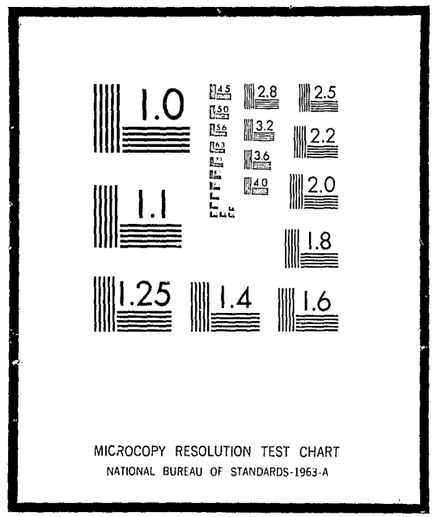

PLEA BARGAINING

A Selected Bibliography

by

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National Criminal Justice Reference Service

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INTRODUCTION

In many courts, approximately 90 percent of criminal convictions are not obtained by the verdict of a jury or the decision of a judge. They are instead based upon the defendant's plea of guilty after plea negotiation or plea bargaining. Plea bargaining is the process by which a defendant pleads guilty in exchange for prosecutorial concessions such as reduced charges or sentence. This process requires the defendant to waive an entire array of constitutional rights, including the right to remain silent, the right to confront witnesses against him, the right to a jury trial, and the right to be proven guilty beyond a reasonable doubt. In addition to requiring the accused to waive such fundamental rights, the plea bargaining process affects other parties involved in the criminal justice system — the victim who has suffered, the police who have gathered evidence, and the public at large. All of these interests must be dealt with justly in the plea negotiation process, or the process is indefensible.

How can the process of plea bargaining be improved? What are the respective roles of the defendant, the defense counsel, the prosecutor, judge, police, and the victim? What rules should govern the plea bargaining process?

This bibliography contains documents that explore these questions and the legal aspects of plea bargaining. Although not a definitive search of the available literature, the referenced documents cover Federal and state rules of procedure, factors influencing plea bargaining, a comparison between the American and English practices, advantages and disadvantages, and the present status of plea bargaining.

All documents have been selected from the National Criminal Justice Reference Service data base. This bibliography is arranged by author; an index is provided to help the reader locate subjects appropriate to his information needs.

These documents are NOT available from NCJRS. To obtain them, see the instructions on the following page. Many of the documents may be found in local, college, or law libraries. A list of the publishers' names and addresses appears in the Appendix.

HOW TO OBTAIN THESE DOCUMENTS

The documents listed are NOT available from the National Criminal Justice Reference Service, except those indicated by the words LOAN or MICROFICHE. Many of them may be found in public, college, or law school libraries. The publisher of a document is indicated in the bibliographic citation, and the names and addresses of the publishers are listed in the Appendix.

- Those documents marked LOAN followed by the NCJ number can be borrowed from the National Criminal Justice Reference Service by submitting a request through a library utilizing the Interlibrary Loan system. For example:

GEORGE, JAMES, JR. and IRA A. COHEN. Prosecutor's Sourcebook. New York, Practising Law Institute, 1969. 2 v. 888 p.
LOAN (NCJ 10753)

- Documents marked MICROFICHE: A microfiche copy of the document may be obtained free of charge from the National Criminal Justice Reference Service. This indicates that the document is NOT available for distribution in any other form. Microfiche is a sheet of film 4 x 6 inches that contains the reduced images of up to 98 pages. Since the image is reduced 24 times, it is necessary to use a microfiche reader, which may be available at a local library. Microfiche readers vary in mechanical sophistication. A sample microfiche entry follows:

ENKER, ARNOLD, Perspectives on Plea Bargaining. In U. S. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts. Washington, U. S. Government Printing Office, 1967, p. 108-119.
MICROFICHE (NCJ 14624)

1. Acceptance of Guilty Pleas. Arizona Law Review, v. 14, no. 3: 543-550. 1972. (NCJ 7616)

The main topics of this article are considerations of the pitfalls inherent in the guilty plea, the waiver of constitutional rights involved, and the problem of the guilty plea in Arizona courts. The author recommends that when accepting a guilty plea State judges should follow the procedures required of Federal judges under Rule 11 of the Federal Rules of Criminal Procedure. Rule 11 sets forth three basic requirements to be met before a guilty plea may be accepted — the defendant must be personally addressed by the trial court; the plea must be entered voluntarily and with an understanding of the charge and the consequences of the plea; and the judge must satisfy himself that a factual basis exists for the plea.

2. ALSCHULER, ALBERT W. The Defense Attorney's Role in Plea Bargaining. The Yale Law Journal, v. 84, no. 6: 1179-1314. May, 1975. (NCJ 16464)

The criminal defense attorney is often seen as a romantic figure — a sophisticated master of the system whose only job is to be on the defendant's side. In accordance with this view, it is common to regard the right to counsel as a primary safeguard of fairness in plea bargaining. The Supreme Court and other observers of the plea bargaining process have relied heavily on the assumption that criminal defense attorneys will, almost invariably, urge their clients to choose the course that is in their clients' best interests. However, this assumption merits examination in terms of the actual workings of the criminal justice system. This article explores the extent to which the presence of counsel does provide a significant safeguard of fairness in guilty plea negotiation and finds that current conceptions of the defense attorney's role are often more romanticized than real. The thesis of this article is that the plea bargaining system is an inherently irrational method of administering justice and necessarily destructive of sound attorney-client relationships. The author contends that this system subjects defense attorneys to serious temptations to disregard their clients' interests — temptations so strong that the invocation of professional ideals cannot begin to answer the problems that emerge. The research for this article consisted of interviews with prosecutors, defense attorneys, trial judges, and other participants in the criminal justice system in ten major urban jurisdictions. The role of the privately retained attorney is first examined. The functions of public defenders, other appointed attorneys who represent indigent offenders, and defendants who represent themselves in the bargaining process are examined and compared to the conduct of private attorneys. This article presents some of the serious problems, incongruities, and ethical dilemmas that the guilty-plea system has created, and the author concludes that nothing short of abolition of plea bargaining promises satisfactory resolution of these problems.

3. ————————. Prosecutor's Role in Plea Bargaining. University of Chicago Law Review, v. 36: 50-112. 1968. (NCJ 14629)

Plea bargaining is discussed, focusing on factors guiding the prosecutor's decision, the flexibility of the practice, and the practice of overcharging. In bargaining and making concessions for pleas, the prosecutor becomes to some degree an administrator, an advocate, a judge, and a legislator. Other factors influence the prosecutor in bargaining to a lesser extent — personal relationships between the prosecutor and defense attorney, attitudes of the police personnel involved, the race and personal characteristics of the defendant, and the desires of the victim. Prosecutors' concepts of the four basic roles vary considerably. Only a few accept the legislative role. The judicial role is unimportant to most. Most agree that the administrative role is the most basic. Prosecutors in the study were virtually unanimous on one point — the strength or weakness of the State's case is the most important factor in bargaining. Since it can be assumed that the chances of the defendant being innocent increase as the state's case weakens, the dangers of false convictions are apparent. Although few would admit to prosecuting an individual while not being personally convinced of his guilt, this often happens in the "heat of the prosecutor's day." Penological factors are not considered in the prosecutor's administrative role. Plea bargaining is more flexible than traditional forms of adjudication. Prosecutors often will bargain after conviction to avoid a possible unfavorable decision on appeal; however, this practice is less frequent than pretrial bargaining.

Although most prosecutors condemn overcharging, they define it as accusing the defendant of a crime of which he is clearly innocent to induce a plea to the "proper" crime. On the other hand, defense counsel identifies "horizontal" overcharging as the unreasonable multiplying of accusations against a single defendant. He may be either charged with a separate offense for every criminal transaction, or a single criminal transaction may be fragmented into numerous component offenses. Defense counsel defines "vertical" overcharging as charging a single offense at a higher level than the circumstances of the case seem to warrant.

Defense counsels agree that prosecutors rarely seek convictions on the original complaint. Prosecutors' motives in plea bargaining are often at variance with their duties as guardians of the public interest. Most prosecutors' careers are relatively short. With an eye towards practice on the "outside," the prosecutors' motives to be liked by other members of the profession may result in unwarranted generosity. Under the plea bargaining system, an objective evaluation of treatment goals never occurs. Plea bargaining merges the function of the criminal justice system into a single judgment often influenced by extraneous factors and personal interests.

