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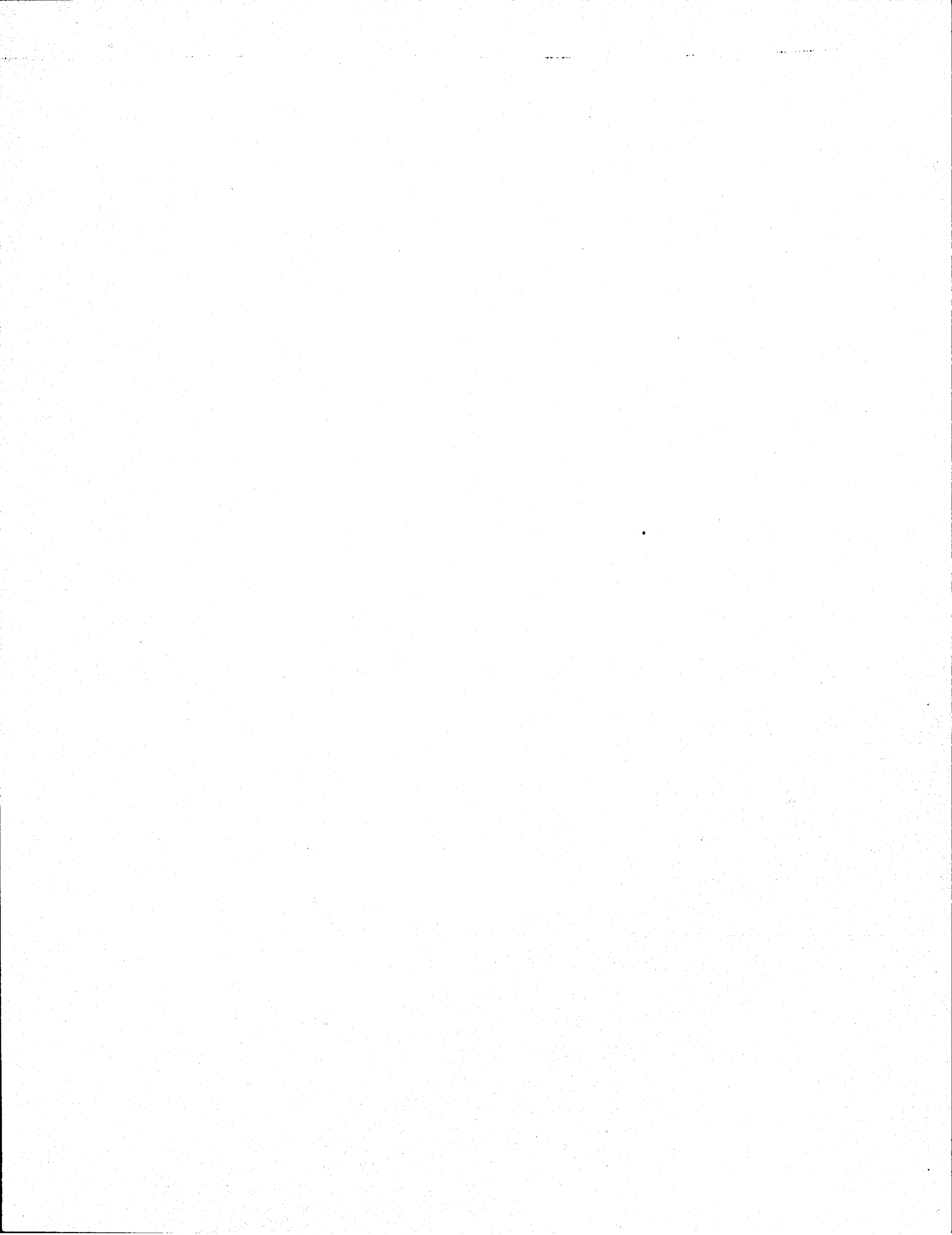

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SURVEY OF PLEAS IN SUPREME COURT TRIALS

Study Series No. 1

Planning and Development Division
Department of Justice
Wellington
New Zealand

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This report is the first of a series of studies to be published by the Planning and Development Division. These publications will present the result of investigations into various aspects of the administration of the judicial system and other areas of departmental activity.

The series will be additional to publications in the Research Series which follow comprehensive theoretical and/or empirical research. The study series will generally report on projects involving limited research only and will concentrate particularly on operational features.

This study examines the incidence of guilty pleas in the Supreme Court in Auckland and Wellington following a plea of not guilty on the preliminary hearing and committal for jury trial. As will be noted from Table 1 a figure approaching 30% of those committed for trial in Auckland in 1977 changed their plea to guilty on arraignment. Whilst the Wellington figure was lower it was still in excess of 20% of all committals. This phenomenon has been examined from two perspectives; the first whether there appears to be any relationshihp between changes in plea and the form of legal representation and the second whether changes in the offences with which the accused is to be arraigned encourage a change in plea.

The information obtained in the study also gives the lie to the supposition that legal aid has increased over the past few years. The statistics in Tables 5 and 6 show that at least in Auckland and Wellington the proportion of persons who have been charged or indicted and who are in receipt of legal aid has reduced considerably between 1974 and 1977.

The research was undertaken by Ms P.C. Oxley, a Senior Research Officer in the Department.

