Washington Law Review

Volume 48 | Number 3

5-1-1973

Criminal Procedure—Dismissals in the Futherance of Justice—State v. Sonneland, 80 Wn. 2d 343, 494 P.2d 469 (1972)

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CRIMINAL PROCEDURE—DISMISSALS IN THE FURTHERANCE OF JUSTICE —*State v. Sonneland,* 80 Wn. 2d 343, 494 P.2d 469 (1972).

In March 1969, Sonneland was charged with possession of marijuana, then a felony. His offer to plead guilty to a gross misdemeanor was accepted. Subsequently, a second bargain was made whereby Sonneland agreed to furnish information leading to the arrest of three dealers in exchange for a promise to dismiss all the charges against him. A continuance was granted to provide a cover, and in August 1969, Sonneland gave a tip which culminated in the arrest of three men. It was disputed whether all were dealers. In February 1970, the prosecuting attorney concluded that Sonneland would provide no further information and set the trial date for June 1970. Sonneland moved to dismiss in the interest of justice pursuant to R.C.W. § 10.46.090[1] on the ground that he had substantially complied with the bargain. *Held:* where a defendant substantially complies with a bargain to provide information in exchange for a promise not to prosecute, a dismissal is not an abuse of discretion. *State v. Sonneland,* 80 Wn. 2d 343, 494 P.2d 469 (1972).

At common law, the prosecuting attorney had the sole discretionary power to enter a *nolle prosequi* from the return of the indictment up to the beginning of the trial.[2] R.C.W. § 10.46.090 abrogates the common law insofar as the power to dismiss in furtherance of justice is exclusively granted to the court.[3] Cases requiring interpretation of this statute rarely have reached the appellate stage in Washington,[4]

1. WASH. REV. CODE § 10.46.090 (1959) provides:
The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal proceeding to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record. No prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in this section.

2. L. ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 338 (1947). However, in some states, a *nolle prosequi* requires consent of the court, and once the trial has begun and a jury has been impanelled, entering a *nolle prosequi* without the defendant's consent will result in an acquittal. *Id.* at 339.

3. *See* note 1 *supra.*

4. *See* State v. Weiss, 73 Wn. 2d 372, 438 P.2d 610 (1968) (prosecuting attorney's desire to file information in superior court for same offense charged in justice court complaint is sufficient reason to dismiss justice court prosecution); State v. La Vine, 68 Wn. 2d 83, 441 P.2d 436 (1966) (no abuse of discretion for refusal to dismiss charge of assault with intent to rape); State v. Camp, 67 Wn. 2d 363, 407 P.2d 824 (1965) (no abuse of discretion to refuse to dismiss charge of abduction where both parents of abducted girl requested dismissal since the girl was a ward of the court); State v. Satterlee, 58 Wn. 2d 92, 361 P.2d 168 (1961) (where two robbery charges are dismissed in return for a guilty plea on the lesser included offense of grand larceny on one charge, but the defendant serves only one year rather than the contemplated fifteen, then on reindict-

and with the exception of California,[5] such has been the general experience of other states with similar statutes.[6] While the cases manifest a plethora of possibilities for application of the statute,[7] no prior case has been found where this or any similar statute has been employed by the court to enforce a bargain for immunity.[8]

The central concern of this note will be to examine the proposed usage of the dismissal statute.[9] In particular, *Sonneland* raises questions as to (1) the impact of construing the statute to allow the defendant to move for dismissal, and (2) the propriety of and standards to be employed in applying the statute to unkept bargains for immunity.[10]

I. THE MOTION FOR DISMISSAL

By its express terms, R.C.W. § 10.46.090 allows only the court

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ment on both robbery charges, it is proper to dismiss the principal charge to which defendant pleaded guilty of the lesser included offense, but error to dismiss the other count to which no plea was ever made); Seattle v. Mathewson, 194 Wash. 350, 78 P.2d 168 (1938) (court which dismisses action on its own motion must set out in the order and enter on the record the reason for dismissal).

