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NCJRS

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ACQUISITIONS

LIMITING THE PLEA
BARGAIN IN MULTNOMAH COUNTY

46993

"It seems reasonable to conclude that***performance improved from year to year; the experiment's goals were largely achieved; and the experiment had a substantial effect in improving overall performance."

Rand Corporation Study
June, 1976

"By far the most ambitious effort to limit plea bargaining is going on in Oregon's Multnomah County..."

Reader's Digest
January, 1975

"While crime is going up in most of the country, in Portland, Oregon, it's going down. Why? Well, for one thing, because Portland is making sure that crime leads to punishment. They're doing it by doing away with plea bargaining on serious crime."

Dan Rather
"60 Minutes"
December, 1976

INTRODUCTION

Background

During the early seventies, Multnomah County (Portland, Oregon), experienced a dramatic increase in its stranger-to-stranger crime rates--burglaries and robberies had increased by over 400% since 1961, and during one 1-year period (1971), the burglary rate jumped 14%. At the same time these increases were taxing the local criminal justice system, prosecutors were relying more and more on speedy resolution of their felony case-load. Plea bargaining was one way to clear the worksheet. For example, in 1971, 90% of those arrested and charged with robbery, and subsequently convicted, were plea bargained. For home burglars, the figure was 81%.

The President's Commission on Law Enforcement and Administration of Justice (1967) had observed that the plea agreement, "in its best known form is an arrangement between the prosecutor of the defendant or his lawyer whereby the accused pleads guilty to a charge less serious than could be proven." Six years later, the National Advisory Commission on Criminal Justice Standards and Goals recommended total abolition of the plea bargain by 1980.

In October of 1973 the Law Enforcement Assistance Administration (LEAA), through its eight-city High Impact Anti-Crime program awarded \$395,000 to the Multnomah County District Attorney's Office to create a unique two-year prosecution project--the No Plea Bargain Project ("Impact Unit"). The original team of six prosecutors and support staff were to devote 100% of their energies and talent towards prosecuting home burglars, armed robbers, and major "fences" by refusing to reduce the top felony charge.

Day to Day Operation

Each morning when the list of police arrests made the day before arrives at the unit, a legal clerk reviews the list for all home burglary, armed robbery, and fencing charges. In selected instances, the clerk may call the appropriate police department to obtain additional information to insure if the offense on the arraignment docket is a target crime. Most often the police detectives, now thoroughly familiar with the unit's criteria, will come to the unit (which is located two blocks away from the station house) and discuss with the on-duty deputy whether the case will be issued as an "Impact" case.

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The deputy district attorney on duty--a rotating assignment-- reviews the case with the police, and (1) issues a complaint for "Impact" crimes; (2) declines to issue the complaint for reasons which must be stated in writing; (3) returns the case to the police for further investigation with specific instructions for completing the case, or (4) issues for a trial unit, a procedure whereby the deputy may issue a non-target crime to be processed by the regular office.

The deputy district attorney who makes these issuing decisions will appear the same day at the afternoon arraignment in District Court. That deputy then handles the case until it is disposed.

IMPACT'S GOALS

"One Case--One Deputy"

As New York's prosecutor, Thomas E. Dewey was one of the country's first District Attorneys to apply the division of labor concept to criminal prosecutions. Much as Henry Ford had built his Model-T, Dewey designated specialized units to process cases--screening and intake, pre-trial, grand jury, trial, etc. As cases moved through the system towards disposition, so they moved from unit to unit. This technique, quickly adopted by the country's larger offices, was efficient and economical, particularly when later in the sixties and early seventies, the crime rate began to soar.