4. ————————. The Supreme Court, the Defense Attorney, and the Guilty Plea. University of Colorado Law Review, v. 47, no. 1: 1-71. Fall, 1975. (NCJ 31181)

This article analyzes the Supreme Court's guilty-plea trilogy (Brady v. United States, McMann v. Richardson, and Parker v. North Carolina), as well as a number of subsequent Supreme Court decisions (including Tollett v. Henderson, Robinson v. Neil, Blackledge v. Perry, Ellis v. Dyson, and Lefkowitz v. Newsome). It argues that the Supreme Court has abandoned desirable concepts of waiver in guilty-plea cases and has given unjustified weight to the presence of counsel. A section on The Merits and Demerits of the Knowing Waiver Concept explores problems of finality and habeas corpus jurisdiction, and in considering whether or not a guilty

plea should be held involuntary only when induced by a threat of unlawful action. The article examines the history of the doctrine of unconstitutional conditions, the doctrine of duress in private contract cases, the law of voluntariness applicable to out-of-court confessions, and the Supreme Court's treatment of not-guilty plea waivers of constitutional rights. Among the other topics considered are retroactivity in constitutional adjudication and the requirement of the effective assistance of counsel.

5. AMERICAN BAR ASSOCIATION. Standards Relating to Pleas of Guilty. Chicago, Special Committee on Minimum Standards for the Administration of Criminal Justice, 1968. 78 p. (NCJ 2289)

The American Bar Association's standards and commentary on the plea bargaining process are discussed in this document. Recommendations deal principally with the plea of guilty and to some extent with the related, although seldom used, plea of nolo contendere. They include not only standards for procedures to be followed in taking the plea of guilty, but also standards to govern the practice of negotiating for such a plea, commonly engaged in by prosecutors and defense counsel with a view to reaching an agreement upon which the guilty plea will be tendered.

6. ————————. Standards Relating to the Prosecution Function and the Defense Function. Chicago, Special Committee on Standards for the Administration of Criminal Justice, 1971. 327 p. (NCJ 2293)

Role and function of defense and prosecuting attorneys are discussed in this volume along with duties and functions of defense and prosecuting attorneys. The prosecution section includes the organization and relations with other agencies, investigative functions and decisions, plea discussions, trial, and sentencing. The defense section covers the access to counsel, lawyer-client relationship, investigation, preparation, control and direction of litigation, disposition without trial, and trial and post-conviction remedies.

7. ARCURI, ALAN F. Police Perceptions of Plea Bargaining — A Preliminary Inquiry. Journal of Police Science and Administration, v. 1, no. 1: 93-101. March, 1973. (NCJ 11509)

This is a report of the demoralizing effect negotiated pleas have on police attitudes without affecting actual police performance. The author randomly distributed questionnaires to police officers in Rhode Island and analyzed their responses to 14 questions concerning their attitudes toward plea bargaining. He concluded that the high frequency of plea bargaining, which often accounts for defendants receiving lenient sentences, has a demoralizing effect on police. This demoralizing effect on police attitudes seems to result in negative attitudes toward local justice and the judicial system. These attitudes, however, do not appear to affect actual job performance. A majority of those surveyed felt that plea bargaining should continue.

8. ARIANO, FRANK V. and JOHN W. COUNTRYMAN. Role of Plea Negotiation in Modern Criminal Law. Chicago-Kent Law Review, v. 46, no. 1: 116-122. Spring-Summer, 1969. (NCJ 30300)

This is an analysis of the problems and advantages of plea bargaining, with an emphasis on problems related to whether a guilty plea is entered voluntarily and with full knowledge of the consequences. Related issues discussed include the question of coercion and the possibility of influence exerted by the defense counsel in communicating the plea negotiation offer from the prosecutor to the defendant. The advantages of plea negotiation cited include efficient disposition of pending trials, the avoidance of public trial publicity in certain sensitive cases, its aid to prosecutors in bargaining for information leading to the conviction of others, and the theoretical psychological effect of any admission of guilt as a step toward rehabilitation.

9. BEQUAI, AUGUST. Prosecutorial Decision Making — A Comparative Study of the Prosecutor in Two Counties in Maryland. Police Law Quarterly, v. 4, no. 1: 34-42. October, 1974. (NCJ 16157)

Those factors which affect plea-bargaining by prosecutors in Prince Georges and Montgomery counties are the issues discussed in this article. Some of the most important variables include age of both defendant and complainant, defendant's previous record, strength of the evidence, the defendant's ability to adjust, and the complaining witness. Other factors considered are the sex of both complainant and defendant, the reputation of the defense attorney, and the education level and socio-economic background of the defendant.

10. BISHOP, ARTHUR N. Guilty Pleas in Texas. Baylor Law Review, v. 24, no. 3: 301-341. Summer, 1972. (NCJ 7610)

This is a review of Texas procedures for accepting guilty pleas and a discussion of applicable case law. Texas recently authorized guilty pleas in noncapital cases without the necessity of juries. The defendant can still demand one in such cases and cannot waive one in a capital case. However, most Texas pleas nowadays are directed to the court. While evidence is still required, Texas has fostered a trend that predictably may soon be adopted and used nationwide — the factual stipulation. Texas courts adhere strictly to the statutory procedural requirements to assure that pleas of guilty are entered by persons who are sane and who understand the consequences, and who do so voluntarily without fanciful hopes of leniency.

11. BOND, JAMES E. Plea Bargaining and Guilty Pleas. New York, Clark Boardman Company, Ltd., 1975. 531 p. (NCJ 30404)

The author states that the purpose of his book is to serve as a manual incorporating existing case law, statutes, articles, and studies for those involved with plea bargaining. He says that this volume delineates the roles of participants in the bargaining process — defense counsel, prosecutor, and judge — and provides guidance for the standards of acceptance of guilty pleas and remedies for improvident pleas or broken agreements. The book contains an overview of the guilty plea process;

the constitutional status of plea bargaining; standards for acceptance of guilty pleas; the role and responsibility of defense, the prosecutor, and judge in the guilty plea process; and remedies for improvident pleas. The appendixes contain the American Bar Association standards for criminal justice relating to pleas of guilty, Federal statutes relating to plea bargaining and guilty pleas, and a form for recommended plea-taking procedures. Also included are a bibliography and table of cases.

12. CASPER, JONATHAN D. American Criminal Justice — The Defendant's Perspective. Englewood, New Jersey, Prentice-Hall, 1972. 192 p. (NCJ 11086)

While much has been written about the criminal justice system from the point of view of the police, prosecutors, and court administrators, very little has been written about the process from the defendant's viewpoint. This work examines what the defendant thinks is happening to him, how he perceives the other actors in the criminal justice process, and what he learns from his encounter with the courts. The consensus was that defendants felt their cases were decided more often by bargaining and luck than by legal principles. The implications of this document will be of particular concern to all criminal justice personnel coming into contact with the "consumers" of our court system.

13. Competence to Plead Guilty — A New Standard. Duke Law Journal, v. 1974, no. 1: 149-174. (NCJ 15816)

Sieling v. Eyman, a decision of the Ninth Circuit Court of Appeals, is studied with a conclusion that a practical effect may be to create a class of semi-competent defendants able to stand trial but not plead guilty. In Sieling v. Eyman, it was held that a court may not accept a plea of guilty from a criminal defendant who has been found competent to stand trial unless it also determines that he is competent to make the waiver of constitutional rights inherent in a guilty plea. In reaching its decision, the court relied on the Supreme Court's rendering in Westbrook v. Arizona, which recognized a distinction between a defendant's competence to stand trial and his competence to waive the right to counsel. The Ninth Circuit Court of Appeals concluded that the Westbrook decision would logically apply to the waiver of all fundamental constitutional rights in the course of a trial. The author feels that in fostering a dual standard of competence, the court failed to consider the possibility that the competence standards applied to decisions on constitutional rights should also apply to the determination of the defendant's competence to stand trial. The author argues that the competence to make decisions on fundamental constitutional rights should properly be one of the standards for competence to stand trial.