1. INTRODUCTION

The number of persons committed to the Supreme Court for trial but not actually going to trial is increasing. The purpose of this exercise is to assess the size and nature of this increase and to explore two possible avenues which might account for the change. Firstly, is there some form of plea bargaining being exercised in the Supreme Court where it wasn't before, and secondly, does legal aid have some effect on the plea?

2. THE SURVEY

All Wellington and Auckland trial files for the years 1974, 1976 and 1977 were surveyed, giving a total of 1,320 persons. 1974 was chosen for comparison for it is recent enough to see how recent changes are and also it is known to be the high point for legal aid. Because it is plea practice and how it effects trial organisation that is being investigated, the analysis is in terms of persons committed for trial, rather than separate trials which may involve more than one accused.

The 1,320 cases were derived from the courts thus:

	Wellington	Auckland
1974	85	328
1976	148	341
1977	105	313

3. PLEA

The plea made by each accused is given in Table 1. If the accused was arraigned on more than one count and he pleaded differently on the separate counts, the plea that involved greater court action was recorded. The most obvious and not uncommon example of this is the combination of "not guilty" and "guilty" pleas. In such cases the accused was recorded as pleading "not guilty". Situations where an alternative count was added and the accused did not plead "not guilty" outright to all counts have been recorded separately, with the intention of showing how alternatives may elicit guilty pleas. The incidence within different alternative groups is, however, too small to be really illuminating.

Table 1 shows that Auckland and Wellington have had quite different trends in their plea patterns 1974 to 1977. Both courts, of course, had a majority of not guilty pleas, but not as many as might be expected considering all accused have had at least one previous formal opportunity to voice their intention as regards plea. All of them have previously pleaded not guilty at the end of their depositions hearing.

In 1977, Auckland's proportion of not guilty pleas was considerably lower at 61.7% than Wellington's 75.2%. More interesting still is the difference in trends. Whereas Wellington's rate of not guilty pleas increased noticeably and particularly 1976 to 1977, Auckland's

decreased by a very substantial proportion 1976 to 1977. It was this observation that caused us to undertake this study. The two centres seem to have been working in the reverse to each other.

TABLE 1 PLEA

PLEA	AUCKLAND						WELLINGTON					
	1974		1976		1977		1974		1976		1977	
	n.	%	n.	%	n.	%	n.	%	n.	%	n.	%
Not guilty (n.g.)	239	72.9	257	75.4	193	61.7	56	65.9	105	70.9	79	75.2
Guilty (g.)	43	13.1	52	15.2	68	21.7	12	14.1	24	16.2	18	17.1
G. + n.g., then n.g. discharged before trial	4	1.2	2	0.6	8	2.6	-		6	4.1	1	1.0
Alternative added: - g. to original n.p. to alt.	1	0.3	2	0.6	3	1.0	-		4	2.7	3	2.9
- g. to original g. to alt.	-		2	0.6	-		-		-		-	
- g. to alternative, n.p. to original	1	0.3	1	0.3	4	1.3	-		2	1.4	1	1.0
- g. to alt, n.g. to original → dropped	2	0.6	5	1.5	5	1.6	10	11.8	-		-	
No plea (n.p.)	37	11.3	16	4.7	23	7.3	7	8.2	7	4.7	1	1.0
Still pending	1	0.3	4	1.2	9	2.9	-		-		2	1.9
TOTAL	328	100.0	341	100.0	313	100.0	85	100.0	148	100.0	105	100.00

Looking at the straight "guilty" plea, Wellington's increased slightly while Auckland's increased considerably, especially from 1976 to 1977. By taking all the pleas that are in effect a guilty plea, these differences are more marked still, so that Wellington's guilty plea actually registers a decrease from 25.9% of all pleas in 1974 to 22% in 1977. Auckland increased from a relatively low 15.5% in 1974 to 28.2% in 1977. Regardless of the court, the proportion of accused not tried because of, in effect, a guilty plea is substantial - in round figures it is at least a quarter of all persons committed for trial.

The addition of alternative charges is one means of creating the opportunity for plea bargaining. Assuming for the reason of discussion that this was the purpose of all such additions, the number of cases where plea bargaining could be said to have succeeded, i.e. resulted in a guilty plea and no trial, appears to be relatively small. The 46 cases, however, represent 26.6% of all cases over the 3 year period where alternatives were laid.

Comment must also be made of the "no plea" category. This includes all cases that did not proceed to trial and were discharged before a plea was taken - discharges under section 347(1), all counts quashed, stays of proceeding and cases where the accused was unfit to plead. There has been a consistent decrease in the percentage of cases disposed by this means in Wellington. In Auckland the proportion has fluctuated, ranging from 4.7% to 11.3% of all cases, and involving a substantial number of people.

It has been established that there has been an increase of guilty pleas in Auckland of a size that needs further investigation. The relationship between plea and changes in the counts from the charges originally laid and between plea and legal aid are analysed to see whether the increase can, in any way, be attributed to these factors. Although Wellington has not had the increase in guilty pleas, it too is examined in these respects for purposes of comparison.

4. CHANGES BETWEEN CHARGES LAID IN MAGISTRATE'S COURT AND COUNTS IN INDICTMENT

Table 2 shows how the counts presented in the indictment in the Supreme Court relate to the charges as they were laid in the Magistrate's Court. Are the counts the same as the charges, or have there been changes by way of adding alternative charges, adding or dropping charges, or by making substitutions of lesser or greater seriousness? If the indictment in some way differs from the charges, then the accused must have the opportunity to plead, without constraint, on the new charge. However, such changes may be an indication of plea bargaining which, in turn, may account for increases in guilty pleas. By first looking at the incidence and nature of changes in counts from charges and then relating this to plea, we may be able, if not give definite conclusions about plea bargaining, to confirm or refute the possibility and open up the area for further study.

