting from its use in such cases can make possible the luxury of eliminating plea bargaining in those cases involving more serious charges. This would then insure that there would be sufficient court resources available to provide the defendant the benefits of due process to the fullest extent of the law when the consequences of a conviction are more severe. Since plea bargaining is not prohibited in the Superior Courts, however, it is apparent that more is at stake in the Supreme Court decision than merely testing the merits of totally eliminating plea bargaining from the State's adjudicative process.

The explantion for the seemingly discriminatory decision lies with the State Supreme Court's reaction to the manner in which drunk driving charges have been handled by the municipal judges. Although sometimes referred to diminutively as being quasi-criminal, drunk driving is among the most serious charges placed within municipal court jurisdiction and has been treated by jurists as being closely analogous to other criminal matters in respect to prosecution, defense and constitutional rights. See *State v. Johnson*, 42 N.J. 1246 (1964); *State v. Lanish*, 103 N.J.Super. 441 (App.Div. 1968); *Borough of Saddle River v. Bobinski*, 108 N.J.Super. 6 (Chan.Div. 1969). Drunk driving charges, like all other non-indictable offenses, are fully adjudicated in the municipal court. That is, not only is the offender arraigned in the municipal court, but his trial is held there as well. The cases are generally placed on the criminal calendar (*R.* 7:6-5), and are the most likely of all non-indictables to involve multiple charges. Further, the municipal court has full responsibility to provide assigned counsel and to pay all attendant costs for the proper defense of the defendant, as well as in any motions for appeal. *R.* 2:7-2b. Finally, the consequences of a drunken

driving conviction are very severe. Conviction of *N.J.S.A.* 39:4-50(b), driving while impaired will result in a $50 fine and six month revocation of the defendant's driver's license. Conviction of the more serious charge, driving while under the influence [*N.J.S.A.* 39:4-50(a)] will result in a $200 fine and a two year license revocation. Much more serious are the consequences for second offenders. Conviction on a "B charge" will mean a $200 fine and a two year license revocation; and on an "A charge", a ten year revocation of the defendant's license and a 90 day jail sentence. Each of the aforementioned penalties are mandatory.

The significance of a conviction for a drunken driving defendant cannot be gainsaid when considering the automobile's importance to the American way of life. By refusing a man the right to drive, the law comes close to jeopardizing his very well-being; his ability to visit friends, to go to work, to find entertainment, to go shopping, and to go to religious services. Conversely, there can be no more dangerous weapon to the lives and property of the citizenry than an automobile in the hands of a reckless driver and, perhaps justifiably, the penalty for conviction should be as harsh as it is, or even harsher.

The State Supreme Court increasingly felt the need for greater regulation and control of drunk driving cases after reviewing the continual abuses of judicial discretion by municipal judges in handling such matters. There was seemingly a high incidence of downgrading that was not supported by the merits of the cases. A series of steps were taken to discourage abuse ranging from requiring prosecutorial reporting of the reasons for downgrading on the record, and written reports by the municipal judges regarding the same to the assignment judge, to insistence on ever stricter review of the municipal reports by the assignment judges and the prohibition of downgrading before trial. The prohibition of plea bargaining, of course, culminated these preliminary measures.

Concomitantly, the State Legislature made the sentencing of drunken driving offenders mandatory upon conviction. Initially, there was only one gradation of drunken driving, and the "B charge" (While Impaired) was added to create an alternative in the event of mitigating circumstances to the more harsh penalties for being under the influence. (NCST, p.55). The publicity, however, associated with the deaths of innocent bystanders and vast property damage caused by drunken drivers, and the rising public indignation that these offenders could escape full prosecution of the law through plea bargaining made the reversal of the legislative intent almost inevitable.