14. COOK, JOSEPH G. Constitutional Rights of the Accused — Pre-Trial Rights (With 1974 Supplement). Rochester, New York, Lawyers Co-operative Publishing Company, 1972. 572 p. (NCJ 18615)

This survey of the development of Federal constitutional protections for persons accused of crimes and of the current dimensions of these protections includes extensive annotations regarding the application of constitutional principals in all jurisdictions. Representative cases and judicial decisions are cited. The areas discussed are arrest, search and seizure, bail, the nature and cause of the accusation, the

grand jury indictment, the right to a speedy trial, and guilty pleas. An index arranged alphabetically according to subject also is included.

15. Criminal Law — Plea Bargaining — Withdrawal of Guilty Plea. West Virginia Law Review, v. 74, no. 1-2: 196-204. November/January, 1971-72. (NCJ 6485)

In West Virginia, a voluntary guilty plea must withstand the test of whether it was a voluntary and knowing choice among the alternatives available to the defendant. In deciding whether a plea was entered voluntarily, the West Virginia court proposed a subjective process called the totality of circumstances test. This test is an interpretation of the facts surrounding the plea to discern whether the defendant has been misled into pleading guilty. Withdrawal of a guilty plea in West Virginia is allowed only at the discretion of the trial judge. Depriving a court of this discretion will come only upon a showing that the defendant entered his plea under some mistake, misapprehension, promise, or inducement that has worked an injustice.

16. DAVIS, ANTHONY. Sentences for Sale — A New Look at Plea Bargaining in England and America, Part 1. Criminal Law Review, v. 1971, no. 1: 150-161. January, 1971. (NCJ 30298)

The author describes the comparative analysis of the nature and scope of plea bargaining in English and American courts, with emphasis on the guilty plea as a factor in sentencing and the problem of voluntariness of guilty pleas. The author points out that while in English courts an offender's remorse, expressed in his plea of guilty, may properly be recognized as a mitigating factor, there are contradictory opinions on whether the American practice of rewarding guilty pleas with leniency (without looking for evidence of actual remorse or any other mitigating factor) is justified. United States and English case law is cited to illustrate the countries' different stands regarding the determination of the voluntariness of a guilty plea. The English position is that, provided the judge has not intervened, a guilty plea is deemed to have been voluntary if the defendant, properly advised as to the possible alternatives by his counsel, has the freedom in his own mind to choose the plea he will make. The sentencing differential is not itself considered an unfair inducement which would affect that freedom of choice. An indirect (or direct) intervention into the defendant's consideration of his plea by the judge, or a reasonable belief in such an intervention will, if held by the defendant, vitiate a plea of guilty entered under the influence of such intervention or such belief. The author points out that in American courts, on the other hand, a promise does not make a plea involuntary if that plea is freely entered by the defendant, with an awareness of all the relevant facts and the assistance of counsel. So long as there is a real "choice," "freedom" will be assumed. Only when the choice as well as the freedom becomes illusory, as a result of the inducement offered, will such a plea be held involuntary.

17. ————. Sentences for Sale — A New Look at Plea Bargaining in England and America, Part 2. Criminal Law Review, v. 1971, no. 2: 218-228. April, 1971. (NCJ 30299)

This article examines the actual bargaining practices in use in England and America and the reasons behind their use, and then explores and evaluates the effect of plea negotiation on the two judicial systems. The author suggests that the pressure on

American courts caused by a huge backload of cases, the existence of public prosecutors who are "paid for obtaining prosecutions," and the prosecutor's role as finder of fact and sentencer has led to a situation where the courts completely ignore the social importance of at least attempting to ensure that the defendant is punished for what he did, rather than what he is prepared to admit to having done in return for a high sentence concession. He contends that the relative lack of pressure on the English courts, the absence of public prosecutors, and a more flexible sentencing structure have allowed English courts to insist that the charges brought match the facts alleged; therefore, English plea bargaining usually involves the dropping of multiple charges for a guilty plea to a single count.

18. DAVIS, WILLIAM J. No Place for the Judge. Trial, v. 9, no. 3: 22 and 43. May/June, 1973. (NCJ 10621)

The United States District Court Judge for Massachusetts argues against the use of plea bargaining and judicial participation in the process. The main objection to plea bargaining for this author is that it enhances the possibility that an innocent person might plead guilty to avoid the death penalty or to avoid lengthy incarceration. Opposition to judicial participation in the plea bargaining system is based on a belief that sentencing is within the judge's discretion and should not be subject to outside controls. This judge argues that a defendant is not entitled to know what sentence he will receive before pleading to a charge.

19. DEAN, JAMES M. Illegitimacy of Plea Bargaining. Federal Probation, v. 38, no. 3: 18-23. September, 1974. (NCJ 16944)

This article discusses the legitimacy of plea bargaining, its operation, and legal status as reflected in recent Supreme Court decisions. The author notes the dependence of the court system on plea bargaining and traces the gradual development of this procedure. Supreme Court decisions that have basically served to legitimize plea bargaining are also reviewed. Several approaches to diminishing the need to rely upon plea bargaining also are presented.

20. Deferred Prosecution and Deferred Acceptance of a Guilty Plea. Honolulu, Hawaii, Law Enforcement Planning Office, 1971. 62 p. (NCJ 2555)

Explanation and evaluation of deferred prosecution and deferred acceptance of a guilty plea in Hawaii are discussed. Both terms are defined in full and the procedure for program implementation is outlined. Program success is discussed in terms of recidivism rates, and other data is supplied about program participants, such as age and offense. Included are recommendations of criteria for determining participant eligibility, a recommendation that the programs remain discretionary in nature and not be mandated by law, and that marginal individuals be given a chance in one of the programs. The appendixes provide forms to be filled out by participant and court personnel.

21. Elimination of Plea Bargaining in Black Hawk County: A Case Study. Iowa Law Review, v. 60, no. 4: 1053-1071. April, 1975. (NCJ 31912)

The institution of plea bargaining is believed by many to be indispensable to the efficient administration of justice in the United States. With the aid of objective data obtained from the northeast Iowa county of Black Hawk, this article examines the validity of such a belief. The examination involves three steps of analysis: a brief judicial history of plea bargaining is presented, social costs and benefits are explored to assess their value as an established institution in our criminal justice system, and cost/benefit analysis is tested by statistical data obtained from the criminal dockets of the county. It is shown that some of the traditional notions that surround the institution of plea bargaining are not supported by objective data.

22. ELLENBOGEN, JOSEPH and ELSIE ELLENBOGEN. Perspective on Plea Bargaining. Crime and Corrections, v. 1, no. 1: 5-10. Spring, 1973. (NCJ 12128)

Plea bargaining, roles of the parties, and an argument that the process may be destructive of certain fundamental rights of the accused are described. The authors contend that this type of negotiated justice discriminates against the lower classes who, unable to make bail, may be weakened by a jail experience to such an extent that a "deal" will seem attractive. In addition to this criticism, they add that the process may deprive an accused of his right to plead not guilty and his right to a jury trial. Finally, the blind acceptance of the bargain as presented to the court by the judge may appear to the defendant as the ultimate failure of the criminal justice system. The authors conclude that the purpose of plea bargaining, to alleviate crowded court dockets, might be better served by reform of the criminal codes.