"Horizontal case processing," as Dewey's system is called, remains a major characteristic of most urban prosecutor's offices. But the practice is at the expense of other, equally important, qualities:

- victims are required to repeat their story as many times as there are attorneys working on the case
- communications break down as the number of deputy district attorneys multiply
- the defendant's particular traits and characteristics become incidental as the press to complete the case and go on to others is paramount
- accountability and responsibility are diffused since numbers of attorneys will have worked on a single case
- there is the very real possibility of physically losing or misplacing a case folder

The Impact Unit avoids these drawbacks by assigning a case to a single deputy--from issuing the criminal complaint to disposition, one deputy will be responsible. The victim will not meet a different deputy district attorney each time he or she appears at the courthouse; all the important material relevant to the case is retained; case folders are not lost; and, the deputy becomes extremely familiar with the crime and the defendant, making for a very effective appearance at trial.

"No Delays"

The Impact Unit, because of its tough position on bargaining with a criminal defendant, was expected to face a multitude of legal hurdles in an effort to relax its plea posture. This would considerably lengthen the time to dispose of a case, thus defeating the notion that the unit could operate just as efficiently as other trial sections.

This apprehension is now known to have been unfounded. Arrest-to-trial time is no longer than those experienced in other sections of the office. Both the Oregon Law Enforcement's project evaluation and a Rand Corporation study indicate that delay was simply not a problem.

"No Bargains"

The common practice of reducing the criminal charge in exchange for a guilty plea has been a controversial one for many years. Defenders of the plea bargain note its efficiency and point to an alternative of clogged dockets and lengthy disposition times. Opponents argue its potential for abuse and that it affords knowledgeable defendants excessively lenient treatment. It is generally agreed, however, that such bargains conflict with ideals of equal treatment.

The Impact Unit sought to dispell the conventional wisdom of clogged trial dockets, excessive delays, and inefficiency. No reductions to the top felony count would be offered to those accused of armed robbery, home burglary, and "fencing." Since October, 1973, the unit has prosecuted approximately 700 cases with approximately 5% receiving a reduced charge in favor of a guilty plea. This dramatic reduction from the pre-project period when bargain rates were at the 80% - 90% level has encouraged the expansion of the no reduction policy to other areas of prosecution.

EVALUATION

The Impact project has now received two major assessments of its work, one conducted by the Oregon Law Enforcement Council (Oregon's SPA) and the prestigious RAND Corporation. The OLEC Evaluation Unit analyzed the project using two different sets of comparative data; (1) two years' (1972-73) worth of information on home burglaries, armed robberies, and fencing cases were retrieved to detect if there would be any shift in the plea bargaining balance over time, and (2) information on "Comparative" cases being prosecuted in the main office during the same time Impact was prosecuting cases (see Table 1). RAND Corporation conducted a random survey of 100 burglary and robbery cases in 1973 and 1974.

OLEC Findings

- 65% (252/386) of the Impact cases pled to the original charge compared to 27% (110/406) of the "comparison cases". In 1972-73 only 13% of identical cases pled to the charge.
- 6% of Impact cases pled pursuant to a charge reduction offer, dismissal of ancillary charges, or to other crimes. In the comparable cases category, the rate was 57%. If the 25 cases of Theft I are removed from the calculation, the bargain rate for Impact becomes 5%.
- In 1972-73, 14% of the home burglars pled to the original charge of Burglary I. During the two years of Impact, the rate was 68%.
- During the two Impact years, the unit prosecuted 59% more burglary, robbery, and theft cases than it had in 1972-73.
- There was no significant difference in the arrest-to-disposition times between Impact cases and comparison cases.

RAND Findings

- Of all Robbery I guilty pleas, charge bargaining decreased drastically (from 59% in 1973 to 6% in 1974); count bargaining fell from 18% to 16%
- "Original Charge" conviction rate for Robbery I by trial or guilty plea rose from 23% in 1973 to 71% in 1974, as a proportion of all dispositions of cases originally charged with at least one count of Robbery I
- Impact pretrial dismissal rate fell from 44% to 12% and there was a rise in gross plea rates (41% to 61%) and overall conviction rates (47% to 77%)
- The trial rate increased for Robbery I (15% to 27%) but not for Burglary I (17% to 13%)
- A higher proportion of Impact offenders were incarcerated (67% to 87%)
- Impact offenses were moved more expeditiously. For example, the median number of days between arraignment and final disposition declined for Robbery I cases (from 71 days to 64).
- "If one believes that stiffer sentences are desirable, it is apparent that the dramatic shift in the plea bargaining balance was a shift for the better..."