5. *See* note 41 *infra*.

6. *See, e.g.*, ARIZ. REV. STAT. ANN. rule 239 (1956); MINN. STAT. ANN. § 631.21 (1945); MONT. REV. CODES ANN. § 95-1703 (Supp. 1971); N.D. CENT. CODE § 29-18-04 (1960); OKLA. STAT. ANN. tit. 22, § 815 (1969).

7. *See* notes 41 and 42 *infra*.

8. Most of these statutes are nearly identical to WASH. REV. CODE § 10.46.090. *See, e.g.*, CAL. PENAL CODE § 1385 (West 1951); OKLA. STAT. ANN. tit. 22, § 815 (1969). The New York statute differs in form but is similar in substance. N.Y. CRIM. PRO. LAW § 210.40 (McKinney 1970). Such statutes have been used in the plea bargaining context. *See, e.g.*, People v. Siciliano, 80 Misc. 149, 56 N.Y.S.2d 80 (County Ct. 1945) (one charge dismissed when defendant pleaded guilty to another charge); People v. Borousk, 24 Cal. App. 3d 147, 100 Cal. Rptr. 867 (1972) (indication that under the proper circumstances, statute could be used to enforce plea bargain). *Cf. Satterlee*, discussed at note 4 *supra*.

9. An additional issue presented in *Sonneland* involved the trial court's failure to comply with the statutory requirement of setting forth the reasons for the dismissal in the order. While the Washington court expressed disapproval of the order's deficiency, it nevertheless allowed the order to stand on the ground that the reasons for the dismissal were evident from the oral opinion. Other states strictly adhere to the requirement. *See, e.g.*, People v. Ritchie, 17 Cal. App. 3d 1098, 95 Cal. Rptr. 462 (1971); Salt Lake City v. Hanson, 19 Utah 2d 32, 425 P.2d 773 (1967).

10. It should be noted that the *Sonneland* situation does not present an example of plea bargaining. A plea bargain is a guilty plea to a lesser charge than the original or a guilty plea to one of several counts of a multiple count indictment. The prosecutor then dismisses the pending charges or agrees not to prosecute other charges not yet filed. A "deal" is a variation of plea bargaining in which the state receives some sort of quasi-consideration other than the saving in time of not having to proceed with the trial. The consideration may take numerous forms, including testimony by the defendant, actual assistance or providing information. In exchange, the defendant is afforded essentially the same type of treatment as in a plea bargain. Allen & Strickland, *Negotiating Pleas*

or prosecuting attorney to move for a dismissal.[11] Although defendants have made such motions in the past,[12] there had been no ruling on their standing to do so until *Sonneland*. In *State v. Camp*[13] the state's brief raised the issue,[14] but the court specifically refrained from ruling on the point and simply held that the trial court did not abuse its discretion in denying the motion for dismissal.[15] In *State v. La Vine*[16] the state did not even challenge the defendant's standing to move for dismissal.[17] In states with similar statutes, the issue is rarely raised, but when it is, the courts have uniformly held that an accused may not make the motion.[18]

The Washington Supreme Court opted for a more permissive stance. Analogizing to R.C.W. § 10.37.020, which requires a dismissal of criminal charges if the state fails to file an information within thirty days,[19] and to R.C.W. § 10.46.010, which requires a dismissal if the state fails to bring a defendant to trial within sixty days,[20] the court reasoned that since defendants are allowed to make motions under these statutes which do not expressly authorize such motions, the same rule should control with respect to R.C.W. §

In Criminal Cases, 17 PRAC. LAW. 35, 36 (1971). Since the bargain in *Sonneland* entailed no guilty plea, it is more properly termed a bargain for immunity.

11. *See* note 1 *supra*.

12. *See* notes 14-17 *infra*.

13. 67 Wn. 2d 363, 407 P.2d 824 (1965).