In most cases no changes were made to the original charges. Taking 1977 for example, in 68.4% of Auckland's cases and in 63.8% of Wellington's the counts remained the same as the original charges. If changes were made, it was more likely to be by adding alternatives or extra charges.

The distribution of cases over the various charge-count categories has been fairly similar for each year in Auckland. There has been a slight increase in cases where counts have remained the same as charges and a slight decrease in cases where alternative charges have been added to those originally laid. The one other category that has changed consistently is a small increase in cases where the original charge has been substituted with a more serious one.

TABLE 2 CHANGES BETWEEN CHARGES LAID IN MAGISTRATE'S COURT AND COUNTS INDICTED IN SUPREME COURT

CHARGES → COUNTS	AUCKLAND						WELLINGTON					
	1974		1976		1977		1974		1976		1977	
Same as charged	209	63.7	222	65.1	214	68.4	28	32.9	103	69.6	67	63.8
Alternatives added	40	12.2	36	10.6	30	9.6	27	31.8	28	18.9	12	11.4
Charges dropped	18	5.5	22	6.5	11	3.5	5	5.9	5	3.4	4	3.8
Substitute lesser charges	4	1.2	0	-	2	0.6	0	-	0	-	4	3.8
Counts added	14	4.3	29	8.5	13	4.2	8	9.4	5	3.4	16	15.2
Substitute charges of same seriousness	1	0.3	2	0.6	1	0.3	8	9.4	0	-	1	1.0
Substitute more serious charges	10	3.0	15	4.4	19	6.1	1	1.2	6	4.1	1	1.0
No indictment prepared	32	9.8	15	4.4	23	7.3	8	9.4	1	0.7	0	-
TOTAL	328	100.0	341	100.0	313	100.0	85	100.0	148	100.0	105	100.0

The Wellington experience has been quite different to Auckland's in degree if not direction. 1974 may have been an uncharacteristic year, but it had, relatively, a very large proportion of cases where alternatives were added or other changes were made to the original charges. Since then there has been a large increase in the proportion of cases where counts were the same as charges, though this did drop a little 1976 to 1977. Like Auckland, but to a much greater extent, there has been a decrease in the practice of adding alternatives. Cases where extra counts have been added have had a fluctuating impression, but in 1977 15.2% of the cases fell into this category.

Comparing Auckland and Wellington in 1977, the two courts are fairly similar in respect of charge-count changes. Auckland has slightly more cases where counts have remained the same as charges and has some instances where indictments were never prepared. The legal status of the accused in these cases is an aspect that requires study. Wellington had no instances of this in 1977.

The incidence of counts changing in some form from the original charges is not insignificant and hence the opportunity for plea bargaining exists. In Auckland, however, the opportunity decreased 1976 to 1977, though in Wellington it increased.

Putting counts in the alternative, dropping charges or substituting original charges with lesser ones may be indicative of plea bargaining. If this is the case we would expect guilty pleas to be more prevalent than when charges are left unchanged. Applying the same logic, the addition of extra counts or substitution with more serious charges may engender more not guilty pleas. These possibilities are examined in Table 3 by relating changes in charges to guilty pleas for each court and each year. In this table cases of dropped charges and substitutions with lesser charges have been amalgamated, as have additional counts and substitution with charges of same or greater seriousness. "Guilty" includes all cases which eventuated in effect in guilty pleas.

It should be stressed here that the present analysis is not a definitive study of actual plea bargaining but only of the opportunity for it as indicated by the form of the indictment in comparison with the original charges. For a more conclusive study of plea bargaining the researcher would need to be privy to interaction between prosecution, defence lawyer and accused. This information is not available from formal documents, the source of the present data. Consequently one form of plea bargaining eludes this inquiry altogether, that is, bargains for sentence concessions without any consequent changes in the form of charges. Such cases in this study show up in the category "same as charged", which for purposes of comparison is taken to be an absence of plea bargaining.

TABLE 3 THE PERCENTAGE OF EACH CHARGE-COUNT CATEGORY RESULTING IN A GUILTY PLEA

	Same as Charged	Alternatives Added	Charges Dropped, Substitutions Of Lesser Seriousness	Counts Added Substitutions Of Same Or Greater Seriousness	Total
AUCKLAND					
1974	19.1	10.0	22.7	8.0	15.5
1976	18.5	27.8	45.5	6.5	18.8
1977	28.0	40.0	61.5	24.2	28.1
% increase 1974-77	46.6	300.0	170.9	202.5	81.3
WELLINGTON					
1974	7.1	40.7	20.0	29.4	25.9
1976	20.4	32.1	20.0	45.5	24.3
1977	26.9	33.3	-	5.6	21.9
% increase 1974-77	278.9	-18.2	-	-81.0	-15.4

The Auckland situation generally concurs with the propositions we have suggested. Relatively more guilty pleas resulted from cases with added alternatives or dropped charges and relatively fewer from cases with extra charges than when there were no changes from charges to counts (table 3).

