Uniform Crime Charging Standards

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Preface

This publication is intended to accompany the *Uniform Crime Charging Manual*, also published by the California District Attorneys Association. It is designed to assist prosecutors in carrying out the objectives of the charging function through recommended policies and procedures.

The first *Standards* manual was published in 1974 — a product of the Uniform Crime Charging Project which operated under a federal grant from the United States Law Enforcement Assistance Administration. In July 1988, CDAA committed itself to revise the text and to ensure periodic supplementation.

CDAA's Uniform Crime Charging Committee, chaired by David R. Ross, is the working group assigned to this project and all its subsequent updates. I would like to thank the Committee for their dedication and unselfish efforts in keeping such an important publication current to meet the needs of California prosecutors.

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A. THE PROSECUTORS CHARGING FUNCTION

> *The District Attorney is the public prosecutor.... (California Government Code § 26500.)*
>
> *The District Attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he[1] has information that such offenses have been committed.... (California Government Code § 26501.)*

These few words contained within the Government Code form the statutory basis for the district attorney's charging power in California. The words "shall" and "reasonably suspected" suggest that the mere existence of probable cause to suspect an accused committed a crime obligates the district attorney to file criminal charges. This strict interpretation has never been sustained by the courts or in age-long practice.[2] Such an interpretation would cause chaos in the criminal justice system by seriously multiplying the number of criminal actions and providing some individuals with the ability to use the powers of government to harass other individuals in society.

Public prosecutors are members of the executive branch of government with a quasi-judicial type discretion necessary for the effective enforcement of the laws passed by the Legislature.[3] As initiators of criminal lawsuits within the criminal justice system, they have the discretionary power to determine whether to prosecute in a particular case within their assigned jurisdiction.[4] They act on behalf of the interests of all California citizens not on behalf of individual victims, witnesses, or even their own county electors.[5]

What are these interests? What is the prosecutor's purpose in instituting criminal charges, or conversely, in deciding not to charge? What is the theoretical basis for the exercise of what is commonly known as prosecutorial discretion to charge or not to charge?

It is a dangerous oversimplification to state that a prosecutor's goal in charging is simply to convict the guilty and protect the innocent. There is a difference between guilt-in-fact and the existence of evidence to prove guilt. There is a difference between the existence of evidence to sustain a guilty verdict and the existence of evidence which will convince the fact-finder to return a guilty verdict. There is a difference between the existence of such evidence and the legal ability to get it admitted for consideration by the fact-finder.

There is a difference between simple conviction and meaningful sanctions for unlawful conduct. There is, in short, a difference between actual guilt and de facto liability within the criminal justice system.

The prosecution charges because he believes *the law indicates* a particular individual *should* be subject to one or more of the sanctions provided by it within the criminal justice system. The terms "law" and "should" encompass more than a consideration of the actual statute in question or the actual guilt of the particular individual. They encompass considerations set forth in the Bill of Rights and various constitutional and statutory provisions relating to the protection of the innocent from unwarranted prosecution and the protection of all individuals, whether guilty or innocent, from certain improper actions by the government. These terms also encompass certain additional considerations, discussed in Part IV of these Standards, which are relevant to the efficient operation of the criminal justice system and which have been recognized directly or indirectly by case or statutory law.

Prosecutorial discretion involves the recognition of these various considerations and their application to the decision to charge, reject, or select another available alternative in a particular case. Prosecutorial discretion does not give the prosecutor the right to say what the applicable law should be. It gives him the right to follow his honest and informed interpretation of what the applicable law is. It also gives him the right to determine if there is an independent alternative to charging in a particular case which "will be best productive of law enforcement, and will best result in general law observance."[6]

Prosecutorial discretion is an integral part of the American criminal justice system which in turn is an integral part of the entire American system of government. Just as the government could not operate if the legislative body did not have the power to draft and make laws, the criminal justice system could not operate if the prosecutor did not have the discretion to make appropriate charging decisions. This principle becomes obvious when one considers the underlying basis for the entire system of law making and law enforcement in this country.

Laws exist to foster and maintain a political society in which its members are free to live and act in the secure enjoyment of rights specified by that system of laws. The ultimate value is freedom. Individuals are free to live and act with a minimum amount of interference by government necessary to guarantee the survival of that freedom.

The enactment and enforcement of criminal laws involves an interference with some forms of individual freedom so the freedom of all members of society is protected and maintained to the maximum degree feasible.

The initial step in this necessary process of interference with individual freedom is known as legislation. The enactment of laws involves a balancing of the need for individual freedom with the need for social stability. However, this balancing process does not cease with legislation. As a primary enforcement mechanism for these laws, the criminal justice system also entails a balancing process, and the general goal of maintaining a free and lawful society continues to be relevant. Henceforth, whenever these Standards speak of the prosecutor's responsibility to foster and maintain a lawful society within the framework of his assigned responsibilities, it must be remembered that such a society is an integral part of a free society, with freedom being the primary value. Balancing becomes necessary to achieve both these integrally related primary and secondary values.

For several reasons, balancing is necessary in the criminal justice system, since literal application of the law is neither possible or desirable in many situations. First, the wording of a particular law may leave its meaning and manner of application open to interpretation. Sometimes this deficiency in wording is deliberate. Sometimes it is the result of legislative oversight. Sometimes it is unavoidable.

Secondly, the prosecutor has a legal and ethical obligation entirely separate from his statutory obligation to prosecute crimes. That obligation is to protect the innocent — not just the innocent-in-fact but the innocent-in-law. The American legal system contains certain presumptions and rules which have the effect of frequently protecting the guilty-in-fact as wells as innocent-in-fact. One example is the exclusionary rule. The prosecutor should not file charges unless there is legally sufficient, admissible evidence to support a guilt verdict regardless of his personal evaluation of an individual's guilt-in-fact. Prosecuting cases when there is little or no probability of conviction endangers the successful operation of the entire criminal justice system.

Thirdly, balancing is necessary because the prosecutor needs to consider whether charging a person with a crime in a particular case will ultimately achieve one or more of the traditional purposes of criminal prosecution. The three basic purposes are:

1. The protection of society from individuals who pose a danger to the persons or property of other individuals,

2. The deterrence of other individuals from posing a similar danger in the future,

3. The punishment of individuals for failing to fulfill their responsibility to obey the laws on which the preservation of an orderly and free society rests.

If prosection within the criminal justice system is the enforcement mechanism of a system of justice under law, then these three purposes are the tools of that enforcement mechanism. These purposes become relatively more or less important depending on the particular facts of each case. Sometimes these

purposes may be in conflict with each other or with a criminal prosecution in another case. In rare cases, all of them may be inapplicable despite the language of the statutory law.

The prosecutor should balance these three purposes of prosecution with the obligation to protect the "legally" innocent in deciding whether to charge, The prosecutor should balance these dual obligations and the various considerations involved in each, so the effect of any decision is the preservation of a lawful society.

The prosecutor cannot engage in this balancing process without a great deal of discretion. It is impossible for an independent body to anticipate the various considerations which will be present in each case and to prescribe appropriate decisions. On the other hand, frequent inconstancy in discretion, or at least unjustified inconsistency, will upset the balancing process inherent in the effective exercise of prosecutorial discretion. Consequently, certain standards relative to the crime charging function are necessary.

B. PURPOSE OF THE UNIFORM CHARGING STANDARDS

These Standards have been prepared for the sole purpose of assisting California prosecutors[7] in carrying out the objectives of the charging function set forth above. They are designed as guidelines to help them understand their own role in the daily exercise of prosecutorial discretion. These Standards are designed as *uniform* only because they reflect a consensus of what constitutes ideal policies or procedures among those district and city attorneys in office at the time of their promulgation. While uniformity in the application of the criminal law is an ideal objective, so also is diversity which engenders progress, reform, and independence in the fulfillment of a prosecutor's overall responsibility. It must be remembered that discretion is better than rigidity, and freedom of choice is better than sterile uniformity. Thus, the preservation of a free society must continue to rest on local control of the criminal justice system.

These standards are, therefore, not intended to be a substitute for working out appropriate prosecution policies on a local level. They are not intended to place any limitations upon the exercise of discretion. They are not binding on any prosecutor in the state, and are not to be cited in court by anyone.

On the other hand, it is hoped that these Standards will assist California district attorneys and city attorneys in exercising a strong voice in influencing the ultimate outcome of cases introduced by them into the criminal justice system. Uniformity of approach may help in that quest. Certainly, a more systematic approach to the exercise of prosecutorial discretion will strengthen the influence of prosecutors. A strong voice for prosecutors means a better criminal justice system. A better criminal justice system means a more lawful society.

C. SCOPE OF THE UNIFORM CRIME CHARGING STANDARDS

These Standards primarily relate to decisions which are generally, or at least frequently, made at the charging stage. The opening section defines the screening duties of the California prosecutor for felonies and misdemeanors. It describes the limited areas where these duties might be delegated to the investigating agency.

Part II of the Standards — *Evidentiary Sufficiency* — deals with the most important issue relating to prosecutorial discretion, namely, what constitutes sufficient evidence to charge. It rejects the notion that simple probable cause justifies charging. It sets forth four basic criteria for charging. Standing alone, though, the words "sufficient" and "evidence" mean little. To begin with, prosecutors must determine what is proper evidence, and if proper, for what purposes. More importantly, they must determine for whom this evidence must be "sufficient." These basic issues, plus many frequently raised collateral issues, are all covered in Part II.

Part III is entitled *Charge Selection.* Due to the overlapping nature of statutes enacted by the Legislature, prosecutors have a great deal of discretion in deciding what particular charges are to be brought in a

given case. The nature of the charges selected will ultimately affect the sanctions imposed at the conclusion of the case. Furthermore, the Legislature has specifically delegated to the prosecutor the discretion to file certain felonies as misdemeanors. However, guidelines were not prescribed for the exercise of this discretion. The guidelines provided fill a practical need in this area.

Part IV is entitled *Prosecutorial Alternatives*. This part covers the discretion of the prosecutor not to file criminal charges for reasons other than lack of "sufficient evidence." Some of these reasons may justify no action at all by the prosecutor. Other reasons may justify the use of certain alternatives available to the prosecutor such as mediation or civil lawsuits.

Part V, *Office Procedures*, sets forth recommended procedures for the effective and efficient exercise of prosecutorial discretion within a given prosector's office. These recommendations are subject to the limitations imposed by office size, budget and organization.

Part VI, *Special Standards*, deals with a variety of procedures and decisions relating to the charging stage. A few of the recommendations may involve changes in the current practice of some prosecutor's offices. These changes are recommended because they will help the prosecutor play a greater and more influential role in the administration of criminal justice. For the most part, however, these Standards merely relate the current practices in prosecutor's offices in California.[8]

These Standards are designed so they can be supplemented or modified locally, and subsequently, statewide through yearly review by the California District Attorneys Association. Such supplementation is encouraged in order to stimulate future reform and to strengthen the role of the prosecutor within the criminal justice system.

D. SCOPE OF THE SCREENING FUNCTION

The prosecutor, as the chief law officer within a given jurisdiction, and as the person responsible for deciding what cases to prosecute, has the responsibility to review and approve the filing of all criminal cases. It has been the general practice in California for the prosecutor to review all felony charges, including all felony charges filed as misdemeanors, pursuant to Penal Code section 17(b)(4). However, many misdemeanors are filed directly by police and other law enforcement agencies. Misdemeanors filed by these agencies are done so only with the express or implied permission of the district attorney's office within that particular county.[9] The purpose of implied or actual delegation is simply to save time and expense because the misdemeanors, where this practice is typically followed, involve direct observations of unlawful conduct by law enforcement officers for which citations are generally issued to the violator. Prosecutorial review is frequently impractical or unnecessary.

However, many misdemeanors do pose the type of evidentiary sufficiency, charge selection, and prosecutorial alternative problems that arise with felonies. Thus, as a general rule, misdemeanors should be reviewed, prior to filing, by the local prosecutor.

Local district attorneys' offices may, in their discretion, permit direct agency filing in cases involving:

1. On-view Vehicle Code citations,
2. Fish and Game Code citations unless the offense involves pollution, theft, or other serious situations for which jail time or a substantial fine is a likely penalty,
3. Violations of Penal Code Section 647(f) where alcohol is involved as opposed to drugs,
4. County ordinances involving control of domestic animals,
5. Any other offense for which citations are normally issued in lieu of arrest within the particular jurisdiction and the normal penalty is only a small fine or diversion.

These recommendations are not intended to discourage the extensive use of the release provisions of Penal Code section 849(b) or of citations in lieu of arrest, where appropriate. However, in using citations, law enforcement agencies need to prepare comprehensive police reports concerning the incident in question for presentation to the charging prosecutor.

These Standards deliberately do not consider the question of the appropriate role of the district attorney in the screening of juvenile cases.