14. Brief for Respondent at 13, State v. Camp, 67 Wn. 2d 363, 407 P.2d 824 (1965).

15. 67 Wn. 2d at 368, 407 P.2d at 827-28.

16. 68 Wn. 2d 83, 441 P.2d 436 (1966).

17. Brief for Respondent at 11, State v. La Vine, 68 Wn. 2d 363, 407 P.2d 824 (1965).

18. *See, e.g.,* People v. Montgomery, 36 Misc. 326, 73 N.Y.S. 535, 537 (Sup. Ct. 1901) ("the power is to be exercised by the court on its own motion, which precludes the idea . . . of entertaining a motion on the part of the defendant."); People v. Shaffer, 182 Cal. App. 2d 39, 5 Cal. Rptr. 844 (1960). *But see* People v. Ritchie, 17 Cal. App. 2d 1098, 95 Cal. Rptr. 462 (1971) (dicta that defendant may informally suggest that a court consider a dismissal and that the court could adopt the suggestion on its own motion).

19. WASH. REV. CODE § 10.37.020 (1959) provides:
Whenever a person has been held to answer to any criminal charge, if an indictment be not found or information filed against him within thirty days, the court shall order the prosecution to be dismissed; unless good cause to the contrary be shown.

20. WASH. REV. CODE § 10.46.010 (1959) provides:
If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his own application, be not brought to trial within sixty days after the indictment is found or the information filed, the court shall order it to be dismissed, unless good cause to the contrary is shown.

10.46.090. The court viewed this as the only practicable method of informing a court of circumstances warranting dismissal.[21]

The court's rationale is not compelling. First, the analogy between the statutes is inappropriate, since R.C.W. § 10.37.020 and R.C.W. § 10.46.010 both are silent as to who has authorization to make the motion, while R.C.W. § 10.46.090 specifically delineates who may move for dismissal. Thus, the analogy is untenable, and the authorization for defendants to make the motion is difficult to reconcile with the seemingly clear statutory language. Second, allowing the defendant to make a formal motion is not the only practicable way to inform the court of grounds for dismissal. For example, it has been suggested that a defendant might informally suggest that the court consider a dismissal, permitting the court to adopt the suggestion on its own motion.[22]

Although the court's reasoning is questionable, its holding will have the desirable impact of ensuring defendants a vehicle for appeal. If defendants were denied standing to make the motion, there would be no effective means by which a trial court's refusal to dismiss under R.C.W. § 10.46.090 could be appealed. It is highly unlikely that an appellate court would consider the suggestion that a lower court abused its discretion in not making its own motion for a dismissal. Nor would a writ of mandamus likely be available, as R.C.W. § 10.46.090 posits no affirmative duty; it only states that a court *may* dismiss.[23] However, if a defendant is allowed to make the formal motion in court, a denial will be in the record and furnish grounds for arguing abuse of discretion on appeal.

Defense counsel should be cognizant of the potential use of the statute and move for dismissal in the furtherance of justice whenever a plausible argument for dismissal can be articulated. While appellate courts are traditionally reluctant to set aside discretionary rulings, it appears that the latitude of discretion with respect to bargains for immunity has been narrowed considerably by *Sonneland* as will hereinafter be demonstrated.

21. *Sonneland*, 80 Wn. 2d at 347, 494 P.2d at 471.
22. People v. Ritchie, 17 Cal. App. 2d 1098, 1104, 95 Cal. Rptr. 462, 465 (1971).
23. *See* note 1 *supra*.