For each of Auckland's charge-count categories, the incidence of guilty pleas has increased substantially from 1974 to 1977. This is particularly so where the counts are in some way different from the original charges, including when extra counts are added.

It is difficult to come to an unequivocal conclusion about Auckland. On the one hand, guilty pleas are positively associated with cases where alternatives have been added or charges lessened in some way. Also the increase in guilty pleas over the years is more accentuated in these cases than when counts are the same as charges. On the other hand, the incidence of cases where charges have been amended in the Supreme Court and which lend themselves to guilty pleas has not, itself, increased over the same years that guilty pleas have. Thus it cannot be concluded that there is a direct correlation between increases in plea bargaining opportunities and guilty pleas. Again it is emphasised that this survey has measured the type of charge-count relationship that gives the opportunity for plea bargaining. It has not established cases of plea bargaining. Making changes to the indicted counts from the original charges may not have increased, but the way such a practice is used may well have changed from 1974 to 1977.

How does Wellington compare with Auckland? There were proportionately more guilty pleas when alternatives were added than when counts were the same as charges, but here similarity with Auckland and agreement with the hypotheses stop. There was no consistency in the way other changes to the charges related to guilty pleas. The small numbers involved are probably partly responsible for this indefinite state.

Whereas guilty pleas have increased substantially from 1974 to 1977 for cases with counts the same as charges, they have decreased or fluctuated in all other charge-count situations. This is contrary to Auckland's position and to the hypothesis that guilty pleas are associated more with cases where alterations are made to the original charges. As with Auckland but for different reasons, Wellington's situation regarding plea bargaining opportunities and guilty pleas is not clear cut.

At this stage the picture is complex and somewhat inconclusive. To help clarify the situation a multiway contingency analysis of the data was carried out in order to explore interaction between variables and account for intervening variables, if any. Stated most simply the question is whether changes made to the original charges in the Magistrate's Court affect the plea in the Supreme Court, and if they do, is the effect independent of other factors, in this case the court and the year.

Firstly, the analysis confirms that there has been an increase in the rate of guilty pleas from 1974 to 1976 to 1977. There was no doubt of this, but it shows that this is the case regardless of whether changes were made to charges or not.

More crucial to the problem at hand, it shows that changes in charges do affect the plea and that this influence acts independently of the location of the court and of the year. The following statement shows the nature and size of the effects. Cases where no plea was required were excluded.

> The frequency of guilty pleas following a reduction in charges (i.e. alternatives added, charges dropped, substitution of lesser seriousness) is 1.59 times that following no change in charges, and 2.32 times that following an increase in charges (i.e. added charges, substitutions of same or greater seriousness). These ratios are not significantly affected by the city or the year.

The direction of the influence as shown in this statement concurs with the hypotheses on page 5 (reduced charges result in more guilty pleas; increased charges result in more not guilty pleas). This analysis extends the association between such changes and plea to Wellington, a relationship not so apparent from the previous, less rigorous analysis. It has also been found that changes in charges have this effect independently of the year, i.e. it was the case in 1974, 1976 and 1977. Thus it can be concluded that changes in plea bargaining opportunities are not wholly responsible for the increase in the rate of guilty pleas over these years.

Having reached these conclusions, their full significance is qualified by the realization that we have analyzed plea bargaining opportunities only. How these opportunities were used and whether they were used differently in 1977 than 1974 might conceivably account for some of the increase in the rate of guilty pleas.

TABLE 4 OUTCOME OF NOT GUILTY TRIALS ACCORDING TO CHARGE-COUNT CATEGORIES

	(i) Same As Charged		(ii) Alternatives Added		(iii) Dropped Charges*		(iv) Counts Added**	
	no.	%	no.	%	no.	%	no.	%
Acquitted	191	30.0	25	21.6	12	25.5	17	14.2
Convicted	377	59.3	89	76.7	28	59.6	94	78.3
Convicted of lesser charge	30	4.7	-	-	-	-	3	2.5
Discharged under s.347(3) etc.	38	6.0	2	1.7	7	14.9	6	5.0
TOTAL	636	100.0	116	100.0	47	100.0	120	100.0

* Includes substitutions of lesser seriousness.
** Includes substitutions of same or greater seriousness.

To complete the picture, Table 4 shows the eventual outcome of trials according to their charge-count classification where the accused did not plead guilty.

In 67.1% of the cases where alternatives were added and in 62.7% where charges were dropped, the accused maintained his plea of not guilty. These cases are analyzed further in columns (ii) and (iii) of table 4. It would appear from their lower rates of acquittal that the prosecution had its options fairly well covered in these cases. Amongst cases with dropped charges, there was a relatively high rate of discharges under s.347(3) of the Crimes Act 1961, counts quashed or stays of proceedings. The conjunction of these two factors may possibly indicate that these prosecutions were not well founded in the first place. Cases with additional charges or more serious substitutions (column iv) had a relatively low rate of acquittal and discharges were also at a more explicable rate. This is not surprising, since the prosecution would have to be more than usually sure of its position before making such alterations.

A glimpse of the wider implications of these results in respect of guilty plea cases is introduced here. Because contested cases with added alternatives or counts resulted in higher conviction rates, it may be argued that such changes are justified in eliciting guilty pleas. By the same token however, a not insubstantial proportion (23.3%) of such contested cases were acquitted or discharged. Is it possible that an analogous proportion of the guilty plea cases would have been discharged had they been contested? This is an oversimplification of the argument and there may well be critical differences between those who plead guilty in these circumstances and those who do not. Although more involved consideration than is possible here is needed before conclusions can be stated, it is necessary that the complex nature of these issues be pointed out.