23. ENKER, ARNOLD. Perspectives on Plea Bargaining. In U. S. President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts. Washington, U. S. Government Printing Office, 1967. p. 108-119. MICROFICHE (NCJ 14624)

This document describes the negotiated plea, administrative considerations, and the various legal issues associated with the practice. The author outlines three common motives for bargaining held by defendants — (1) they seek less serious or fewer charges than originally presented in return for their guilty plea; (2) they may offer to plead guilty to a certain offense to maximize judge sentencing discretion, where a mandatory sentence would accompany conviction on the original counts; (3) the defendant may desire to plead guilty to an alternative offense when a conviction on the original charge would be accompanied by undesirable, repugnant collateral aspects, as in sex crimes. The serious problems accruing to the criminal justice system by these changes in the conviction label are discussed as are the useful ends of plea bargaining. The author counters several often heard criticisms of the practice of bargaining. He contends that the risk that innocent defendants will plead guilty, while of obvious concern, is comparable to the anxiety that accompanies trials, which do not always result in truthful or accurate verdicts. In some respects, adjudication by bargaining may be more rational than by trial. A major criticism of plea bargaining is its lack of visibility. Professor Enker argues that while the process is indeed less visible to the public and law professors, it is more visible to the parties most directly involved and affected. On the issue of voluntariness, notions of dignity seem to require that the defendant be allowed to judge and act intelligently

in his own self interest, with adjudication by trial viewed as an available, rather than a preferred or desired procedure. The practice is ripe for revision and reform. The author suggests that three key areas should be explored by any examination — early development and agreement on facts by the prosecution and the defense, free exchange of ideas, and early participation in the process by the judge. The author contends that it would not be desirable to lay down a broad constitutional dictum forbidding the practice. It would be a mistake to push valid legal or constitutional insights to the ultimate of their logic. Accommodation of conflicting interests is a more sensible pursuit.

24. ERICKSON, WILLIAM H. Finality of a Guilty Plea. Notre Dame Lawyer, v. 48, no. 4: 835-849. April, 1973. (NCJ 15407)

The 17 American Bar Association standards for criminal justice, which relate to the acceptance of pleas of guilty in criminal proceedings, are the main topics of this article. These standards are designed to assist judges, prosecutors, and defense counsel in arriving at fairness and accuracy in entering guilty pleas while minimizing post-conviction contests as to finality. Included in this article are discussions of plea bargaining, voluntariness of the guilty plea, and pretrial discovery. The possible grounds for post-conviction review of a guilty plea are also described. Several illustrative court decisions are cited.

25. FOLBERG, H. JAY. Bargained for Guilty Plea — An Evaluation. Criminal Law Bulletin, v. 4, no. 4: 201-212. May, 1968. (NCJ 30297)

This paper evaluates the policy desirability of negotiated pleas based on an analysis of the guilty plea process in terms of the due process features of accuracy, fairness, and insulation against corruption and abuse. The author explores the appropriateness of plea bargaining in our system of criminal administration and the potential evils generated by the practice. He also examines the major arguments in favor of plea negotiation and looks at their common premise — the need of plea negotiation to sustain an adequate flow of guilty pleas in a system of limited resources. Finally, he reviews statutory and practical variations in the system, as practiced in some jurisdictions, which appear to be a reasonable alternative to the need for guilty plea negotiations. It is concluded that if one accepts that guilty plea negotiations are not the most appropriate method to administer criminal law in our society, then the burden is created to establish their necessity for the operation of our system of justice. The need for guilty plea bargaining has, it appears, been assumed rather than adequately explored and proved.

26. GALLAGHER, KATHLEEN. Judicial Participation in Plea Bargaining — A Search for New Standards. Harvard Civil Rights — Civil Liberties Law Review, v. 9, no. 1: 29-51. January, 1974. (NCJ 30296)

This article suggests standards to maximize the benefits and fairness of conviction without trial through exclusion of the judge in the plea negotiations and an open and contractual approach to such negotiations. It is generally recognized that judicial participation in the plea negotiation process creates due process problems. Two opposing solutions have generally been suggested. Some commentators argue that the trial judge should be moved from his present informal, loosely defined role to

the center of the plea bargaining system. This article generally supports the opposite solution: the trial judge should be totally excluded from pre-plea negotiations. These alternatives are analyzed from two different perspectives. First, the constitutional questions are explored. Then a brief consideration of the validity and application of recent contractual approaches to plea bargaining is undertaken. The author argues that a pre-plea conference before an impartial hearing examiner could be used to set forth conditions of the plea negotiation, thereby ending the defendant's danger of "pleading in the dark," and reducing the coercive power of the prosecutor and judge. She further states that removal of the trial judge from pre-plea negotiations is a vital step toward ensuring that the guilty plea meets both constitutional and contractual requirements.

27. ————. Voluntary Trap. Trial, v. 9, no. 3: 23-26. May/June, 1973. (NCJ 10620)

Problems resulting from sentencing promises by trial judges during plea negotiations are analyzed, and several remedies are suggested to protect the defendant's rights. The Supreme Court has mandated that to preserve the defendant's due process rights, trial records must show that guilty pleas were entered voluntarily, intelligently, and understandingly. Difficulties in meeting the voluntary standard are encountered when judges tender sentencing promises during plea bargaining. The coerciveness inherent in such situations has led to two lines of appellate decisions limiting trial judge discretion in this area, those which bar judicial participation in plea negotiations completely, and those which hold judicial promises to be only one factor whether or not a plea is voluntary. It is suggested that the best solution to this problem is to bar the trial judge from plea negotiations and to bind him to impose a sentence no greater than that recommended by the prosecutor. If the prosecution recommendation is denied, the defendant should be given the opportunity to withdraw his plea.

28. GEORGE, JAMES, JR. and IRA A. COHEN. Prosecutor's Sourcebook. New York, Practising Law Institute, 1969. 2 v. 888 p. LOAN (NCJ 10753)

All areas of criminal justice administration are presented, as is the effect of legal developments under the modern court and Congress. Included are works by prosecutors, judges, lawyers, and legal scholars on the subjects of basic prosecutorial functions and techniques. The material is gathered from revisions of outlines and papers delivered before seminars sponsored by the National District Attorneys Association. Essays on the role of the prosecutor at preliminary proceedings, such as plea negotiations and bail hearing, are presented in volume 2.

29. GOODARD, WENDELL H. Criminal Procedure — Plea Bargaining. California Law Review, v. 60, no. 3: 894-900. May, 1972. (NCJ 6938)

The Law Review discusses standards for plea bargaining in California in light of recent United States Supreme Court opinions. The article analyzes a specific case on plea bargaining and the appropriate standard to be applied in plea bargaining cases. First, the author details the majority opinion in light of the standard laid down by the Supreme Court and a California court decision explicating the standard.

The author then discusses the dissent and its contention that the California case explaining the standard for plea bargaining went too far in light of subsequent Supreme Court cases. In the author's conclusion, he questions the validity of the existing California standard as it was reaffirmed in the case analyzed by the review.

30. Guilty Pleas. Journal of Criminal Law, Criminology and Police Science, v. 61, no. 4: 521-526. December, 1970. (NCJ 3508)

This article discusses the redefinition of the concepts of voluntariness and intelligence in pleading, and its effects on Federal habeas corpus proceedings. Three Supreme Court cases — McMann v. Richardson, Brady v. United States, Parker v. North Carolina — narrow the possibility of obtaining habeas corpus hearings. The court decided that an accused who pleaded guilty with the advice of reasonably competent counsel, even if motivated by a coerced confession or fear of a harsh sentence, relinquished his right to review.

31. HAAS, HARL. High Impact Project Underway in Oregon — "No Plea Bargaining Robbery and Burglary." The Prosecutor, v. 10, no. 12: 127-128. 1974. (NCJ 14676)

This document discusses the responsibilities of a special prosecution unit for case preparation and trial of target crimes, home burglaries and theft offenses, and armed robberies. Three broad goals of the project are to improve the quality of cases coming to trial by providing legal advice and casework assistance to police investigators, to provide swift and appropriate prosecution of target crimes, and to reduce negotiated pleas. The planners hope to determine whether or not plea bargaining is an institutionalized myth or a positive factor in efficient and just prosecution.

32. HOLDEN, MATTHEW, JR. and others. Politics of Prosecution — A Bibliographic Working Paper — A Draft. Detroit, Wayne State University, Department of Political Science and Center for Urban Studies. MICROFICHE (NCJ 17282)

This is an annotated bibliography of 105 articles dating from the Second World War to the present, with notes for a research program on political aspects of prosecution. Topics covered in the bibliography include the background of the prosecutor's office, the recruitment and social backgrounds of prosecutors, the definition of the prosecutor's roles, prosecutorial discretion, and plea bargaining. Prosecutorial discretion in the issuance of warrants, the prosecutor's conduct of the trial proceeding, judicial control over prosecutors, administrative control over prosecutors, allocations of authority among prosecutors, and general articles related to prosecution also are included.

33. The Influence of the Defendant's Plea on Judicial Determination of Sentence. The Yale Law Journal, v. 66, no. 1: 204-222. November, 1956.