As reflected in the March 14 and 28, 1975 editorials of the New Jersey Law Journal, there was immediate and sharp contention over the decision to eliminate plea bargaining from the municipal court, with critics arguing that the prohibition would serve to "bloat" the court calendars to such a degree that the already strained resources of the municipal courts would not be able to support the increased workload. Due to the negative reaction, a decision was made to review the policy. The matter was referred to the Criminal Practice Committee of the Administrative Office of the Courts, which in turn requested the National Center for State Courts to prepare a report. The successful completion and conclusions of this study lead to the immediate implementation of the policy. The Report advanced two major arguments.

The Report's first conclusion was that the statutory structure of the municipal courts was not conducive to the proper administrative environment in which plea bargaining could fairly be negotiated. Adherence to high standards of justice must be followed before plea negotiation can be allowed, and the credibility of the municipal courts to maintain such standards stands diminished due to a non-professional and relatively inexperienced bench, absence of a prosecutor on a routine basis, and an "inchoate" administrative structure. (NCST p.19).

These may well be serious shortcomings of the municipal court system; certainly, there has been considerable commentary in the past alleging these shortcomings by noted State jurists in several State court reports and documents.[5] However, unless the New Jersey Legislature, Supreme Court, and the Administrative Office of the Courts are prepared to force the taxpayers to expend vast sums of money to change or buttress the municipal court system, they should, when considering the imposition of a new policy or policy change, carefully determine whether the measure will actually result in enhancing the administration of justice on the local level. To a very limited extent, this was done by the National Center for State Courts.

The second prong of the Report summarizes the findings of a statistical analysis made to determine the effects of the prohibition imposed upon plea bargaining in the municipal courts. The Report concludes that the prohibition did not cause the courts any serious or long-range harm as was earlier feared by critics of the measure. The precise manner in which the municipal courts reallocated their resources to make the accomodation could not be explained. (NCST p.30). But, by pointing to a number of statistical indicators such as backlog, trial delay, average court time, and appeals, the Report claimed that the municipal courts could and were increasingly better than had been expected in coping with the policy change.

It is submitted that the conclusions of the Report are somewhat biased. It would be difficult and misleading to argue that rigid reporting requirements and the bar against municipal pleas could be anything but one and the same insofar as their potential impact upon the municipal courts' workloads. Yet, the Report strove to differentiate the two by stating that no significant increase in drunken driving cases resulted from the 1974 prohibition, and then by noting that such an increase (18%) did occur the previous year stemming from the rigid requirements imposed upon the municipal court judges accepting negotiated pleas. (NCST p.29). Similarly, the Report suggested that no significant increase in trial delay resulted from the prohibition, and then recited that trial delays increased by 130% in 1973 and remained relatively constant the succeeding year. (NCST p.29). The Report did suggest that three corrective measures could be taken by the municipal courts if their resources became too strained. These were: (1) increased trial sessions to remove backlog, (2) appointment of additional judges, and (3) improved administrative procedures through the retention of additional clerical staff. (NCST p.30). Seemingly, the mere existence of these alternatives alone was sufficient to warrant the continuation of the prohibition. However, the Report made no mention as to the source of monies to fund these additional expenditures.

The optimism of the State Supreme Court and the Administrative Office of the Courts, that judicial abuse in drunken driving matters could be eliminated through the prohibition of plea bargaining without any additional State aid to the municipal courts overlooks an all too pervasive tendency of the judiciary (at whatever level), when operating under conditions of scarcity, to adapt to increased workload by lesser quality disposition.[6] Changes of this kind cannot be made in administrative policy with disregard for the rest of the system; otherwise, malfunction or overload will result in another part of its operation.s. The bar to pleas demanded a significant additional expense upon New Jersey communities to provide more funds to bolster their lagging

5 "Merging Municipal Courts", study completed by Synectics, authorized by the Administrative Office of the Courts, State House Annex, Trenton, New Jersey 08625 (April, 1974).
Horn, "Municipal Court Consolidation", 2 Criminal J. Quar. 58 (1974).
"1974 Presentment of the Morris County Grand Jury to Hon. John L. Ard. Assignment Judge, Superior Court, New Jersey."
"1972 Study of the Jersey City Municipal Court" by Judge Milton Friedman for American University.