5. LEGAL AID

Of the total cases in the survey, 2.7% of the defendants in the Magistrate's Court and 1.1% in the Supreme Court were not represented by counsel. The following discussion concentrates on those who were represented and analyses this according to whether they were on legal aid or not. Persons who were not represented or cases where it is not really applicable because of withdrawals at early stages are excluded.

Tables 5 and 6 show whether the defendant was legally aided or not in the Magistrate's Court and Supreme Court.

TABLE 5 LEGAL AID IN MAGISTRATE'S COURT

LEGAL AID	AUCKLAND						WELLINGTON					
	1974		1976		1977		1974		1976		1977	
	N	%	N	%	N	%	N	%	N	%	N	%
Yes	89	27.8	99	29.6	81	27.1	28	42.4	41	30.4	25	25.0
No	231	72.2	235	70.4	218	72.9	38	57.6	94	69.6	75	75.0
Don't know	3	excl.	1	excl.	11	excl.	9	excl.	4	excl.	2	excl.
Not represented or n.a.	5	excl.	6	excl.	3	excl.	10	excl.	9	excl.	3	excl.
TOTAL	328	100.0	341	100.0	313	100.0	85	100.0	148	100.0	105	100.0

Table 5 shows that at the Magistrate's Court stage, there has been a sharp reduction in the percentage of defendants on legal aid in Wellington from 1974 to 1977. Compared with this, Auckland's legal aid rate has remained steady over the same period. Auckland did not have the high rate in 1974 that Wellington did, so by 1977 the two courts had comparable legal aid rates, approximately one-quarter of the defendants. These rates refer only to cases that proceed to the Supreme Court for trial and not all Magistrate's Court cases. It is worth noting that Wellington Supreme Court receives cases from Wellington, Lower Hutt, Upper Hutt and Masterton Magistrate's Courts. Auckland takes in Auckland, North Shore, Otahuhu, Henderson, Papakura and Pukekohe Magistrate's Courts. The legal aid practice may not be uniform in the various courts served by the one Supreme Court.

TABLE 6 LEGAL AID IN SUPREME COURT

LEGAL AID	AUCKLAND						WELLINGTON					
	1974		1976		1977		1974		1976		1977	
		%		%		%		%		%		%
Yes	116	37.5	109	33.2	94	30.8	41	49.4	51	36.2	32	32.0
No	193	62.5	219	66.8	211	69.2	42	50.6	90	63.8	68	68.0
Don't know	-	-	1	excl.	-	-	-	-	-	-	-	-
Not represented or n.a.	19	excl.	12	excl.	8	excl.	2	excl.	7	excl.	5	excl.
TOTAL	328	100.0	341	100.0	313	100.0	85	100.0	148	100.0	105	100.0

The decrease in legal aid is also evident in the Supreme Court, for both Auckland and Wellington (Table 6). Once again, this trend is more obvious in Wellington than Auckland. For each of the three years Wellington has had more legal aid than Auckland, though by 1977 the two centres were much on a par. In 1977 approximately one-third of all accused in the Supreme Court were on legal aid.

Obviously if guilty pleas are associated with legal aid, it is not a phenomenon as simple as an increase in legal aid resulting in an increase in guilty pleas. Over the years that the rate of guilty pleas has increased, the rate of legal aid has decreased.

Table 7 presents the relationship between plea and legal aid. Plea is redefined so that "guilty" includes all pleas that in effect were a guilty plea.

Legal aid in the Magistrate's Court rather than Supreme Court is used in the analysis for it is considered that the committal stage is the relevant one. It is at this stage that the defendant announces his intent to plead guilty or not. It is worth noting that of the 363 defendants who had legal aid in the Magistrate's Court (i.e. of the total survey, both courts for the three years), 79% had legal aid in the Supreme Court as well, and another 20% were represented but not this time on legal aid. As well there were 112 persons who didn't have legal aid in the Magistrate's Court, but did in the Supreme Court.

TABLE 7 PLEA BY LEGAL AID IN MAGISTRATE'S COURT *

AUCKLAND

PLEA	1974		1976		1977	
	Legal Aid	Not Legal Aid	Legal Aid	Not Legal Aid	Legal Aid	Not Legal Aid
	%	%	%	%	%	%
Guilty	18.0	15.2	21.2	18.3	38.3	25.2
Not guilty	80.9	68.8	74.7	75.7	54.3	62.8
No plea	1.1	16.0	4.0	6.0	7.4	11.9
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

WELLINGTON

PLEA	1974		1976		1977	
	Legal Aid	Not Legal Aid	Legal Aid	Not Legal Aid	Legal Aid	Not Legal Aid
	%	%	%	%	%	%
Guilty	25.0	18.4	41.5	17.0	24.0	21.3
Not guilty	75.0	65.8	48.8	80.9	76.0	76.0
No plea	-	15.8	9.8	2.1	-	2.7
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

* These tables exclude persons who were not represented by a solicitor and those represented but it was not known whether by legal aid or private solicitor.