II. EVIDENTIARY SUFFICIENCY

A. INTRODUCTION

The primary responsibility of a prosecutor in charging is to determine whether or not there is sufficient evidence to convict the accused of the particular crime in question and to authorize the filing of appropriate charges.

1. Basic Criteria for Charging

The prosecutor should charge only if the following four basic requirements are satisfied:

a. Based on a complete investigation and a thorough consideration of all pertinent data readily available, the prosecutor is satisfied that the evidence shows the accused is guilty of the crime to be charged;

b. There is legally sufficient, admissible evidence of a corpus delicti;

c. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged;

d. The prosecutor has considered the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

> *The prosecutor should go through this four-step process in evaluating a case even though these steps are integrally related and the issues often overlap. This four-step process will help prevent the filing of inadequate cases because the failure to consider one or more of these issues separately could cause a prosecutor to overlook an issue or problem in the case.*

2. Improper Bases for Charging

The following factors constitute improper bases for charging:

a. The race, religion, nationality, sex, occupation, economic class, or political association or position of the victim, witnesses, or the accused;

b. The mere fact of a request to charge by a policy agency, private citizen, or public official;

c. Public or journalistic pressure to charge;

d. The facilitation of an investigation including obtaining a statement from the accused;

e. To assist or impede, purposely or intentionally the efforts of any public official, candidate, or prospective candidate for elective or appointed office.

B. CASE INVESTIGATION AND EVALUATION

Based on a complete investigation and on a thorough evaluation of all pertinent data readily available, the prosecutor should be satisfied that the evidence shows the accused is guilty of the crime to be charged.

1. Scope of Investigation

Before deciding whether to charge, the prosecutor should insist on as complete an investigation as is reasonably feasible.

a) Initial Investigation

(1) The following matters should be interviewed where possible — preferably in person by trained police investigators. Signed statements or taped statements should be obtained from any witness who might change or forget his testimony. These statements should be clear and in detail so they can be used later in court for refreshment of memory or impeachment purposes;

(2) Scientific examinations should be completed as expeditiously as possible, especially where there is some doubt as to the outcome of the examination. Attempts should be made to lift fingerprints and make comparison tests whenever conceivably relevant, even though it is unlikely that the attempt will prove fruitful;

(3) An attempt should be made in accordance with constitutional guidelines to obtain a statement from the accused. Such statements should be signed or taped whenever feasible. Arrest warrants should not, therefore, be sought by the prosecutor unless:

i. A statement has already been made to the police, or the accused has recently indicated he would refuse to make one;

ii. A statement could not foreseeable be expected to change the prosecutor's evaluation of the case;

iii. The arrest warrant is essential to facilitating the location of the accused;

iv. The accused is not in the county where the prosecution is sought, and it would be difficult to arrest the accused without an arrest warrant.

(4) When the accused makes a statement that, if true in whole or in part, negates criminal liability, the statement should be investigated, if possible, no matter how implausible it may seem. Statements of potential defense witnesses should be obtained, preferably signed or taped.

b) Subsequent Investigation

If the initial investigation appears significantly incomplete for any reason, the prosecutor should insist on a subsequent investigation by the law enforcement agency to correct any major deficiencies:

(1) This Standard should be observed even if it means that the accused must be released from custody and re-arrested later on a warrant.

i. If the investigating officer knows of specific, articulable facts to support a firm belief that the accused will not be readily available for later arrest then this guideline may be disregarded if there is at least a reasonable likelihood of conviction based on the evidence already available to the prosecutor.

ii. Where a case is filed in accordance with the above exception, the subsequent investigation should be expeditiously pursued. The prosecutor should move promptly to dismiss if he believes the evidence from this investigation creates a reasonable doubt of the accused's guilt. The prosecutor should set a reason-

able deadline for the completion of the investigation. If possible, it should be completed before the preliminary hearing.

(2) The responsibility for carrying out this subsequent investigation lies with the investigating law enforcement agency — not the prosecutor — unless he initiated the original investigation. However, if the agency in question has inadequate resources to carry out such an investigation, the prosecutor should lend whatever assistance he can.

In reference to Standard B.1.a) (2), supra, it should be emphasized that most cases involving marijuana do not required pre-charging scientific examination, because trained law enforcement officers can readily recognize these substances. On the other hand, hallucinogens or narcotics are frequently misidentified. If there is any doubt about the nature of the substance, scientific tests should be required before the case is presented for filing.

Fingerprints pose another problem. Police frequently fail to attempt to lift them on the assumption that they will not get readable prints. Unfortunately, they may prove liftable in a few case, and juries have been conditioned to place a great weight on them. Unless there is no reasonable possibility of lifting prints, defense attorneys are free to comment on the prosecution's failure to try. Such arguments are difficult to rebut.

Reliance on post-filing investigations to correct deficiencies is discouraged because there is less incentive to get them done expeditiously and because it may lead to needless filing of criminal cases. Premature issuance of arrest warrants is discouraged because the prosecutor usually has not had the opportunity to evaluate the case from the accused's point of view. Standard a) (3) iv, supra, makes an exception for those situations where the arrest must be made by an out-of-county law enforcement agency and that agency requires an arrest warrant before it will make the arrest.

2. Scope of Prosecutorial Review

Before deciding to charge, the prosecutor should make a thorough evaluation of all data pertinent to the issue of the accused's guilt of the crime to be charged, whether such data is admissible in court as evidence or not.

a) Admissible Evidence

(1) Review all available police reports. He should not issue a case oral presentation alone;

(2) Require oral or written reports on all conceivably relevant scientific examinations, unless the result is almost certain or the result would not affect his decision to charge;

(3) Carefully review all defense statements and consider, in as impartial a manner as possible, whether there is a reasonable possibility the statement is true;

(4) Consider, when practicable, personally interviewing witnesses whose later cooperation in prosecution is doubtful or where their demeanor and credibility significantly controls the outcome of the case. The following are typical examples of situations where witnesses might be interviewed:

i. Victims of crimes of a sexual nature;

ii. Victims whose competence may be in issue;

iii. Accomplices who are key witnesses in a prosecution case;

iv. Victims of robberies where the issue is identity, unless the accused's is separately established by other evidence;

v. Informant witnesses who are not personally known to the prosecutor.

(5) Insist that the investigation conform to the guidelines of Standard *II.B.1.*, supra, or refer the case back for further investigation.

> *With reference to polygraph examinations, the prosecutor should keep in mind section 637.4 of the California Penal Code. This provision prohibits requiring victims of forcible sex crimes to take such a test as a prerequisite to charging.*

b) Inadmissable Evidence

The prosecutor may also consider the following matters in deciding whether to charge — although they either are not, or may mot be admissible at trial:

(1) The existence of seized evidence which may be suppressed;

(2) The existence of inadmissible statements by an accused. (These statements may be admissible for impeachment, so they should be investigated. Their presence, when coupled with a reasonable conceivable defense, might remove or create a reasonable doubt concerning an accused's guilt.);

(3) The accused's background, including his prior record. (The fact that his alleged conduct is consistent or inconsistent with prior proven conduct may remove or create a reasonable doubt. Such evidence could become admissible at trial even if only in rebuttal.)

> *The suggestion that witnesses be personally interviewed in specified cases is set forth to serve the following purposes: (1) enable the prosecutor to establish a personal rapport with the witness, (2) enable him to personally evaluate the likelihood of future cooperation, (3) enable the prosecutor to properly evaluate the likelihood of conviction, because it is difficult to portray demeanor in a police report, (4) enable the prosecutor to anticipate and handle problems which might develop on cross-examination, and (5) assist the witness in preparing himself for the various problems to be encountered in court.*
>
> *Evidence which may be ruled inadmissible should be considered for the primary purpose of seeing whether it might exonerate the accused. Such evidence might become admissible later for special purposes as well.*

3. Evaluation of Evidence

After evaluating the investigation and all available pertinent data, the prosecutor should be satisfied that the evidence shows the accused is guilty.

a) Direct Evidence

In evaluating cases where the resolution of key issues rest primarily on direct evidence, the prosecutor should consider problems like a witness's:

(1) Mistake (especially mistaken identity);

(2) Motive to fabricate;

(3) Inability to recall or relate properly.

b) Circumstantial Evidence

In evaluating cases where the resolution of key issues rests primarily on circumstantial evidence, the prosecutor should consider the possibility that there is another rational explanation for the uncontested facts.

(1) He should consider every reasonable defense, whether offered or not;

(2) He should then consider whether, under the uncontested facts, the defense might be true.

C. EVIDENCE OF A CORPUS DELICTI

There should be legally sufficient, admissible evidence of a corpus delicti.

1. Existence of a Crime

The prosecutor has a responsibility to be reasonably certain that a crime has been committed before charging. In cases posing novel or unclear questions of law, the prosector may charge if the following requirements are satisfied:

a. There is a reasonable possibility that a court will later rule that a crime has been committed;

b. The violation, if it is in fact a violation, is a substantial one affecting significant personal or property rights of others;

c. A prosecutor can reasonably argue that a crime has in fact been committed.

> *The exception set forth will rarely be applicable in practice. In the case of possible, significant violations, the prosecutor does a service to the victim, the accused, and himself by obtaining a final judicial resolution of the issue. Unlike cases where the issues involved are issues of fact, the resolution of legal issues affects more than the outcome of the present case. Their resolution bears on future conduct and charging decisions.*

2. Existence of Evidence Sufficient to Prove Elements of Crime

The prosecutor should be reasonably certain that he has legally sufficient evidence to prove each element of the crime in question.

a) Judicial Interpretations of Statutes

The prosecutor is responsible for knowing the relevant case law interpretations of each criminal statute so he can make a correct and informed decision.

b) Questions of Law

In cases posing novel or unclear questions of law relating to the presence of legally sufficient evidence to prove any element of a crime, the prosecutor may charge if the requirements set forth above in Standard *II.C.1.* are satisfied.

c) Admissible Confessions

In cases where an admissible confession clearly shows a crime has been committed, but it appears difficult to prove the existence of a corpus delicti in conformance with the requirements of case law, the prosecutor should charge if the following requirements are satisfied:

(1) The prosecutor believes there is a reasonable possibility the court will rule that a corpus delicti has been independently established;

(2) There is enough independent evidence with which the prosecutor can reasonably argue that the corpus delicti has been independently established.

> *The burden of proving the existence of a corpus delicti independent of a confession is slight under case law. Corpus problems are most difficult with crimes where a negative must be proven as an element of the crime. However, be aware if the accused has made a judicial confession, this would suffice to overcome the corpus delicti rule. See People v. Hill (1934) 2 Cal.App.2d 141;1 Witkin, Cal. Crimes, section 90, pages 86–87.*

D. EVIDENCE OF IDENTITY

There should be legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged.

1. Direct Evidence Cases

In cases resting primarily upon direct evidence of identity, the prosecutor should be reasonably certain that the evidence he possesses, standing alone, would result in a finding of guilt. Due to the nature of direct evidence, it will generally be clear whether this requirement has been satisfied. In evaluating the case, the prosecutor should be certain that the establishment of one or more elements of the offense does not rest on circumstantial evidence. In that case he should consult Standard *II.D.2.* below.

> *One common example of a case which always depends in part on circumstantial evidence, is one where the prosecutor has to prove specific intent or knowledge.*

2. Circumstantial Evidence Cases

In cases resting primarily upon circumstantial evidence of identity, the prosecutor should not simply consider the evidence before him in determining whether there is legally sufficient evidence to convict. In view of all reasonably foreseeable defenses relating to identity, the prosecutor should also consider of the evidence is of such a quality that an appellate court would sustain a guilty verdict upon appeal regardless of the defense raised at trial.

These standards draw a distinction between mere probable cause to arrest and legally sufficient evidence to convict. This distinction to convict. This distinction is most meaningful in circumstantial evidence cases where a given set of evidence might warrant a strong suspicion of guilt but not a verdict of guilty beyond a reasonable doubt. The probable cause standard for arrest is proper because it enables police to make a proper investigation, and frequently, to alleviate a dangerous situation. While the prosecutor is legally justified in charging on mere probable cause, he serves no useful, legitimate purpose in doing so.

3. Admissibility of Evidence of Identity

The prosecutor should believe that there is a *reasonable possibility* a court of law would rule that the evidence necessary to satisfy this Standard is admissible under current statutory, case, or constitutional law.

a) Reasonable Possibility Standard

The standard of reasonable possibility should be based on an informed judgement of what the highest court entitled to rule on the issue in question would rule if confronted with it. If a local court frequently rules contrary to current appellate interpretations, such a possibility should not be weighed in considering whether to charge.

(1) The standard of reasonable possibility applies to both issues of law and fact relating to admissibility of evidence.

See Commentary to Standard II.C.#. That Standard relates to the proper treatment at the charging stage of issues relating to the admissibility of evidence of the corpus delicti. The same principles apply to issues relating to the admissibility of evidence of identity. If there is a reasonable possibility that the evidence is admissible under current constitutional, case, or statutory law, the prosecutor should assume, for charging purposes, that it will be ruled admissible.