II. ENFORCEMENT OF BARGAINS

A. Expansion of the Common Law

Under common law principles,[24] a promise of immunity is entitled to enforcement only when (1) the promise is made by an accomplice of another, (2) both are jointly indicted for the same offense, and (3) the individual promises a full disclosure of the evidence.[25] The agreement may not be made in advance of the crime, and it must call for the accused to give testimony, not merely to cooperate with the state generally.[26] Even if these conditions are satisfied, the weight of authority holds that the court's advice or consent is required.[27] Thus, the agreement is not a bar to a subsequent prosecution if made by the prosecutor alone.[28] All other promises of immunity are generally unenforceable.[29] Since the bargain struck in *Sonneland* deviated from the traditional criteria by (1) focusing on unrelated crimes and (2) not requiring testimony, it would not be entitled to enforcement under common law principles.[30]

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24. *See* Rex v. Rudd, 1 Cowp. 331, 98 Eng. Rep. 1114 (1775) for Lord Mansfield's account of the development of the common law. The original manner of acquiring testimony was by approvement, a procedure by which a person indicted for treason or a capital felony could confess the charge, thus implicating his confederates. If the court in its discretion admitted him as an approver, he would repeat his confession in court. If his confederates were convicted, he received a pardon; if not, or if he failed to disclose the entire truth, he was executed by virtue of his own confession.

25. Note, *Criminal Procedure—Agreements to Testify for the State in Return for Immunity,* 30 N.Y.U.L. REV. 690, 691, 693-94, 702 (1955). *See also* 1 F. WHARTON, CRIMINAL LAW AND PROCEDURE § 165 (1957).

26. Note, *Criminal Procedure—Agreements to Testify for the State in Return for Immunity,* 30 N.Y.U.L. REV. 690, 694 (1955).

27. 1 F. WHARTON, CRIMINAL LAW AND PROCEDURE, § 165 (1957).

28. *See, e.g.,* Frady v. People, 96 Colo. 43, 40 P.2d 606 (1934); State v. Miller, 16 N.J. Super. 251, 84 A.2d 459 (App. Div. 1951). *Contra,* People v. Bogolowski, 326 Ill. 253, 157 N.E. 181 (1927).

29. People v. Groves, 63 Cal. App. 709, 219 P. 1033 (1923) (improper to promise immunity for other crimes in return for confession of guilt regarding particular crime); Henderson v. State, 135 Fla. 548, 185 So. 625 (1938) (Brown, J., concurring: improper to promise lesser punishment to defendant in return for testimony against co-defendants). In Hinesman v. State, 34 Tex. Crim. 79, 29 S.W. 482 (1895), the court enforced that part of an agreement which exchanged testimony about an offense for immunity as to that particular crime but disallowed immunity in regard to another separate offense. RESTATEMENT OF CONTRACTS § 549 (1932) provides:

> A bargain by a prosecuting attorney with a person accused of crime to recommend to the court a nol. pros. in consideration of the accused becoming a witness for the State is not illegal. But any other bargain to secure a nol. pros. or the recommendation of a nol. pros., except by the presentation of facts, showing that the accused person is not guilty, is illegal.

30. Application of Parham for Habeus Corpus, 6 Ariz. App. 191, 431 P.2d 86 (1967) (agreement similar to that in *Sonneland* held unenforceable); Hughes v. James, 86 Okla. Crim. 231, 190 P.2d 824 (1948).

However, the Washington court was not so restrictive. Indeed, it is difficult to understand why enforcement of such promises should be so narrowly circumscribed. The rationale articulated under the common law for enforcing such agreements was that they tend to uncover the truth,[31] and they promote a desirable public policy since some defendants may be convicted who might otherwise escape punishment.[32]

It would seem that these purposes can be served as well by bargains involving unrelated crimes as by those in which two or more codefendants are indicted for a single offense. The common law requirement probably reflects the unstated beliefs that more truthful and reliable statements will thereby be secured and that an informant should incur detriment to himself by offering evidence that could convict him if the bargain were unenforced. When providing information regarding an unrelated crime, an informant is likely to suffer little or no detriment if the bargain is not enforced. However, there are persuasive reasons why such a stringent requirement should not be imposed. First, the rationale for enforcing bargains under the common law still is met since the effect would be to elicit the truth and obtain convictions that might otherwise be lost. Second, public policy can be promoted by providing a wider latitude in trading petty offenders for dangerous persons who would otherwise escape punishment. Finally, predictable enforcement will tend to preserve the public faith and furnish defendants a strong inducement to cooperate with law enforcement officials.[33]