This article is a review of the results of a survey of 240 Federal district judges conducted by the Yale Law Journal. Of the 140 judges replying to the questionnaire,

66 percent considered the defendant's plea a relevant factor in local sentencing procedure. These judges indicate that a defendant pleading not guilty may incur additional punishment because he displays an uncooperative attitude, commits perjury, asserts a frivolous defense at trial, reveals the circumstances of his crime, or does not contribute to the efficient administration of justice. Each of these rationales is discussed. The conclusion is that "... in view of the inequities that the policy fosters, courts should not award sentencing concessions to defendants who plead guilty." Answers to many of the questions contained in the survey are in the footnotes.

34. KATSH, ETHAN, RONALD M. PIPKIN and BEVERLY S. KATSH. Classroom Strategies — Guilt by Negotiation — A Simulation of Justice. Law in American Society, v. 3, no. 2: 23-28. May, 1974. (NCJ 14696)

A game to introduce students, who assume the roles of prosecutor, trial judge, defendant, and defense counsel, to the practice of plea bargaining is described in this article. Players are introduced to considerations such as court dockets, time limitations, the location of bargaining, prosecutorial concessions, record keeping, and the requisites for accepting a valid guilty plea.

35. KATZ, LEWIS R., LAWRENCE LITWIN, and RICHARD BAMBERGER. Justice Is the Crime — Pretrial Delay in Felony Cases. Cleveland, The Press of Case Western Reserve University, 1972. 536 p. (NCJ 7633)

This extensively documented report on the administration of felony cases describes the lengthy pretrial process and suggests reforms to ensure a speedier disposition. Each aspect of the pretrial procedure in felony cases is evaluated. The effect of delay on the individual and society and the way in which this delay undermines the right to a speedy trial are discussed. The protracted process of deciding the charge, including police and prosecutory decisions, pretrial conferences, grand jury indictment, and preliminary hearings, is described. One chapter covers the problems in the period from indictment to trial, which include discovery procedures and plea bargaining. Reform measures suggested range from the expansion of the booking procedure and elimination of the preliminary arraignment to the elimination of money bail and the standardization of plea negotiations. Appendixes include statistical analyses, a state-by-state survey of pretrial procedures, and an extensive bibliography.

36. KLONOSKI, JAMES, CHARLES MITCHELL, and EDWARD GALLAGHER. Plea Bargaining in Oregon — An Exploratory Study. Oregon Law Review, v. 50, no. 2: 114-137. Winter, 1971. (NCJ 5160)

This document is an analysis of questionnaires returned by Oregon district attorneys on their practices of plea bargaining. Plea bargaining, as revealed in this survey, is extensive in Oregon, slightly more so in the large counties. Most district attorneys will usually plea bargain, except perhaps in those criminal areas that arouse a strong revulsion on the part of the public, such as crimes involving violence. In Oregon, participants in the plea-bargaining process are usually the prosecutor and defense attorney, although judges and defendants are occasionally involved. Main

controversies concerning the role of the participants include questions such as — Should the district attorney initiate plea bargaining? Does a lawyer's style affect subsequent outcomes in plea bargaining? Is it proper for the defense counsel to withold information in plea bargaining? Should the judge discuss sentencing? As to all the above questions, there was no consensus among prosecutors. Benefits from the plea bargaining process are substantial. Much money and time is saved and the accused also benefits in that he may be protected from adverse publicity or obtain a reduced charge which lacks social stigma and the possibility of a heavy maximum penalty. On the other hand, the disadvantages are also numerous. The method of payment of court-appointed attorneys may affect their disposition towards plea negotiations. Young, inexperienced attorneys might stretch out cases to gain courtroom experience to the detriment of their clients. Through fear and lack of understanding, the defendant could fail to comprehend the full consequences of his guilty plea. And finally, the community interest may suffer from criminals being turned prematurely back into the community by overworked district attorneys.

37. KUH, RICHARD H. Plea Bargaining — Guidelines for the Manhattan District Attorney's Office. Criminal Law Bulletin, v. 11, no. 1: 48-61. January/February, 1974. (NCJ 16282)

These guidelines indicate the powers of assistant New York City district attorneys in plea negotiations and some standards for their application. Richard H. Kuh, when serving as district attorney for Manhattan, issued guidelines to his staff for conducting plea bargaining. These guidelines are reproduced in this article in their original memorandum format. The six sections deal with general principles governing plea negotiations, defendants charged with multiple crimes, reduction of felonies, a pre-pleading report (analogous to a presentence report), procedure in court, and reduced pleas concerning certain specific crimes. In New York County, plea bargaining starts with a provable offense, not necessarily the crime originally charged. The assistants are permitted to reduce a charge one class (from a class A felony to a class B felony, for instance), and a further reduction is permissible after consultation with appropriate superiors. If a reduction of more than one class is sought, the defendant must agree to a pre-pleading report. This report allows both prosecution and defense to engage in informed plea bargaining and can serve as the basis for the statement in support of accepting the lesser plea which the assistant must enter on the court record. While this memo is based on New York law and court practices, it is an interesting example of one prosecutor's efforts to establish uniformity and serve the best interests of justice in this important area.

38. MADIGAN, MICHAEL J. Honest Way. Trial, v. 9, no. 3: 18-19. May/June, 1973. (NCJ 10623)

Some suggestions are made for more clearly delineating the responsibilities of the parties in the plea bargaining system and for imposing more standard sentences. An openly and honestly conducted plea bargaining system requires a definite plea agreement to be presented to the trial judge. If the judge ratifies the agreement, it would serve as a sentence guarantee for the accused.

39. MANAK, JAMES P. Plea Bargaining — The Prosecutor's Perspective. Chicago, National District Attorneys Association, n.d. 22 p. (NCJ 11103)

The advantages and disadvantages of the plea bargaining procedure for the courts, the prosecution, and the defense are reviewed. Among the issues discussed are overcharging by police or prosecutor, lighter sentences for those who plead, and what constitutes a knowing and informed plea. Summaries of Supreme Court cases on plea bargaining are provided as are detailed guidelines for negotiation.

40. MATHER, LYNN M. Some Determinants of the Method of Case Disposition: Decision-Making by Public Defenders in Los Angeles. Law and Society Review, v. 8, no. 2: 187-216. Winter, 1973. (NCJ 14572)

Field work for this paper included interviews with attorneys, judges, and court staff; analysis of case files; some statistical analysis; and five months of observation in court. Two factors were found to be crucial for choosing the method of disposition — the strength of the prosecution's case and the seriousness of the case in terms of the probable punishment on conviction. A typology of cases was developed to show how public defenders use these factors to predict case outcomes. Adversary trial is recommended mainly in three situations where the risks of trial are low and the possible gains are high. First, there is the "light" case where there is reasonable doubt that the defendant committed any crime. The second situation is the "serious" case where there is a good chance of conviction and where a sentence in the local jail cannot be obtained through bargaining. The third instance is a "serious" case where there is reasonable doubt that the defendant was involved in the crime.

41. MORRIS, NORVAL. Future of Imprisonment. Chicago, University of Chicago Press, 1974. 150 p. (NCJ 16220)

The author's principal discussion emphasizes a new model for imprisonment to replace the present archaic and anachronistic model. However, he relates plea bargaining directly to the sentencing system. In Chapter 2, under a paragraph titled Sentencing: Plea Bargaining, the author states, "The inequities and awkward compromises involved in charge and plea bargaining...suggest that the strongest defense of our present...practice that is offered is based on expediency and on the reluctance of the community to allocate sufficient resources to the determination of guilt or innocence and to the settlement of the appropriate punishment for guilt." He feels that the process can be reformed by including at least four parties in the negotiations — judge (not the trial judge), prosecutor, defense counsel, and offender. He also stresses that the victim should be present to be heard, as part of the criminal justice system, on the suitability of any pretrial settlement and on the acceptability of any compensatory arrangements. The author concludes that there can be no rational future for imprisonment unless present plea bargaining practices, which are the main dispositive technique for sentencing criminals, are rendered principled and orderly, and unless sentences imposed at trial...are set free from the crippling link between prison program and release date.