6 Carter, *The Uncertain Future of Criminal Justice*, (1970).

municipal courts, and with no such funds available, only one other alternative was open - dilute the legal process. And as always, that segment of the community affected the most is that segment the least able to afford the cost.

There is a sociological maxim that the rights of the poor tend to be defined by those who posit them. Most judges are sincerely committed to having full justice done in their courtrooms, but when the calendar is crowded and the facts of a particular case indicate that no substantial harm can result, they may, with only momentary pain of conscience, relax certain legal standards in order to expedite caseflow. This statistic itself is interesting not only for what it does say, but also, for what is missing. For example, no attempt was made to distinguish trial time taken by drunken driving cases involving retained counsel or by the public defender. It might be suspected, given the present nature of the judicial system, that the drop in trial time is attendant only to those cases involving assigned counsel.

A comparison of the number of drunken driving appeals involving assigned counsel relative to the total before and after the prohibition would be a more persuasive statistic to demonstrate how the system's prejudice against the exercise of legal rights by the poor is aggravated by increasing resource scarcity. Consistent with *R.* 2:7-2, the municipal courts have the responsibility to provide counsel to indigents who seek to appeal a conviction on a non-indictable offense. An examination of county court statistics on drunken driving appeals reveals (NCSC p.52) that with the more serious "A charge", the appellant has over four chances in ten of having his case either downgraded, reversed or withdrawn. The same is true in appealing a "B charge". The convicted drunken driving offender, therefore, would be well advised to appeal his case. Again, given the present nature of the judicial system, there is reasonable cause to suspect that the majority of these appeals involve retained counsel rather than a public defender. These suspicions, however, cannot be proven because the statistics are not readily available. In the absence of such statistics, the implication of the change in prosecutorial policy ordered by the State Supreme Court for the constitutional rights of the indigent drunken driving offender can best be appreciated in light of how the prohibition serves to further aggravate the already adverse situational context (political, administrative and legal) from which the case of the indigent must be advanced in the courtroom. In drunken driving, the conviction rate on the original charge is inordinately high, approximately 90%. (NCSC p.55). Most municipal court judges agree that the local and state police issue much too great a number of "A charges", virtually as a matter of policy. (NCSC p.8). Yet, on the municipal level, there is no prosecutorial screening to insure that the offender is charged with the appropriate offense. And since the prosecutor's office is highly politicized vis-a-vis the mayor's office and other city departments, there is little chance during the course of the litigation that the prosecutor will do anything to antagonize the police officer who issued the charge. (NCSC p.23). Therefore, the defendant can actually expect that no greater objectivity will be shown him than by his immediate accusor - the police. Hopefully, the void would partially be filled by the court clerk who would determine whether there exists reasonable cause for issuing a complaint given the circumstances surrounding the incident in question. However, due to inadequate staffing and lack of legal training or reinforcement of that training, this step is rarely taken, or at best, performed only in the most perfunctory manner.

There is the possibility that the municipal judge will amend the charge during the course of the trial. Unless an obvious and gross error has been made, though, this is highly unlikely. The municipal judge's office is political and similar to the municipal prosecutor. But in a more restrained way. The municipal court judge does not wish unnecessarily to antagonize the political authorities of the City by his actions or words

on and off the bench. The continual and severe review of the municipal judge's monthly dispositional reports by the county assignment judge, especially in drunken driving matters, further inhibits any discretionary initiative by the municipal judge in his own courtroom. This is all the more true because the municipal judge is not advised by the county court bench when any of his decisions regarding sentencing or bail are reversed. Finally, the municipal judge is reluctant to downgrade a drunken driving charge because the sentence is mandatory.