While the same charging standard applies to both types of evidence, the prosecutor should carefully note the distinction between corpus delicti and identity evidence, since in limited situations, the distinction may be relevant to the proper determination of the legality of a particular search for and seizure of evidence. Of course, many items of physical evidence are relevant for proving both corpus delicti and identity.

E. PROBABILITY OF CONVICTION

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonable foreseeable defense that could be raised under the evidence presented to the prosecutor.

1. Jury Panels

In determining what constitutes a jury of reasonable persons, the prosecutor should not necessarily reject a case because local juries, due to political or social attitudes, unreasonably refuse to

convict where a reasonable jury in another locality would be likely to convict under the facts of that particular case. The prosecutor's responsibility to enforce the law is a responsibility owed to the State of California and all its citizens who freely obey their oath as jurors to follow the court's instructions and not be affected by any conscious or unconscious biases which, if revealed, would subject them to challenge for cause.

> *Unreasonable jury panels pose a continuing problem for prosecutors. The prosecutor must not permit the likelihood of unreasonable actions by jurors to deter him from carrying out his assigned duty to prosecute violations of the law.*
>
> *Application of this Standard to obscenity cases should not be misconstrued. Application of community standards to the determination of what is obscene is proper, as authorized by case law. There is a distinction between a local jury's interpretation of community standards and a local jury's unwillingness to convict because of its members view of the propriety of obscenity laws in general or because of other improper nonevidentiary considerations. In the latter situation, this Standard applies.*

2. Special Proof Problems

In deciding whether to charge, prosecutors should give careful consideration to special problems of proof in certain cases.

a) Identity

Where identity is in issue, and the proof of identity rests solely on the testimony of an independent witness or witnesses without further corroboration, the prosecutor should generally charge where one of the following situations is present:

(1) The witnesses already knew the accused, so there is no reasonable possibility of mistake;

(2) The opportunity to observe was substantial so there id no reasonable possibility of mistake;

(3) Investigative standards relating to identity evidence have been satisfied and the witness can furnish an adequate description of the accused;

(4) The perpetrator of the crime possessed unusual physical characteristics similar to those possessed by the accused;

(5) When identity is an issue, a charge should not be filed based solely on the uncorroborated photographic identification of the accused. If the accused is in custody, a lineup identification before charging should be required.

b) Crimes of a Sexual Nature

In considering the credibility if the victim and the sufficiency of the evidence to warrant the filing of a charge, the prosecutor shall consider the following factors:

(1) There is no reasonable possibility of a motive to fabricate;

(2) The victim shows signs of physical injury or damage to clothing consistent with the victim's testimony;

(3) Additional witnesses provide significant information consistent with the victim's account of what took place, or;

(4) Upon evaluating the case, the prosecutor finds sufficient facts with which he can reasonable argue that the victim told the truth.

Two types of cases are singled out for special consideration, because on the one hand, they pose unusually difficult proof problems, while on the other hand, their commission poses particular dangers to society that may extend beyond the violation in the present case. This statement is particularly applicable to sex offense cases. The dangers of the prosecutor's hasty actions or inaction are frequently great because of the unusual and unpredictable physical and emotional conduct of the guilty-in-fact (and sometimes of the victim) either during or after the offense. Special, careful case evaluation is required.

In considering the application of Standard E.2.b)(3) it is appropriate to include evidence of prior offenses where there is a reasonable possibility such evidence would be admissible under the doctrine of modus operandi.

In considering the application of Standard 2.b)(4) it is appropriate to include situations where there are multiple victims who are strangers to each other. In such cases, a prosecutor can argue that such multiple evidence precludes the otherwise reasonable possibility of fabrication.

The purpose of requiring a lineup is threefold: (1) to assess the ability of an eyewitness to make an in-court, in-person identification, (2) to enhance the convincing force of a subsequent in-court identification, and (3) to reduce the possibility of a mistaken identification. If the eyewitness is acquainted with the accused or if there is independent corroborative evidence of the identification, no valid purpose is served by requiring a lineup. On the other hand, the inconvenience to law enforcement personnel or the present unavailability of the accused for a lineup are factors to consider.

F. AFFIRMATIVE DEFENSES

The prosecutor should not decline to charge because of an alleged affirmative defense unless:

1. The affirmative defense is of a nature that, if established, would result in a complete exoneration of the accused from liability within the criminal justice system, and

2. The affirmative defense is not subject to refutation by substantial evidence available to the prosecution.

If these two requirements have been satisfied, the prosecutor should decline to charge. Otherwise, it is the responsibility of the prosecutor to see that the issue is litigated in court.

For purposes of this Standard, an affirmative defense is one which in effect admits the truth of the principal allegations contained within the complaint, indictment, or information, but which asserts other matters which, if true, exonerate the accused from criminal liability in whole or in part. They are matters which the accused has the burden of raising.

Affirmative defenses are treated differently because the data necessary to establish them is usually unavailable to the prosecutor at the charging stage, and because the accused has the burden of raising them at trial. Common examples are insanity, entrapment, and double jeopardy. Self-defense and defense of third parties, while technically affirmative defenses, should be carefully evaluated at the charging stage as corpus issues. Alibi and the statute of limitations are not affirmative defenses and should be treated as identity or corpus issues respectively.

III. CHARGE SELECTION

A. CHARGE LEVEL

The prosecutor has the responsibility to see that the charge or charges selected adequately describe the offense or offenses committed by the accused and provide for an adequate sentence under the facts known to the prosecutor at the time of the charging.

1. Filing Charges in the Alternative

In selecting the appropriate charge or charges for a particular crime, the prosecutor should file applicable charges in the alternative when those applicable charges each correctly describe the offense committed, and the prospective punishment levels under these alternative charges are approximately the same.

> *One common example is the joinder of felony charges involving automobiles, e.g., Penal Code section 487(3) and Vehicle Code section 10851. The former charge suggests a higher degree of wrongdoing (because it involves an actual theft), but the punishment levels are the same.*

2. Application of Affirmative Defenses to Charge Selection

In deciding whether to charge a particular offense as opposed to a lesser included or lesser related offense, whether that offense be a felony or misdemeanor, the prosecutor should select the greater offense when the final determination of the correct charge level or degree depends in significant part on the application of an affirmative defense to the case.

> *The most common example is the filing of murder charges where it appears that the accused ultimately will be convicted of manslaughter. Penal Code section 1105 places the burden of proving mitigating circumstances on the accused. Of course, if the evidence clearly shows that the accused only committed manslaughter, the lesser charge should be filed.*

3. Overlapping Statutes

When confronted with a situation in which identical criminal conduct is separately punishable under two or more similar statutes providing significantly different penalties, the prosecutor should generally charge the offense with greater penalty when any of the following situations exist:

a) The lesser charge does not adequately and fully describe the actual offense committed by the accused;

b) The penalties provided for the lesser charge are inadequate for the actual offense committed or for the particular accused because of his prior criminal record;

c) There is a specific evidentiary, legislative, judicial, or prosecutorial function to be served by utilizing the charge with the greater penalty other than plea leverage;

d) There is an indication that the Legislation intended to induce a guilty plea to a lesser charge prior to trial. There should be a reasonable expectation of conviction on the designated charge.

4. Misuse of Charge Selection Process

The prosecutor should not use the charging process to obtain leverage to induce a guilty plea to a lesser charge prior to trial. There should be a reasonable expectation of conviction on the designated charge.

> *The use of the charging process simply to obtain plea leverage without any reasonable expectation of conviction on the designated charge cannot be reconciled with any of the prosecutor's legitimate goals in initiating prosecution. There is the additional risk that overcharging may induce innocent people to plead guilty to lesser charges to escape conviction on greater charges.*

B. MULTIPLE CHARGING

1. Introduction

The prosecution has the authority to charge all crimes committed. However, reasonable limitations, as defined below, may be placed on this responsibility in order to facilitate more efficient prosecution of the case in question and in order to promote the better utilization of resources within the criminal justice system.

2. Joinder of Misdemeanors with Felonies

Generally, misdemeanors should not be joined with felonies, except as provided below:

a) The evidence relating to the misdemeanor court directly or indirectly strengthens the evidence relating to the felony count.

b) The commission of the conduct proscribed by the misdemeanor statute demonstrates the aggravated nature of the conduct proscribed by the felony statute.

c) Conviction on the misdemeanor charge carries significant punitive consequences for the accused in addition to the likely consequences of a felony conviction. These consequences may be prospective only.

d) The misdemeanor charge involves conduct constituting a significant invasion of the rights of others, and due to legal standards set forth in the case of *Kellett* v. *Superior Court* (1966) 63 Cal.2d 822, cannot be independently prosecuted.

e) There is reasonable possibility that a jury might not convict on the felony count even though the Standards on Evidentiary Sufficiency have been satisfied in deciding whether to charge.

> *Unless one of the exceptions are applicable, no useful purpose is served by adding charges of lesser dignity to those of greater dignity. The expense of prosecution is needlessly compounded. However, many of the exceptions implicitly recognize that some misdemeanors carry greater actual penalties or stigma than some felonies. For example, a conviction for a violation of Vehicle Code section 23152 will affect an accused's driving record. Moreover, a license suspension would be mandatory if he is convicted again for the same offense.*
>
> *This Standard should not be interpreted as discouraging the filing of misdemeanor charges separately in municipal court where permitted by the Kellett case.*

3. Multiple Counts

a) Unrelated Crimes

Unless the prospective number of counts is patently excessive, the prosecutor should not limit the number of counts filed in a particular case.

(1) Of course, the counts utilized must be properly joined.

(2) Exceptions can be made for certain crimes against property. like forgery and issuance of insufficient fund checks, where multiple counts stem frequently from a single initial violation of law (e.g. from a burglary). The prosecutor may restrict the number of counts filed in order to avoid the use of an excessive number of witnesses, provided the counts alleged adequately portray the relative aggravation of the accused's conduct.

> *It is too difficult to formulate a statewide count limitation policy because of the many variables involved in each case. Uniform policies are particular difficult to achieve in large offices. In these circumstances certain presumptions might be established. (e.g., no more than ten counts should be filed without a supervisor's permission.)*

b) Related Crimes

The prosecutor should file all applicable additional charges relating to single course of conduct, regardless of the provisions of Penal Code section 654, providing:

(1) The Standards on Evidentiary Sufficiency set forth in Standard *II*, supra, have been satisfied as to each count;

(2) The Standards relating to appropriate charge level set forth above in Standard *III*.A, supra, have been satisfied; and

(3) The additional charge is not merely a technical one but accurately portrays significant independent conduct committed by the accused at the time of the event in question.

> *Since at least one charge will be filed in any event, mere multiplicity does not prejudice the rights of an accused.*
>
> *The general disuse of consecutive sentences for charges relating to a single event means that there is little danger of wrongfully inducing a guilty plea from an innocent person. On the other hand, the prosecutor's case could be prejudiced by needlessly limiting his options in the beginning. Penal Code section 654 provides adequate protection to the accused and should be applied at the intended stage — at the time of plea sentence.*

4. Pending Prosecution

The fact that the accused is being prosecuted in the present or in another jurisdiction for a crime should have no effect on the prosecutor's decision to file additional charges in a particular case except as provided in Standard *IV.A.1.g*), infra, relating to multiple prosecutions.

C. SPECIAL ALLEGATIONS

The prosecutor should utilize all special allegations whenever the Standards on *Evidentiary Sufficiency* have been satisfied. Special allegations must be plead in the complaint, because they must not be proven at the preliminary hearing and are subject to Penal Code section 995, if not, with the exception of prior convictions or crimes committed while on bail.

1. Unresolved Legal Issues

If the possible application of a special allegation presents a novel or unclear question of law, the prosecutor should utilize the special allegation in filing the complaint or information where there is a reasonable possibility that a court will later rule that the allegation is applicable and where the evidence in support of the allegation is such that the prosecutor can reasonably argue that the allegation is applicable.

> *The prosecutor should exercise care in charging in order to prevent legally innocent people from being introduced into the criminal justice system and to promote an effective allocation of resources so that convictions will serve their intended purposes. Once the decision to charge has been made, however, neither purpose will be served by limiting the use of special allegations, except as noted in Standard III.C.3. below. Special allegations exist to provide the legal basis for the subsequent imposition of additional penalties for unlawful conduct. Once the fact of such conduct has been determined, the choice of the appropriate penalty, among a range of possible penalties, should be deferred to the sentencing stage. The accused is not prejudiced by this policy. A contrary policy would remove the legal basis for a subsequent determination of appropriate penalties and would thus prejudice the prosecutor's case.*

Unsettled legal issues should be resolved by the judiciary in order to provide for more certain resolution of these issues in the future by the prosecutor. Furthermore, no useful purpose is served by premature resolution by the prosecutor in the present case.