Sonneland's second deviation from traditional principles, not requiring testimony, is also justifiable, for the purposes of eliciting the truth and obtaining convictions often can be served as well by informants assisting law enforcement in securing other admissible evidence as by informants giving actual testimony.[34] In fact, it is arguable that

31. Note, *Criminal Procedure—Agreements To Testify for the State in Return for Immunity*, 30 N.Y.U.L. REV. 690, 693 (1955). *See also* Ingram v. Prescott, 111 Fla. 320, 149 So. 369 (1933) (such agreements tend to break up criminal combinations).

32. Ingram v. Prescott, 111 Fla. 320, 149 So. 369 (1933); Note, 83 U. PA. L. REV. 922 (1935).

33. Note, *Plea Bargains: Is Court Enforcement Appropriate?*, 17 STAN. L. REV. 316, 319 (1965).

34. It is arguable that requiring testimony makes it more likely that these ends will be attained. However, this conclusion need not follow, for whether testimony or information is most valuable in terms of convictions is dependant upon a number of variables such as the nature of the bargain, the quality and/or quantity of information or testimony, the prosecution's access to other evidence or testimony, and the credibility of the witness. To state that testimony always is more valuable would be an unfortunate simplification.

informants often can better effectuate these purposes than can witnesses since an informant can maintain his cover and continue to aid law enforcement. In contrast, a witness provides only transitory help. After his identity is disclosed at trial, he will be of little aid to the state.

The requirement that an accused become a witness for the state in order for his bargain to be enforceable probably manifests a desire to control such bargains and to prevent abuse by bringing their operation into the open. However, these same ends can be accomplished by formulating standards to control promises of immunity rather than by restricting enforcement to a rigid category of actual witnesses for the state. By enforcing the *Sonneland* bargain, the Washington court thus moved in a laudable direction,[35] but it failed to delineate criteria for enforcement of future bargains.[36]

B. Parameters of Discretion—Standards for Enforcement

Sonneland portends the future for bargains for immunity in Washington, suggesting a sharp limitation on the scope of discretion of the lower courts in enforcing such bargains. The last sentence of the opinion contains dictum that prosecutors should be held to their bargains and that courts should fulfill their "statutory duty" by enforcing them.[37] A literal reading of this language suggests that all bargains between prosecutors and defendants must be enforced. However, since the statute itself is couched in discretionary language,[38] it is highly doubtful that the supreme court really perceives it as the trial court's

35. However, there is an unresolved doctrinal problem. Arguably, the power of the prosecuting attorney to make a promise of immunity should be greater where he has the common law power of *nolle prosequi;* if the statute removes the power of dismissal and places the final decision in the court, the promise could be illusory. Yet, to require the courts to enforce such promises (as the Washington Supreme Court apparently does) allows the prosecutor to do indirectly that which he may not do directly.

36. In State v. Ashby, 43 N.J. 273, 204 A.2d 1 (1964), the court likewise failed to articulate any standards when it enforced a bargain not to prosecute certain charges in return for a guilty plea to other charges. The case has been interpreted as being analogous to "a chancellor's decree to do equity under the particular circumstances." Note, *supra* note 33, at 319. This would not seem to be the case in *Sonneland* due to the court's broad dictum. *See* note 37 *infra.*

37. "Society is best served when the prosecution abides by the terms of its agreements and when the court fulfills its statutory duty by seeing that it is done." 80 Wn. 2d at 351, 494 P.2d at 473.

38. *See* note 1 *supra.*

absolute duty to enforce all bargains. Nevertheless, the language is strong, and the probable intent is to restrict a court's discretion to refuse enforcement. The problem, then, is to formulate viable standards for operating within this restricted range of discretion.