In all non-indictable cases apart from drunken driving, the municipal judge exercises considerable discretion in sentencing convicted offenders. It is not unprecedented for the municipal judge to sentence the defendant to a lesser penalty that called for by the offense, *i.e.*, (a fine rather than imprisonment). This may be partly in consideration of the position the defendant has in the community or due to mitigating circumstances surrounding the facts of his case. More probably though, the municipal judge after receipt of the presentence report or driver's abstract will fine the convicted offender rather than order his incarceration. The municipal judge realizes that in sentencing the offender in this manner, he is less likely to appeal his case. (See RCCC).[7] The lesser penalty thereby serves as the carrot to deter those who would make an issue of some judicial error on the record, an inadequate defense, or some inherent injustice to the community court system which may have unfairly prejudiced the defendant's case. The actions of the municipal court judge in these instances need not necessarily have been directed to frustrate the legal process or motivated out of self-interest. Rather, this approach is taken in sentencing both as an economy measure and to keep the system viable. Sentencing in drunken driving cases, however, is mandatory, and instead of risking charges of judicial impropriety, the municipal judge will go at great, sometime exaggerated lengths, to remain the distant, impartial, arbitrator.

The final resort of the indigent drunken driving defendant to extricate himself from the legal predicament is the municipal public defender. Consistent, with *Argersinger v. Hamlin*, 407 U.S. 25 (1972), indigents have the right to counsel paid for and appointed by the Court in most non-indictable charges where incarceration may result. *Rodriguez v. Rosenblatt*, 58 N.J. 281 (1971) makes assigned counsel mandatory in the State of New Jersey in all disorderly persons and motor vehicle offenses where the possibility of incarceration or other consequences of magnitude may result (including the substantial loss of driving privileges). Unfortunately, a number of reasons exist why public defense on the municipal level is not as forceful as it might be. It is rare, for example, for the public defender to be present at the defendant's arraignment. Many municipalities draft members of the local bar to serve as same rather than keep a full time public defender on the city payroll. The spirit of the defense due to nonexistent or insufficient compensation is not always enthusiastic; and many times, the first and only private encounter between client and public defender may be a few moments prior to the actual trial. (See RCCC). Minimum time is spent on case preparation, funds are extremely limited to hire expert witnesses, and the public defender is generally under extreme pressure by the judge not to hold up the Court's calendar "unnecessarily". The public defender usually complies since he never knows when he might have to appear before the same judge as a private attorney, and he does not seek a hostile reception. (See RCCC).

To appeal a case, the indigent defendant faces almost insurmountable odds to obtain effective defense. Since the municipal court must assume the cost of the transcript, the municipal judge may be reluctant to grant counsel in the first place. Once granted, the

7 The Right to Counsel in Criminal Cases: The mandate of *Argersinger v. Hamlin*, LEAA, National Institute of Law Enforcement and Criminal Justice, 633 Indiana Avenue, N.W. Washington, D.C. 20530. [Hereafter referred to as RCCC.]

motion many times is never filed within the appropriate time period (even after the extension). Since the attorneys selected from the local bar generally serve as public defenders on a *per diem* and rotational basis, the defendant has difficulty meeting the attorney who initially handled his case to discuss his appeal. And if the public defender is a full-time position, he is often so over worked that he has little time to perfect appeals for his clients once they manage to catch up to him. (See RCCC).

In summary, implicit in the New Jersey Supreme Court's decision to prohibit plea bargaining in the municipal courts is that the standard of justice in the lower courts is seriously deficient, and that there is little that can be done to safeguard the rights of the accused while his case remains in the municipal jurisdiction. If this is true, why stop with the mere prohibition of plea bargaining in the municipal courts? Why not eliminate the municipal courts entirely? Since this is where the greater number of criminal and quasi-criminal cases are disposed of and therefore where most citizens have their day in court: is it fair to burden society and basic justice with such incompetency?