42. NEUBAUER, DAVID W. Criminal Justice in Middle America. Morristown, New Jersey, General Learning Press, 1974. 320 p. (NCJ 12591)

This overview of the criminal justice system describes its functions and its participants in a small American town. Studies of the administration of justice have not been distributed across the spectrum of the criminal justice process. The author further notes that studies of crime and police; the basic inputs into the criminal courts; and studies of prisons, corrections, and rehabilitation abound. Coverage of what happens between arrest and prison, however, has been largely neglected. Professor Neubauer leads the reader through the criminal process in Prairie City, a fictitious medium-sized industrial town in Illinois. The study discusses the interrelation of justice and politics and how the decision makers interact. The author examines the initial charging process, prosecution screening, and the effects of these procedures on later stages of the system. Emphasis is placed on plea bargaining as a functional element of the criminal justice system. The bargaining roles of the prosecutor and defense attorney are defined, as are their positions and goals in the negotiations.

43. NEWMAN, DONALD J. Conviction — The Determination of Guilt or Innocence Without Trial. Boston, Massachusetts, Little, Brown and Company, 1966. 259 p. (NCJ 30618)

This document contains a description of the non-trial adjudication practices — the guilty plea and the acquittal of the guilty — in Kansas, Michigan, and Wisconsin. The author discusses the guilty plea process, including plea bargaining, trial judge discretion in acquitting or in reducing charges against defendants, trial judge use of his acquittal power to control other parts of the criminal justice system, and the role of the defense counsel, particularly in plea bargaining. The author argues that all three processes are characterized by informality and wide variation in practices and suggests that more attention be given in research and by formal lawmaking agencies to these informal processes because of their significant use in the criminal justice system.

44. ————. Informal Bargaining. In Radzinowicz, Leon and Marvin E. Wolfgang, Eds. Crime and Justice. v. 2, The Criminal in the Arms of the Law. New York, Basic Books, Inc. 1971. p. 425-436. (NCJ 30648)
Reprinted from Pleading Guilty for Considerations: A Study of Bargain Justice. Journal of Criminal Law, Criminology and Police Science. v. 46: 781-790. 1956. (NCJ 7145)

Based on interviews with 97 felons convicted in one court district, this paper examines the processes by which pleas are negotiated and the factors influencing them. It was noted that 93.8 percent of the 97 convictions were obtained through guilty pleas: 38.1 percent of these were changed from a not-guilty plea. Men entering an initial plea of not guilty were usually represented by defense attorneys. The eventual disposition of the two types of cases were not found to differ. The initial guilty plea group and those without counsel were more often recidivists, while those pleading innocent or retaining counsel were most often experiencing their first conviction. The article examines the reasons for pleading guilty without a lawyer, the conviction process of those who retained counsel, the types of bargaining where an attorney was retained, and the types of informal conviction agreement reached. The most

significant general finding of the study was that the majority of the felony convictions in the district studied were compromise convictions, the result of bargaining between defense and prosecution. This accounted for over half the cases studied. The implications of the informal convictions process to criminology are discussed.

45. ———————. Reshape the Deal. Trial, v. 9, no. 3: 11-15. May/June, 1973. (NCJ 10626)

The nature and extent of the negotiated guilty plea and an examination of the bargaining motivations of the guilty defendant and of the State are the main topics of this article. Plea bargaining is argued to be and should be an acceptable tool of the criminal justice system. The negotiated plea allows defendants to avoid inappropriately excessive mandatory sentences and a criminal label of particularly damaging consequences. Plea bargaining leads to a more efficient, cheaper, and more certain disposition of the case than a contested case and brings the individualization of justice into the court system.

46. OAKS, DALLIN H. and WARREN LEHMAN. A Criminal Justice System and the Indigent. Chicago, University of Chicago Press, 1968. 203 p. (NCJ 2366)

The criminal justice system in the large city is examined with emphasis on the indigent defendant. The discussion on plea bargaining in Chapter 4 questions the disparity between the decline in guilty convictions by trial and the increase of guilty pleas. Logically, if guilty convictions are going down, the defendant is inclined to take his chances and plead not guilty, whereas the opposite is true. The conclusion seems to be that defendants are offered more favorable inducements to plead guilty. Two types of incentives may be considered: a reduction of the charge or a reduction of the probable sentence. The authors examine the various alternatives between why the conviction rate is going down while guilty pleas are going up. The authors use tables and graphs to illustrate their theories.

47. OHLIN, LLOYD E. and FRANK J. REMINGTON. Sentencing Structure: Its Effect Upon Systems for the Administration of Criminal Justice. Law and Contemporary Problems, v.23, no. 3: 495-507. Summer, 1958.

The resolution of a number of basic issues is important to the formulation of a sound sentencing structure. The article lists the following questions that must be answered: Where should the responsibility for the sentencing decision be vested? What alternatives should be made available to the responsible agency? What limitations should be placed on the severity of the sentence? What criteria should guide or control the sentencing decision? The article discusses the functions of sentencing as it affects the community and the offender, the administrative characteristics that bear importantly upon sentencing, and analyzes the sentencing structures in terms of their effect on criminal justice administration. The article concludes that adequate resolution of the difficult problems of sentencing requires continuing effort to decide the principal objectives of sentencing, particularly as they relate to the individual offender and protection of the community. The decisions concerning these objectives are not enough in themselves, however, for they must be capable of implementation by administrative means. The objectives also must be evaluated for their impact on the total criminal justice system.

48. PETERSON, RUSSEL W. Bad Bargain. Trial, v. 9, no. 3: 16-17 and 19. May/June, 1973. (NCJ 10624)

The National Advisory Commission on Criminal Justice Standards and Goals has established standards for plea bargaining until such time as the practice is eliminated. The standards primarily call for exposing the negotiation process to scrutiny by the court and the public.

49. Plea Bargaining Mishaps — The Possibility of Collaterally Attacking the Resultant Plea of Guilty. Journal of Criminal Law and Criminology, v. 65, no. 2: 170-180. June, 1974. (NCJ 16088)

This is a survey of Federal and Illinois law dealing with the collateral attack of guilty pleas subsequent to different kinds of plea bargaining mishaps. Mishaps may result from the promises of the prosecution, from the promises of the police or investigators, from the defendant's false belief in the existence of a bargain, or from judicial participation in the plea bargaining process. The defendant should be granted relief if the prosecutor or police break their promises. In the latter case the defendant must show that he was dealing with an authorized agent of the prosecutor. A mistaken belief in the existence of a deal is usually not sufficient for collateral attack. The fact that a judge participated in the plea bargaining process is not necessarily sufficient for attack because some jurisdictions consider it desirable for the judge to participate if the process has been initiated by the two parties. A judicial promise in this stage must be kept. Non-collateral avenues of attack, such as habeas corpus petitions and motions to withdraw a plea of guilty, are also discussed.

50. Plea Bargaining — Proposed Amendments to Federal Criminal Rule 11. Minnesota Law Review, v. 56, no. 4: 718-737. March, 1972. (NCJ 6930)

This article is an examination of Federal Criminal Rule 11, which recognizes the propriety of plea bargaining and sets forth a procedure for its implementation. Rule 11 now provides that a defendant may plead guilty, not guilty, or nolo contendere. The court has the power to reject a plea of guilty or nolo contendere and must not accept either without first determining from the defendant that the plea is voluntarily and understandingly made and that there is a factual basis for the plea. The present rule was revised in 1966 in an attempt to insure that the guilty plea was based on an informed decision. Proposed Rule 11 contains two distinct provisions — one applying recent court decisions to the current provisions of Rule 11 and the other creating a procedure for recognizing and implementing court-approved plea bargaining.

51. PURVES, R. F. That Plea-Bargaining Business — Some Conclusions from Research. Criminal Law Review, v. 1971, no. 3: 470-475. August, 1971. (NCJ 30301)

From an examination of 112 British cases in which the defendants changed their pleas from not guilty to guilty in a plea bargaining situation, the author draws several conclusions on the nature of plea bargaining in Britain. The author states that there was no evidence that the police behaved aggressively in order to induce a defendant to change his plea. It is also asserted that there is no evidence that the English plea bargaining system operates to deny the defendant his right to "put the prosecution to

its proof." Some justification was found for the objection that the defendant is not allowed enough time for due consideration of all aspects of the negotiation. Finally, the author stresses that the United States plea bargaining process differs significantly from the British process and argues that the British process eases the administration of justice without prejudicing the rights of the innocent or causing injustice to the guilty.