Washington case law is not helpful either in ascertaining the scope of the court's discretion under the statute or in identifying standards for its application. Due to a dearth of cases reaching the appellate level,[39] there is a corresponding lack of articulated standards or factors to consider.[40] Other jurisdictions are similarly deficient in promulgating guidelines for enforcing bargains for immunity, although California[41] and New York[42] have developed basic standards for applying similar statutes generally. However, when an unfulfilled bar-

39. The question of enforcement of bargains for immunity and plea bargains is not often raised. This has led some courts to conclude that most bargains are performed willingly. *See, e.g.,* Anderson v. North Carolina, 221 F. Supp. 930, 934 (W.D.N.C. 1963) (dictum); Commonwealth v. Smith, 244 S.W.2d 724, 726 (Ky. 1951); State v. Ward, 112 W. Va. 552, 554, 165 S.E. 803, 804 (1932) (dictum).

40. A review of the cases results only in a list of the holdings; no guidelines are provided. *See* note 4 *supra.*

41. In California, the courts are granted a relatively broad discretion. People v. Superior Court, 69 Cal. 2d 491, 446 P.2d 138, 72 Cal. Rptr. 330 (1968); People v. Curtiss, 4 Cal. App. 3d 123, 125-26, 84 Cal. Rptr. 106, 108 (1970). However, there are a surprising number of reversals. The discretion is to be exercised in view of the constitutional rights of the defendant and the interest of society. People v. Superior Court, 249 Cal. App. 2d 714, 57 Cal. Rptr. 892 (1967). Other factors to consider include: "the weighing of the evidence indicative of guilt or innocence, the nature of the crime involved, the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, [and] the possible harassment and burdens imposed upon the defendant by a [trial]." People v. Superior Court, 69 Cal. 2d 491, 505, 446 P.2d 138, 147-48, 72 Cal. Rptr. 330, 339-40 (1968). These standards have provided a viable guideline for general application of the California statute. *See, e.g.,* People v. Superior Court, 26 Cal. App. 3d 668, 102 Cal. Rptr. 925 (1972); People v. Curtiss, 4 Cal. App. 3d 123, 84 Cal. Rptr. 106 (1970); People v. Superior Court, 13 Cal. App. 3d 672, 91 Cal. Rptr. 651 (1970); People v. Winters, 171 Cal. App. 2d 876, 342 P.2d 538 (1959); People v. Disperati, 11 Cal. App. 469, 105 P. 617 (1909).

42. It has been stated that the "power to discontinue prosecution has little or nothing to do with the legal or factual merits of the charge. Nor is it concerned with the guilt or innocence . . . . Such a dismissal is concerned solely with principles of justice." People v. Quill, 11 Misc. 2d 512, 513, 177 N.Y.S.2d 380, 381 (Super. Ct. 1958). At least one court has considered it pertinent that no member of the public suffered by the defendant's conduct. People v. Davis, 55 Misc. 2d 656, 286 N.Y.S.2d 396 (Super. Ct. 1967) (indictment of young college student with high academic record who brought marijuana home from Paris dismissed, since conviction would be detrimental to pursuit of professional career). *Contra* on similar facts, with the exception that the defendant was not an academician, is People v. McAlonan, 22 Cal. App. 3d 982, 99 Cal. Rptr. 733 (1972). Some New York courts, at least implicitly, consider the nature of and facts surrounding the crime. *See* People v. Campbell, 48 Misc. 2d 798, 267 N.Y.S.2d 5 (Super. Ct. 1966) (indictment for abduction of minor dismissed because abductee voluntarily accompanied defendant in order to marry and was only two months less than eighteen at the time).

gain for immunity is thrust upon the court, a unique situation is presented in terms of both equity and policy. In such a case, general guidelines for application of the statute will be of little pertinence. This is especially true in Washington in view of the dictum in *Sonneland* indicating an apparently narrowed scope of judicial discretion with respect to the enforcement of such bargains.[43]

Although it is unfortunate that the Washington court did not use the opportunity to elucidate standards for application of the statute, *Sonneland* does suggest that as a general rule bargains for immunity must be enforced where a defendant has complied with the terms of the agreement, a refusal of enforcement constituting an abuse of the court's discretion. However, unless one accepts at face value the dictum that all bargains should be enforced, it is probable that this presumption of enforceability could be overcome in isolated cases.