The current disenchantment with the municipal courts at the present time, however, remains academic. There are several advantages to the community justice concept which hopefully in the future, will be further explored and discussed before the municipal courts are eliminated or incorporated into a more monolithic, unified, State Court system. And certainly, it should be kept in mind that the popular criticism directed toward New Jersey's municipal courts is only part of a much louder public clamor for the reform of the county's entire judicial system: local and appellate, state and federal. There are, in fact, no easy answers. The business of remedial public policy formulation is rife with caveats. Above all, care must be taken not to adopt measures that normatively, are intellectually sound, but in practice, simply do not work. This is especially true for the judiciary which plays a major role in our society. Traditionally, the principal emphasis of any court "administrative" program lay solely with "due process" concerns. This is as it should have been since, after all, the very role of the judiciary is to adjudicate those cases committed to its jurisdiction in the most orderly, prompt and economical fashion possible where equal justice is dispensed to all.

On the other hand, the arrangement for workload specialization and for obtaining the resources needed to create a forum in which caseload could be processed received at best, only passing attention. This was not for lack of recognition that the everyday maintenance needs of the court could very much affect the quality of the work product itself, but only because the household affairs of the court in the past were a relatively simple matter. It has only been over the years, as the workload of the judiciary grew in size and complexity that recognition was given to "systems management" as an important secondary objective in the administrative program for a court.[8] Today, court planners agree that it is critical that there be symmetry and harmony between "due process" and "systems management" concerns if the justice system is to work properly. The State Supreme Court decision to prohibit plea bargaining in the municipal court illustrates the serious consequences that an imbalance in input for policy-making can have on the work product of a court as well as on the integrity of the system itself. The intent of the measure to prohibit plea bargaining in the municipal courts was to enhance the administration of justice on the local level. It was demonstrated, however, that although in the past judicial discretion or the plea bargain offered an escape to an imperfect justice system, the sad consequence of the policy was merely to place the accused of drunken driving offenses into a legal bear trap (inordinately high conviction rate, overcharging, an unassertive bench, and

8 *Standards Relating to Court Organization*, American Bar Association, Circulation Department, 1155 East 60th Street, Chicago, Illinois 60637, P.1

inadequate defense counsel) where their property and liberty were very much placed in jeopardy. It was also known that the prohibition so increased the workload of the municipal courts, that as a matter of organizational survival, the judges had to dilute the quality of justice dispensed in their courtrooms, and thus make the municipal courts and themselves all the more vulnerable to criticism by members of the very communities which they were meant to serve. In view of the negative effect that the prohibition of the practice of plea bargaining had upon the municipal courts, it is clear that such an important cost-saving device cannot be eliminated without providing something to take its place. There are, fortunately, several alternatives. The first and most obvious, of course, is to "prime the pump" and thereby bolster the municipal courts with extensive State financial assistance. If this is not practical, then perhaps other economy measures could be adopted. The New Jersey Supreme Court and the Administrative Office of the Courts, for instance, might examine and review the legal procedures used to adjudicate the caseload of the municipal courts to determine what might be the procedural minimum in dealing with the various types of cases that are handled and whether greater procedural elaboration could be attendant to processing only certain sets of cases and not just any controversy brought to the court.

Some consideration might be given to adjudicating all traffic cases including drunken driving cases by the "para-judicial method" whereby the municipal court retains jurisdiction over these cases but certain functions in the decision-making and sanctioning process are delegated to quasi-judicial officers. These officers or "hearing referees" would be authorized to hear minor offenses. They would be permitted to hear contested cases, and their recommendations for disposition could be subject to judicial review upon the defendant's request. Potentially, these referees could greatly reduce the case load of the municipal courts at a cost much less than would be needed to hire full time judges.[9] Similarly these same cases could be adjudicated by the "administrative method". This method would place all functions of decision-making and the sanctioning process, as well as the preliminary review, in the hands of administrative hearing officers who would be under the supervision of an administrative agency.[10] (See also, Senate Bill No. 2283, State of New Jersey, Introduced April 16, 1973 by Senator Schiaffo). Or the New Jersey Supreme Court can always reverse itself, allow plea bargaining in the municipal courts, and attempt once again to improve the standards of justice using traditional techniques. That is, since the abuse of judicial powers is probably only by a small percentage of the entire municipal bench, these judges could be removed and barred from reappointment. Also, a much more determined effort could be made than in the past to provide safeguards to insure fairness in securing agreement between the accused and the prosecutor consistent with the rules outlined in *Moore v. Michigan*, 355 U.S. 155 (1957).