2. Incomplete Investigation

The prosecutor should charge the allegation and not delay the filing of a complaint or information if the evidence supporting the allegation is incomplete due to insufficient investigation and there is at least a reasonable possibility that the allegation is applicable. If subsequent investigation creates a reasonable doubt relating to the application of the allegation, because of factual as opposed to legal issues, the prosecutor should promptly dismiss the special allegation.

> *Since the accused is going to be charged anyway, it will not prejudice his rights to proceed to charge the special allegation as well. Delaying the charging might actually prejudice his rights. Failure to allege the special allegation could needlessly prejudice the prosecutor's rights.*

D. FELONY-MISDEMEANOR ALTERNATIVES [Penal Code § 17(b)(4)]

An alternative felony-misdemeanor charge should be prosecuted as a felony unless the prosecutor believes that a misdemeanor sentence is warranted under all the circumstances of the case. If he believes a misdemeanor sentence is warranted, he should prosecute the case as a misdemeanor pursuant to Penal Code section 17(b)(4).

1. Primary Factors Relevant to Appropriateness of Felony Sentences

In determining whether a felony charge is warranted, the following factors should be considered, in addition to the special circumstances which may exist in a particular case:

a) Prior Record

A misdemeanor prosecution should not normally be considered if:

(1) There has been a conviction on a felony charge of a Penal Code section 17(b)(4) prosecution for the same type of crime within the previous five years;

(2) There has been a conviction which resulted in a state prison commitment for the same type of crime within the previous ten years;

(3) There has been a juvenile record which consisted in part of a committed to the California Youth Authority or camp, or the sustaining of several felony level petitions within the previous five years;

(4) There has been a record of several convictions for any crime, felony or misdemeanor, within the previous ten years.

b) Severity of the Crime

A misdemeanor prosecution should not normally be considered if:

(1) The accused has attempted to injure another with the use of a deadly weapon, whether successfully or not;

(2) The accused has, regardless of the means used, caused permanent injuries, temporary injuries requiring hospitalization, or temporary injuries substantially incapacitating another for a significant period of time, in the commission of the crime in question. *Note:* in mutual combat fights or injuries arising out of quarrels between acquaintances, other factors should be considered in addition to the mere existence of injuries (see also Standard *IV.A.1.c*), domestic violence);

(3) The accused was in possession of a loaded firearm at the time of the commission of the crime, and the crime in question is such that a loaded firearm could be used to facilitate its commission;

(4) The accused has committed a battery on a peace officer and inflicted other than minor injuries;

(5) The accused has committed a crime against the property of another of a value in excess of $2,000. If the value of the property is less than $1,000, a misdemeanor prosecution is preferable unless clearly barred by other provisions of these Standards, or unless the particular type of crime in question has an unusual and special impact on the community. If the value of the property falls between $1,000 and $2,000, factors other than the amount of the loss or threatened loss should be determined;

(6) The accused has possessed a quantity of controlled substances in violation of Health and Safety Code sections 11357(a) and 13577 larger than that normally used for personal consumption or has possessed any significant quantity of drugs proscribed by those sections;

(7) The accused as committed the crime of auto theft, and in doing so, has stripped the car, changed the license plates or vehicle identification number (VIN), deliberately damaged it, transported it a substantial distance, or retained it for a substantial period of time.

c) Probability of Continued Criminal Conduct

A misdemeanor prosecution should not normally be considered if:

(1) The accused has demonstrated he is a professional criminal by his modus operandi, the tools used in the commission of the crime in question, his criminal associations, his addition to narcotics or drugs, or other similar circumstances; or

(2) The accused has committed a crime related to gang activities or organized crime.

d) Eligibility for Probation

In any event, a misdemeanor prosecution should not normally be considered if the accused is ineligible for probation under the provisions of the Penal Code.

In the commentary to Standard III.C.1., it was stated that the resolution of possible penalty issues should be deferred to the plea or sentencing stages of prosecution. All applicable special allegations are thereby alleged regardless of their ultimate disposition. However, the policy in respect to the filing of felonies as misdemeanors differs, because the Legislature specifically authorized the prosecution to make a preliminary "penalty" determination at the charging stage when it enacted Penal Code section 17(b)(4).

The existence of Penal Code section 17(b)(4) gives the prosecutor a unique tool to affect judicial sentencing policies. By prescribing guidelines for what constitute legitimate misdemeanor sentence cases, the prosecutor in effect says that all remaining cases merit felony sentences. A more uniform approach to the sentencing problem by prosecutors should eventually lead to a more uniform approach to the same problem by the judiciary. It is understandably difficult for independent judges across the state to develop more uniform sentencing policies. The prosecutors are in the best position to suggest a proper approach and to set an example through the wise use of their charging discretion.

Of course, while greater uniformity is an ideal objective, any standards developed in this area must enable individual prosecutors to take into account the many relevant variables that exist in particular cases. These Standards provide a framework for considering the application of Penal Code section 17(b)(4).. This framework can be systematic without being rigid. Most cases do clearly and properly fall into a felony or misdemeanor category. However, the use of the "normally be considered" in the opening of each subsection, leaves each prosecutor with the discretion necessary for reaching a proper decision in those cases that should not be easily categorized.

The factors set forth are legitimate factors to consider in determining whether a particular accused appears to merit a felony or misdemeanor sentence. Excluded are less significant factors which lead to unjustified, unequal sentencing policies when used excessively by some judge or prosecutor. Some major exclusions are: (1) the attitude of the victim or witnesses per se toward the decision (although their arguments should be considered insofar as they

make reference to the legitimate factors for consideration), and (2) the accused's family or professional status.

The dollar limitations set forth in Standard D.1.b)(5), supra, apply only when the accused's prior record and modus operandi are such that a misdemeanor sentence is otherwise warranted. It is not suggested that the current $400 dividing line between grand and petty theft be changed. For example, if an accused stole $400 worth of merchandise and he had a prior felony theft conviction that was four years old, the case should be filed as a felony. If he stole $2,000 worth of merchandise, but had no prior criminal record, the case should still be filed as a felony. If an accused stole $1,500 worth of merchandise and he had no prior criminal record, the prosecutor, in determining whether a misdemeanor sentence is warranted, should consider factors like the manner of the theft, the likelihood that the accused has been involved in similar thefts, the cooperation of the accused, and the type of premises burglarized, where applicable. The age of the accused might also be relevant in this situation for the reason set forth in Standard D.3.c) below.

In applying this subsection, the prosecutor should consider the threatened or potential loss as well as the actual loss. For example, if an accused is arrested at the scene of a commercial burglary, before he has had an opportunity to steal, the prosecutor should consider what the loss might have been had the accused not been arrested. He should consider the nature of the premises, the time, the modus operandi, and the nature of the objects available for theft.

In applying this subsection the prosecutor should consider the value of all actual or potential losses caused to all victims by the accused, not just the ones to be charged.

In reference to Standard D.1.b)(8), supra, it should be emphasized that the references to substantial distance and time apply primarily to thefts where the car was taken initially from the owner without his knowledge or consent. Cases involving cars kept in violation of a rental agreement, for example, would not automatically be filed as felonies because of the distance or time involved. Such cases normally involve substantial distance or time. The key test in applying this subsection is whether a felony or misdemeanor sentence is warranted under all the facts of the case.

2. Special Situations Generally Warranting Misdemeanor Prosecution

A misdemeanor prosection pursuant to Penal Code section 17(b)(4) should normally be considered in the following cases regardless of the provisions of Standard *III.D.1.*:

a) Cases which become felonies solely because of the provisions of Penal Code section 666, unless the accused is a persistent violator;

b) Violations of Penal Code section 261.5, unless there is a substantial age difference between the accused and the victim in which case other relevant factors would be considered;

c) Violations of Penal Code section 12020, unless the weapon in question is a sawed-off shotgun, was used in the commission of another felony, or was possessed under circumstances which posed an apparent threat of injuries to other persons;

d) Case in which very small amounts of property or contraband are involved;

e) Violations of Penal Code section 476a, unless the accused is a persistent violator of this section, or unless the crime in question is part of a major fraudulent scheme. If the value of the checks issued with insufficient funds is less than $1,000, a misdemeanor prosecution is generally preferable. If the value of the checks issued with insufficient funds is greater than $2,000, a felony prosecution is generally preferable;

f) Violations of Vehicle Code sections 20001 and 23153, unless significant injuries were sustained or the accused has a bad driving record.

The crimes listed in this section are ones which normally receive misdemeanor sentences in the absence of the exceptions indicated. The exceptions are difficult to define legislatively, and they are frequently applicable. For that reason, it is not suggested that the Legislature reduce any of these crimes from felonies to simple misdemeanors.

Standard D.2.d), supra, is not applicable where the gist of the crime is something other than the actual taking of property or possession of contraband — e.g., burglary where the gist of the crime may be invasion of privacy or intent to cause greater loss.

3. Secondary Factors Relevant to Appropriateness of Felony Sentence

In close decision regarding the utilization of Penal Code section 17(b)(4), the prosecutor may consider the following additional factors:

a) The relative difficulties in successful prosecution of the case as a felony as opposed to a misdemeanor, including the nature of the witness involved;

b) Cooperation of the accused as demonstrated by his voluntary confession, his assistance in the recovery of property, his information regarding other criminal activity by himself or others, voluntary restitution, or other like factors;

c) The age of the accused (extreme youth or aged).

These factors are legitimate factors to consider. They relate to the propriety of a felony sentence.

4. Effect of Insufficient Information

If at the time of charging, the prosector lacks the necessary information to determine whether a felony sentence would be appropriate, he should proceed to file the case as a felony.

a) Penal Code Section 17(b)(4)

If the information can be obtained prior to the preliminary hearing, the prosecutor may then proceed to dispose of the case pursuant to Penal Code section 17(b)(5).

b) Criminal Record Sheets

To avoid unnecessary felony filings, the prosecutor should make a conscientious effort to obtain all necessary information prior to charging, particularly criminal record sheets.

In determining whether the accused has a significant prior record for purposes of electing to proceed under Penal Code section 17(b)(4), the prosecutor may rely on verbal information supplied by the investigating officer. If there is no strong possibility of a signifi-

cant prior record, and the crime in question is not serious, the prosecutor should elect to file the case as a misdemeanor without actually viewing the criminal record sheet.

c) Improper Objectives

Penal Code section 17 should not be used for plea leverage purposes.

> *The stated policy is that which merit felony sentences should be filed as felonies, and cases which merit misdemeanor sentences should be filed as misdemeanors. Section 17 should not be used to accomplish the improper objectives of overcharging proscribed in Standard III.A.4. Penal Code section 17(b)(5) exists to assist the prosecutor where it is genuinely impossible to obtain all the necessary data at the time of charging.*

5. Multiple Defendants

If the prosecutor is confronted with a situation in which two individuals are chargeable in a single accusatory pleading with a felony offense, and one of the two appears to merit a felony sentence for the crime in question, both should be charged initially with a felony regardless of the eligibility of the other for a misdemeanor sentence under other provisions in Standard *III.D.*

> *The use of separate felony and misdemeanor prosecutions for co-defendants would be contrary to the legislative intent implied in Penal Code section 954 that co-defendants be prosecuted in a single proceeding. Duplicative trials and unnecessary inconvenience of witnesses should be avoided. Dispositions at the misdemeanor level are still possible for the eligible co-defendant under Penal Code section 17(b)(5).*

IV. PROSECUTORIAL ALTERNATIVES

A. DISCRETION NOT TO CHARGE

The prosecutor has the responsibility to prosecute individuals who commit crimes in accordance with the Standards on *Evidentiary Sufficiency* and *Charge Selection.* As a member of the executive branch of government, the prosecutor also has the responsibility to decline to prosecute in situations where criminal prosecution would defeat the underlying purpose of the statute in question or his duty to foster and maintain a lawful society. This holds true even though standards on evidentiary sufficiency have been satisfied. This responsibility to decline to prosecute for reasons other than evidentiary insufficiency should be exercised sparingly and only when society would clearly be served by such action. It should apply only when declining to prosecute will result in increased respect for the law. This responsibility is not to be construed as authority to arbitrarily select individuals for prosecution or non-prosecution.

> *The basic rationale for prosecutorial discretion is set forth in the first part of the Introduction of these Standards. The cases cited in the Introduction and other sections make it quite clear that the decision to charge or not belongs with the prosecutor.*
>
> *The court in Taliaferro v. Locke (196) 182 Cal.App.2d 752, 755-56, indicated that economic limitations justified non-action by a district attorney. In that case the district attorney refused to abate a nuisance or prosecute for perjury. The victim and accused were ex-spouses. The unfettered authority to decline was upheld. This case implicitly recognizes the right of the district attorney to decline to charge for other than evidentiary reasons. The court said:*
>
> *"As concerns the enforcement of the criminal law the office of district attorney is charged with grave responsibilities to the public. These responsibilities demand integrity, zeal, and conscientious effort in the administration of justice under the criminal law. However, both as to investigation and prosecution that effort is subject to the budgetary control of boards of supervisors or other legislative bodies controlling the number of deputies, investigators, and other employees. Nothing could be mote demoralizing to that effort or to efficient administration of the criminal law in our system of justice than requiring a district attorney's office to dissipate its effort on personal grievance, fanciful charges, and idle prosecution."*

The case of *State ex rel. McKittrick* v. *Wallach* (1944) 353 Mo. 312, 182 S.W.2d 313, specifically recognized the right to use prosecutorial discretion to determine what action would best result in general law observance and good law enforcement. (See, Introduction [footnote 6], *supra.*)

The following Standards give some examples of proper and improper reasons for the exercise of discretion not to charge. The list is not exclusive. The Standards constitute a compromise between those who believe there should be no discretion and those who believe in very broad discretion.

