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January 31, 2005

Hon. Chauncey G. Parker III
Director,
N.Y.S. Division of Criminal Justice Services
4 Tower Place
Albany, New York 12203-3764

re : Statistical Services.

Dear Director Parker :

As we briefly discussed on the phone this afternoon I am writing this letter to address an issue that is a matter of concern to the members of the Association. It pertains to the manner in which the Bureau of Statistical Services records the dismissal of certain post-indictment diversion cases. I sincerely appreciate your keen understanding of the need for a solution and your assignment of this to Kim O'Connor to liaison with Bill Dempsey, of the Nassau District Attorney's Office (516 571 3636) [who assisted in drafting this letter and others working on this issue for our Association], in order to bring about a solution in these cases.

Over the years the members of our Association have worked in cooperation with other agencies in an effort better to serve the People of the State of New York. Often this is accomplished through diversionary programs such as Drug Treatment Alternative to Prison (D.T.A.P.) or Project Safe Neighborhood. In D.T.A.P. we offer individuals with addictions an opportunity to have charges against them dismissed in return for their successful completion of a drug treatment program. In Project Safe Neighborhood, we defer prosecution of weapons-related charges to federal courts which can offer enhanced punishment for individuals who use or possess firearms. Apart from Project Safe Neighborhood, there are several other circumstances, not readily susceptible of classification, in which we defer prosecution of violent criminals to the Office of the United States Attorney.

Although these programs have different orientations, and are designed to accomplish different goals, they initially proceed along the same path. In both situations, the cases are often submitted to grand juries, which, upon being satisfied that there is legally sufficient evidence, votes an indictment in support of these charges. When a defendant is entering D.T.A.P., we may file a superior court information and have the defendant enter a plea before entering a program. The filing of an indictment or a superior court information is a critical stage in a criminal prosecution. It reflects a well-founded belief that there is competent evidence supporting the charge, that there is no perceptible reason why the case should not be prosecuted, and, most importantly, that it is worthy of prosecution. When a District Attorney has filed an indictment or a superior court information against a defendant, the public expects the case to move forward to some meaningful resolution.

In D.T.A.P., of course, we ultimately dismiss the charges, but this is only after the defendant has demonstrated an exceptional commitment to overcoming an addiction. The dismissal is not a dismissal on the merits, nor a dismissal occasioned through prosecutorial neglect. In fact, it is just the opposite. It reflects a considered judgment that addicted individuals who have made a sincere commitment to change should be given a second chance. When cases are referred to the federal government (as in Project Safe Neighborhood), the charges against the defendant are also dismissed, but only in a technical sense. They are not laid to rest. It would be more accurate to characterize the referral as a transfer to a venue which offers an enhanced sentence to violent or potentially violent defendants.

In both scenarios we, as prosecutors, are using our discretion to benefit members of the law abiding public. When the members of the public are aware of or know the circumstances behind these dismissals it is reasonable to expect that the majority will approve the exercise of this discretion. By

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the same token, however, when members of the public are unaware of the reasons underlying these dismissals, and incorrectly perceive them as the result of carelessness or neglect, it unfairly erodes the confidence that District Attorneys need and rely upon in carrying out their duties. To put the matter another way : when these dismissals are included with prosecutions that have been terminated for lack of evidence or failure to give the defendant a speedy trial, it makes it appear that we, as prosecutors, are not doing our jobs.

It is in this context the members of the Association respectfully request that the Bureau of Statistical Services amend the manner in which it reports dismissals of post-indictment cases. We are expressly requesting that the Bureau list dismissals occasioned by referrals to diversionary programs in a separate category. In this way, members of the public can make a more accurate, and we believe, more intelligent assessment of whether we are living up to the standard of trust that the voters have reposed in us.

Thank you for your helpful offer to work for a satisfactory solution in this matter.

Very truly yours,

Kevin L.

Wright

Kevin L. Wright
President