POSTSCRIPT

With the success of Impact, Multnomah County District Attorney's Office has restricted its plea bargaining policy to include other criminal charges and to all cases involving career criminals.

"Career Criminals"

Awarded by LEAA as the nation's nineteenth Career Criminal jurisdiction, the District Attorney's Office established a five-deputy Career Criminal Unit (CCU) on October 1, 1976. The unit prosecutes a defendant who has committed a felony and has two prior felony convictions or was on probation, parole or institutional supervision during the commission of the crime. The unit has a strict policy of not negotiating the charge and the sentence. Indeed, a "sentencing panel" composed of three CCU deputies will prepare a sentence recommendation for the court's use. Although the unit has been in operation for eight months, the results are similar to those found in the Impact project (see Table 2).

Office-Wide Policy

On May 9, 1977, the District Attorney's Office announced it was expanding the charge reduction prohibition to include eight criminal charges in addition to the original "Impact crimes" (Burglary I, Robbery I, Theft I). The new guidelines were included in a comprehensive statement of standards expected to be followed when conducting negotiations. The no charge reduction policy reads:

"It is the policy of the District Attorney's Office that the following delineated felony crimes will not be subject of plea bargaining by charge reduction:

- A. Robbery I;
- B. Robbery II, when committed with a simulated weapon;
- C. Burglary I;
- D. Burglary II;
- E. Theft I;
- F. Furnishing heroin or cocaine;
- G. Supplying contraband;
- H. Forgery I;
- I. Escape I;
- J. Escape II;
- K. Ex-Convict in possession;
- L. All cases where the defendant has been designated as a career criminal by the District Attorney's Career Criminal Project's staff."

Table 1

DISPOSITION OF BURGLARY I AND ROBBERY I
CASES PROSECUTED FOR TWO YEARS PRIOR TO
IMPACT (1972-73) AND IMPACT (1974-75)

	<u>"Pre-Impact"</u> <u>1972-73</u>	<u>"Impact"</u> <u>1974-75</u>
CASES TRIED	33 (15%)	98 (27%)
a) Guilty	27	76
b) Not Guilty	4	7
c) Others ¹	2	15
PLED TO CHARGE	30 (13%)	241 (68%)
PLED TO OTHER ²	165 (72%)	18 (5%)
CASES PROSECUTED	227 (100%)	357 (100%)
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CONVICTIONS TO THE ORIGINAL CHARGE: (either at trial/plea)	57 (25%)	317 (89%)
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¹includes NGI, Dismissals, Mistrials

²includes pleas to lesser charge, different charge, separate cases, dismissal of other charges

Table 2

DISPOSITION OF CAREER CRIMINAL CASES PROSECUTED
 FOR THE FIRST SEVEN MONTHS OF THE MULTNOMAH
 COUNTY'S DISTRICT ATTORNEY'S CAREER CRIMINAL
 PROJECT (OCTOBER 1976 - MAY 1977)

	<u>CCU</u>	
CASES TRIED	43	(50%)
a) Guilty of charge	36	
b) Guilty of lesser included charge	6	
c) Not guilty	0	
d) NGI	1	
PLEA TO CHARGE	43	(50%)
PLEA TO OTHERS ¹	0	
CASES PROSECUTED	86	
CONVICTIONS TO THE ORIGINAL CHARGE	79	(92%)

¹ includes pleas to lesser charges, different charge, separate cases, dismissal of other charges

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For further information:

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The Rand Corporation
Publications Department
1700 Main Street
Santa Monica, California 90406

(Ask for Reports R-1918-DOJ, and
R-1917-DOJ)



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