Table 7 shows that in Auckland in 1974 and 1976, the accused who had legal aid in the Magistrate's Court were inclined to plead guilty slightly more than those not on legal aid. It is only in 1977 that those on legal aid had appreciably more guilty pleas than those not legally aided. It was also 1977 that saw the large increase in guilty pleas in Auckland (Table 1). This increase is reflected in Table 7 too - as well as the difference between legal aid and non-legal aid widening, the percentage pleading guilty in both categories is much greater than previous years.

Table 7 also shows that in Auckland persons on legal aid fell into the "no plea" category less than persons not on legal aid. Most of the no plea cases refer to persons discharged before trial. However, it cannot be concluded from these results that privately retained lawyers are more assiduous in securing their clients discharge than legal aid lawyers. Other factors may well have a bearing on the situation. As Wilkins* discovered in his examination of criminal legal aid in Canada, legal aid clients were a distinct group from private clients. They were more likely to be under 20, to have been arrested, to be in custody, to be charged with more offences, more counts and more serious offences. Such conditions may also obtain in New Zealand and may partly account for differential rates of discharges before plea as indicated in Table 7.

The Wellington situation has not moved in the same direction as Auckland. In 1974 and particularly 1976, those on legal aid had decidedly higher proportions of guilty pleas, but the difference was less marked in 1977. The 1976 Wellington figures show an extraordinary difference in type of plea according to legal aid which defies immediate explanation and looks most uncharacteristic compared with 1974 and 1977. In 1974 and 1977 the proportions pleading guilty in comparable legal aid categories were not so very different from each other. There has been no consistency over the years in the proportions of defendants not required to make a plea in relation to legal aid.

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* Wilkins, James L., Legal Aid in the Criminal Courts, University of Toronto Press, 1975, p. 141.

TABLE 8 PLEA ACCORDING TO WHETHER ACCUSED WAS ON LEGAL AID IN MAGISTRATE'S COURT AND/OR SUPREME COURT *

Plea	No Legal Aid in Mag Ct, nor Sup Ct	No Legal Aid in Mag Ct, Legal Aid In Sup Ct	Legal Aid In Mag Ct, No Legal Aid In Sup Ct	Legal Aid In Both Mag and Sup Cts
	%	%	%	%
Guilty	19.9	20.5	33.8	25.4
Not guilty	72.9	78.6	59.2	72.2
No plea	7.2	0.9	7.0	2.4
TOTAL	100.0	100.0	100.0	100.0

* Persons not represented by counsel, or represented but not known whether by legal aid or not are excluded.

The results preceding table 8 support the hypothesis that persons on legal aid in the Magistrate's Court pleaded guilty more than persons with a non-legal aid lawyer. This conclusion is re-affirmed by the data in Table 8 which examines the question from another angle. The accused with legal aid in the Magistrate's Court are broken down into those with and without legal aid in the Supreme Court and vice-versa. Table 8 analyzes the total cases in the survey and does not distinguish between court and year.

The highest rate of guilty pleas (33.8%) was for accused who had legal aid in the Magistrate's Court but then changed to a private solicitor in the Supreme Court. This raises the issue of the nature of the advice given the accused before his decision to elect jury trial. Those with legal aid in both courts had the next highest rate (25.4%). The lowest rate (19.9%) was for persons with a private solicitor in both Magistrate's and Supreme Courts, with those who changed to legal aid in Supreme Court rating 20.5% of guilty pleas. These results further confirm the previous conclusion that legal aid at the Magistrate's Court stage is a factor that affects the level of guilty pleas in the Supreme Court.

It has clearly been ascertained in the preceding analyses that guilty pleas are associated with legal aid. This conclusion is confirmed in a more rigorous way by a multiway contingency analysis applied to the data to sort out any intervening effect the court or the year may have on the relationship. The analysis was further controlled by restricting it to cases where the counts in the indictment were the same as the original changes and thus eliminating the influence such changes have been shown to have on the plea.

The results showed that for 1976 and 1977, but not 1974, those on legal aid were more likely to plead guilty than those represented but not through legal aid. An additional refinement, perhaps contrary to the previous impression, is that the difference in the guilty plea rate according to legal aid was more exaggerated in 1976 than 1977. This, no doubt, is a reflection of the extraordinary Wellington situation in 1976, but it may also be a function of the decrease in legal aid 1976 to 1977. The size of the differences are given in the following statements. It is important to note that the ratios are not significantly affected by the court, i.e. it is a phenomenon independent of location.

1. In 1974 the frequency of pleading guilty in the Supreme Court by those who were on legal aid in the Magistrate's Court was 0.73 times those who were not on legal aid.

2. In 1976 the frequency of pleading guilty in the Supreme Court by those who were on legal aid in the Magistrate's Court was 2.33 times those who were not on legal aid.

3. In 1977 the frequency of pleading guilty in the Supreme Court by those who were on legal aid in the Magistrate's Court was 1.78 times those who were not on legal aid.

The next set of statements once again reflects the general conclusion that legal aid produces guilty pleas more than non-legal aid, but their main gist is the increase in guilty pleas from 1974 to 1977, and that this is true even with non-legal aid cases in 1977. Again whether it is Wellington or Auckland makes no material difference to these conclusions.

1. For those represented by legal aid in the Magistrate's Court, the frequency of guilty pleas in the Supreme Court in 1976 was 2.27 times, and in 1977 3.32 times that in 1974.

2. For those represented in the Magistrate's Court but not by legal aid, the frequency of guilty pleas in the Supreme Court in 1976 was 0.71 times, and in 1977 1.32 times that in 1974.