1. Proper Bases for Exercising Discretion Not To Charge

There are reasons for exercising this inherent power to decline to charge other than insufficient evidence.

a) Contrary to Legislative Intent

It would be proper to decline to charge because the application of criminal sanctions to the accused's conduct is contrary to the intent of the Legislature in enacting the particular statute.

Penal Code section 4 states that the provisions of the Code "are to be construed according to the fair import of their terms, with a view to effect [their] objects and to promote justice."

b) Antiquated Statute

It would be proper to decline to charge because the statute in question is antiquated in that:

(1) It has not been enforced for many years;

(2) Most members of society generally act as if it was no longer in existence;

(3) It serves no deterrent or protection purpose in modern society; and

(4) The statute has not recently been reconsidered by the Legislature.

The reasons for this exception is that prosecution in the present case would violate the accused's constitutional right to equal protection of the laws and would serve no legitimate prosecutorial purpose. Prolonged non-enforcement lulls society into an impression that certain conduct is not unlawful. This exception is not to be construed as a basis for rejecting cases because the law in question is unpopular or because appellate decisions have made it difficult to enforce.

c) Victim Requests No Prosecution

It would be proper to decline to charge because the victim does not wish the prosecutor to file criminal charges, and the case involves the following crimes or situations:

(1) In assault or battery cases where the victim has suffered little or no injury and where the accused's conduct is not likely to be repeated;

(2) In crimes against property, not involving violence, where no major loss was suffered and where the accused's conduct is not likely to be repeated. The fact of restitution may be considered in applying this Standard.

Crimes are prosecuted on behalf of all citizens of the state, not on behalf of particular individuals. The victim is not a party to a criminal prosecution. He is not the prosecutor's client. (See People v. Municipal Court (1972) 27 Cal.App.3d 193, 207.) Crimes are committed primarily against society and only secondarily against individual members of society. There are rare situations, set forth here, in which the secondary interest of the individual outweighs the primary interest of society. This primary interest is outweighed because none of the three purposes of a criminal sentence is particularly applicable, while non-prosecution would serve interests like family harmony, good employment relations, the promotion of individual friendships, and the personal privacy of the victim.

The problem described here is to be distinguished from the situation in which a witness is so uncooperative that successful prosecution is unlikely. In that event, Standard II.E. controls as the basis for rejections. That Standard is

potentially applicable in any criminal case, but in serious cases, society's interest in protection and deterrence requires the prosecutor to try to secure the victim's or witness's cooperation.

Domestic violence is a special problem for the prosecutor, since the victim's efforts to abandon the criminal prosecution must be viewed with extreme care. The victims are usually subject to the continuing threat of physical abuse. This threat is greatly compounded by the social, economic, and psychological pressures which are associated with the prosecution of one's spouse or sexual partner, no matter how abusive that person may be. A victim's reluctance to cooperate is usually born of such factors extraneous to the merits of the case, and in itself, should not result in a dismissal. If diversion is acceptable to the parties albeit reluctantly, the deputy should consider charging in the alternative to allow the court to divert under Penal Code section 1000.6. However, violence in the domestic scene is no less violent; therefore, an objective assessment of the defendant's culpability and propensity for violence should determine the ultimate disposition.

For example, unless a significant injury was attempted or actually inflicted, a felony charge should not be filed in any case.

d) Immunity

It would be proper to decline to charge where immunity is to be granted to the accused in order to prosecute another, subject to the following guidelines:

(1) The accused's testimony is essential to a successful prosecution;

(2) Considering the factors set forth below, the accused is less culpable than the other person:

i. His involvement in the present case;

ii. His overall involvement in criminal activity;

iii. His cooperation in the present case, coupled with the continued viability of other alternatives like probation revocation, civil commitment, and prosecution on other charges; and

(3) The gravity of the case is such as to justify granting immunity;

(4) The testimony is necessary to expose matters of great public interest which outweigh the interests of justice in prosecuting the persons to whom leniency is to be offered;

(5) The testimony is necessary to exculpate another who may be unjustly suffering a penalty.

As part of the balancing process of prosecutorial discretion, it is often necessary to be lenient with one individual so a more culpable individual can be prosecuted. The decision is a tactical one. It is one of the most well-recognized examples of prosecutorial discretion and is explicitly approved by statute. See Penal Code section 1324. See also e.g., Attorney General v. Tufts (1921) 239 Mass. 488, 132 N.E. 322.

e) De Minimis Violation

It would be proper to decline to charge because the violation is de minimis. This reason should be used rarely and should be subject to specific local office guidelines. Those guidelines should consider the following factors:

(1) The availability of appropriate alternative charges;

(2) Whether the accused would merit from any confinement or significant fine; and

(3) Whether a deterrent purpose would be served by prosecuting the offense.

> *This Standard is a prosecutorial application of the judicial concept of de minimus. It may be applied for several reasons: (1) with certain types of crimes, it is better to "save" violations so that they can be prosecuted together and a more meaningful sentence obtained, (2) the cost of criminal prosecution to the taxpayers is so high it would be better to utilize alternatives. (See Standard IV.B, infra.) Presumably the situation in question is so rare that "deterrence" is inapplicable, and the violation so minimal that "protection" is inapplicable.*

f) Present Confinement On Other Charges

It would be proper to decline to charge because the accused has just had his probation or parole revoked or has been sentenced on another charge to a lengthy period of confinement and:

(1) Conviction on the new offenses would not merit any additional direct or collateral punishment;

(2) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(3) Conviction on the new offense would not serve any significant deterrent purpose.

The quality of the evidence of the new offense is an appropriate factor to consider in close decisions regarding whether to prosecute under this Standard.

> *It makes little sense to prosecute cases for the mere sake of prosecution. However, the exceptions set forth here and in Standard A.1.g) below will rarely be applicable. One reason is that the mere fact of conviction on a significant felony charge affects an accused's record and how it will be viewed in the future by someone like a judge, parole agent, or probation officer. Further, the commission of a new offense in most cases should warrant the imposition of additional punishment.*

g) Pending Conviction On Other Charges

It would be proper to decline to charge because the accused is facing a pending prosecution in the present or another jurisdiction and:

(1) Conviction on the new offense would not merit any additional direct or collateral punishment;

(2) Conviction in the pending prosecution is imminent. The prosecutor should be reasonably certain that the pending case will be successfully prosecuted;

(3) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(4) Conviction on the new offense would not serve any significant deterrent purpose.

The quality of the evidence of the new offense is an appropriate factor to consider on close decision regarding whether to prosecute under this Standard.

See commentary to Standard A.1.f) above.

The application of this Standard is primarily an extension of the principles set forth in Standard III.B.3.a) under which prosecutors sometimes restrict the number of counts initially charted in particular cases (most notably in prosecutions under Penal Code section 470 and 476a).

Prosecutors should consult with other prosecutors when determining whether conviction in a pending case is imminent. In some case it may be appropriate to delay the initiation of prosecution under the principles set forth here. However, the prosecution should consider whether any delay could jeopardize an accused's right to due process and a speedy trial.

h) Highly Disproportionate Cost of Prosecution

It would be proper to decline to charge because the burden on or the cost of locating or transporting prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question.

If extradition may be declined because extradition costs are too high, so also may prosecution because of costs in producing witnesses or of burdens on those witnesses. This Standard is to be applied in extreme situations only. The mere fact that a witness is inconvenienced does not justify declining to prosecute.

2. Inadequate or Improper Bases for Declining to Charge

There are certain factors which do not justify declining to charge, unless other mitigating factors are present as well.

a) Restitution

It would be improper to decline to charge simply because the accused made or tendered restitution to the victim.

The mere fact of restitution should not justify declining to charge. If it did, the accused would in effect be buying his way out of prosecution at no additional cost. He would have no incentive for not committing a crime. On the other hand, the fact of restitution in conjunction with legitimate factors like the victim's request not to prosecute or the existence of a de minimus situation might justify a decision not to prosecute.

b) Extradition Not Warranted

It would be improper to decline charge simply because extradition is necessary to obtain jurisdiction over the accused's person.

> *There is always the possibility that the accused will return to the jurisdiction, but delay in charging could cause due process, speedy trial, or statute of limitations problems.*

c) Relation of Accused and Victim

It would be improper to decline to charge simply because the victim and accused are related.

> *Crimes are committed primarily against society, not as individuals. However, this Standard is inapplicable if mediation is appropriate as set forth in Standard B.1. below.*

d) Unpopular Statute

It would be improper to decline to charge simply because the statute is an unpopular one with a segment of the local population, the local judiciary, or even the prosecutor himself.

> *In State ex rel. Johnston v. Foster (1884) 32 Kan. 14, 43, 3 P. 534, 538, the court wrote:*
>
> *"If a law enacted by the Legislature has not the support of public sentiment, this may be, under some circumstances, a reason for its amendment or repeal, but it is not a good defense for a county attorney, upon whose lips is fresh the oath of office, for refusing to attempt its enforcement."*

There is a distinction between trying to effectively carry out the Legislature's intent and deliberately acting contrary to it. There is also a distinction to be drawn with antiquated statutes as defined in Standard A.1.b) above, because no equal protection argument should be available in the present situation.

e) Victim's Future Cooperation Problematical

It would be improper to decline to charge simply because the victim's future cooperation is problematical. The prosecutor should take steps to see that his cooperation is ensured in doubtful cases. For instances, the prosecutor may explain to the victim his legal obligation as a witness and the fact that the case is being prosecuted by the state, not the victim.

However, nothing in this Standard should be viewed as preventing the prosecutor from considering the victim's present lack of cooperation as a factor in determining whether the case can be successfully prosecuted under Standard II.E.

> *The refusal of past victims to cooperate does not justify an assumption that the present one will refuse. Furthermore, cases are prosecuted on behalf of all citizens of the State.*

f) Severe Impact on Accused or Family

It would be improper to decline to charge simply because prosecution will have a severe impact on the accused or his family.

> *This Standard is contrary to the position taken by the National Conference on Criminal Justice, Standards on the Courts, Standard 1.1 (Criteria for Screening) (1973). Prosecutions often have a severe impact on the accused and his family. The first is usually justifiable, the second is unavoidable. If justice were to be administered on the basis of an accused's family status, there would be greater inequality in law enforcement than exists now.*

g) Improper Motives of the Complaint

It would be improper to decline to charge simply because the motives of the complaint in seeking prosecution are different from those properly associated with a criminal prosecution.

> *This Standard may be contrary to the positions taken by the National Conference on Criminal Justice, Standard on the Courts, Standard 1.1 (Criteria for Screening) (1973) and the A.B.A. Proposed Standards on the Prosecution Function, Standard 3.9 (Discretion in the Charging Decision) (1971). The issue is relevant in determining if a witness's bias will affect the successful prosecution of the case. It is otherwise irrelevant because crimes are committed against society, not individuals.*

B. ALTERNATIVES TO CRIMINAL PROSECUTION

1. Mediation

The prosecutor may, in conjunction with other agencies, attempt to mediate disputes or refer disputes for mediation. The prosecutor may choose this approach rather than prosecute crimes that arise out of such disputes, and which have all of the following characteristics:

a) The offense involved is a misdemeanor like disturbing the peace, assault, battery, or trespass:

b) The dispute is between members of a family, relatives, acquaintances, or neighbors;

c) It appears mediation would ne successful in establishing peaceful relations between the parties to the dispute and preventing future violations of the law.