For instance, it is not clear whether the court would enforce a promise of immunity in return for the promise of an accused merely to attempt to furnish information. Likewise, it is questionable whether all categories of crime will be treated the same with respect to court enforcement of bargains. It is conceivable that situations could arise where bargains with defendants charged with heinous felonies might merit different treatment than bargains with defendants charged with gross misdemeanors. *Sonneland* probably will engender the formulation of a balancing process involving considerations of various factors to determine when the general rule should yield.

If a balancing process is developed, several primary factors[44] which deserve to be considered are: (1) the injury to the public and the circumstances surrounding the informant's crime;[45] (2) the likelihood of the informant committing crimes in the future and the public's interest in isolating the accused; and (3) the adequacy of consideration. Although contract principles do not consider adequacy of consideration pertinent, principles of contracts should not necessarily govern the

43. *Sonneland* leaves open the question of whether Washington courts will be allowed to exercise a broader discretion with respect to applications of the statute other than pledges of immunity. It is conceivable that the same statute will command a different scope of discretion in different situations.

44. These factors are not necessarily intended to be applicable to plea bargains, for the policy considerations as to plea bargains and bargains for immunity are fundamentally disparate. In the former, the focal point of concern is usually that an innocent defendant will plead guilty due to undue coercion, whereas the latter involves a fear that a guilty defendant will be released unjustly.

45. *See Davis* and *Campbell* note 42 *supra*.

criminal law in the dispensation of justice. Thus, adequacy of consideration may properly be scrutinized for evidence of corruption. Occasionally, if the informant's record and character suggest that he is motivated by a sincere desire to aid law enforcement officials, the bargain for immunity may also be properly interpreted as indicating repentance and lack of likelihood of committing a future crime. Because the bargain for immunity presumes the guilt of the informant, his probable guilt or innocence should not be of significance in determining whether the bargain should be enforced.[46]

These considerations could develop into a limitation on the general presumption of enforceability such that (1) the crime charged against the informant should be less serious than the crime about which information is provided, or (2) if the crimes are of equal seriousness or the informant's crime is of greater seriousness, the information should lead to the arrest of more than one person. However, since fine distinctions between the seriousness of crimes would not only pose difficult definitional problems[47] but also would tend to undermine a policy of predictable enforcement of bargains, it seems most likely that these limitations would be invoked only in cases of blatant imbalance between the information given and the crime charged.

CONCLUSION

The Washington Supreme Court has provided the defense a potentially powerful tool by allowing defendants to move for dismissal and by manifesting an intent to hold prosecutors to their bargains for immunity. This decision will likely generate an increased use of the statute whenever a plausible theory supporting the justice of dismissal can be constructed. Regrettably, the court did not anticipate this result and promulgate guidelines for the lower courts to follow in order to obviate potentially disparate treatment of similiarly situated defend-

46. *See* State v. McDonald, 10 Okla. Crim. 413, 137 P. 362, 363 (1914):
It may be that the evidence would warrant a conviction, but, if the court is of the opinion that such conviction would be unjust and that the best interest of society would be subserved by the dismissal . . . the statute . . . authorized such action.

47. It is difficult to perceive what factors could define seriousness other than the punishment prescribed. This would be a valid indicator to the extent that it reflects society's determination of culpability. However, society's conception of seriousness often evolves through time, while concomitant changes in punishment may lag far behind. To this extent, prescribed punishment does not necessarily reflect the seriousness of a crime to society.

ants. Instead, the court left to patchwork growth the development of the elusive concept "furtherance of justice." This will only exacerbate the danger of discretionary rulings predicated upon personal predilections.

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