The situation as regards legal aid and guilty pleas obviously is not a simple one. The above analyses convincingly show that, having taken into account possible intervening effects of changes in charges and different court locations, legal aid is inclined to produce more guilty pleas. However, this influence has flourished as the incidence of legal aid has decreased. Whatever the answer is, it is not the mere existence of legal aid that intrinsically demands more guilty pleas, but it appears to be a more complicated issue involving questions of the way legal aid is used.

TABLE 9 OUTCOME OF NOT GUILTY TRIALS BY LEGAL AID IN MAGISTRATE'S COURT

Outcome	Legal Aid no.	Legal Aid %	Not Legal Aid no.	Not Legal Aid %
Acquitted	47	19.1	185	29.6
Convicted	170	69.1	389	62.1
Convicted of Lesser charge	22	8.9	9	1.4
Discharged	7	2.8	43	6.9
TOTAL	246	100.0	626	100.0

TABLE 10 OUTCOME OF NOT GUILTY TRIALS BY LEGAL AID IN SUPREME COURT

Outcome	Legal Aid no.	Legal Aid %	Not Legal Aid no.	Not Legal Aid %
Acquitted	70	21.5	172	29.5
Convicted	219	67.4	361	61.9
Convicted of lesser charge	18	5.5	15	2.6
Discharged	18	5.5	35	6.0
TOTAL	325	100.0	583	100.0

For the people who did plead not guilty, the outcome of their trial in relation to legal aid is shown in Tables 9 and 10. Table 9 shows outcome by legal aid in the Magistrate's Court, Table 10 is legal aid at Supreme Court stages. In both tables no distinction is made between Auckland and Wellington Supreme Courts nor between years, and the analysis is restricted to those who pleaded not guilty and were represented by a solicitor. It excludes cases which were still pending at the time of data collection (24 cases).

Table 9 shows that considerably more persons who had legal aid in the Magistrate's Court were convicted in the Supreme Court than those who had a private solicitor (78% and 63.5% respectively). Generally the same was true of accused with legal aid in the Supreme Court though the differences are not so exaggerated - 72.9% and 64.5%. Once again it is deceptively easy to jump to the conclusion that accused who have retained their own solicitor are better served than those on legal aid. The cautionary note and qualifications discussed earlier in relation to legal aid and discharges before trial must be borne in mind here as well. Legal aid cases may well

be different in kind from non-legal aid ones in that they may be more serious in a number of aspects and thus not so susceptible to acquittal or discharge.

6. SUMMARY OF CONCLUSIONS

1. Guilty pleas have increased in Auckland from 1974 to 1977, with a particularly sharp rise 1976 to 1977. In 1976 18.7% of the accused pleaded guilty, in 1977 28.1% pleaded guilty. In Wellington the numbers pleading guilty decreased from 25.9% in 1974 to 21.9% in 1977.

2. The possibility of plea bargaining was investigated to see whether such activity could account for the increase in guilty pleas in Auckland. The proportion of cases where some alteration was made to the original charges in the Supreme Court decreased very slightly in Auckland from 1974 to 1977. In Wellington there was a large reduction in added alternatives 1974 to 1976 (1974 was probably an uncharacteristic year), and 1977 was similar to 1976. In 1977 both Auckland and Wellington were comparable in this respect.

   It has been established that for both courts and for all years, changes in charges do affect the plea. If charges are dropped, substituted with a lesser charge, or alternatives added there are likely to be more guilty pleas than if charges remain unaltered; if charges are added or substituted with other charges of the same or greater seriousness then there are likely to be more not guilty pleas. However, because this was the case for all years and because the incidence of changing charges did not increase over the years, particularly in Auckland, this phenomenon alone cannot account for the increase in guilty pleas.

3. Legal aid was the other factor incorporated into the analysis to see whether it has any effect on plea.

   Generally, there is less legal aid in 1977 than 1974. This is particularly so in Wellington where there has been a sharp decrease in the proportion of defendants on legal aid at both the Magistrate's and Supreme Court stages. In Auckland the decrease has only been apparent in the Supreme Court. In 1977 the legal aid rates in Magistrate's Court and Supreme Court were comparable for Wellington and Auckland.

   Further analysis showed that in 1976 and 1977 accused who had legal aid in the Magistrate's Court were more likely to plead guilty in the Supreme Court than those who were not on legal aid. This was a change from 1974 when the effect was in the opposite direction. Both Auckland and Wellington were subject to these influences.

   Legal aid is associated with guilty pleas. But it is not a simple matter of increased legal aid, therefore increased guilty pleas, but rather a decrease in legal aid results in more guilty pleas. This general conclusion is further

complicated when the two courts are studied separately. The great increase in guilty pleas in Auckland is associated with a relatively stable legal aid situation, whereas Wellington has maintained a steady guilty plea in the face of a large decrease in legal aid cases.

This survey has given some indication of what is involved in the recent increase of guilty pleas. More detailed research is needed however, to properly unravel the causes.

For example, plea bargaining. We have looked at the opportunities provided for this and it has been found that there are relatively more guilty pleas in such cases. It does not however, wholly explain the increase in guilty pleas for some of this occurred independently of such changes. This survey has been a superficial investigation of plea bargaining. A more thorough examination would require a legal appraisal of the facts of the cases in order to assess the accused's chances of an acquittal had he pleaded not guilty. Discussions with the prosecution, the defence lawyer and the accused to monitor their perception of what negotiations were involved in the plea would also be needed.