> *The basic information for using mediation in appropriate cases is that it will best serve the interests of promoting family or neighborhood harmony. The prosecutorial goals of protection and deterrence are achieved through non-prosecution at the expense of the relatively unimportant goal of punishment in the particular situation. Furthermore, because the victim will, at the conclusion of successful mediation, agree to non-prosecution, the reasons supporting Standard IV.A.1.c) apply as well.*

2. Voluntary Compliance

a) Consumer Fraud Cases

In a case involving defrauding of consumers by merchants, the prosecutor or the appropriate law enforcement agency may accept voluntary compliance, rather than file criminal charges or proceed civilly, if the following factors are all present in the case:

(1) The incident in question is the first offense by the merchant involving this type of conduct;

(2) The violation was not deliberate;

(3) The incident appears to be isolated and not part of a conspiracy; and

(4) Complete restitution is made to all known victims.

b) Environmental Cases

In a case involving a minor violation of antipollution statutes or ordinances, the prosecutor may, in conjunction with state or local enforcement agencies, encourage and accept voluntary compliance, rather than file criminal charges or proceed civilly if all of the following factors are present in the case:

(1) Voluntary compliance would basically compensate for past damage done or is satisfactory with the enforcement agency;

(2) The prosecutor is reasonably satisfied that the accused will not repeat the conduct in question;

(3) There is no pattern of continuing violations of the statute or ordinance in question; and

(4) The violation was not deliberate.

c) Regulations, Ordinances and Public Nuisance Cases

In cases involving violations of administrative agency regulations, county zoning, health, or other like ordinances, and in the case of violations of Penal Code section 370, the prosecutor may, in conjunction with local enforcement agencies, encourage and accept voluntary compliance rather than file criminal charges, if the following factors are all present in the case:

(1) Voluntary compliance would basically compensate for past damage done or is satisfactory with the victim or complainant;

(2) The prosecutor is reasonably satisfied that the accused will not repeat the conduct in question; and

(3) There is no pattern of continuing violations of the ordinance or statute in question.

d) Business License Violations

In a case involving a failure to obtain a business license as required by statute or ordinance, the prosecutor may accept voluntary compliance if all of the following factors are present in the case:

(1) The accused promptly obtains the proper license upon request;

(2) There is no pattern of continuing violations of the statute or ordinance in question;

(3) The violation was not deliberate.

The primary focus of the statutes involved in this Standard is corrective or rehabilitative. Unlike other violations of law (e.g., narcotic possession), it is relatively easy for the prosecutor to see whether the "correction" as been made; future formalized supervision is not necessary. Situations are being rehabilitated, not individuals (provided, in the consumer fraud situation, a criminal intent to steal is not involved). Due to the relative lack of criminal intent, retribution is not a major consideration. Protection is achieved through correction. Protection is not needed from the accused person, anyway. Instead, protection is needed from the proscribed practice. Finally, to the extent that the Standard is restrictive, there remain plenty of successfully prosecuted cases to accomplish the deterrent purpose of such statutes. Any deterrent potential is outweighed by the excessive costs of prosecution.

In applying the criteria set forth in this section, the prosecutor should consider previous efforts by the appropriate enforcement agency to obtain voluntary compliance as part of his own effort. Needlessly, duplicating their work will only delay enforcement.

3. Civil Action

a) Consumer Fraud Cases

In cases involving defrauding of consumers by merchants and voluntary compliance is not an appropriate remedy, the prosecutor may seek civil damages or injunctive relief without filing criminal charges, where he has the right to bring civil actions, if all of the following factors are present in the case:

(1) Money damages or injunctive relief would be a more effective deterrent to the accused and others;

(2) The conduct would probably cease as a result of the successful conclusion of the civil suit;

(3) The accused's activity does not involve a relatively minor single or occasional violation for which criminal prosecution would be more expeditious and effective.

b) Environmental Law Cases

In a case involving a violation of an antipollution statute or ordinance and voluntary compliance is not an appropriate remedy, the prosecutor may seek civil damages or injunctive relief without filing criminal charges, if all of the following factors are present in the case:

(1) Money damages or injunctive relief would be a more effective deterrent to the accused and others;

(2) The conduct would probably cease as a result of the successful conclusion of the civil suit.

c) Abatement — Public Nuisance Cases

Where the prosecutor has the right to seek a civil injunction to abate a nuisance, he may utilize this remedy whenever practical.

The primary consideration is a tactical one. The prosecutor should select the means best available to accomplish the three goals of deterrence, protection, and punishment. The Legislature has given the prosecutor additional tools to accomplish these goals — the right to proceed civilly as well as criminally.

There are conflicting considerations at work in each case which the prosecutor should weigh. There id no set presumption as to whether civil action is to be preferred to criminal action in the situations set forth. It may be preferable in many situations to proceed both criminally and civilly.

On the other hand, criminal actions carry a certain stigma, which in itself, has a major deterrent effect in addition to the potential for incarceration.

On the other hand, civil lawsuits give the prosecutor certain major advantages. The advantages are such that civil suits may be the only practical remedy. The potential damages are greater. Due to the lack of stigma, civil suits may lead to faster correction of the problem and resolution of the lawsuit. The prosecutor is not limited by the dictates of the Fifth Amendment, so his right to discovery is more effective and meaningful and the lawsuit is more easily won. The burden of proof is different. All these factors should be weighed in deciding which course of action will accomplish the prosecutor's overall purpose of remedying the problem which is causing an interference with the freedom of others to live in a lawful society.

Abatement actions are common for crimes mentioned in this section of the Standards. They are often more effective because they are designed to correct ongoing situations rather than specific past acts. See, 8 Ops. Cal.Atty.Gen. 110 (1946) which states that the primary purpose of abatement actions is to enforce the criminal law when applied to houses of prostitution. ".... [I]n many instances criminal prosecutions and abatement proceedings could both properly be used in stamping out a single course of conduct." Id. at 113.

V. OFFICE PROCEDURES

The following procedures are recommended steps which might be taken to improve the quality of crime charging within a prosecutor's office. The procedures are valid only insofar as office size, budget, organization, and personnel turnover permit. For the most, the procedures set forth in Section A are designed for middle size offices — over ten attorneys, or large offices — over fifty attorneys. However, certain ideas might be adapted in part to any office where the district attorney is in a position to delegate any significant portion of his responsibilities to deputy prosecutors. The recommended procedures set forth in Sections B, C and D are applicable to all offices.

A. SELECTION OF CHARGING DEPUTY

1. Selection and Rotation

To the extent feasible, each office should designate one or more persons to review and file all felonies and misdemeanors submitted to that office. The person(s) qualified to hold this position should be periodically rotated in order to ensure that they can apply the benefits of continuing courtroom experience to their charging functions, yet ensure uniformity of approach within a given period of time.

2. Case Assignment Systems

Where more than one person is assigned to crime charging in a particular office, an assignment system should be devised to prevent deputy selection by individuals seeking felony or misdemeanor complaints. Among the possible assignment systems are:

a) Direct rotation from case to case;

b) Designating certain individuals to handle complaints from specified law enforcement agencies;

c) Assigning cases based on the type of crime involved;

d) Assigning cases based on the first letter of the accused's name;

e) Assigning cases to members of a team on a rotational basis.

3. Qualifications

The person selected should have the following basic characteristics:

a) Good judgement as well as sufficient legal knowledge;

b) Trial experience commensurate with the level of crime he is assigned to review and charge.

> *The term "level" refers to level of seriousness (e.g., felony versus misdemeanor), not type of crime.*
>
> *These recommendations do not preclude an initial review by a deputy without these qualifications, provided his decision is subject to review by someone who has them prior to actual filing.*

4. Specialized Areas

Each office should encourage part-time or full-time specialization by one or more deputies in areas which may pose unique and complicated prosecution problems like:

a) Child abuse
b) Environmental law
c) Consumer fraud
d) Prison cases
e) Labor disputes
f) Organized crime
g) Major narcotics violations
h) Pornography
i) Civil disturbances
j) Domestic violence
k) Sexual assault
l) Gang violence
m) Career criminals
n) Child stealing

Large offices should designate one or more persons to handle one or more of these specializations so that all cases within a county, falling within a particular category, will be handled by the designated person(s).

> *This recommendation does not mean that a deputy should be assigned exclusively to one or more of these functions. It merely means that these areas require a fair amount of specialized knowledge and that someone in an office should have that knowledge, even if he is regularly assigned to the same duties as other deputies.*

B. INTERNAL REVIEW OF SCREENING DECISIONS

1. Multiple Review Prior to Issuance

Generally, multiple review prior to issuance of a complaint is to be discouraged. It consumes too much time and is economically impractical, except in special circumstance cases. However, multiple review might be considered for the same type of cases designated in Standard V.B.2. below for possible review by superiors should office size and organization permit.

> *The crimes which surveys indicate pose frequent conviction problems include rape, child molesting, perjury, arson, driving under the influence of drugs, embezzlement of rented cars, receiving stolen property, and obscenity. Cases where self-defense is in issue are included. If feasible, multiple review or consultation should be considered in those areas.*

2. Supervisory Review of Decisions

In certain classifications of cases, each office may require consultation or review by district attorneys or deputies with greater position or experience. Such classification, which should be published within that office, might include:

a) Special circumstances cases;

b) Cases which are generating a considerable amount of public concern;

c) Cases which involve public officials or police officers;

d) Cases which involve particularly serious crimes;

e) Cases which involve crimes that in the past have proved particularly difficult to successfully prosecute within that county;

f) Cases which involve crimes that pose unusual or special problems within a particular county or area.

3. Review Prior to Filing Information

There is no substitute for good, initial case screening. However, problems do develop at and before a preliminary hearing that cannot always be reasonably anticipated. Felony screening should not stop with the filing of the original complaint. Each office should develop a procedure for reviewing a case after the preliminary hearing. Such a procedure might include one of the following:

a) Assigning deputies with considerable felony trial experience to handle preliminary hearings. These deputies should have authority to dismiss unsatisfactory cases after or during preliminary hearings;

b) Organizing an office by teams so that each team is responsible for the initial charging decision, review, and subsequently handling of a particular case at all stages;

c) Having a superior review a recommendation by the preliminary hearing deputy to file or not to file an information. Such a recommendation should include references to changes in anticipated testimony, new evidence, or comments on demeanor of witnesses;

d) Having an office staff meeting, including deputies with felony trial responsibility, to review cases prior to filing an information. Such staff meetings could also be held post-filing in order to have the advantage of reviewing the preliminary hearing transcript.

4. On-Going Review

Each office should establish procedures so that supervisory personnel review felony and significant misdemeanor filings and rejections on a periodic basis to be certain the office follows uniform practices and conforms with all portions of local office standards.

C. WRITTEN MATERIALS FOR CHARGING DEPUTY

1. Annotated Statutes

The most recent annotated Penal Code, Evidence Code, Health and Safety Code, and Vehicle Code, along with other state codes containing criminal sections and relevant portions of frequently used County and Municipal ordinances, should be readily available.

2. Crime Charging Manual

A currently updated edition of the Uniform Crime Charging Manual, published by the California District Attorneys Association, should be readily available.

3. Office Policies

All office manuals and memoranda relevant to crime charging, in usable and compact form, should be readily available.

4. Pleading Forms

Standardized felony and misdemeanor pleading forms should also be readily available to a prosecutor assigned to crime charging. Form books should be available within each office, and each charging deputy should have one. The forms should be available for easy and rapid use by clerical personnel either through printed blank forms or automated word processing systems.

5. Special Forms

Special forms should be readily available if adopted for local use, particular:

a) Witness information sheets to be filed out with each felony case filed on which the deputy can place the names and addresses of all witnesses and a brief summary of their testimony;

b) Case evaluation forms on which the charging or reviewing deputy in felony cases could indicate any special problems he anticipates with the case;

c) Rejection forms conforming with Standard *VI.A.2., infra.*

d) Information forms for victims or other civilian witnesses as called for by Standard *VI.B.3., infra.*

> *A deputy should have these materials available in his office so he will not delay police officers by having to leave his office to look for books in a library or which may be in use by someone else. There of a greater incentive to use books that are within arm's reach.*

D. RESPONSIBILITIES OF THE CHARGING DEPUTY

1. Pre-Charging

The charging deputy has the following responsibilities at the time of charging:

a) Reviewing the police reports and the other information called for in Standard *II.B.2.* relating to evidentiary sufficiency;

b) Making the decision to charge or reject in accordance with the *Standards on Evidentiary Sufficiency, Prosecutorial Alternatives,* and *Charging Selection;*

c) Completing forms required by local office procedure;

d) Giving a written explanation of a decision to reject a felony charge in accordance with Standard *VI.A.2.* Where Penal Code section 17(b)(4) is to be used, any relevant considerations should be mentioned;

e) Obtaining any review or approval required by office policy of his decision to charge or reject;

f) Making an appropriate bail or O.R. recommendation when required office policy and indicating, in an appropriate place, reasons supporting the recommendations;

g) Explaining to any appropriate law enforcement officer, civilian witnesses, or victim his reasons for charging or rejecting in accordance with Standard *VI.B.1.d*).

h) Referring the necessary documentation to clerical personnel for the preparation of the complaint and other necessary papers.

2. Post-Charging

Subsequent to the actual decision to charge, the charging deputy should:

a) Review the pleading and arrest warrant forms used by clerical personnel to see that they are correct in all respects;

b) Review the subpoena lists (if the charging deputy is responsible for preparing them) to see that they are correct in all respects in all respects;

c) Communicate the fact of issuance or rejection to his superior in significant cases in accordance with some standard office procedure;

d) See that a written agreement copy of any special instruction given to the investigating officer or others regarding supplementary investigations or other like matters are placed in the case file.