In any event, the lesson to be learned from these past mistakes is that administrative policy changes which have an important bearing on the adaptive mechanisms of the judiciary should not be implemented without first conducting a careful and thorough investigation as to whether any negative effects would result for the welfare of the defendant and the courts, as an organization. The National Center for State Courts attempted to do as much when compiling their report and using statistical indicators to support their conclusions. But since the twin goals - justice and economy - of any court organization are in conflict with each other, the completion of

9 Effective Highway Safety Traffic Offense Adjudication, "Vol 1–A Perspective", (prepared for the U.S. Department of Transportation by Arthur Young & Co., Contract No. DOT–4S–123–2–442, August, 1974)

10 National Advisary Commission on Criminal Justice Standards and Goals (Courts, Standards 8.2 p.168)

such an evaluation is no easy task.[11] And it becomes virtually impossible when there are no specific guidelines or standards to remove the ambiguity and lend greater rationality to the decision-making process. There is an absolute need for a highly particularized statement of objectives concerning the time and professional attention which should be devoted to various types of adjudications and the cost levels which those efforts may be expected to entail.[12] In the absence of such specific standards, the means for achieving an end may become an end in itself. This, regrettably, has become precisely the case with the New Jersey Supreme Court decision to prohibit plea bargaining in the municipal courts. Thus in conclusion, when formulating policies and procedures meant to improve the justice delivery capabilities of the State, the New Jersey Supreme Court, Legislature and The Administrative Office of the Courts should give greater attention to the self-maintenance needs of the courts than they have shown in the past. This includes such matters as finance, political relationships and internal morale. Only in this way can those that make the policy decisions have the positive effect upon the system that they were intended to have; and thus, the health and strength of all levels of New Jersey Court's system be maintained.

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11 *Standards Relating to Trial Courts*, American Bar Association, *Ibid*, p.3

12 *Standard Relating to Trial Courts*

EXTRADITION: EXISTING PROCEDURES AND SUGGESTED REFORMS

I. INTRODUCTION

In response to numerous requests, the Appellate Section of the Division of Criminal Justice conducted a survey of New Jersey's prosecutors in order to determine how the existing extradition process may be improved. These officials were virtually unanimous in their dissatisfaction with several aspects of the current practice. Specifically, one of the chief complaints concerned the proliferation of necessary documentation and confusion about the expectations of the asylum state. In other words, despite the fact that the basic prerequisites are uniform throughout the country, local variations among the states have resulted in unnecessary delays through unforeseen technical requirements. The prosecutors thus strongly condemned what was viewed as an abundance of paper work and urged that requisition documents should be both simplified and made uniform.

A related problem also stressed by the survey respondents was the delay in processing extradition requests by governors in the various asylum states. Efficiency and expediency were posited as worthy objectives of any projected reforms of the present system.

After reviewing these comments, we have concluded that two alternative courses of action are available. The first would entail an entirely new approach to the issue and involve eliminating the role of the asylum state governor in extraditing fugitives. The other option is to maintain the present structure while seeking to improve and expedite the procedures through rectification of existing problem areas.

The first alternative would have the advantage of relieving overburdened chief executives of what is essentially a ministerial duty. By channeling extradition requests through the judiciary, the proposal to be discussed in this article would both simplify and expedite the surrender of fugitives. At present, unless extradition is waived, a prosecutor must first petition the governor in his own state who in turn forwards a requisition to the governor of the asylum state. The latter must then issue an executive warrant for the arrest of the fugitive who, upon being apprehended, may seek a writ of

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