The legal aid investigation accounted more satisfactorily for the increase in guilty pleas but it too could stand deeper examination. It can be confidently asserted that legal aid produced relatively more guilty pleas than non-legal aid cases in 1976 and 1977, years that coincide with the decrease in legal aid.

This conjunction of increased guilty pleas and decreased legal aid suggests a possible explanation. If legal aid lawyers are losing work from one source, maybe they are compensating for it in another way - involving more work in the legal aid cases they do have. This is tentatively put forward for even this solution is not as simple as it first appears. Auckland is responsible for more of the increase in guilty pleas, but has not had a commensurate decrease in legal aid. This has been more marked in Wellington where guilty pleas have not increased to the same extent.

More work is obviously required to explain how this situation has developed. Very basically, it would be helpful to know whether legal aid cases are qualitatively different from non-legal aid cases. This was found to be the case in Toronto*, and if it applies in New Zealand too, it could well have a bearing on the plea. As with the plea bargaining question, an independent legal assessment of the facts would help elucidate the role of legal aid in pleading.

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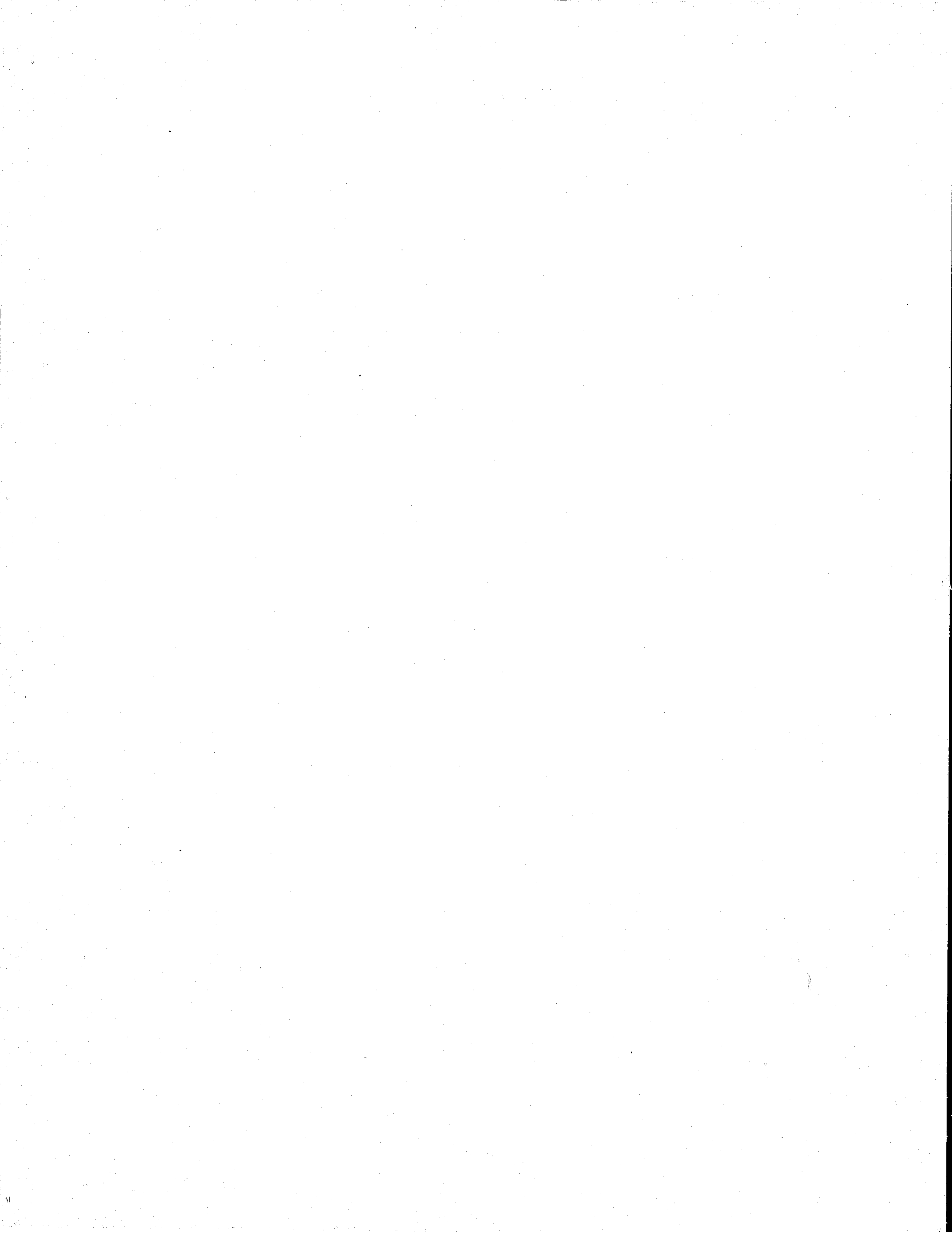
* Wilkins, 1975, ibid.

What this survey has shown is that where charges are reduced from the Magistrate's Court to the Supreme Court, there are more guilty pleas; where there is legal aid in the Magistrate's Court, there are more guilty pleas. Both factors play a part in the increase in guilty pleas but the latter does so more than the former. For a more meaningful account of why these associations are having their present effect more in depth work is required.



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