> *If the charging deputy issues the subpoenas, he should check to see that all witnesses are listed in the subpoenas, their names are spelled correctly, and addresses and telephone number are correct. The wording of special allegations should also be checked.*

VI. SPECIAL STANDARDS

A. RELATIONS WITH LAW ENFORCEMENT AGENCIES

1. Procedures to Explain Charging Policies

The prosecutor has the responsibility to see that local law enforcement agencies understand his charging policies and what he needs in terms of adequate investigation in order to obtain convictions. He should develop procedures to accomplish this goal. Such procedures might include:

a) Monthly or quarterly bulletins outlining changes in case and statutory law and clarifying local policies;

(Where budgetary limitations prevent the publication of such bulletins, local prosecutors' offices within a region might consider pooling their efforts and resources to publish such a bulletin or adapt the bulletin of a larger office revising it to meet local conditions or problems.)

b) Monthly or quarterly meetings between police investigators and prosecutors holding supervisory positions or who are primarily responsible for crime charging within a prosecutor's office;

c) Frequent use by prosecutors of rides with the law enforcement officers on regular duty patrol;

d) Willingness to readily provide advice in the field when requested, particularly in a major investigation;

e) Training program seminars conducted by a local prosecutor's office or by a regional association of prosecutors.

2. Use of Written Rejections

The prosecutor should provide written rejections to law enforcement agencies whenever he declines to prosecute a felony or *significant misdemeanor.*

a) Significant Misdemeanor

For purposes of this Standard, a *significant misdemeanor* is one which falls in any of the following categories:

(1) The accused was subjected to an arrest by a private citizen;

(2) The case involves a physical injury to the victim;

(3) The offense is punishable by a maximum one year sentence in the county jail;

(4) The offense involves specialized areas like environmental law, consumer protection; and domestic violence;

(5) The accused was taken into custody on a felony charge; or

(6) The investigating officer requests a written rejection.

b) Basic Requirements for Written Rejections

Rejections should comply with the following basic requirements:

(1) They should indicate which of the basic nine categories used in the California Department of Criminal Justice Form 8715 is applicable;

(2) They should explain in clear but concise language what makes one or more of these nine categories applicable. A person reading the rejections should be able to tell what evidentiary deficiencies or other factors caused the rejections.

c) Copies of written Rejections

One or more copies of each rejection should be furnished to the law enforcement agency involved in the investigation and one or more retained in the prosecutor's files. Copies of the police reports should be attached to the prosecutor's copy for his records.

d) Alternative Methods of Providing Notice of Rejections

Rejections should comply with the following basic requirements:

(1) They should indicate which of the basic nine categories used in the California Department of Criminal Justice Form 8715 is applicable;

(2) They should explain in clear but concise language what makes one or more of these nine categories applicable. A person reading the rejections should be able to tell what evidentiary deficiencies or other factors caused the rejections.

c) Copies of Written Rejections

One or more copies of each rejection should be furnished to the law enforcement agency involved in the investigation and one or more retained in the prosecutor's files. Copies of the police reports should be attached to the prosecutor's copy for his records.

d) Alternative Methods of Providing Notice of Rejection

Nothing within this Standard should be viewed as precluding the use of other methods for informing law enforcement officers of the reasons for rejecting certain cases. The prosecutor should take steps to be certain that the agency involved in a particular is informed of the reasons for a rejection of such information would assist it in the future.

Written rejections are desirable for the following reasons: (1) it is desirable to have written records of cases presented to a prosecutor and the reasons for his action, if questions are raised later or if new cases concerning an accused are presented and background information would prove helpful, (2) due to the relatively large volume of cases handled by most police agencies, verbal communications are generally less likely to proceed intact through channels than written communications, (3) written rejections assist a prosecutor in carefully thinking about the reasons for his decisions, (4) there are fewer dangers of subsequent misunderstanding or misquoting. If other procedures to strengthen communication channels can worked out as called for in subsection d), they may be used.

3. Rejection Review Procedures

The ultimate decision whether to charge lies solely with the local prosecutor. However, in order to improve uniformity in charging practices which prosecutor's office should establish a procedure for considering appeals from rejections by law enforcement officers or private citizens.

a) Such a procedure should allow for a particular law enforcement officer to consult with supervisors in his own office in order to ensure consistency of approach by his department.

b) Such a procedure should require law enforcement agencies to proceed through supervisory channels in larger prosecutors' offices so that more careful attention can be given to the facts of a particular case by all parties in question.

B. RELATIONS WITH CIVILIAN WITNESSES

1. Consultation with Civilian Victims/Witnesses

Upon request, the prosecutor should see that civilians victims or witnesses properly interested in a case are informed of the prosecutor's reasons for declining to charge, charging lesser offenses, or taking any other action in relation to that case.

a) Personal Interviews

Interested civilian victims or witnesses should be interviewed personally by the prosecutor as suggested in Standard *II.B.2.a)* or whenever the prosecutor feels it is appropriate.

(1) When deemed necessary such interviews should be witnessed by a third party. The interviews should otherwise be as private as possible.

(2) Generally, witnesses should be interviewed separately. Minors should not be interviewed in the presence of their parents, guardians or teachers.

b) Justification for Charging Decision

The prosecutor should carefully and clearly explain his reasons for declining to prosecute or charging lesser offenses.

c) Additional Training for Prosecutors

Whenever financially feasible, prosecutors should take advantage of any statewide or regional program that may be offered which provides education and training in processing and interviewing witnesses.

2. Rejection Review Procedures

Procedures for considering appeals from rejections by the victims or witness should be established and maintained as provided in Standard *VI.A.3.* above. The ultimate decision whether to charge must remain with the prosecutor. He should not charge simply to appease individual citizens. The Standards on *Evidentiary Sufficiency* must be satisfied in order to ensure equality under the law.

3. Communicating Obligations of Witnesses

When the prosecutor is in direct contact with a victim or witness and he decides to charge, he should explain to the victim or witness his duties with respect to testifying.

a) The prosecutor should inform the witness of his legal obligations and rights, and obligations regarding future cooperation. The prosecutor should also advise him regarding what to expect on cross-examination, court delays, and other like matters that may concern him.

b) The prosecutor should ensure the witness has, or will obtain, necessary information to be able to answer all likely questions.

4. Facilitating Witness Cooperation

Prosecutors' offices might consider instituting the following procedures in felony cases to facilitate future witness cooperation:

a) Correspondence to Witnesses

Witness cooperation can be facilitated by sending letter to them in cases which have been filed, informing then that they will be witnesses in the future, requesting future cooperation, and requesting information regarding any changes of address. Such letters should be utilized particularly whenever the witness has not been subpoenaed to testify at the preliminary hearing.

b) Compensation Procedures

Prosecutors should explain the rules on compensation to witnesses.

c) Attendance Certificates

Attendance certificates can be furnished to assist the witness in showing that he was in court or in the prosecutor's office during a certain period of time and to express appreciation for his appearance.

C. GRAND JURY PROCEEDINGS

As a general rule the prosecutor should initiate felony charges by filing a complaint and proceeding through a preliminary hearing, because current case law requires a preliminary hearing after an indictment. (*Hawkins v. Superior Court* (1978) 22 Cal.3d 584; 150 Cal.Rptr. 435, 586 P.2d 916.) However, if the district attorney elects to proceed to grand jury, the following recommendations are applicable.

1. Appropriate Cases for Grand Jury Review

Depending on the relative availability of resources and the facts of particular cases, the prosecutor should consider taking a case to the grand jury in the following situations:

a) Cases involving official misconduct or corruption;

b) Cases in which there is a substantial danger posed to testifying witnesses;

c) Cases in which there is a need to temporarily protect the identity of the witnesses;

d) Child abuse, child molesting, or rape cases were consideration should be given to sparing the victim the embarrassment involved in a preliminary hearing;

e) Series of cases involving a single narcotic or drug buy program;

f) Any case where premature disclosure to the public of the evidence involved could cause community disruption;

g) Any case where, due to its complexity or length, proceeding through the grand jury would save the public substantial time and money;

h) Cases in which there has been an unreasonable prior dismissal, delay, or reduction of charges by the local magistrate. The fact of any such prior dismissal should be disclosed to the grand jury when it reconsiders a case;

i) Cases posing substantial security problems.

2. Office Procedure

Each prosecutor's office should establish detailed procedures and guidelines appropriate to its size and organization so that each case, upon initial presentation to the prosecutor, is reviewed to see f grand jury consideration would be preferable.

D. USE OF SEARCH WARRANTS

Since the issuance of a search warrant usually bears a close relationship with the decision to charge, the prosecutor has the responsibility to see that search warrants are promptly issued based on legally sufficient probable cause.

1. Written Affidavits

No written affidavit should be presented to a magistrate without the approval of the local prosecutor. The prosecutor should seek cooperation of local magistrates in implementing this Standard.

a) Out-of-County Agencies

When am out-of-county agency seeks a search warrant from a local magistrate, it should obtain the approval of a local prosecutor just like any local law enforcement agency.

b) Pre-Printed Forms

In order to facilitate the collection of information necessary for the affidavit, prosecutors' offices should supply local law enforcement agencies with pre-printed forms.

c) Complex or Unusual Cases

The prosecutor must review or draft an affidavit before presentation to the magistrate. In complex or usual cases he should always draft the affidavit.

(1) Exception

An exception to the above requirement may be made for a properly trained officer in the case of an emergency, the unavailability of a prosecutor, or excessive distance. Training programs should be conducted regarding the proper methods for preparing affidavits.

d) Off-Duty Hours

Each prosecutor's office should endeavor to have someone available to prepare or review affidavits during off-duty.

Telephonic warrants are not regularly used primarily because of inexperience. There are mechanical problems, but the use of duplicate recording machines can obviate many of these problems. Used properly, they can save several hours of police and prosecutorial time. For more information on telephonic search warrants, see Search Warrants, published by the California District Attorneys Association.

E. JURISDICTIONAL ASPECTS OF CHARGING

1. Procedure for Making Selection Decisions

In determining whether to prosecute in a particular case, the prosecutor must always first determine whether his county has jurisdiction over the accused for the unlawful conduct committed and whether venue is proper. If jurisdiction and venue are proper in more than one county, the prosecutor should then consult with the prosecutor or prosecutors in the other county or counties involved to select the appropriate county in which to prosecute the particular case.

a) Designated Personnel

Large or medium size offices should designate specific persons to review cases posing jurisdictional problems and to consult with designated individuals in other prosecutors' offices and appropriate law enforcement agencies when such conflicts arise.

(1) Continued Cooperation and Consultation.

Consultation should continue after charges are filed in order to ensure successful prosecution.

Continued cooperation and consultation is necessary because evidentiary problems might arise after a case has been filed in a particular county, and additional action might prove desirable. Each office involved continues to have an interest in the prosecution of these cases even though the actual duty of prosecution id assumed by a particular prosecutors' office.

2. Relevant Facts — Relative Property

In selecting the appropriate county or counties in which to prosecute a particular case, the following factors should be considered. These factors are listed in descending order of importance:

a) The ability to prove that a particular crime to be charged was committed in whole or in part within a particular county. If multiple crimes involved, the relative ability to prove particular charges within a particular counties should be weighed against the relative seriousness of those particular charges;

b) The ability to consolidate and successfully prosecute the greatest number of significant appropriate charges within a particular county;

c) The ability to consolidate and prosecute cases against multiple defendants within a particular county;

d) The location of the place where the most serious crime was committed;

(1) In cases involving thefts where stolen property is moved from one county to another, the county where the property is recovered will be the appropriate county, unless it can be proved that the accused committed the actual theft, and the case can be successfully prosecuted in the county where this theft took place.

(2) In cases involving escapes from penal institutions, the county where the escape actually occurred will generally be the appropriate county, other factors being relatively equal.

e) The convenience of prosection witnesses.

Because of the many variables in the prosection of particular cases, it is impossible to formulate exact rules. Certain preferences are set forth. For example, if it can be proved that a particular accused committed the crime of auto theft in County A, the accused should generally be charged in that county, even if he was caught driving the car in County B. However, it will usually be difficult to prove without direct evidence that the accused committed the theft. Thus, the accused would probably be charged with a violation of Vehicle Code section 10851 or Penal Code section 496 in County B.

Cases involving multiple murders or other crimes against the person are even more difficult to classify. Each of the factors set forth should be carefully considered in such cases.

F. BAIL RECOMMENDATIONS

1. Recommendation Process

The prosecutor has the affirmative responsibility to make an appropriate bail or O.R. recommendation when he approves the filing of a felony complaint, if he believes that the particular case justifies bail different from that set forth in the applicable bail schedule.

a) The recommendation should accompany the complaint.

b) Sufficient data should be placed in the case file so that any prosecutor appearing at the arraignment, or at any subsequent stage of the prosecution, can explain to the court the reasons for the recommendation.

c) Nothing in this Standard precludes subsequent change or modification of the original recommendations once additional information is obtained.