52. Restructuring the Plea Bargain. Yale Law Journal, v. 82, no. 2: 286-312. December, 1972. (NCJ 8272)

This critique of the present system suggests that, since the plea bargain is in reality a sentence determination, a formal judge-supervised hearing should be held. The author outlines the content of his pre-plea hearing, discusses the benefits that would result, and responds to possible criticisms of the hearing.

53. ROSETT, ARTHUR. The Negotiated Guilty Plea. The Annals: Combatting Crime, v. 374: 70-81. November, 1967.

"A procedure resembling plea bargaining is needed," claims the author, "to provide a place in the criminal process for ameliorative discretion to work, but existing practice is badly in need of reform." He discusses the President's Commission on Law Enforcement and Administration of Justice, which concludes that such reform is possible. The recommendations of the commission are designed to make these negotiations a legitimate part of the system, to exploit their potential for improving decisions on what is to be done with the convicted offender, and to design a more suitable role for the trial judge. "When plea bargaining is considered in the setting of the criminal justice system," says the author, "it becomes apparent that procedural reform will not suffice without additional men and money. Moreover, changing the plea system brings to the surface troublesome questions concerning the position and function of the prosecutor, defense counsel, and judge. Resolution of these issues must accompany procedural reform."

54. ROTHBLATT, HENRY B. Bargaining Strategy. Trial, v. 9, no. 3: 20-21. May/June, 1973. (NCJ 10622)

This is a short guide for defense counsel on effective techniques for plea bargaining to ensure the maximum amount of leniency and justice for his client. Defense counsel is advised to be familiar with those considerations which make plea bargaining attractive to the prosecution and to recognize and exploit weaknesses in the prosecution's case. The defense counsel is also urged to consider carefully all factors upon which a final bargain will depend and dismiss himself from a case if he is unable to effectively guide his client.

55. SHIN, H. JOO. Do Lesser Pleas Pay — Accommodations in the Sentencing and Parole Processes. Journal of Criminal Justice, v. 1, no. 1: 27-42. March, 1973. (NCJ 9721)

This article contains an analysis of differences in sentence lengths or actual incarceration according to original charge, type of plea, conviction charge, and magnitude of charge reductions. The study shows that charge reduction may result in directly reducing the maximum sentence possible and indirectly reducing the actual amount of time served. There are indications, however, that the parole process tends to neutralize the sentence differentials associated with charge reduction. The ratio between the time served and the sentence imposed tends to get higher as the magnitude of charge reduction increases. Statistical tables are included.

56. SKOLNICK, JEROME H. Social Control in the Adversary System. In Cole, George F., Ed. Criminal Justice — Law and Politics. North Scituate, Massachusetts, Duxbury Press, 1972. p. 247-271. (NCJ 25807)

Based on a 1962 study of the courts in a California county, this paper describes and analyzes the outstanding features of the adversary system and examines the types and causes of deviation from the adversary model. The basic norm of the adversary system of justice should be one of conflict and challenge between prosecution and defense. However, as in all institutions based on conflict, there is a problem of conflict maintenance or of the control of tendencies toward cooperation. The pressures on the prosecutor to reduce conflict are first examined. Prosecutor-defense relations are then examined with the issue of "deviance" from conflict norms as the principal subject. The conflict model is also analyzed for various categories of defense attorney. The principal theme of the paper is that administrative requirements of American criminal justice make for a reciprocal relationship between prosecutor and defense attorney that strains toward cooperation; that this cooperation is not based mainly on the needs of the state or the defendant; and that the public defender as an institution does not significantly differ from other "cooperative" defense attorneys.

57. SMITH, JAMES M. and WILLIAM P. DALE. Legitimation of Plea Bargaining — Remedies for Broken Promises. American Criminal Law Review, v. 11, no. 3: 771-779. Spring, 1973. (NCJ 10999)

Problems and injustices of current plea bargaining procedures are discussed with possible solutions. The problems of unkept bargains, misunderstandings, and misrepresentations are rooted in the secretive approach that courts and participants have historically taken to plea negotiations. Its prevalence and importance require greater attention to the realities of plea bargaining. The autnors recommend adoption of preventive measures to eliminate many of the uncertainties and exigencies of the negotiated plea. One of these measures would be to set down the plea negotiations in writing, divulge the results to the court, and incorporate the written agreement into the official court record. Other areas discussed are theories of relief based on standards of voluntariness and procedural fair play, and judicial participation in plea negotiations.

58. THOMAS, ELLEN S. Plea Bargaining — Clash Between Theory and Practice. Loyola Law Review, v. 20, no. 2: 303-312. 1974. (NCJ 14914)

This is a critique of the practice of plea bargaining as contrary to the presumption of innocence and unlikely to be engaged in knowingly, intelligently, and voluntarily. In addition to the effects on the defendant, the author notes the problems for prosecutors and judges in current practice and in the American Bar Association standards relating to pleas of guilty.

59. Unconstitutionality of Plea Bargaining. In Criminal Law Selected Essays. Cambridge, Massachusetts, Harvard Law Review Association, 1972. p. 494-518. (NCJ 10686)
Reprinted from Harvard Law Review, v. 83: 1387-1411. April, 1970. (NCJ 8880)

Plea bargaining is described as producing tension between judicial administrative economy and constitutional values. This article describes briefly the institution of plea bargaining, analyzes reforms recently proposed by the American Bar Association, evaluates the constitutionality of curtailment of individual rights to promote efficiency in the administration of justice, and discusses the problem of enforcing a judicial determination that plea bargaining is unconstitutional. It is argued strongly that plea bargaining nullifies constitutional guarantees for large numbers of defendants. Although the author agrees that it would cause severe stress on the criminal justice system to eliminate plea bargaining, he contends that it is the Legislature's responsibility to seek other means of increasing administrative efficiency.

60. U. S. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS. Courts. Washington, U. S. Government Printing Office, 1973. 358 p. (NCJ 10859)

A major restructuring and streamlining of procedures and practices in processing criminal cases at State and local levels is proposed by the National Advisory Commission on Criminal Justice Standards and Goals. The proposals of the Commission appear in the form of specific standards and recommendations — almost 100 in all — that spell out in detail where, why, how, and what improvements can and should be made in the judicial segment of the criminal justice system. The report on courts is a reference work for the practitioner — judge, court administrator, prosecutor, or defender — as well as the interested layman.

61. VETRI, DOMINICK R. Guilty Plea Bargaining: Compromises by Prosecutors to Secure Guilty Pleas. University of Pennsylvania Law Review, v. 112, no. 6: 865-908. April, 1964.

The article emphasizes that in order to stay in business, the prosecutor must bargain with the offender to obtain guilty pleas. Such pleas are prevalent in all courts. According to the author, pleas of guilty and nolo contendere represented an average of 79 percent of the dispositions of all criminal defendants for the years 1956 through 1962. An analysis of plea bargaining is given, including typical plea arrangements,

sentence recommendations, plea to a lesser offense, dismissal of charges in an indictment, information or other charging paper, and judicial consideration of a guilty plea in determining sentence. Also discussed are current rules governing guilty pleas, understanding of the waiver of constitutional rights, and withdrawal of guilty pleas. Plea bargaining is further appraised as to the propriety of the practice, and suggested safeguards are offered. The discussion on safeguards covers voluntariness, responsibilities of the prosecutor, the role of defense counsel, and a more responsible role for the judge.

62. WHITE, WELSH S. A Proposal for Reform of the Plea Bargaining Process. In Susman, Jackwell, Ed. Crime and Justice. New York, AMS Press, 1972. p. 409-438. (NCJ 27336)

This document describes some of the practices presently utilized to induce guilty pleas, points out the salient problems with these practices, and offers suggestions for improvement. The author discusses various aspects of plea bargaining as it is conducted in the Philadelphia and New York district attorneys' offices. Formal office policies are compared and contrasted with actual practices, and ways by which both the district attorney and the courts can meet some of the problems with the bargaining process are presented.

63. WHITMAN, PETER A. Recent Developments — Judicial Plea Bargaining. Stanford Law Review, v. 19: 1082-1092. May, 1967.

The idea of promises by the judge in return for a guilty plea, as discussed in United States ex rel. Elksnis v. Gilligan, is coercive and renders the plea involuntary. The article states that the basic requirement for the acceptance of any guilty plea is that it be made "voluntarily with an understanding of the nature of the charge." But what constitutes an involuntary plea has not been developed, particularly with reference to judicial pressure on the defendant. The combination of the judge's control over the trial and the sentencing procedures and the impressiveness of the judicial position may be said to put a great amount of pressure upon the defendant. But since the defendant is pressured to plead guilty at all points during the criminal justice process, the author states that we should judge practices to be in violation of due process of law only when they exert pressure on the accused beyond that which is inherent in the system itself. Elksnis condemns judicial bargaining, while indicating that prosecutorial bargaining need not be abandoned. The author lists some means for ensuring fuller understanding of pleas, such as requiring that the defendant be represented by counsel during bargaining and increasing the formality of the procedural framework of bargaining, perhaps by making official notation of the plea negotiations. These might help remedy a situation that has led some writers to comment that the defendant often bargains for merely an illusory gain.

64, WILLIAMSON, THOMAS S., JR. Constitutionality of Reindicting Successful Plea-Bargain Appellants on the Original Higher Charges. California Law Review, v. 62, no. 1: 258-293, January, 1974. (NCJ 15770)

This discussion appraises the rule permitting reprosecution on the original, higher charges in relation to due process, double jeopardy, and equal protection. Reprosecution on the original, higher charges after successful appeal is considered a violation of due process. Using North Carolina v. Pearce, the policy of imposing harsher sentences in retaliation for making an appeal is said to be a violation of due process. A discussion of Mullreed v. Kropp is intended to illustrate the general inadequacy of double jeopardy as a doctrinal approach to the scope-of-reprosecution problem in plea bargaining cases. It is held that a court relying on the strict scrutiny or the new rational relationship standard of equal protection should hold that the rule permitting reprosecution of successful plea-bargain appellants on the original, higher charges is unconstitutional.

APPENDIX

LIST OF PUBLISHERS

All references are to document numbers not pages.

1. Arizona Law Review
College of Law
University of Arizona
Tucson, Arizona 85721

2. Yale Law Journal
401 A Yale Station
New Haven, Connecticut 06520

3. University of Chicago Law Review
University of Chicago School of Law
1111 East 60th Street
Chicago, Illinois 60637

4. University of Colorado Law Review
Fleming Law Bldg.
University of Colorado
Boulder, Colorado 80302

5. American Bar Association
Circulation Department
1155 East 60th Street
Chicago, Illinois 60637

6. Same as No. 5.

7. Journal of Police Science and Administration
International Association of Chiefs of Police
Eleven Firstfield Road
Gaithersburg, Maryland 20760

8. Chicago-Kent Law Review
Chicago-Kent College of Law
10 North Franklin Street
Chicago, Illinois 60606

9. Police Law Quarterly
Illinois Institute of Technology
Chicago-Kent College of Law
Institute for Criminal Justice
10 North Franklin Street
Chicago, Illinois 60606

10. Baylor Law Review
Baylor University School of Law
Waco, Texas 76706

11. Clark Boardman Company, Ltd.
435 Hudson Street
New York, New York 10014

12. Prentice-Hall, Inc.
Englewood Cliffs, New Jersey 07632

13. Duke Law Journal
Duke University School of Law
Durham, North Carolina 27706

14. Lawyers Co-Operative Publishing Co.
Aqueduct Bldg.
Rochester, New York 14603

15. West Virginia Law Review
West Virginia University College of Law
Morgantown, West Virginia 26500

16. Criminal Law Review
Sweet and Maxwell, Ltd.
11 New Fetter Lane
London EC4P 4EE England

17. Same as No. 16.

18. Association of Trial Lawyers of America
Trial Magazine
20 Garden Street
Cambridge, Massachusetts 02138

19. Federal Probation
Administrative Office of U. S. Courts
Supreme Court Bldg.
Washington, D. C. 20544

20. Law Enforcement Planning Office
City and County of Honolulu
119 Merchant Street, Room 400
Honolulu, Hawaii 96813

21. Iowa Law Review
University of Iowa College of Law
Iowa City, Iowa 52242

22. Crime and Corrections
California Probation, Parole and Correctional Association
1722 J Street, Suite 10
Sacramento, California 95814

23. Superintendent of Documents
U. S. Government Printing Office
Washington, D. C. 20402

Also available on microfiche from:
National Criminal Justice Reference Service
P. O. Box 24036, S. W. Post Office
Washington, D. C. 20024

24. Notre Dame Lawyer
Notre Dame Law School
Box 486
Notre Dame, Indiana 46556

25. Criminal Law Bulletin
Warren, Gorham and Lamont, Inc.
89 Beach Street
Boston, Massachusetts 02111

26. Harvard Civil Rights — Civil Liberties Law Review
Austin Hall
Harvard Law School
Cambridge, Massachusetts 02138

27. Same as No. 18.

28. Prosecutor's Sourcebook
Practising Law Institute
810 Seventh Avenue
New York, New York 10019

29. California Law Review
University of California
School of Law
Berkeley, California 94720

30. Journal of Criminal Law and Criminology
Williams and Wilkins Company
428 East Preston Street
Baltimore, Maryland 21202

31. The Prosecutor
Journal of the National District Attorneys Association
211 East Chicago Ave., Suite 1515
Chicago, Illinois 60611

32. Available on microfiche from:
National Criminal Justice Reference Service
P. O. Box 24036, S. W. Post Office
Washington, D. C. 20024

33. Same as No. 2.

34. Law in American Society
Law in American Society Foundation
33 North La Salle Street, Suite 1700
Chicago, Illinois 60602

35. The Press of Case Western Reserve University
School of Law
Gund Hall
Cleveland, Ohio 44106

or
University Microfilms
300 North Zeeb Road
Ann Arbor, Michigan 48106

36. Oregon Law Review
University of Oregon
School of Law
Eugene, Oregon 97403

37. Same as No. 25.

38. Same as No. 18.

39. National District Attorneys Association
211 East Chicago Ave., Suite 1515
Chicago, Illinois 60611

40. Law and Society Review
University of Denver
College of Law
200 West 14th Avenue
Denver, Colorado 80204

41. University of Chicago Press
5801 Ellis Avenue
Chicago, Illinois 60637

42. General Learning Press
250 James Street
Morristown, New Jersey 07960

43. Little, Brown, and Company
34 Beacon Street
Boston, Massachusetts 02106

44. Basic Books, Inc.
10 East 53rd Street
New York, New York 10022

45. Same as No. 18.

46. Same as No. 41.

47. Law and Contemporary Problems
Duke University School of Law
Duke Station
Durham, North Carolina 27706

48. Same as No. 18.

49. Same as No. 30.

50. Minnesota Law Review
University of Minnesota Law School
125 Fraser Hall
Minneapolis, Minnesota 55455

51. Same as No. 16.

52. Same as No. 2.

53. The Annals of
The American Academy of Political and Social Science
3937 Chestnut Street
Philadelphia, Pennsylvania 19104

54. Same as No. 18.

55. Journal of Criminal Justice
Pergamon Press, Inc.
Fairview Park
Elmsford, New York 10523

56. Duxbury Press
6 Bound Brook Court
North Scituate, Massachusetts 02060

57. American Criminal Law Review
American Bar Association
Section of Criminal Justice
1155 East 60th Street
Chicago, Illinois 60637

58. Loyola Law Review
Loyola University
School of Law
New Orleans, Louisiana 70118

59. Harvard Law Review
Harvard Law Review Association
Gannett House
Cambridge, Massachusetts 02138

60. Superintendent of Documents
U. S. Government Printing Office
Washington, D. C. 20402

61. University of Pennsylvania Law Review
University of Pennsylvania
Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19174

62. AMS Press, Inc.
56 East 13th Street
New York, New York 10003

63. Stanford Law Review
Stanford University
School of Law
Stanford, California 94305

64. Same as No. 29.

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