Many prosecutors' offices have deferred bail or O.R. decisions to courts except in special cases. Unfortunately, bail policies vary considerably throughout the state and are one of the best examples of unjustified inequality in the criminal justice system. Further, the prosecutor has a vested interest in securing the successful outcome of the lawsuit he has started. He secures it by actively assisting in ensuring the presence of the accused and in preventing additional dangers to society in the interim.

No statewide bail schedule is provided because the formulation of bail schedules is the function of the judiciary.

The prosecutor should consider the standard set forth in Penal Code section 1275 when recommending bail. The following factors are relevant, 1) seriousness of the offense, 2) previous criminal record, and 3) the probability of his appearance.

In appropriate cases, the prosecutor should consider a "no bail" recommendation as described in Article I, section 12, California Constitution. Also, if the defendant has been arrested without a warrant and an increase in bail prior to arraignment is desirable, the charging deputy should assist the peace officer to prepare a declaration pursuant to Penal Code section 1269c.

2. Factors Relevant to Bail Recommendations

In formulating a proper bail recommendation, the prosecutor should recommend ab amount adequate to ensure the accused's timely appearance in court.

a) Potential Punishment

The amount of insurance necessary depends in large part on the potential punishment for the crime in question. The following factors will affect the degree of punishment:

(1) The general classification of the crime itself. In considering this factors, the prosecutor should refer to the to the local bail schedule for guidance. The amount recommended can be adjusted up or down depending on the following additional factors:

(2) Bodily injury suffered by the victim in cases not necessarily considered crimes of violence;

(3) The prior record for the accused, including his probation or parole status, if any;

(4) Whether the accused was armed with, or used, a deadly weapon in the commission of the offense;

(5) The quantity of contraband or amount of loss where applicable;

(6) The immediate danger to individual witnesses or to the community during the period from the filing of the original complaint to the imposition of sentence.

b) Other Factors

The amount of insurance necessary also depends in part on the following factors which can cause the normal amount of bail for the offense in question to be too low or too high:

(1) Special factors relating to the accused's contact with the community, such as residence, relations, schooling, and employment:

(2) The relative wealth of the accused, his family, or close associates as it affects the real value to him of what is posted as security for the bail;

(3) Express indications of unwillingness to appear in court;

(4) Any prior record of non-appearance.

Article I, Section 6, of the California Constitution provides that:

All persons shall be bailable by sufficient surety unless for a capital offense when the proof is evident or the presumption is great."

The sole purpose of bail is to ensure the accused's attendance in court when his presence is required, whether before or after conviction. (In re Underwood (1973) 9 Cal.3d 345, 348.)

The amount of security required in a particular case should be proportioned to the degree of risk. If the probability of a lengthy sentence is high, the accused has a greater incentive not to appear, and the degree of risk rises. Thus, more security or insurance us needed.

The factors listed in Standard 2.a) above are factors which will greatly affect the actual sentence. Therefore, they are relevant in determining the amount of security required to ensure the accused's appearance. They are, of course, not in themselves determinative of the amount of bail, nor can they be used as a basis for denying bail. See In re Underwood, supra. For example, the fact that the accused poses an immediate danger to witnesses or others while on bail, his sentence would probably be greater than it would otherwise be. He is therefore, relative to others, not a good risk for later appearance, and his bail should be relatively high.

The district attorneys agreeing to these bail guidelines do not necessarily endorse the bail system as presently constituted or even the concept behind it. It is not the purpose of these Standards to suggest reform, but rather to encourage more effective and uniform utilization of current laws.

3. O.R. Recommendations

The following factors should be taken into consideration in determining whether to make an O.R. recommendation:

a) The seriousness of the crime;

b) The prior record of the accused;

c) Whether the accused poses an immediate danger to individual witnesses or the community;

d) Whether the accused has close local ties, including a local residence and a local job or regular local schooling; and

e) Whether the accused has a record for non-appearance in any felony or misdemeanor matter.

G. EXTRADITION

1. Need for Independent Decision

Where felony charges have been (or are about to be) filed, and the accused is not to be believe to be within California, the prosecutor must independently decide whether to seek extradition. This decision is independent of the decision whether to charge.

There is always a possibility the accused may return to the state. However, delay or failure to charge may create due process, speedy trial, or statute of limitations problems.

2. Criteria for Determining if Extradition is Warranted

Generally speaking, if the prosecutor believes that a felony sentence with a substantial jail sentence is warranted, extradition should be sought.

a) Felony-Misdemeanor Alternatives [P.C. §17(b)(4)]

The factors set forth in *Standard III.D.* relating to the use of Penal Code section 17(b)(4) are critical in making this determination.

b) Marginally Serious Felonies

In the case of marginally serious felonies for which the prosecutor believes that a state prison sentence is unwarranted, though felony probation might be warranted, the prosecutor should weigh the potential cost of extradition against the following factors:

(1) The existence of an uncompensated financial loss to the victim;

(2) The accused's prior record (including his conduct since the filing of the original charges if there has been a time lapse) and the seriousness of his conduct as it affects the length of a county jail commitment as a condition of felony probation;

(3) The local importance of the case as it affects the deterrent role of punishment and conviction.

If the cost is clearly excessive in relation to all of these factors, extradition should not be sought.

c) Non-Alternative Felonies

Extradition should not be sought in the case of non-alternative felonies, where due to the nature of the crime, the accused is unlikely to be confined for a significant period as a result of a subsequent conviction.

d) Substantial Prison Term (Other Jurisdiction)

The fact that the accused is presently serving a substantial prison term in another jurisdiction should be considered even though local charges might result in a state prison sentence.

The general theory is that, (1) cases warranting misdemeanor sentences do not warrant extradition; (2) cases warranting state prison (or usually California Youth Authority or state hospital) commitments warrant extradition; (3) cases falling in a middle category have to be considered on an individual basis. In the latter situation, the prosecutor must engage in the balancing process described in the Introduction using the factors set forth here. Further, in determine whether to extradite an individual incarcerated in a state prison facility in another state, particularly when a demand for trial has been made pursuant to Penal Code section 1389, a prosecutor should consider the

likelihood of a new conviction significantly increasing the total period of confinement and the deterrent value of prosecuting the accused for the particular offense.

3. Review of Evidence

The prosecutor should determine if he still has a provable case before he seeks extradition, if there has been a passage of time since the original charges were filed.

4. Child Stealing

Notwithstanding the criteria set forth above, the prosecutor should always seek extradition in felony child stealing cases.

5. Unlawful Flight Warrant

The charging deputy should consider requesting a warrant from the local United States Attorney when he has reason to believe the accused has escaped from the state to avoid prosecution. These requests should be limited to significant felony cases or child stealing cases. In each case, the United States Attorney should be consulted, since standards may vary between offices.

H. OFFICIAL MISCONDUCT

1. Unlawful Conduct by Police Officers

Each district attorney's office should establish understandable and acceptable procedures with all local police agencies for handling the investigation of any case involving alleged unlawful conduct by police officers in the performance of their duties. Local problems and experiences should be considered in formulating these procedures. The procedures should be such that the public will be convinced that the law is being faithfully and equitably enforced. The following is one possible procedure which might be followed if local conditions warrant.

a) Investigating Agency

Generally, the official investigation would be made by the law enforcement agency of which the accused is a member. The law enforcement agency would be given a reasonable time to complete this investigation.

(1) However, if a citizen complains directly to the prosecutor's office regarding alleged unlawful conduct involving himself or a member of his family as a victim, the complaint appears to ne supported by substantial evidence, the charge is serious, and the complainant is not satisfied with he progress of the investigation, the prosecutor would conduct an independent, simultaneous investigation.

(2) If the alleged unlawful conduct involves the chief of police or other high level officer, a simultaneous investigation would also be conducted.

(3) Simultaneous investigations also might for certain serious crimes as a matter of course in the discretion of individual offices.

b) Prosecutorial Review for Investigation

Once the investigation is complete, the prosecutor would review the initial investigation, or conduct his own investigation, if the charge is serious. The prosecutor would do this

to be certain that the initial investigation is complete and to determine whether a criminal action is warranted.

(1) Once the prosecutor has completed his review and investigation, a complaint should be filed or the matter referred to the grand jury regardless of the status of any internal disciplinary proceedings, if the evidence shows that a crime has been committed.

> *There are conflicting considerations at stake. The proposed guidelines attempt to strike a balance. On the one hand, a law enforcement agency naturally wants to investigate its own internal problems first and try to resolve them. A presumption that such an investigation would be biased is unfair and unwarranted and needlessly endangers police-prosecutor relations. On the other hand, the prosecutor has a responsibility to members of the public to see that the agents of the criminal justice system respect the laws they are obligated to enforce. Many members of the public unfairly assume that police agencies will not fully investigate charges against their own members. In any event, it is best to remove any possible suspicion of impropriety. The proposed compromise is a fair one.*

2. Unlawful Conduct by Public Officials

the prosecutor should investigate cases of alleged unlawful conduct by public officials in conjunction with the grand jury. However, if the conduct involves a member of the prosecutor's staff or if the prosecutor lacks sufficient investigatory personnel for the type of investigation required, the case may be referred to the Attorney General for investigation and prosecution.

3. Conflict-of-Interest Laws

Since the district attorney has the responsibility to enforce conflict-of-interest laws, he should work closely with the county counsel in all potential conflict-of-interest situations so each will be mutually advised of all circumstances and factors prior to decisions by either, and in order to ensure uniformity of position.

> *Present laws involving conflicts-of-interest of interest of county supervisors create problems. The district attorney is charged with prosecuting violations, but the county counsel frequently furnishes the legal advice to a supervisor upon which he then relies.*

4. Intelligence Matters

Each district attorney should devise internal security measures in the handling of criminal intelligence matters, or other matters of a confidential nature, in order to keep himself fully informed and to protect the confidentiality of information.

I. PRESS RELEASES AT CHARGING STAGE

1. Scope of Dissemination

A.B.A. Standards relating to divulge information to the press may be followed as a general guideline regarding information about new cases. However, it is proper to disseminate factual matters concerning the actual commission of a particular crime, provided such dissemination will not prejudice successful prosecution of that particular case:

a) Unless there is a court order in a pending case preventing a prosecutor from doing so;

b) Unless to do so would constitute a violation of some law, such as Penal Code section 168.

> *See A.B.A., Code of Professional Responsibility, DR 7-107 (1971)*

2. Manner of Dissemination

Individual offices should develop internal guidelines concerning the identity of the individual or individuals authorize to make statements to the press.

ENDNOTES

[1] For convenience, "he," "him," "his," and "himself" applies to male and female persons

[2] See *Ascherman* v. *Bales* (1969) 273 Cal.App.2d 707,708.

[3] See *People* v. *Municipal Court of Ventura County* (1972) 27 Cal.App.3d 193; *Pitchess* v. *Superior Court of Los Angeles County* (1969) 2 Cal.App.3d 653; *People* v. *Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430.

[4] See *People* v. *Municipal Court, supra.*
"The district attorney's function is quasi-judicial in nature...and as we have already stated, he is vested with discretionary power in determining whether to prosecute in any particular case. An unbroken line of cases in California has recognized this discretion and its insulation from control by the courts through the writ of mandamus...[cases cited...]

"Except for the situation where the district attorney is himself charged with a crime, his failure to act, even if improperly or corruptly motivated, is not a matter for the courts. In the final analyses, the district attorney, like a judge, is answerable to the electorate for the manner in which he conducts his office." (Id. at 207, 208.)

Accord, *Boyne* v. *Ryan* (1893) 100 Cal. 265. See also, Discretion in the Charging Decision-Standard 3.9, American Bar Association's Proposed Standards on the Prosecution Function (1971).

"(a) In addressing himself to the decision whether to charge, the prosecutor should first determine whether there is evidence which would support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction...."

[5] The county attorney within his county is a representative of the state. *State ex rel. Johnston* v. *Foster (1984)* 32 Kan. 14, 3 P. 534.

[6] The concept that a prosecutor's decision depends on what he believes will be best productive of law enforcement was judicially sanctioned in *State ex rel. McKittrick* v. *Wallach* (1944) 353 Mo. 312, 323, 182 S.W.2d 313, 319, where the court said

"Such discretion exercised in good faith authorizes the prosecuting officer to personally determine...that a certain plan of action or a certain policy of enforcement will be best productive of law enforcement, and will best result in general law observance."

See generally, Annot. (1944) 155 A.L.R. 10.

[7] The term "prosecutor" is used throughout these Standards to denote district attorneys, city attorneys, and their assistants to deputies.

[8] As part of the project developing these Standards, a survey was conducted of current charging attitudes and practices in the different district attorneys' offices in California. The results of this survey in part formed the basis for these Standards.

[9] In *People* v. *Municipal Court* (1972) 27 Cal.App.3d 193, the court stated at page 206:

"By this holding we do not mean to imply that criminal complaints need take any different form than they presently do, but only that their filing must be approved, authorized, or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual."