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PLEA BARGAINING: ACQUIESCING FOR CONSIDERATION IN A BUREAUCRATIC ENVIRONMENT

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ABSTRACT

PLEA BARGAINING: ACQUIESCING FOR CONSIDERATION
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The thesis examines the use of plea bargaining within the criminal justice system. It was proposed that the major problem in understanding the process of plea bargaining was that there are many different procedures for resolving criminal cases that are lumped together and described by the term. This resulted in confusion about what plea bargaining actually is.

Contemporary definitions of the term, the nature and scope of interactions among the involved participants as well as factors influencing these interactions were examined. Case and statutory law were examined to determine the current state of jurisprudence concerning plea bargining. It was found that approximately 90% of criminal cases were resolved by guilty pleas and there were various methods used to achieve a defendant's guilty plea.

The empirical portion focused on municipal and county courts within Mahoning County and Ohio. Guilty plea and dismissal case resolution methods for aggregate misdemeanors and drunk driving

cases were compared. Guilty pleas were found to be the most prevalent case resolution method. Also, for the most part, courts within the county resolved cases similarly to each other. The use of guilty pleas by courts within the county to resolve cases was congruent to their use by other courts in Ohio.

The study concluded plea bargaining was a case resolution method that had evolved from within a bureaucratic criminal justice system as an alternative to trials. A revised conceptual definition of plea bargaining was proposed.

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TABLE OF CONTENTS

LIST OF TABLES

PLEA BARGAINING: ACQUIESCING FOR CONSIDERATION IN A BUREAUCRATIC ENVIRONMENT

Chapter 1

Introduction

Plea bargaining--what exactly does it mean? Whenever a complex social process such as plea bargaining is examined, quite often the examination is muddied due to the abstract nature of the process. Before any further discussion on the subject at hand, it is believed that a scenario will clarify and provide a commonality of focus about the process upon which further discussion may be developed.

A Case Scenario

An individual was lawfully arrested for driving under the influence of alcohol. For this scenario, "lawfully arrested" assumes that the original arrest as well as the subsequent arrest for possession of a controlled substance and other proceedings were not tainted by any procedural, evidentiary, or constitutional error, or some other impropriety that could ultimately affect their outcomes. After the operator of the vehicle was arrested

for driving under the influence of alcohol he was transported to the police station for the purpose of booking.

During the police booking process, a procedure in which the personal property and possessions of the person arrested are inventoried, the individual was found to be in possession of a small quantity of marihuana. The individual was advised at that time that in addition to the drunk driving charge he would also be charged with a violation of the statute regulating the possession of controlled substances. A short time after the booking process the driver was taken to an initial appearance for the procedural purposes of formally charging him, setting bail and setting a future date for the preliminary hearing.

Prior to the start of the preliminary hearing, the defense counsel approached the prosecutor indicating that his client was willing to enter a guilty plea to the drunken driving charge if the prosecution would dismiss the drug possession charge. The prosecutor made a counterproposal to discharge the "driving under the influence of alcohol charge" if the accused would enter a guilty plea to possession of a controlled substance. Continuing the negotiation process, defense counsel consulted with his client. After this consulation, the defense counsel indicated that his client would be willing to plead guilty to the "possession of a controlled substance" charge only if the charge of "driving under the influence of alcohol" was dismissed and the

prosecutor would recommend a sentence of probation to the judge. The prosecutor agreed to the negotiated settlement.

After this negotiation session, all parties entered the courtroom to attend the preliminary hearing. The purpose of this hearing is to hear the evidence presented by the state and determine if there is probable cause to continue the case against the defendant by binding the case to the next stage in the criminal justice process. However, the case can also be resolved during the preliminary hearing, as it was in this scenario, by the method disscussed below.

During the preliminary hearing, the judge inquired if there were any modifications to the original criminal complaint, indicating she understood a settlement had been reached. The prosecutor addressed the judge and told her that he elected to amend the original complaint and moved for a dismissal of the "driving under the influence of alcohol" charge. After granting this motion, the judge inquired if there were any sentencing recommendations for the remaining possession of a controlled substance charge. The prosecutor expressed the agreed-upon recommendation of probation as the sentence and the defense counsel concurred.

After hearing this recommendation, the judge continued by placing the defendant under oath. After he was sworn, the judge questioned the defendant about his actions attempting to resolve

several legal points. She had to determine if the actions taken by the defendant would support the controlled substance possession charge. She also inquired about the nature of his plea, making certain whether the defendant knew his guilty plea had the same weight as a conviction and if he was entering the guilty plea on a voluntary basis. Satisfied that the defendant was aware of his actions and their consequences, the judge accepted the guilty plea to the drug possession charge. The judge officially recognized the negotiated plea bargaining agreeement when she accepted the guilty plea and imposed a specific term of probation as the sentence.

The Results of the Plea Bargaining Process were Several

First, the accused did not have to spend time incarcerated even though he was legitimately stopped for drunken driving--his second offense. Title 45 of the Ohio Revised Code §4511.99 A(2) calls for a ten-day minimum jail sentence upon a second conviction of the "driving under the influence of alcohol" statute, whereas simple possession of a controlled substance has no minimum incarceration requirement under Title 45 of the Ohio Revised Code §2925.11 D.

Second, the defendant benefited by being assured that he would not be required to suffer the repercussions of spending time incarcerated. There are literally volumes of works written

arguing both the merits and faults of this consequence that are outside the scope of this thesis, and therefore will not be fully addressed.

Third, the prosecutor benefited by adding a conviction to the prosecutorial record without expending considerable time preparing for and participating in a trial. Fourth, the defense counsel benefited by settling the matter as quickly and as amicably as possible, hence being able to represent another client and garner another fee.

Fifth, the judge benefited by not being placed in the uncomfortable position of being required to reach decisions about guilt or innocence, or questions of law, let alone being forced to determine what sentence to impose.

Finally, society benefited in various ancillary ways. Since there was no trial, the cost for the conviction was substantially reduced. No individual member of society was personally inconvenienced by participating in the *voir dire* process resulting in the possibility of serving on a jury. Also, since the guilty plea was a voluntary conviction, the potential costs to society of post-conviction remedies and appeals were nullified. Furthermore, no tax dollars would be spent warehousing the defendant in an institutional setting. Only those funds allocated to the probation department would be spent.

The Problem

Does this scenario provide a sufficiently explanatory example of what the plea bargaining process is about? Not explicitly and therein lies the problem. **There is no one type of plea bargaining.** The plea bargaining process involves more than having the accused entering a guilty plea on one charge in a multicount indictment in exchange for other charges' being dismissed. At least two types of plea bargaining were indicated in the above scenario. The first type was charge bargaining. In charge bargaining the negotiations center around the specific crime the defendant would plead guilty to. The second type was sentence bargaining. Sentence bargaining focuses on the defense and prosecution coming to mutually agreeable terms about some type of sentencing recommendation to be presented to a judge, who is not bound by the terms of the recommendation. The point that there is no one type of plea bargaining is crucial to further discussion of the plea bargaining process and should be kept in mind.

It is also important to note that the case described in the scenario was not resolved by any of the methods indicated by either the Sixth Amendment to the United States Constitution or Article I §10 of the Constitution of the State of Ohio. Rather, it was disposed of by a negotiated settlement agreement between two bureaucrats--the defense counsel representing the defendant and the prosecutor representing the state--and approved by yet a

third bureaucrat, the judge (see Footnote 1). This fact is fundamental to constitutional purists' criticisms of the plea bargaining process. The News America Syndicate columnist Carl T. Rowan (1988) aptly stated one popular purist public conceptualization when he called plea bargaining:

> ...one of the greatest abominations of the American criminal justice system....because it lets people guilty of egregious crimes get off with minor punishment, and it pressures people to plead guilty to crimes they never committed out of fear that they will get harsh punishment if they fight for their rights.

Although not intending to make a political statement about her mores, nor should it be perceived in any way as such, former vice presidential candidate Geraldine Ferraro's comments concerning her son's cocaine possession charges indicate a quite different popular view of plea bargaining. An Associated Press article (1988a) reported Ferraro's outrage when she, "...blasted Addison County State's Attorney John Quinn for failing to accept a plea bargain." Her comments indicated a common belief that criminal defendants have a right to have a proffered guilty plea to a lesser charge accepted. Ferraro's complaint that the State's Attorney *refused to allow* her son Zaccaro to enter a guilty plea to a lesser count than that originally charged also indicated some other popular beliefs about plea bargaining. First, that pleading guilty to a reduced charge has become an accepted practice by the public. Second, was it has risen to a legitimate legal practice.

Finally, that one who is charged with a crime has a right to plead guilty to a lesser charge.

Was there no plea bargaining involved in the Zaccaro matter? Consider subsequent Associated Press reports. Zaccaro was sentenced to a four-month jail term by Judge McCaffey, with the recommendation for a special house arrest program (Associated Press, 1988b). Later it was reported that Zaccaro was serving his sentence in an apartment that a great number of Vermont's citizens could not afford to reside in (Associated Press, 1988c). Finally, it was reported that Quinn, the prosecutor, rejoiced that the State of Vermont was ending the practice of allowing those convicted of drug offenses to be eligible for a house arrest program (Associated Press, 1988d).

Compared to the scenario, was something special happening in the Zaccarro incident? Most assuredly. First, the Zaccaro incident received national news coverage whereas the incident described in the scenario did not. (The scenario was derived from an actual incident receiving coverage only in the local press.) Second, although both incidents involved the possession of a controlled substance, the scenario was concerned with a guilty plea subsequent to plea bargaining negotiations, whereas Zaccaro's involved a conviction by verdict. In Zaccaro's legal incident he was not given the opportunity to enter a plea of guilty to a lesser charge. Also, Zaccaro was most certainly not permitted to

resolve his case by a plea bargained guilty plea to a lesser charge because of the *national interest* created by the news coverage. Third, despite the national attention, plea bargaining may have played a part in the resolution of the Zaccaro case. Consider that rather than being sentenced to prison he was sentenced to a special house arrest program. This fact suggests that a specific type of plea bargaining which attempts to control or otherwise limit one's punishment, called sentence bargaining, might have been employed in the Zaccaro incident.

Consider the myriad of issues surrounding the plea bargaining process. Does the accused have a constitutional right to plea bargain? Must the prosecution always attempt to resolve a criminal case prior to trial? Must the prosecution recommend a sentence to the court or can the state stand mute? Does the charging method that police use predispose the plea bargaining process? Are defendants induced to enter guilty pleas by the inner workings of the criminal justice system? Is it legally acceptable that defendants who enter guilty pleas receive less severe sentences than those requesting trials? Are Constitutional rights protected or usurped by the plea bargaining process? Is a judge or referee required to participate in the plea bargaining negotiations and are they required to accept any plea offered? What part does the victim or the public have in the plea bargaining process? Is justice served or can those who are

factually guilty literally "get away with murder" because of the plea bargaining process?

Purpose of the Study

This thesis considers the issues raised above about the plea bargaining process, attempting to provide answers based on an examination of various works about the process, case law, and empirical research, as well as providing a body of information about plea bargaining. The thesis concludes with a comprehensive definition of plea bargaining in its current state of evolution.

Overview of the Study

The first chapter provides a general overview of the plea bargaining process as well as showing the need for the study. The central ideas are that there is no singular definition of plea bargaining and there is more than one type of plea bargaining currently in use.

The second chapter is divided into two portions. The first portion of the chapter is a literature review indicating various positions, issues and arguments supporting and opposing the use of plea bargaining. Law journals as well as popular publications were used to provide comprehensive coverage of viewpoints about plea bargaining. The second portion of Chapter 2 consists of an examination of case law concerning various questions of law about

plea bargaining. The review of case and statutory law was not restricted to the Ohio courts. In order to develop a more complete picture of plea bargaining, case law from various levels of courts throughout the country was examined. Attention was focused so as to determine the legal development, standing, definition, application and interpretation of plea bargaining as well as the issues affecting the plea bargaining process. These issues included topics concerning: elements of the crime and the guilty plea; who controls the plea bargaining process; the voluntary or involuntary nature of waiving the right to trial; aspects of differential sentencing and various rights waived by the plea bargaining process.

The third chapter of the thesis describes the methods used to examine two case recording systems from the populations of municipal and county courts in Mahoning County as well as congruous courts throughout the State of Ohio. Attention was focused on cases filed, pending, and transferred from another court or reactivated during the calendar year of January 1, 1987 through December 31, 1987.

The fourth chapter contains an analysis of the data gathered from the case recording systems identified in Chapter 3. Attention was focused on the impact of case pressure on the case resolution methods of guilty pleas and dismissals. This was accomplished by the use of various statistical testing procedures.

Descriptive statistics illustrated the prercentage of cases resolved by various case resolution methods.

The fifth chapter consists of a summary of the thesis. Included in Chapter 5 are also the author's conclusions about the findings. Suggestions for further research are indicated. The chapter concludes with a revised definition of plea bargaining.

Chapter 2

Literature and Case Law Review

Literature Review

The notion of pleading is ancient in origin. Some of the earliest recorded sources of pleading are biblical in nature. Consider the pleas for help from the Canaanite woman for her child (Matthew 15:22-28, in McLaughlin, 1941, pp. 43-44), the cries for mercy by Bartimeus (Mark 10:47-52, in McLaughlin, pp. 121-122), as well as the actions of the penitent sinner woman at the Pharisees' house (Luke 7:36-50, in McLaughlin, pp.171-172).

As far as the term "bargain" is concerned, ask any shopper and one might well find that the term is associated with receiving a greater return than expected for funds spent.

However, the idea of plea bargaining is a recent phenomenon (Alschuler, 1979). Trying to understand the modern concept of plea bargaining using the meanings associated with the words, alone, will not reveal the actual process taking place within today's legal community. Hayakawa (1972) tells us that the meaning associated with a particular word or concept comes from within the individual. To a large extent, those individualized meanings and beliefs govern one's conceptual response. However, the position one has about an issue is not entirely dependent on

the perception of the issue alone. There is a synergistic effect when the individual words "plea" and "bargain" are combined.

Working definitions of plea bargaining. Thomssen and Falkowski (1979) indicated that more than 66% of all court cases involved some type of plea agreement and 90% of all criminal convictions were the result of guilty pleas, of which 75% directly involved plea bargaining. A study by the Citizens Research Council of Michigan (1978) found that over 68% of convictions were accomplished by guilty pleas. Sit (1987) found that 81% of convictions were the result of a guilty plea. Dean (1974) said: "In many courts 90 percent or more of defendants plead guilty to something, and the pressures brought to bear on a defendant to plead are enormous" (p. 19).

With the high rate of guilty pleas, many resulting from some type of negotiated plea arrangement, Miller (1977) indicated that there was a lack of consensus among the legal profession about what plea bargaining was. Despite this lack of consensus Alschuler (1983), in an article vehemently opposing plea bargaining, referred to a public opinion survey showing 70% of those polled were opposed to the practice of plea bargaining whereas 21% were in favor of it. Alschuler contended that the only group approving of the practice were attorneys (p. 1049).

Langbein (1979) referred to the practice of plea bargaining as "...condemnation without adjudication" (p. 204).

The *Harvard Law Review* (1970) defined plea bargaining as being a negotiation process, "...in which the prosecutor offers the defendant certain concessions in exchange for a guilty plea" (p. 1389).

Black's Law Dictionary (1979) defined the concept of plea bargaining as:

> The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. (p. 1037)

The fact that plea bargaining has only recently been recognized as a concept is obvious by its absence in the revised 4th edition of *Black's Law Dictionary* (1968).

Political activist Jerry Rubin (1970) provided a more colloquial insight into the process. He referred to plea bargaining as:

> ...a negotiation session between the State and Criminal on how much the Criminal must pay for having been arrested. Ninety-five percent of the people busted make deals to get lesser punishments. (p. 160)

"Plea bargaining" is a nebulous generic term. The contemporary use of the term "plea bargaining" attempts to describe several concepts. First, the term describes a somewhat complex series of events such as those taking place during a negotiation process. Second, the term describes an acceptable procedure. Guilty pleas, often resulting from plea bargaining negotiation sessions, are the case resolution method most often

used by today's courts. Also, the term can describe a combination of various case resolution methods used in concert.

Plea bargaining can also be viewed as a legal catharsis where the litigants supposedly talk things out rather than going through an adversary settlement. Rogers (1942) described the psychological relationship that developed between parties where they just got things out in the open--airing their differences. However, most plea bargaining negotiations do not take place in public view; there is no open airing of differences. Also, the victim usually does not participate in the negotiations. These features are often pointed out by critics of plea bargaining.

Judge Mortin, of Genesee County New York (cited in Umbreit, 1986) addressed the need for actual victim involvement: " 'The earlier the victim becomes involved in the criminal justice system the better. For too long their needs have been overlooked' " (p. 204).

A historical summary of plea bargaining. Alschuler (1979) examined the historical aspects of plea bargaining. He contended that the idea of plea bargaining was an unknown concept throughout the development of the common law. He defined the modern concept of plea bargaining as consisting, "...of the exchange of official concessions for a defendant's act of self-conviction" (p. 3).

Self-convictions are the default manner of criminal case disposition today. Approximately 90% of all criminal cases were resolved by guilty pleas, as opposed to trials.

The extensive use of the guilty plea has not always been the normal state of events. During the medieval period, guilty pleas were the exception rather than the rule for resolving criminal cases. Also, the idea of an adversary method to resolve conflicts is an underlying premise of our legal system (Goodpaster, 1987).

There are numerous types of adversary conflict resolution methods; however, they have one common aspect, "...they are contests that lead to decisions" (Goodpaster, 1987, p. 119). Contests usually have formalized rules governing participants' behavior, actions and how to determine the winner. Plea bargaining, however, has few formal rules, other than rules of usage that indicate the proper method for acceptance of the guilty plea by a court.

The remarks of Sir Matthew Hale, Lord Chief Justice in England from 1671 to 1676, indicated that courts at that time were extremely reluctant to accept guilty pleas:

> 'Where the defendant upon hearing of his indictment... confesses it, this is a conviction; but it is usual for the court...to advise the party to plead and put himself upon his trial, and not presently to record his confession, but to admit him to plead.' (cited in Alschuler, 1979, p. 7).

This reluctance to accept guilty pleas continued throughout the development of American and English jurisprudence until the later part of the 1900s.

Also, this conflict and confusion surrounding plea bargaining has been with us since plea bargaining was recognized as a concept. In Miller's article (1927) he said the term "plea bargaining" might be used in place of "compromise." His comments show there was concern about the practice in the early part of the century: "In theory there should be no compromises of criminal cases" (p. 1). Miller's concern about the practice was exemplified by the results of a study done on felony disposals during the year 1926 in Cleveland.

Examining the courts in Detroit, Bashara and Gardner (1978) reported that 20 judges handled 11,011 criminal cases. More than 68% of those cases were disposed or terminated by the court accepting guilty pleas, or an average of 374 guilty pleas per judge. They estimated that if plea bargaining were eliminated, more than 70 judges would be needed to handle the case load. Statistics similar to these are cited by various authors and judges as reasons to justify plea bargaining. Although the reason of heavy case loads is used to justify the extensive use of plea bargaining by contemporary criminal courts, Bechefsky and Katkov (cited by Bashara and Gardner, 1978) proposed that plea bargaining may have other roots, "...plea bargaining did not develop as a

response to heavy case loads. In fact, originally, plea bargaining developed as a mechanism to provide flexibility within the rigid system of statutory and common law" (Bechefsky & Katkov, cited by Bashara & Gardner, 1978, p. 11).

Viewing plea bargaining as a response to heavy case loads is analogous to explanations of behavior by psychological stimulus-response motivational theories. The earliest theories of motivation were those of the stimulus-response types (Donchin, 1984). In order to determine why some behavior occurs, behaviorists study the motivations of that behavior. Some motivators, such as hunger, are not directly observable (Dworetzky, 1985, p. 274). Just as eating was the observable response to the motivator of hunger so was the negotiated guilty plea case resolution method the directly observable response to case load. Maynard (1984) also suggested that plea bargaining was a response to various stimuli, "...plea bargaining is often depicted as a *response* to such outside factors as overcrowding in the courts or abstract laws and harsh penalties established by state legislatures" (p. 2).

There are various "outside factors" also acting as stimuli other than those identified above by Maynard. The work-group relationships, preferences and attitudes developed over time among the various judges, prosecutors and defense attorneys comprising the legal bureaucracy are also stimuli to the negotiated guilty

plea case resolution method. They become accustomed to conducting business in a particular fashion.

The process of becoming accustomed to a particular method of resolving cases combined with a customarily associated penalty was discussed by Miller (1977). Miller wrote about the expectations of attorneys, who usually practiced in Philadelphia County, defending clients in Montgomery County:

> ...an assistant prosecutor explained that defense counsel who practice regularly in the Philadelphia criminal courts may occasionally defend a first degree burglar in the Montgomery County criminal courts. These attorneys are suprised to find that these cases are not automatically considered for probation. (p. 80)

This process of becoming accustomed or conditioned to a particular method of resolving cases is a learning process.

The process of instrumental learning strengthens or weakens the response to a stimulus by a consequence following the response (Dworetzky, 1985, p. 188). Criminal charges levied against an individual are the stimuli that must be responded to. The classic responses (methods) of resolving criminal cases are those identified by either the Sixth Amendment to the United States Constitution or Article I §10 of the Constitution of the State of Ohio. The classic case resolution method is confrontation or going to trial. The consequence following the response is the sentence. The defendant exercising his right to trial more than likely faces a more severe penalty upon conviction than the

defendant who pleads guilty. This is the crux of differential sentencing.

Smith (1986) addressed this issue of differential sentencing. In Smith's study, "...71% of the 279 defendants convicted at trial received prison sentences of one year or longer compared to only 42% of defendants who plead guilty" (p. 957). Cooperation with prosecutors can mitigate the punishment, even during times of war. During World War II, Germany successfully landed several saboteurs along the eastern shores of the United States. One of them, Dasch, defected shortly after the landing and proffered information about the planned covert mission to the FBI. Dasch also convinced another saboteur to inform on those remaining. These acts of cooperation were rewarded. Dasch and the other informer were sentenced to prison terms whereas the other saboteurs were executed (Chiles, 1988, pp. 198-200). This event is only one of many blocks in the operant conditioning foundation supporting implicit plea bargaining.

Consider the message this case resolution sent to all defendants. Since this incident occurred during a period of international conflict, the message was of special significance. During times of war, sabotage by foreign nationals is not something those in power take lightly. Even though the above incident occurred while an international war was being fought, it became just another situation sending a special message to all

criminal defendants. Due to the differential penalties, death versus prison, the sentences publicly acknowledged to defendants that their cooperation would probably be rewarded with a substantial reduction of the imposed penalty upon conviction.

The more severe penalties are operants reinforcing the avoidance of the trial. A case resolution method not using the trial is therefore an operant conditioned response to the criminal indictment. The negotiated guilty plea is such a case resolution method that has evolved into an acceptable alternative practice to trials by the bureaucratic courtroom work-group:

> If men were supremely adaptable, and could shift from boldness to caution as the times demand, then they could master fortune. But no man is wise enough to know how to accommodate himself to the variability of affairs, both because 'nature' disposes an individual to act in a certain way and because he cannot be induced to depart from methods that have worked for him in the past. (Germino, 1972, p. 33)

It was noted that the conditioning process does not stop with the conviction. Morris (1974) cautioned about the practice of giving prisoners an early release because of participation in experimental studies or voluntary treatment programs: "The link between release on parole and involvement in prison programs must be broken" (p. 35). Skinner (1971) examined a type of bargaining often used by prisoners to ameliorate their sentence:

> ...the practice of inviting prisoners to volunteer for possibly dangerous experiments--for example, on new drugs--in return for better living conditions or shortened sentences. Everyone would protest if the prisoners were forced to participate, but are they really free when positively reinforced, particularly when the condition to be improved or

> the sentence to be shortened has been imposed by the state? (Skinner, 1971, p. 36)

Also, this practice is not a unique Western phenomenon. Kovaly (1971) identified a similar process of reducing sentences for performing some act or duty within the Soviet Union.

Various typologies and models of plea bargaining. Miller, McDonald and Cramer (1978) identified two fundamental typesof plea bargaining. The first type identified by them was the explicit type of plea bargaining. This type uses a negotiation process between defense counsel and the prosecution counsel culminating in an agreement. Negotiations are not limited to charge reduction. There may very well be other topics addressed such as sentence recommendations or prosecutorial acquiescence to evidence admitted by the defense counsel indicating mitigating circumstances. The agreement is then presented to a judge for official approval.

Morris (1974) referred to the judicial approval process as the power of veto:

> The judge also becomes a mere secondary party, advised by the first two parties [defense and prosecution attorneys] of the conclusions of their negotiations, having only a veto power over them, a veto power he can exercise only rarely if the trial system is not to break down. (p. 53)

Newman's comments (in Atkins & Pogrebin, 1978) show how infrequently judges use this veto power: "A number of judges reported that they could not recall ever having failed to go along with a district attorney's recommendation to reduce a charge" (p. 193).

The second plea bargaining type identified by Miller *et al.* (1978) was the implicit. Here there were no direct negotiations. Rather, the defendant was prone to enter a guilty plea due to conditioning induced by either past experience in the criminal court system or observations of previous cases.

Nardulli, Flemming, and Eisenstein (1985) identified the consensus and concessions types of plea bargaining. The consensus type is tantamount to the implicit type of plea bargaining, with the exception that negotiation proceedings may be included. The consensus type of plea bargaining:

> ...would predict high levels of consistency with respect to both charging and sentencing. Charge and count modifications would be relatively infrequent, and instead of rampant sentence disparities, a set of going rates would minimize variations in sentences for comparable cases and circumstances. (p. 1112)

Charging methods. Various charging methods can be used by either the police or the prosecutor. Criminal charges can be filed against defendants so that they are either overcharged, undercharged or straight charged. The primary concern about charging methods focuses on the concept of *overcharging*. Klein (1976) defined overcharging as deviation from a customary practice: "What constitutes overcharging is related more to normative than legal considerations" (p. 118). There are several types of overcharging.

The vertical overcharging method separately charges all lesser-included offenses of the alleged conduct. The lesser-included offenses are separate offenses that were committed in order for the particular crime to have occurred. Charging a person with the crime defined by the lesser-included offenses, by definition, includes them. These lesser-included offenses are sometimes the *elements of the crime*.

For example, a burglary in Ohio is defined by individual elements. The statute defining burglary indicates this crime occurs when a person, "...by force...shall trespass...with the purpose to commit therein any theft...or any felony" (§2911.12 of the Ohio Revised Code).

The following three elements are included in the statute's definition of burglary and are lesser-included offenses that may be separately charged: (a) force, most often a door or window secured with a lock is forced open. However, there need not be anything "forced." Force can be constructed as a concept. The only force need be an action done without the permission of the owner or an action done without authority of law; (b) trespass, being in the structure or on the property of another without permission; and (c) with the intent to steal something or engage in felonious activity.

Vertical overcharging accuses and charges the individual with each lesser-included element, as separate counts in an indictment.

Using the crime of burglary, Trespassing (§2911.21 of the Ohio Revised Code) would be included in the charges since the perpetrator would not have had permission to enter the land or premises of the victim. More often than not, some portion of the burglarized building would be damaged by the entry. A lock may be forced or a window may be broken. These acts are prohibited by §2909.07 of the Ohio Revised Code (Criminal Mischief). While in the building, the perpetrator most likely would steal some item of value. This theft is prohibited by §2913.02 of the Ohio Revised Code. When one is convicted of a singular crime, one is punished according to the penalties indicated for that singular crime. As opposed to when one is vertically overcharged and convicted of each lesser-included offense there exists the potential of facing greater penalties.

A second overcharging method is the horizontal type. This type includes all actions of the perpetrator that are ordinarily considered separate crimes, as opposed to lesser-included offenses. An individual might commit various crimes while preparing for a crime. A crime also might be committed while traveling to and from the crime scene.

Charging by the horizontal overcharging method, an individual committing a burglary would first be charged with the crime of burglary. The moment the perpetrator took a stolen item into possession, the crime of Receiving Stolen Property (§2913.51 of

the Ohio Revised Code) would be charged. Possession of a crowbar, used to pry a lock to gain entry, is an offense prohibited by §2923.24 of the Ohio Revised Code also known as Possessing Criminal Tools. Disorderly Conduct (§2917.11 of the Ohio Revised Code) prohibits the inconvenience experienced by the victim. If the perpetrator failed to report the crimes to the police, the crime of Failure to Report a Crime or Knowledge of a Death (§2921.22 of the Ohio Revised Code) was committed. Finally, when the perpetrator parked the get-away car so that it blocked the victim's driveway, there was a violation of §4511.68(B) of the Ohio Revised Code also known as Parking Prohibitions. Thus, the individual would be horizontally charged with each separate crime not ordinarily defined as lesser-included offenses of the burglary. The possible penalties one would face upon conviction of these horizontal charges would be far greater than if one was charged with and convicted of burglary alone.

A third method of overcharging criminal offenses is the maximum charging method. This method charges a person to the highest degree possible for a given course of action. Using this method, a prosecutor might charge an individual with Burglary (§2911.12 of the Ohio Revised Code) even though one of the individual elements comprising burglary may be weak or entirely missing.

Consider, for example, that the actual intent of an individual entering another's occupied structure was not to commit a theft or a felony. Instead, it was to play a practical joke on another person by rearranging all of the furniture in that person's home. The entry upon the property of another would indeed be a Criminal Trespass (§2911.21 of the Ohio Revised Code) and the rearrangement of furniture would involve an act of Criminal Mischief (§2909.07 of the Ohio Revised Code), which, under these circumstances, would amount to a misdemeanor of the third degree. Since Criminal Mischief is not a felony or a theft, one of the elements of burglary would be missing. However, when using the maximum charging method the missing element would be constructed. It could be argued that the actor did indeed commit a theft--stealing the occupant's time when he had to place everything back in order. Also, it could be argued that one had no other purpose in mind than stealing something when entry was gained by force. These arguments, weak though they are, could construct a missing or support the weak element and sustain a charge of burglary.

A fourth charging method only files charges for the actual crime committed. If a burglary was the crime committed, Burglary (§2911.12 of the Ohio Revised Code) would be the only criminal charge facing the defendant. The straight charging method leaves little room for negotiations concerning charge reductions. If

there are any negotiated reductions, either the original criminal complaint must be amended or the complex process of filing the *new* negotiated charges and going through the arraingment process again must be done again.

The fifth charging method involves the police charging an individual with a degree of criminal culpability that is less than the actual crime committed. Consider the example given above in the maximum charging method. Rather than attempting to construct the missing or support the weak element of burglary, the police would only charge the individual with Criminal Trespass (§2911.21 of the Ohio Revised Code). Once again, the prosecutor has little bargaining room. The less culpable charging method also infringes on the power of the prosecuting attorney to negotiate. This method suggests there may have been some negotiations between the police and the defendant prior to charges being filed by the police.

It is clear that the charging method has an impact on plea bargaining negotiations. Some charging methods give the prosecutor more room to bargain. The charging methods also have an impact on the defendant. The particular charging method used can produce a substantial amount of pressure on defendants to plead guilty: "Their guilty pleas are the product of the threat of a larger punishment if they do not plead guilty or, phrased more generously, of uncertainty about what their punishment would be if

they risk either bench or jury trial" (Morris, 1974: p. 51). Since the "jury trial has become the exception rather than the rule..." (University of Pennsylvania Law Review, 1984, p. 327) "the decision to charge a defendant is frequently made with the ultimate aim of plea bargaining" (Atkins & Pogrebin, 1982, p. 6).

Various methods of resolving criminal cases. Miller (1927) identified various methods of resolving criminal cases other than trial on the original charge, "...in securing either a dismissal or a reduced penalty at the hands of the prosecuting attorney" (p. 6). First, the prosecution could simply move for a dismissal of the charges during the preliminary hearing. Second, immunity could be granted in exchange for the defendant's turning state's evidence. Today this method is often associated with infiltration of organized criminal activities and drug cases. Third, the prosecutor could dismiss or *nolle prosequi* at the trial. Waiting for the trial keeps the defendant on notice. There is always the outside chance that the defendant may plead guilty during the opening remarks of the trial, before the prosecutor dismisses the charges that evidence or some deficiency in the state's case might not support a finding of guilty beyond a reasonable doubt. The standard of proof at trial.

Fourth, the prosecutor could agree to dismissal of various pending charges in exchange for the defendant's guilty plea on those remaining. Fifth, the original charge could be dismissed in

exchange for the defendant's guilty plea on some lesser offense. This type of plea bargaining is the most common public conception about plea bargaining and is referred to in this work as the traditional type of plea bargaining. Last, the state could agree to continuances or to standing mute. The state's acquiescing would permit the case to pass out of sight in the court's calendar without comment or taking any action. The longer the delay, the greater a defendant benefits.

Courts, as well as prosecutors, do stand mute and allow a case to become lost in the myriad of court calendars. A recent judicial order issued by Judge Frampton (1988) illustrates that acquiescing and standing mute continues today. The order concerned a delinquent child (*i.e.*, under Pennsylvania law, a juvenile who has been convicted of a criminal rather than a status offense) who was sentenced on August 26, 1986, "...to remain under the jurisdiction of the Juvenile Court until his fines and costs in this captioned matter were paid in full." The judge continued, saying that the individual sentenced had made only one payment and "...has had four convictions in Criminal Court since...and he has totaled $705.10 in Criminal Court Costs and restitution, with no payments to date."

How did the judge respond to the matter of noncompliance? By dismissing the original delinquency charge? No. The judge, the prosecuting attorney or the probation department did not take any

action on the original charge since the original date of sentencing, even though the individual was charged in connection with four more criminal matters since the original sentence. Rather, they acquiesced to their accustomed method of dealing with defendants--accepting a guilty plea (called a consent decree in juvenile cases) without protesting about the defendant's failure to comply with the provisions of the plea.

Instead of focusing on the guilty plea and accepting it as the final resolution to the matter, had some type of specific deterrence such as incapacitation or intensive supervised probation been used the subsequent offenses might have been prevented (Levine, Musheno, & Palumbo, 1980, p. 308). The opportunity to commit the subsequent offenses would probably not have occurred if the juvenile were placed in an institutional setting. Also, if the juvenile had intensive supervision attempting to counter the effect of some underlying factor, such as differential association, causing the antisocial behavior the first crime may have been the only one the juvenile became involved in. (The exact etiology of crime is a debatable issue and beyond the scope of this thesis.) However, allowing the juvenile to plead guilty to criminal behavior without any other tangible penalty did little more than condition him to plead guilty when facing a criminal charge at some future time.

The tools of the plea bargaining process. All involved in the criminal courts have certain bargaining chips that are used to facilitate the plea bargaining process (Dean, 1974). For lack of a better term, the term "chip" is used here with the same meaning as a chip in a poker game--one only has so many chips to play before they must call and show their hand. First is the chip held by the accused. It amounts to nothing more than exercising the right to trial if the negotiated plea bargained settlement is not agreeable. Second are those chips held by the prosecutor:

> He can reduce the charge (perhaps to circumvent a legislatively mandated sentence); he can agree to dismiss other charges (to eliminate the threat of consecutive sentences); he can seek the dismissal of charges in other jurisdictions; he can recommend a more lenient sentence, or agree not to oppose a defense plea for leniency; he can agree to dismiss charges against a codefendant on other charges, which may or not be related to the instant offense....to indict the defendant for the highest crime that the evidence could possibly support.... (Dean, 1974, pp. 19-20)

Third is the chip held by the court. This is the ability the court possesses to *encourage* a guilty plea by threatening the imposition of a harsher sentence if the defendant is found guilty at a trial. Goldstein (1977) addressed the issue about the lack of controls: "A prosecutor need not account for a decision to prosecute, nor must a judge justify a decision to dismiss" (p. 199). Referring to judicial discretionary power, Miller (1927) said: "As to the manner in which such discretionary power should be controlled and exercised there is more room for question" (p.

11). However, in the United States there is some degree of control over this discretionary power.

The effect of the press. In theory, the American public has ultimate control over the prosecutor by the power of the poll and in some states in determining whether a judge will be elected or retained. However, this power often amounts to little more than a facade since the public is largely unaware of the actual day-to-day operations and problems of the court system.

The primary reason the public is not aware of these actual day-to-day operations is due to the source of their information about courts--the press. The public's reliance for information on a myriad of topical matters by the usual explicative nature of the press is not fulfilled about issues concerning the courts. Most judicial problems are ignored by the press (James, 1974). As will be later indicated, the majority of a court's business is conducted in a bureaucratic manner--accepting guilty pleas as opposed to actually hearing cases or presiding over trials. And without trials the press has little to report to the public. This leaves the public with scarce information to formulate an opinion about a candidate for judge or district attorney. Since most negotiation sessions do not take place in public, the only information available for the press to report is the number of cases *handled* by the judge or district attorney. This lack of

public information and involvment is an area about the plea bargaining process that is often criticized.

Despite this lack of public involvment in the negotiations, the press was shown to have an effect on the plea bargaining negotiation process. Without a jury, "...there is no chance that press coverage will prejudice the jury. Nonetheless, it is possible that press coverage will taint the *process*" (Pritchard, 1986, p.143).

Pritchard's study of homicide cases also showed the influence that press coverage had on a prosecutor's decision whether to engage in plea bargaining negotiations or to prosecute by trial. Prosecutors acknowledged to him "...that they take press coverage of a case into consideration in deciding whether to engage in plea negotiations" (p. 144). Pritchard also found that:

> ...press behavior--specifically, the average length of stories about a case--was the strongest predictor of whether prosecutors engaged in negotiations. The proportion of stories about a case that relied partly or entirely on nonroutine sources, however, was not a significant predictor of negotiations. (pp. 150-151)

A look inside the negotiations. What exactly goes on during the plea bargaining negotiation process? A segment of the CBS news program *60 Minutes* reported by Mike Wallace (Wallace, 1989) provided rare public insight when the negotiations between defense attorney, Mr. Saltzman, and prosecution attorney, Mr. Ferrara, in a narcotic case involving a 16-year-old defendant were filmed:

> Saltzman: Nestor, four to 12 is too much for this kid. You can't do that to a kid.

Ferrara: I don't think so.

Saltzman: Nestor, on a four to 12, Nestor, he's going to do four years before you say he's eligible [for parole]. He's out there in the streets, he's got nowhere to go, no job offers, he's going to school. He knows what will happen if he goes to jail--he may be raped, he may be abused. You know what happens up there, and don't tell me you don't.

Ferrara: Unfortunately, unfortunately--

Saltzman: Come on.

Ferrara: --he's taking--you always tell me that I have the power of life and death. They have their own power of life and death. They sell crack, they got to pay the penalties. If you think this arrest is not good, then you know the remedy.

Saltzman: I go to trial, take a chance on 15 to life for this kid? That's no remedy. I can't take the chance.

Ferrara: I gave you a bottom-line offer. That's what it's going to be, Bob.

Saltzman: Nestor, you gave me a bottom-line offer without listening to me. You came down and said, "This is what is," and dictated, and said, "This is it, this is what he's going to have to pay, and everybody's going to take this," Nestor, and you--

Ferrara: You've told me nothing that's going to change my mind.

Unfortunately, most public news organizations in this country are capitalistic enterprises concerned with cost and profit. The media can only publish as much as advertising can support and readers will endure, in a highly competitive market. Although the public has a right to be informed, would extended coverage serve any useful purpose? Or, would readers soon lose interest due to the repetitious nature of negotiation sessions?

The power of the prosecutor. Indeed, the prosecutor does possess a wide latitude of discretion. In the above-mentioned exchange, the defense attorney accused the prosecutor of "dictating" the terms of the settlement. Langbein (1974)

addressed the considerations of prosecutorial discretion. He said the primary reason this issue was of vital importance in the American system of justice was the veritable monopoly held by the prosecutor:

> In cases of serious crime he alone procures the indictment or lays the information; and thereafter, his powers to dismiss, to compromise, or to insist on full trial are all but unlimited. No other officer and no private citizen, not even the victim, may come forward to prosecute when the public prosecutor will not. No one else may make good the prosecutor's neglect. (p. 440)

However, it should be noted that there are certain scarce exceptions to this monopoly. Information relating to criminal actions may be brought to the court's attention by an investigatory grand jury, which, under certain circumstances, may be formed by its own volition, or by an *amicus curiae* action. (*Amicus curiae* is a legal term indicating someone acting as a friend of the court. This friend files a brief drawing the court's attention to some matter perhaps not readily apparent to the court.)

This monopoly of control by the prosecutor is not universal throughout all countries. Langbein (1974) also said that in France if the, "...prosecutor decides not to prosecute, he decides for himself and his office alone. Someone else may still invoke the criminal process against the culprit" (p. 442). Marshall (1985) described the different degrees of authority and discretionary powers in some countries. For minor offenses, the

Sweedish, Danish, and Belgium prosecutors were able to levy predetermined (scheduled) monetary penalties. Prosecutors in Norway were found to have the power to convict a defendant without going through a trial. The prosecutor usually punished those convicted in this manner with suspended sentences. These seem to be quite extensive powers when compared to a prosecutor's powers in the United States.

Time limitations of the negotiations. The bargaining process is time bound with respect to prompt trial statutes. If a case is not resolved within the limits, it must be dismissed. Also, the plea bargaining process usually takes place early on in the criminal justice court process. However, as discussed above, certain negotiations about sentences may take place after the conviction.

The extent of the state's power. The story of Floyd "Buzz" Fay illustrates the extreme amount of power wielded by the state during a criminal investigation. The prosecution developed a weak case against Fay when he was implicated in a murder. He was given a deal. The prosecutor suggested there would be no charges filed if he were able to pass one of two polygraph tests. If he failed both tests he would enter a guilty plea to a lesser degree of murder. However, if he refused to enter the guilty plea he would be charged with aggravated murder and the results of the polygraph tests would be submitted as evidence.

Fay failed both tests and was convicted. Later, following an intensive investigation by a public defender, Fay was exonerated (Dworetzky, 1985). Here the state had the power to charge Fay without offering any real bargain in the take-it-or-leave-it package deal. Because of the legitimized force possessed by the state, Fay was forced to provide incriminating evidence, the results of the polygraph tests that the state would not have otherwise had. The power of the state backed by criminal laws has been referred to by Goodpaster (1987) as, "...one of the government's greatest weapons" (p. 134).

This disparity of power favoring the state was described by Blumberg (1979) as the underlying problem facing the criminal defendant:

> The incredible disparity of resources available to the police, prosecution, and court as contrasted to the average person. The only leverage an accused has to offset the preponderance of power and advantage of resources in the hands of the prosecution is the vague threat of a jury trial. (p. 285)

A defendant facing criminal charges imposed by the state is indeed a contemporary David facing Goliath.

What is case pressure? Anyone who has been forced to complete some task by a specified deadline, while other work accumulates, knows exactly what case pressure is.

In the case of *Santobello v. New York* (1971) Justice Burger asserted that plea bargaining existed because of congested court dockets: "If every criminal charge were subjected to a full-scale

trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities" (p. 260). Is this an accurate portrayal? Perhaps it is not. Heumann (1978) examined Connecticut trial courts during a 75-year period, 1880 to 1954. His findings illustrated that plea bargaining was not directly related to case pressure caused by congested court dockets alone.

However, consider Mike Wallace's interview of Judge Burt Roberts, who is the Chief Administrative Judge in The Bronx, New York (Wallace, 1989). They discussed some of the staggering statistics about the criminal court system operating in the Bronx. Each year there were more than 9,000 criminal indictments entering a system that could only handle about 550 trials. More than 90% of the defendants entering the system were convicted.

Mirroring Justice Burger's comments some 18 years earlier, Judge Roberts concluded that plea bargaining was essential to the continued existence of the criminal court system: "Plea bargaining is as necessary to this system as breathing, eating and sleeping is to a human being. Without plea bargaining, the system would crumble, would fall apart" (Wallace, 1981). Perhaps the influence of case pressure, created by a court system with an already crowded court docket calendar and backlog of cases, and a future promising an ever-increasing number of defendants entering the

system with cases that must be resolved within specific legal time frames, has more of an influence than Heumann suggested.

Marvell (1987) forcasted the civil case load growth of Ohio courts. Although his study addressed civil case loads, these civil cases are additional to any criminal case load of a judge. Marvell said that civil case loads have increased substantially over the past ten years and "...this trend has encompassed all court levels and a wide variety of case types" (p. 160). Marvell found the rate of increase during this 10-year period was 4% per year or four times the population growth. There is no reason to believe these increases will subside, and he predicted increases of approximately 6% for the years 1987 and 1988.

In Ohio, the already crowded court docket calendar combined with the prompt trial requirements of §2945.71 of the Ohio Revised Code also creates pressure to resolve criminal cases.

The due process and crime control criminal process models. Herbert Packer (1964) identified two models of the American criminal justice system--Due Process and Crime Control. These models represent ends of a continuum and introduced a method of breaking down our complex system of justice so that it could be more readily understood.

The Due Process model was conceptualized by Packer as being a recognition that there can be mistakes made by the prosecution. This model is analogious to an obsticle course (Packer, 1964, p.

13) that presents a series of hurdles that must be overcome in order for a defendant to be found guilty. These hurdles include universally recognized concepts such as protections availed by amendments to the United States Constitution and court decisions based on constitutional provisions. The statements of one appellate judge summed up the extent of these constitutional protections. In a case that was denied *certiorari* by the United States Supreme Court, Judge Posner said that the Constitution of the United States was not a series of positive tests, or tests that required actions by the government about what the government shall do for the public. Rather, the Constitution was constructed as a series of negative tests, or tests that mandated what the government shall not do to the public (*Jackson v. City of Joliet*, 1983).

Defendant presumed guilty. Carter (cited in Huff, Rattner, and Sagarin, 1986) indicated that our system of justice has become so overloaded that, "...it has grown cynical to the possibility of a man's innocence" (p. 523). Are there no wrongfully accused defendants? Huff *et al.* addressed the dilemma of the wrongful accused:

> Typically, the innocent defendant protests his innocence to counsel (and because many guilty defendants also claim innocence, counsel may regard such claims with cynicism) and to others, but not to the judge (at least not in open court), who must approve the plea bargain. (p. 529)

To a certain extent, this cynicism in the criminal court has been reinforced by the fact that many of the civil right suits and civil actions brought by both accused and convicted individuals are *marginal* or *frivolous*. Justice O'Connor acknowledged these unjust actions saying that some actions brought under 42 United States Code §1983 (The Civil Rights Act of 1871) were "...meritless, and the inconvenience and distraction of public officials caused by such suits is not inconsiderable" (*Town of Newton v. Rumery*, 1987, p. 1196). The criminal justice system needed an effective process that was efficient and not totally without protections to deal with a large number of cases.

The Crime Control model, as conceptualized by Packer, was one of efficiency. The primary purpose of this model was to either dismiss the charges against a defendant or to obtain his confession and guilty plea. This model substituted the protections provided by the Due Process model with a screening process of police and prosecutors: "The supposition is that the screening process operated by police and prosecutors are reliable indicators of probable guilt" (Packer, 1964, p. 11). Plea bargaining falls within the crime control strategy and the screaning process is nothing more than a *sub rosa* attempt to protect a defendant's rights.

Pierce (1980) identified a contemporary attitude in opposition to the "innocent until proven guilty" or Due Process model's posit:

> There is a curious phenomena with frightening implications that operates against any accused. Often the police and the general public will assume an element of guilt of anyone suspected of crime; a belief that if one were totally innocent he would not be a suspect. (Pierce, 1980, p. 28)

Mather's remarks (Mather, 1974) complement that position when he said that anyone coming before the court must be guilty of at least something or they would not be there:

> ...in the vast majority of cases the conflict between the accused and the state is not over the question of guilt or innocence, but it is over the question of what punishment will be imposed on them. (p. 268)

Pierce indicated the universal acceptance of this position when he said that this acceptance was illustrated, "...in the legislated laws which require that only convictions of crime can be required on job application, not arrests for crime" (p. 28).

The United States was mandated by the Declaration of Independence to be a government "...instituted among men, deriving their just powers from the consent of the governed...." This indicated that office holders and bureaucrats of the government are purported to act on and for the best interests of the populace.

The Crime Control model was a quick and highly efficient method, with respect to time and money, of resolving criminal cases that falls within this constitutional mandate. Bureaucracies are well noted for steryotyped methods of handling situations before them. Packer's comments noted these aspects when he said:

> The more expeditious the process, the greater the number of people with whom it can deal and, therefore, the greater variety and, hence, the amount of anti social conduct that can be confided in whole or in part to the criminal law for inhibition. (pp. 3-4)

Packer continued, saying that: "Routine stereotyped procedures are essential if large numbers are being handled" (p. 11).

Paramount among the various criticisms about the routine stereotyped procdures used by those using the plea bargaining case resolution method is that defendants are penalized if they do not plead guilty. This includes those defendants who assert their fundamental Constitutional right to trial, as well as other Constitutionally mandated due process hurdles (*i.e.*, calling of witnesses, facing one's accuser, etc.). These defendants often face a more severe penalty upon conviction by trial than when convicted by the guilty plea.

Those who are truly innocent may be compelled to otherwise plead guilty to some lesser charge rather than facing the more severe consequences of an almost certain conviction at a trial on some more serious charge. Smith's (1986) findings showed the prospect of being convicted at a trial were very great, "...the probability of being found guilty once a defendant has gone to trial is .72, a figure consistent with other research" (p. 957). And, since there are certain strict procedural rules in a trial, that have evolved over time, defendants may not truly have the opportunity to vindicate themselves. Also, the structure of the

trial is such that the prosecution has the slight inherent advantage of having the first and last opportunity to address the finders of the facts.

Packer (1964) summed this position when he said: "Only an impartial tribunal can be trusted to make determinations of legal as opposed to factual guilt" (p. 17). A bureaucratic criminal justice system that has been accustomed to certain methods will attempt to use those methods as often as possible.

Our maturing legal system. The effects of maturation among police officers was noted by Pepinsky and Jesilow (1984):

> There is a pronounced tendency among police--the gatekeepers of criminal justice--to mellow as they grow older. They become more relaxed about handling disputes and are more inclined to deal with problems informally, appreciating that taking people into custody or filing offense reports is often wasted effort. A lot can be said for letting criminal-justice forces relax and mature. (p. 90)

Can this maturation effect, or mellowing, be carried over to the court systems? Marshall (1985) said a social control system, "...which entirely lacks informal methods of dealing with many incidents is inconceivable" (p. 26). Trials are the formal methods of resolving criminal cases. Guilty pleas, entered as a result of a defendant's conditioning or subsequent to negotiations, are the informal methods.

Evolution of the American criminal justice system's nontrial case resolution method. How does a pattern of change become the norm? Merton and Nisbet (1971) said:

> Historical instances of institutionalized evasions that have run their full course bring out the connections between the pattern of regularized evasion and subsequent institutional change. (pp. 836-837)

The trends of the legal system of the United States are not new. They are nothing more than modernized versions of those preceding it. Bailey (1961) indicated that the American legal and jurisprudence system had evolved from the established framework provided by the English system of law, which essentially began when the colonists seceded. The foundation included a built-in bias favoring those members of the community who were high in stature or were owners of property. Since the time of the codes laid out by Hammurabi (Johns, 1903) to the birth of the legal system of the United States, one who was higher in social standing or possessed substantial amounts of capital was cradled while the less fortunate were subjected to the full wrath that the state could muster. The legal system of the United States was built on this faulty constructed foundation. The plea bargaining response to criminal accusations has evolved from within this justice system.

Merton (in Merton & Nisbet, 1971) said that there was a natural course about how changes become institutionalized:

> The law is maintained on the books, not as a result of 'inertia' but in response to certain interest groups in the community that are sufficiently powerful to have their way....During the interim of this social conflict, the social system evolves a pattern of institutionalized evasions in which the rules remain nominally intact while devices for neutralizing them evolve. (p. 836)

When viewed from the constitutional purist posit, plea bargaining is nothing more than an "institutionalized evasion" of the trial.

Alschuler (1979) contended that plea bargaining monopolized the resolution of criminal cases during the latter part of the 19th Century. The overwhelming concern of increasing profit by those within the business environment may have had a direct impact on the bureaucratic court system's development and use of plea bargaining.

During the early 1900s, Fredrick Taylor began the scientific management movement (Hersey and Blanchard, 1982). This movement focused on technological advancment. Emphasis was placed on increasing worker output by focusing on the techniques and methods used by workers to complete a task. "Time is money" was the battle cry of scientific management. Likewise, trials consume substantial amounts of time and money.

Courts could fulfill this fundamental economic principle of scientific management if they could develop a method that would resolve criminal cases without the time and monetary expenses consumed by conducting trials. The case resolution method would also be required to provide some degree of protection to those accused. The negotiated plea bargain was just such a method.

Blumberg (1979) addressed the issue of cost-effectiveness when he described how the majority of urban judges believed their constituents rated them: "Many judges in urban criminal courts

feel that there is a strong tendency to evaluate them in terms of speed and efficient processing of large numbers of cases rather than on 'justice' " (p. 263).

Bureaucracies are noted for their processing mindset and stereotyped response to problems and, as indicated above, the court system has this *processing* principle woven within its every fiber: "The overwhelming majority of those who come before the court (at least if they survive to the indictment stage) are convicted--of something" (Dean 1974, p. 18).

Goodpaster's (1987) remarks suggested that the negotiations involved with plea bargaining act as a screening process. The negotions were similar to the Crime Control screening process identified by Packer. Goodpaster's statements also showed that bargaining theory can be thought of as offering some degree of protection similar to that which was offered by Packer's Due Process model. Goodpaster said bargaining theory was a:

> ...pragmatic offshoot of the rights theory. It takes the structure of an adversary criminal trial and a defendant's unilateral trial rights as givens which form the foundation of a system of criminal case resolution that is much greater than the trial...The structure of adversary criminal trial poses no problems for the bargaining theorist because he is not concerned with issues of truth finding, trial fairness and side constraints. (Goodpaster, 1987, p. 138-139)

Although the plea bargaining process does negate certain constitutional protections, the process has become, "...a key element of the existing criminal justice bureaucracy" (Harvard Law

Review, 1970, p. 1410). Plea bargaining is actually nothing more than an evasion of a full blown trial.

Also, consider the current state of events in other Western countries. Damaska's (1973) comments showed that resolving criminal cases by full blown jury trials has become the exception rather than the rule: "...at present the jury trial has been retained only in a small number of Western European countries (Austria, Belgium, Norway and a few Swiss cantons) for the disposition of a narrow class of criminal offenses" (p. 510).

The bureaucratic courtroom work group. The actions of the adversaries after the trial are indicators of the true nature of the relationship among the parties within the bureaucratic courtroom work group environment:

> ...there is a hearty exchange of pleasantries between the lawyer and district attorney, wholly out of context with the supposed adversary nature of the preceeding events. The fiery passion is gone, and lawyers for both sides resume their offstage relations, chatting amiable and perhaps including the judge in their restrained banter. No other aspect of their visible conduct so effectively puts even a casual observer on notice that these individuals have claims upon each other. In intricacy and death, their relations range far beyond the priorities or claims of a particular defendant. (Blumberg, 1979, p. 245)

Eisenstein and Jacob (1977) proposed that daily contact of this type among work groups will increase the likelihood of cooperation among them. This air of cooperation is not created for the sake of those in the environment outside of the work groups. In the realm of the courts--the victim, witnesses,

accused and jury. Instead it is done for the convenience of those within the environment of the work group.. In the courtroom environment this includes the bureaucratic regulars--the judges and attorneys. Farr (1984) argued that the relationship among these work groups was reinforced by the use of negotiated plea bargains: "...plea bargaining vitiates the adversary system by forcing prosecutors and defense attorneys to join together in a cooperative endeavour to obtain a guilty plea" (p. 293).

A summary of the literature revealed several aspects about plea bargaining. The most conspicuous results were that the plea bargaining process was a relatively recent concept and there has been little agreement about what the definition of plea bargaining is as well as what it should explain. Various types of plea bargaining were identified: (a) explicit, which uses actual negotiations; (b) implicit, which does not use negotiations and defendants plead guilty as a conditioned response to criminal charges; (c) charge bargaining, where negotiations focus on the actual charge or charges the defendant is willing to plead guilty to; and (d) sentence bargaining, which focuses negotiations on the defendant's punishment subsequent to the guilty plea. The plea bargained guilty plea has evolved over time within the framework of our legal system. These self-convictions, otherwise known as guilty pleas, have become the usual case resolution methods of courts today.

The third issue examined the effect of charging practices on plea bargaining negotiations. There are several types of charging methods that can be used. The vertical charging method charges all lesser-included offenses of the primary crime. The horizontal method charges all actions of an individual in a course of criminal conduct as separate charges. The maximum charging method charges the defendant with the most severe crime or highest degree of a crime possible for a given course of action. The straight charging method charges only the actual crime that the defendant committed. And, the less culpable charging method charges the defendant with the least severe crime or a lesser degree of crime than could be supported for a given course of action. The extent and method used to charge a defendant are often assessed with plea bargaining in the background. From the defendant's point of view, the charges facing him are a factor that must be taken into consideration when deciding whether to negotiate a guilty plea or to face the unknown consequences of going to trial.

The press was found to have various effects on the plea bargaining process. Due to the fact that plea bargaining negotiations are not a matter of public record, the press has little to report to the public about the case other than the defendant pled guilty. Reporting these guilty pleas sends messages to all that the defendant must have been factually guilty; otherwise there would have been a trial. These reports

also present an aura about the competency of the police and prosecutor. One could surmise that because everyone arrested and prosecuted pled guilty, there were no wrongful accusations or prosecutions. Finally, prosecutors indicated that the extent of coverage a case had in the press influenced their decision whether to negotiate a guilty plea or prosecute by going to trial.

Our legal system has been in existence for a considerable period of time. It is a maturing system that is developing alternative case resloution methods to the traditional trial method. These alternative methods evolved from within this legal system to save not only time and money. They also allow the system to adjust to unusual or mitigating circumstances and harsh legislative sentences. Plea bargaining has become the bureaucratic standard for resolving cases.

The chapter also examined the influence of case pressure and how it affected the court system. Case pressure is an elusive concept that is caused by a combination of events. Crowded court docket calendars, a limited number of judges and time limitations which a case must be resolved within all create pressure to keep the docket moving. The negotiated guilty plea is a case resolution method that evolved from within the legal system to accomplish this goal.

Also, the power wielded by the state was examined. The potential power available to the state has a considerable

influence on a particular case resolution method. Due to the extent of the state's power combined with the *expected* case resolution (the guilty plea) one could question if a defendant's guilty plea was the product of free will.

The crime control and due process models of the criminal justice system were reviewed. Plea bargaining was determined to be a crime control concept. Defendants were also found to be presumed guilty by the bureaucratic regulars of the court system.

The first portion of Chapter 2 concluded with an examination of the maturing American court system. The effect of scientific management, manifest in the early 1900s, helped the evolution of plea bargaining. Plea bargaining was a case resolution method that evolved from within the bureaucratic system of justice that met the scientific management requirement of increased output without increased costs.

The second portion of Chapter 2 reviews case and statutory law concerning various aspects of plea bargaining. In order that a more complete picture of these aspects could be developed, the review was not restricted to Ohio's case or statutory law.

Review of the Legal Perspective

> They don't teach it this way at law school, but the terrible truth is that the law is a game--full of paradoxes and of opportunities that exist on the fringe of fair play. (McCormack, 1987, p. 198)

This portion of Chapter 2 examines the development of case law concerning various aspects of plea bargaining. It was of no consequence to this examination if a case has been subsequently overturned, since this portion of the thesis was intended to be a historical presentation and examination of cases illustrating the positions of various courts on the plea bargaining process. Also, in order to clarify particular positions or principles, examples of statute law or case law were not necessarily restricted to Ohio's system of justice.

Official judicial recognition and development of plea bargaining. In both Great Britain and the United States, the concept of plea bargaining was not officially recognized by the judicature until the early 1970s. Considering that there had been concern about the practice since the beginning of the 20th Century (Miller, 1927) it has taken the courts of both countries considerable time to grant this official recognition. The United States Supreme Court gave plea bargaining official recognition *in re Santobello v. New York* (1971). Justice Douglas wrote in his concurring opinion:

> These 'plea bargains' are important in the administration of justice both at the state and at the federal levels and, as

> THE CHIEF JUSTICE says, they serve an important role in the disposition of today's heavy calendars. (p. 264)

The highest court of England first recognized the practice in 1970 *in re R. v. Turner* (Criminal Appeal Reports 54, 1970, p. 352, cited in McDonald & Cramer, 1980). Review by the highest Court in both countries has been a relatively recent occurrence.

As indicated by Miller (1927), there was concern about the nontraditional handling of criminal cases in the early part of the 20th Century. The term "plea bargaining" was not used at that time by most individuals involved in legal practice. Rather, this case resolution method was referred to as "compromising criminal cases." Any agreement that included the defendant's pleading guilty was called a "plea agreement" by one court (*Rasmussen v. State*, 1983).

A practice of reaching an agreement to dismiss certain charges in exchange for a guilty plea on other charges was addressed and accepted by the United States Supreme Court (*Ring v. United States*, 1974). The practice of negotiating for a defendant's guilty plea was considered an accepted method of criminal case disposition and some Ohio jurisdictions used some type of plea bargaining in 95% of their criminal case dispositions (State v. Griffey, 1973).

The factual basis and the guilty plea. Fundamental to the concept of plea bargaining is the defendant's guilty plea to some criminal statute. The defendant has various alternatives other

than pleading guilty. First, the defendant may always enter a plea of guilty to the original charge. This does not necessarily indicate the lack of plea bargaining. A particular type of plea bargaining, called sentence bargaining, might well be involved. Second, the guilty plea may be entered for some lesser included offense. Third, the defendant may plead guilty to a totally unrelated offense than what he actually committed. Finally, the defendant may assert his right to trial.

One of the arguments that can be raised against the plea bargaining process is that the individual charged with a crime might not have actually committed the crime. A defendant may become so overwhelmed by the vast power of the state he may enter a guilty plea. This plea would be entered simply to end his frustration with the system *since he believed he would be found guilty anyway.*

In the case of *Beaman v. State*, (1974) the court recognized the problem of entering a plea simply to end one's frustration. This court noted the fact that defendants should not plead guilty to crimes they did not commit. The court said the guilty plea should be accurate and factual in relation to the particular crime for which a person pleads:

> ...the purpose of the factual basis requirement is to ensure accuracy of the plea, that is, to ensure that the defendant is guilty of a crime at least as serious as that to which he is entering his plea. (p. 700)

Another court also recognized this problem (*State v. Fletchinger*, 1977). Here the court found that it was improper for the trial court to have accepted a guilty plea when the facts about the case could not support the defendant's being charged with the crime, let alone being convicted of it.

Addressing the issue that there must be a factual basis supporting the plea, a Minnesota appellate court found a trial court, "...did not err in accepting guilty plea where defendant freely admitted his guilt and thereby established a factual basis for the plea" (*State v. Risken*, 1983, p. 489). This court's decision indicated that the guilty plea itself provided the necessary factual basis that a defendant committed the crime he pled guilty to. At least one court has addressed this issue headfirst. This court said a defendant "...should not be permitted to plead guilty from one side of his mouth and not guilty from the other" (*Commonwealth v. Roundtree*, 1970, p. 202). These decisions indicate that some appellate courts demand a greater degree of assurance of factual guilt than the defendant's guilty plea alone.

On the other hand, some appellate courts have not required any level of proof other than the guilty plea itself. In contrast one court found it did not invalidate the guilty plea whenever the defendant pleaded guilty while protesting his innocence at the same time (*Knight v. Johnson*, 1983). The United States Supreme

Court tacitly accepted this type of guilty plea since the appellate decision was denied *certiorari* (*Knight v. Johnson*, 1983). Also, the Supreme Court in an earlier decision, *North Carolina v. Alford* (1970), found it was not an unconstitutional practice for a court to accept a guilty plea while the defendant asserted his innocence at the same time. One should note that some individuals will enter a guilty plea or otherwise admit involvement in the commission of a crime that they are not factually guilty of committing. Many of the reasons individuals do this are psychological in nature and are outside the scope of this thesis.

Appellate courts are not the only branch of government concerned with the requirement of some factual basis supporting the guilty plea. There are indications that legislators were also concerned about the factual requirement. Consider Title 18 Pa.C.S.A. §3929(e), the Pennsylvania statute prohibiting retail theft. This statute said that other *actus reus* (criminal acts) supporting theft charges shall not be reduced to retail theft: "No justice of the peace or other magistrate shall have the power to reduce any other charge of theft to a charge of retail theft as defined in this section." On the other hand, this statute does not preclude a court superior to the magistrate court from reducing other theft charges to retail theft.

The importance of the guilty plea. Just why is the guilty plea of such significance as far as plea bargaining is concerned? The guilty plea was considered more than a confession of guilt and criminality in open court. It was determined to be a voluntary conviction: "Where a plea of guilt has been intelligently and voluntarily entered, it is sufficient to undergird an unassailable final judgment of conviction" (*Sanders v. State*, 1983, p. 283).

Indeed, there is something special about the guilty plea. It amounts to more than only admitting involvement in some criminal activity; it is a full admission of guilt of all elements of a particular crime. The guilty plea was considered by the United States Supreme Court to be a conviction in itself: "Like a verdict of a jury it is conclusive. More is not required; the court has nothing to do but give judgment and sentence" (*Machibroda v. United States*, 1962, p. 493, quoting *Kercheval v. United States*, 1927, p. 223).

A review of state courts' opinions revealed that their inquiry into the circumstances supporting a conviction were not as great as those imposed on federal courts. However, these opinions had one fact in common; there must have been some indication on the record that the defendant was intelligently and voluntarily entering the guilty plea (*Larson v. Coiner*, 1972). This requirement was addressed in Ohio by Criminal Rule 11 of the Ohio

Rules of Criminal Procedure which is discussed later in this chapter.

A defendant pleading guilty must be aware of certain implications of the guilty plea. Prior to pleading guilty, defendants should be aware of certain elements of the offense for which they are charged. In the case of *Commonwealth v. Ingram* (1974) it was agreed that the court accepting the guilty plea was to make certain that the elements of the criminal charge or charges for which a defendant was pleading must be presented and indicated in terminology that the defendant understood. Having the charges read to the defendant and asking if he understood them was not considered sufficient proof of the defendant's comprehension of the charges according to the decision of one court (*Commonwealth v. Minor*, 1976). The United States Supreme Court said that defendants must be made aware of and have some knowledge of the charges to which they were pleading guilty (*Henderson v. Morgan*, 1976).

A guilty plea was invalidated (*Pilkington v. United States*, 1963) when this appellate court determined that the criminal defendant was not fully aware of or was not accurately informed about the maximum sentence that could be imposed following the guilty plea.

These cases did not indicate that each and every element of the crime must be made known to defendants. Rather, they must be

made aware of the critical elements of the offense to which they are pleading guilty. Courts have generally held that this was the responsibility of either the defense counsel or the court accepting the guilty plea. The United States Supreme Court, in *Boykin v. Alabama* (1969), pointed out that felonious defendants must be aware of the fact that they waived certain Constitutional rights when they entered a guilty plea. Consider *State v. Godejohn* (1983) where the appellate court vacated the defendant's guilty plea:

> The trial court did not advise the defendant of his right to a jury trial, his right to confront his accusers, and of his privilege against self-incrimination or make any inquiry as to his understanding of these rights and that by pleading guilty he was waiving them. (p. 751)

The specific procedural steps an Ohio judge must take in order to accept a guilty plea or no contest plea from a criminal defendant are found in Criminal Rule 11. These steps include, among other things, determining whether the plea was of a voluntary nature, that the defendant understood the nature of a plea of guilty or no contest, and informing the defendant that he was waiving any right to a jury trial, as well as advising him of his right to be represented by retained or appointed counsel. A judge assures the procedural steps of Criminal Rule 11 are followed by questioning a defendant about the above issues. The judge must be satisfied that the defendant understood each of these issues before he could properly waive the appropriate

protections. This question and answer session is a part of the official court record assuring that the guilty plea was properly accepted.

The only pleas available to a criminal defendant in Ohio are indicated by Criminal Rule 12. These pleas are guilty, no contest, not guilty by reason of insanity, and not guilty. The pleas of guilty and no contest, also referred to as *nolo contendere*, were considered indistinguishable by one court. This court found that both pleas represent the defendant as being found guilty and convicted as charged (*United States v. McDonough Co.*, 1960).

The application of the procedural requirements of Criminal Rule 11 were found to be mandatory and without strict compliance to Rule 11 a plea was determined to be involuntary and unacceptable by an Ohio appellate court (*State v. Pina*, 1975). Determining whether the plea was an intelligent and voluntary waiver of rights is a subjective *ad hoc* judicial decision. The depth of judicial inquiry required to reach a determination of whether the defendant was aware of the consequences of the guilty plea depends on the totality of circumstances surrounding each individual case (*State v. McKee*, 1976).

The benefits of being assisted by legal counsel are especially acute when one is facing loss of liberty through the process of conviction resulting from a criminal prosecution. This concept was recognized by the Sixth Amendment to the United States

Constitution: "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." Various court decisions have mandated the appointment of counsel unless the defendant intelligently waived that right. *Johnson v. Zerbst* (1938) required the assistance of counsel in all serious federal trials. The *Powell v. Alabama* (1932) decision found a defendant was denied Fourteenth Amendment due process protection when he was not assigned court appointed counsel to assist in his defense to a prosecution for a capital offense. The requirement for assistance of counsel was required for state felony prosecutions by the *Gideon v. Wainwright* (1963) decision. The right to appointed counsel was extended to a defendant who was considering entering a guilty plea resulting from a negotiated plea agreement by the *Moore v. Michigan* (1957) decision: "The circumstances compel the conclusion that the petitioner's rights could not have been fairly protected without the assistance of counsel to help him with this case" (p. 160). The presence of defense counsel to assist the defendant may, however, do more than protect that defendant's rights.

The presence of a defense counsel has a sustaining, sometimes chilling, effect on the legitimacy and permanence of a criminal defendant's guilty plea. A plea entered upon the advice of one's defense counsel cannot be attacked even when constitutional rights preceding the plea may have been violated. Any challenge to such

a guilty plea was limited by the United States Supreme Court to two issues. These issues concerned the voluntary nature of the plea and the fact that advice from the defendant's counsel was outside the standards governed by Supreme Court decisions (*Tollett v. Henderson*, 1973). A guilty plea by a defendant represented by counsel was found to be the product of free and rational choice, notwithstanding the fact that the defendant would not admit to actual participation in the crime (*State v. Piacella*, 1971). McCormack (1987) said: "In a very real way, when you pass matters on to an attorney, you're not just delegating authority, you're surrendering it" (p. 228).

Even though the negotiations are between the prosecutor and defense counsel, the agreement was found by one court to be "...an agreement between the accused and the prosecutor, not between counsel and the prosecutor" (*Rasmussen v. State*, 1983, p. 868). Despite the fact that a defendant was provided with the assistance of legal counsel, the defendant was the one ultimately held responsible by the court for the guilty plea resulting from the negotiations.

Any errors as to the assessment of the law or facts and circumstances by the defense counsel were waived upon the defendant's pleading guilty and were determined to be the defendant's responsibility. Any plea entered under such circumstances would not be considered to be of an involuntary

nature (*McMann v. Richardson*, 1979). A Texas appellate court, reviewing a procedural rule requiring that all pleas must be intelligently made in order for the plea to be valid, held that the rule did not require the plea vulnerable to some later attack simply because the defendant "...did not correctly assess every relevant factor entering into his decision" (*Ex parte Billy K. Evans*, 1985, p. 274). This court attempted to clear the waters by indicating what it considered to be relevant factors that could support a review of the plea by considering the plea to be of an involuntary nature. The court's list included such factors as an agreement that could not be fulfilled, a bargain or promise that was broken or not kept and erroneous advice of the attorneys or the judge.

The responsibility of keeping a promise was found to be binding on a defendant by one court (*State v. Pascall*, 1972). This court held that a defendant who entered a guilty plea following sentencing bargaining negotiations made an implied promise that the circumstances surrounding the negotiations would not change. Any change caused by the defendant in these circumstances, such as being convicted of armed robbery prior to sentencing on the negotiated settlement, excused the prosecutor from carrying out his promise to recommend probation when the defendant plead guilty.

Courts have consistently indicated that it is the defendant who holds the ultimate responsibility for their guilty plea.

Who controls the plea bargaining negotiation process? One court (*State v. Jackson*, 1977) indicated that Ohio prosecutors were not required to bargain or otherwise negotiate for a plea of guilty. This question was met head-on when the court said the practice of plea bargaining was not a constitutionally protected process inasmuch as the plea of guilty must be accepted when offered by either the defense counsel or the defendant. Also addressing this issue were the cases of *Lynch v. Overholser* (1962) and *Weatherford v. Bursey* (1977). In *Lynch v. Overholser*, the United States Supreme Court held: "There is no absolute right to have a guilty plea accepted" (p. 710). Writing for the Court, Mr. Justice White said that plea bargaining was not a constitutionally protected practice. He said the state was not required to accept a guilty plea whenever it is proffered by the defendant or defense counsel; "...there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial" (*Weatherford v. Bursey*, 1977, p. 846).

At least one court held that the decision to engage in plea bargaining negotiations was solely in the prosecutorial domain: "We find that this authority of the prosecutor to bargain is inherent in his office and is of utmost importance in the orderly

administration of criminal justice" (*State v. Hanson*, 1982, p. 301).

Mr. Justice Stewart, *in re Bordenkircher v. Hayes* (1978), said that the decision about what charges to invoke or present to a grand jury clearly resided within the venue of the prosecutor, as long as the evidence was sufficient to support a prosecution:

> In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion. (p. 668)

Courts also have some degree of control over the final disposition of the negotiated guilty plea case resolution method. A guilty plea may be entered to some lesser-included offense of the crime charged in the original indictment provided the Ohio court is willing to accept the plea (*Crockett v. Hastings*, 1965). The trial judge controls more than a choice of accepting the plea, trying a case or imposing sentence. *In re Brady v. United States* (1970) the United States Supreme Court indicated the trial judge can also determine the type of trial by refusing to hear a case without a jury.

The defendant entering a guilty plea to a charge before an Ohio court confesses to the crime that charge indicates. This confession was an admission that the defendant had committed the particular crime for which he was pleading (*Davis v. State*, 1935) even though he might not have factually committed it.

The voluntary/involuntary nature of waving one's rights. An Ohio court (*State v. Jackson*, 1977) recognized the state does negotiate for the defendant's confession during the plea bargaining process. The bargaining process and the subsequent guilty plea were not considered a choice of necessity, where one must unavoidably choose between two alternatives such as remaining silent or confessing. Second, the negotiations and subsequent confession were not found to be coercive in nature, where one was compelled or induced to act in an unfree manner. Third, nor were they found to be of a duress nature, where one individual forces another individual to commit an act, in this case plead guilty, that they would not normally perform. The crux of these arguments was that the defendant had no other choice than to confess. These traditional legal justifications for conduct did not breach a defendant's constitutionally protected right of remaining silent when entering the guilty plea. The defendant was not *forced* to confess and enter the plea of guilty.

Another court found that a prosecutor's threatening a defendant with the invocation of a habitual offender statute did not make the defendant's guilty plea involuntary (*Bordenkircher v. Hayes*, 1978). It was without argument that there was pressure exerted on the defendant motivating him to plead guilty because of the threat to invoke a habitual offender statute. (Habitual offender statutes impose graver sentences upon conviction of a

criminal charge, whereas one convicted without the imposition of such a statute will face a less severe sentence upon conviction.) The reviewing court indicated, however, that pressure to plead guilty, caused by a prosecutor's threatening the imposition of a habitual offender statute, was not in itself considered to be of such a coercive nature as to vacate the guilty plea by invocation of the defenses of coercion or duress. This prosecutioral produced pressure exerted on a defendant to plead guilty as opposed to asserting his right to a trial was considered an unfortunate aspect of the negotiated guilty plea case resolution method by the United States Supreme Court: "...the imposition of those difficult choices is an inevitable and permissible. . . attribute of any legitimate system which tolerates and encourages the negotiation of pleas" (*Chaffin v. Stynchombe*, 1973, p. 31). However, there were limits to the amount of persuasion.

A trial judge's policy of not granting probation to defendants who either failed or refused to plead guilty could weigh heavily upon whether a defendant decided to assert the constitutional right to trial. This policy was considered to be an abuse of the judicial discretion by an appellate court (*U. S. v. Wiley*, 1959). Defendants were found by the United States Supreme Court to have the right to refuse to plead guilty to a criminal accusation (*U.S. v. Jackson*, 1968). This Court reviewed a case involving a criminal statute that only allowed a death

penalty sentence to be imposed after a jury trial. The court indicated that since the death penalty could only be invoked under that particular statutory guideline, it amounted to a statutory form of plea bargaining. Because of this sentencing allowance, the pressure on a factually innocent defendant to plead guilty was manifest if he wished to exercise the right to trial. The Court called it "...an impermissible burden upon the exercise of a constitutional right" (*U.S. v. Jackson*, 1968, p. 572).

This pressure, burden, or force may be a factor that *causes* a defendant to plead guilty, as opposed to exercising the right to trial. It was referred to by a more comfortable term by Mr. Justice White. Can defendants be *encouraged* to plead guilty? Mr. Justice White said, "...there is no *per se* rule against encouraging guilty pleas. We have squarely held that a State may encourage a guilty plea by offering substantial benefits in return for the plea" (*Corbitt v. New Jersey*, 1978, p. 497). The significant functional definition of *encourage* was left to be a matter of interpretation. The prosecutor does not have exclusive dominion over the ability to encourage a defendant to plead guilty. The trial judge also wields encouragement.

Consider the scope of the trial judge's encouragement in the following Ohio case. Trial judges in Ohio were placed on notice that they should not become directly involved in discussions about and the negotiations of plea bargaining (*State v. Griffey*, 1973).

However, the Ohio court shifted its position slightly in *State v. Byrd* (1980) from the position it had in *Griffey* that trial judges shouldn't participate in plea bargaining discussions. In *Byrd*, the court indicated: "Although this court strongly discourages judge participation in plea negotiations, we do not hold that such participation *per se* renders a plea invalid under the Ohio and United States Constitutions" (p. 1388).

Indicative of the *ad hoc* basis for determining each case, in *Byrd* the trial judge brought Byrd to an *in camera* meeting where members of Byrd's family, the judge and prosecution attorney were present. (An *in camera* meeting generally refers to proceedings that take place within a judge's chamber.) Despite the fact that the defense counsel was not present, the reviewing court supported the existence of implicit plea bargaining. The court weighed the defendant's intimate knowledge of the court system against the absence of the defense counsel. The court ruled that the plea was not invalidated by sole virtue of the absence of the defense counsel during the plea negotiation procedure. The reviewing court also said the extent of a judge's involvment in the negotiations deserved special attention upon review:

> As a consequence we hold that a trial judge's participation in the plea bargaining process must be carefully scrutinized to determine if the judge's intervention affected the voluntariness of the defendant's guilty plea. (*State v. Byrd*, 1980, p. 1388)

Recognizing that there was some amount of pressure on the criminal defendant to enter a guilty plea, the California Supreme court said: "Single plea bargains, as opposed to 'package-deal' ones, although containing some elements of coercion, have nevertheless been upheld as proper" (*In re Ibarra*, 1983, p. 985). How much coercion is necessary to usurp a negotiated plea of guilty is a subjective decision. Courts have not formulated a bright line test. Each case must be determined on an *ad hoc* basis.

The nature of sentencing and differential sentencing. Trials often culminate in different sentences than those imposed as a result of the plea bargained agreement. This raises an Eighth Amendment concern with respect to cruel and unusual punishments. Judicial notice was made of the practice where courts imposed less stringent sentences on defendants pleading guilty as compared to defendants found guilty by a jury or trial after initially pleading not guilty (*Dewey v. United States*, 1959).

Among various judges interviewed while gathering data for this thesis, District Court Judge Russo spoke about the rationale undergirding one aspect of differential sentencing. He indicated harsher sentences are at times imposed on defendants who do not plea bargain or plead guilty before a complete hearing is held. Those hearing the case were more aware of the subtle nuances of the particular course of conduct taken by the defendant and may

believe that the crime was graver based on those facts as opposed to the meager information disclosed by the plea bargaining process.

Consider a hypothetical burglary. While accepting the defendant's guilty plea to burglary, a judge would only be exposed to those facts that supported the burglary charge. However, if the case had gone to trial, the judge might have learned that the house was thoroughly ransacked during the burglary and the owners of the house were so terrorized that they have been unable to spend the night in the house since the crime. These are considerably different facts and circumstances for a judge to base a sentencing decision upon.

The issue of a defendant's desire to limit the possible sanction was recognized by the United States Supreme Court (*Parker v. North Carolina*, 1970). This Court said that a defendant often has a desire "...to limit the possible maximum penalty to less than that authorized if there is a jury trial" (p. 795).

The New York Court of Appeals, addressing the issues of differential sentencing of codefendants, said: "There is no requirement that all participants in a crime be treated equally" (*People v. Danny G.*, 1984, p. 270).

The 11th Circuit Court of Appeals said that as a matter of constitutional law the defendant was not required to be aware of any minimum sentence necessary prior to being eligible for parole,

"...a state trial judge need not inform the defendant of the requisite time of confinement prior to eligibility for parole" (*Owens v. Wainwright*, 1983, p. 1113). And, as long as the sentence fell within customary statutory guidlines, the sentence would not normally be subject to a review by an appellate court (*Dorszynski v. U.S.*, 1974; *Gore v. U.S.*, 1958; *Blockburger v. U.S.*, 1932).

The *State v. Jackson* (1977) appellate court also examined the issue where one codefendant had successfully plea bargained while other codefendants were not provided with a similar opportunity. The court said that because one codefendant entered a guilty plea subsequent to plea bargaining, it did not assumptively indicate that the same privilege must be offered to all other codefendants. In other words, the state was not required to bargain or negotiate for a conviction. The denial of availability of plea bargaining to other codefendants was not considered to be arbitrary or capricious in nature.

Various rights waived by plea bargaining. By pleading guilty to a criminal charge, the defendant waives various constitutionally protected rights (*McCarthy v. United States*, 1969; *Boykin v. Alabama*, 1969; *State v. Younger*, 1975). When a court accepts a guilty plea, Justice Stewart said, in his concurring opinion, that it was "...perhaps the most devastating waiver possible under our Constitution (*Dukes v. Warden*, 1972, p.

258). First, whenever a defendant, with the opportunity of having the advice of legal counsel, pleaded guilty to a criminal offense, that plea may not be attacked because of any deprivation of a constitutional right preceding the guilty plea (*Tollett v. Henderson*, 1973). For example, this would preclude violations of Fourth Amendment rights if the police conducted an improper search and seizure. Second, the fundamental Sixth Amendment rights regarding the jury trial are waived whenever the defendant pleads guilty (*Duncan v. Louisiana*, 1968; *State v. Younger*, 1975). Third, the Sixth Amendment right of confrontation between the defendant and his accuser was waived by the guilty plea (Pointer v. Texas, 1965).

Fourth, the Sixth Amendment right to present witnesses in defense to the charges was waived by a guilty plea (*Washington v. Texas*, 1967). However, this Sixth Amendment waiver did not automatically preclude a defendant who pleaded guilty from introducing witnesses at a sentence hearing. Fifth, the guilty plea was considered a statement made by the defendant who waived the Fifth Amendment right of remaining silent or being a compulsory witness against themselves (*Malloy v. Hogan*, 1964). Sixth, the guilty plea was found to be for all practicable purposes a conviction (*Kercheval v. United States*, 1927) that waived the right of conviction by proof beyond all reasonable doubt (*In re Winship*, 1979).

The waiving of rights such as the privilege against compulsory self-incrimination, trial by jury and confrontation of witnesses are protected in Ohio by the procedural requirements of Criminal Rule 11 (discussed above). Any defendant in Ohio waiving these rights must knowingly waive them (*State v. Younger*, 1975).

During the plea negotiations, the defendant could also waive various rights of an appellate nature to previous convictions, the current charge or future charges. A Washington appellate court found "...the majority of courts which have considered the issue have held that there is nothing illegal per se about a waiver of the right to appeal" (*State v. Perkins*, 1987, p. 251).

A rather interesting twist to the plea bargaining phenomenon of waiving appellate cause of actions was illustrated in the *Town of Newton v. Rumery* (1987) decision. Here, the court examined the issue of whether a defendant could waive civil rights, specifically the right to file a 42 U.S.C.A. §1983 cause of action, during plea bargaining negotiations. This federal statute holds any state or political subdivision liable for actions done under color of law that deprive an individual of any rights, privileges or immunities secured by the Constitution (Conser, 1983, p. 56). A defendant considering waiving his right to seek relief provided by this federal statute could find himself being forced to choose between two alternatives. The first alternative

would be pleading guilty to a crime and suffering a criminal conviction, record and penalty.

The second alternative would be to waive all rights to pursue actions for wrongs suffered in order for criminal charges to be dropped. The weight of the criminal charges hanging over the defendant attempting to make such a determination are analogous to the Sword of Damocles. However, courts have indicated that waivers of this magnitude should not automatically be vacated *per se*; rather, they should be determined on an *ad hoc* case-by-case basis.

A summary of case law revealed several aspects about plea bargaining. In summation, courts have generally indicated that the guilty plea was tantamount to a conviction with the exception that it allowed few justifiable causes of actions that could support an appeal. Second, the prosecutor was the sole individual determining if a case would be terminated by plea bargaining negotiations. The prosecutor's duty, as determined by one court, was to use all legitimate means possible in order to secure a proper conviction (*Berger v. United States*, 1935). Third, recognizing the potential coercive influence that a criminal charge can have on a person, both legislatures and courts have recognized that any guilty plea must be voluntary.

Fourth, it was found that there were differences in the nature of punishment imposed among those pleading guilty and those

requesting trials, even between codefendants in the same criminal episode. Courts have generally indicated that this differential sentencing did not rise to the level of being a coercive influence encouraging a defendant to enter a guilty plea. Fifth, when entering the guilty plea, a criminal defendant waived several constitutional protections. The protections waived included the right to trial, the right to confront accusers as well as certain rights of appeal and redress for grievances.

Summary

As a case resolution method, plea bargaining has been used by the criminal court system for quite some time. Despite this fact, this case resolution method has only been recognized as a legal procedure by the courts relatively recently. Also, a standardized name has not been universally recognized within the legal field. Legal practitioners, scholars and various courts have referred to this particular case resolution method by various terms including: plea bargaining, plea argeement, negotiated self-conviction, compromising criminal cases, negotiated guilty plea and package-deals.

The prosecutor, defendant and judge were found to have control over the plea bargaining process. Various courts have held that the prosecutor was the individual controlling whether a criminal case would be resolved by plea bargaining. Judicial

control was usually limited to *approving* the outcome of the negotiations by a veto power. The extent of a defendant's control was extremely limited. The defendant's only choice was whether he would plead guilty or exercise the right to trial.

There are several factors that pressure or burden a defendant who may be deciding to exercise trial rights as opposed to negotiating a resolution to criminal charges. These factors also act as a catalyst to the negotiations. The particular method used to charge a defendant burdened him by specifying the criminal charges for which he faced conviction. The charging method also influenced the possible sentence as well as being a catalyst by providing *room* to negotiate. The particular charging method also availed the prosecutor the ability to threaten imposition of a habitual offender statute if a defendant would not negotiate a resolution to the criminal charges. A particular sentencing recommendation, such as probation or a minimum sentence, also served as encouragement for a defendant's negotiated guilty plea. A judge could *encourage* a defendant to negotiate a resolution to criminal charges by threatening either a jury or nonjury trial.

The customary method of case resolution by a particular bureaucratic court room work group and routine sentences in exchange for guilty pleas by courts also encouraged defendants to plead guilty. The possibility of facing a more severe sentence

upon conviction subsequent to a trial was an example of differential sentences pressuring a defendant to plead guilty.

The paramount rationale for using nontrial case resolution methods was twofold. The first reason was due to pressure exerted on the entire court system by an overwhelming number of cases entering the system. Second, this case pressure was compounded by the pressure caused by a court's limited amount of time to resolve the cases. These two reasons combined to produce a synergistic effect forcing the evolution of nontrial case resolution methods. The usual method developed by the bureaucratic court system was a guilty plea subsequent to negotiation proceedings. Due to this case pressure, the threat to go to trial by either the defense or the prosecution became a key factor supporting and justifying a nontrial case resolution method.

Reviewing courts have generally agreed that guilty pleas must be supported by some factual basis. What they have not agreed on is what amounted to a factual basis supporting a guilty plea. Some courts have indicated that there must be sufficient evidence to support a defendant's conviction of the charge being pled guilty to. On the other hand, the fact that a defendant was pleading guilty to a criminal charge was considered a factual basis in and of itself that supported the defendant's guilty plea by other reviewing courts. The defendant must also understand the charges and the consequences of his guilty plea.

When a defendant pleads guilty he waives several constitutional and procedural protections. Reviewing courts have generally held that such waivers must be voluntary actions of a defendant. Courts have also held that defendants must be aware that they were waiving those rights and protections.

In Ohio, the factual basis supporting the guilty plea, as well as assuring the court that accepted the guilty plea that the plea was knowingly and voluntarily entered by the defendant, are steps included in the procedural processes required by Criminal Rule 11. This Rule also included the assurance that the defendant was aware that the guilty plea waived any right to a jury trial.

Although guilty pleas have become the customary case resolution method of criminal cases that waive various important protections, the defendant pleading guilty is not without some degree of protection. Rules of criminal procedure and case law have created procedural steps which protect the defendant. The purpose of these steps is twofold. The first purpose is to remove any doubt that the defendant might not have been cognizant of the consequences of the acceptance of the guilty plea by a court. The second purpose is to assure that the defendant did commit the crime he pleaded guilty to. The burden of proof at a trial is beyond any reasonable doubt. Whereas, the only burden of proof for a guilty plea is whether the judge will accept it.

Chapter 3

Methods

Study Description

This thesis was an outgrowth of an idea presented to the author by a professor of criminal justice at Youngstown State University. The professor expressed there was a certain degree of concern in the community about the case resolution methods used by the court system in Mahoning County, Ohio.

Addressing that concern, this study examined the case resolution methods used to dispose criminal cases by municipal and county courts that have jurisdiction in Mahoning County. The case resolution methods used by courts in Mahoning County were compared to those methods of disposition used throughout the state. Also, an intracounty case resolution comparison was made of courts within Mahoning County.

The time period. Since the study began in 1988, the best available data was documented for the year 1987. Therefore, the study focused on and included cases filed, pending and transferred from another court or reactivated during the time period from January 1, 1987 through and including December 31, 1987.

The sample. The population of the 118 municipal courts and 51 county courts in Ohio was separated into two groups which

comprised the samples of the study used for the statistical analysis. Restricting the study to a single state circumvented any problems that might be caused by different classification of offenses or penalties by other states. This restriction assured that any differences found were not caused by state statute since there is only one Ohio Revised Code. The first group of courts used for comparison was the random samples of courts within Ohio.

The second group of courts used for comparison consisted of the seven courts within Mahoning County: Campbell, Struthers, Boardman, Sebring, Austintown, Canfield, and Youngstown. These seven courts included two different court classifications--county court and municipal court. The county court classification included County Court #2 (Boardman), County Court #3 (Sebring), County Court #4 (Austintown) and County Court #5 (Canfield). The municipal court classification included the Campbell, Struthers and Youngstown courts.

The reason for gathering individual data exclusively from courts in Mahoning county was two-fold. First, many of the problems routinely associated with accessibility of data were circumvented by the author through the help of a highly regarded detective, retired from the Youngstown Police Department. Second were financial considerations. Youngstown State University is located in Mahoning County and situated so that most individual

courts were visited without substantial monetary expense or a considerable amount of time traveling from court to court.

The independent variable. The independent variable was case pressure. The best available measurment of case pressure was the volume of cases before a court. Therefore, case pressure was defined and measured as cases before a court during the period studied. The terms "case pressure" or "case load" may be used interchangeably. There were two primary separable sources of case load--civil and criminal. The study was intended to examine criminal cases and associated guilty plea and dismissal case resolution methods. A court's civil case load was a portion of its total case load but not a part of the study.

Although there was civil case pressure exerted on a court, only criminal case resolution methods were examined by this study. No determination was made of the effect of case pressure on civil case resolution methods.

The dependent variables. The dependent variables were the guilty plea and dismissal criminal case resolution methods used by a court for its criminal cases. The guilty plea case resolution method included cases resolved by guilty pleas, pretrial settlements and the violations bureau. (The violations bureau is not a place as the name suggests; rather, it is a method of case resolution that allows the defendant to pay a fine according to a predetermined schedule. There is no requirement for a defendant

to place himself before the court for sentencing and when the fine is paid it is equivalent to a guilty plea.) The dismissal case resolution method included cases dismissed with or without prejudice, for want of prosecution, and for exceeding prompt trial limitations.

The Instrument and the Data

The instrument. The instrument used to collect data was a hard-copy spreadsheet enabling the collection of monthly court case loads and their respective case resolution methods used by courts in Mahoning County (see Appendix). Data for the Youngstown court was aggregate data for the period.

The data. The raw data was obtained from three sources. The first source data was extracted from was *The Ohio Courts Summary*, a document of the Supreme Court of Ohio (1988). (Confer, Arnesen (1980) for use of this document). The second and third sources were the Administrative Judge Report (AJR) and the Individual Judge Report (IJR) of the municipal and county courts in Mahoning County. These are official court records used by courts in Ohio to document cases and their dispositions. The data sampled from these documents was the number of cases and case resolutions of a court during the period studied. Felonies were not compared since municipal and county courts did not have ultimate jurisdiction over felony cases. Also, traffic offenses were not compared since

there has been a trend to consider some traffic offenses outside the realm of the traditional criminal offense: "Among the crimes that fit into the convenience norm category probably traffic offenses are the most prevalent" (Pierce, 1988, p. 6).

The administrative judge report. This official form was used by each court to document total case volume and case resolution methods for a period of one month. Classifications recorded on this form represented both civil and criminal cases. The instrument was used to sample data from the AJR.

The individual judge report. This official form was used by each court to document the total case volume and resolution methods of an individual judge for a period of one month. Categories recorded on this form represented both civil and criminal cases. The instrument was also used to sample data from the IJR.

Research Design

A method was designed to compare courts with differing numerical values of case load and case resolution methods. An example of this comparison problem is illustrated when attempting to compare the guilty plea case resolutions of the Hardin court to the Clermont court for drunk driving. The Hardin court resolved nine of its drunk driving cases by the guilty plea case resolution method, whereas the Clermont court resolved 540 of its drunk

driving cases using the guilty plea case resolution method. With respect to the guilty plea case resolution method, the Clermont Court resolved 531 cases more than the Harden Court did. Which of these two courts used the guilty plea case resolution method more frequently?

One could assume from the raw data that the Clermont court did. However, that would be an incorrect assumption. By converting the raw data into percentages of the drunk driving case load, it becomes clear that the Harden Court resolved 64.29% of its drunk driving cases by the guilty plea case resolution method, whereas the Clermont court resolved 38.46% of its drunk driving cases by the guilty plea case resolution method. The Harden Court used the guilty plea case resolution method more frequently than the Clermont Court did to resolve drunk driving cases.

In order to determine if a particular court's case resolution method was statistically significant various procedures were used. One method of determining if a difference was statistically significant was the parametric technique of examining two samples. This was the technique used for the first examination.

The first step was to total all cases of individual courts. This allowed a calculator sorting program to provide an ordered incrementally increasing numerical listing of total case load for courts throughout the state. The range of case load varied for individual courts from a low of 436 cases, the Hardin Court, to a

high of 263,463 cases, the Hamilton County Court, for the period studied. This list was then divided into two groups separated by the median value of cases, or 9,385 cases. This court was identified as the Cleveland Housing Municipal Court.

These two groups of courts, one-half above the median value of case load and one-half below the median value of case load, were then randomly sampled. The method used for the sampling process was to identify individual courts, from the ordered list by a calculator generated list of random numbers. Each sample consisted of 25 courts selected from each group. (The Hewlett Packard 28S advanced scientific calculator was used for all calculations.)

The number of guilty pleas and dismissals of each court in these samples were converted into percentages of each court's criminal case load. The means of the percentages of guilty pleas and dismissals for the two samples were then calculated. To test for statistical significance between these means, one-tailed Student *t* tests were used.

Second, for the within Mahoning County analysis, percentages of identified case resolution methods were calculated for two categories of cases: aggregate misdemeanors and drunk driving. The means of the percentages of guilty pleas and dismissals were then calculated. The means of those case resolution methods were then tested for statistical significance using Chi-square tests.

Third, the mean percentages of guilty plea and dismissal case resolution methods were calculated for criminal cases of courts within Mahoning County and other courts within Ohio. The means of these two case resolution methods were then tested for statistical significance using Student *t* tests.

The Positions

First, if case load influenced case resolution methods, it was hypothesized that a courts with larger case loads would resolve more cases using guilty plea and dismissal case resolution methods than courts with smaller case loads.

Second, it was hypothesized that the case resolution methods used by a particular court in Mahoning County would not significantly differ when statistically compared to the case resolution methods used by other courts within Mahoning County. This hypothesis was tested by examining the data collected from certain county and municipal courts in Mahoning County and determining if there was any statistical significance among their criminal case resolution methods. Chi-square was used for this determination.

Last, it was hypothesized that there would be no statistically significant difference between guilty plea and dismissal case resolution methods used by courts within Mahoning County when those case resolution methods were compared to

equivalent case resolution methods of other courts throughout Ohio. This hypothesis was tested for statistical significance using Student *t* tests.

Based on the above positions, three individual hypothesis statements were formulated. The first hypothesis was to question whether case load (the independent variable) influenced guilty plea and dismissal case resolution methods (the dependent variables). The last two hypotheses were to question whether there was any difference when the case resolution methods of courts within Mahoning County were compared to each other or when compared to the case resolution methods of the remaining courts within Ohio.

The Hypotheses

Hypothesis 1: When case loads increase there is an increase in guilty pleas and dismissals.

Hypothesis 2: A comparison of the use of guilty pleas and dismissals between the courts within Mahoning County shows no significant difference.

Hypothesis 3: The use of guilty pleas and dismissals by courts in Mahoning County do not differ from their use by other courts in Ohio.

Summary

Three positions were examined by this study. They focused on the effect criminal case load had on criminal case resolution methods of guilty pleas and dismissals. This was done by

comparing two samples of courts with different levels of case load to determine if any differences in their use of guilty plea and dismissal case resolution methods were of statistical significance. Also, courts within Mahoning County were compared to each other in order to determine if there was any real and statistically significant difference in guilty plea and dismissal case resolution methods among them. Finally, the criminal guilty plea and dismissal case resolution methods of Mahoning County were compared to statewide criminal guilty plea and dismissal case resolution methods to determine if there was any real and statistically significant difference between them. The results are included in Chapter 4.

Chapter 4

Analysis of Results

The empirical study consisted of an examination of guilty pleas and dismissals in the courts of Mahoning County and in the state of Ohio. The study examined three situations. First, was the effect of a court's criminal case load on the case resolution methods of guilty pleas and dismissals. Case load was determined to be the total number of cases a court had before it during the time period studied. The initial examination was accomplished by separating the courts in Ohio into two groups of different case loads and comparing their criminal case resolution methods for any differences. The Student's *t* test was used for determining statistical significance. The second comparison examined the guilty plea and dismissal case resolution methods used by courts within Mahoning County for misdemeanor and drunk driving cases. The Chi-square test was used for determining statistical significance.

The last examination compared the guilty plea and dismissal case resolution methods used by courts within Mahoning County to other courts in Ohio. The Student's *t* test was used for determining statistical significance.

Interpretation and Discussion of Results

The first comparison. The first hypothesis deals with the effect of criminal case load on case resolution methods of guilty pleas and dismissals. Prior to testing this hypothesis, the median value of case load was identified. The courts in Ohio were separated into two groups. One-half were courts having case loads greater than the median value and one-half were courts having case loads below the median value of case load. The range of case loads varied for individual courts from 436 cases, the Harden Court, to 263,463 cases, the Hamilton County Court. The median was 9,385 cases, the Cleveland Housing Municipal Court. These two groups were then randomly sampled. The Student's *t* test was used to determine if differences between them, with respect to guilty pleas and dismissals, were of statistical significance.

Table 1 illustrates the mean percentages of guilty pleas for individual courts sampled from above and below the median value of case load of courts in Ohio.

Hypothesis 1: When case loads increase there is an increase in guilty pleas and dismissals.

As predicted by Hypothesis, 1 the courts with greater case loads used the guilty plea case resolution method 2.26% more than did courts with lesser case loads.

Table 1

Guilty Pleas: Mean Percentages and Variances of Samples Above and Below the Median Value of Case Load in Ohio

Sample	Guilty Pleas	Variance
Above Median	86.82%	41.30
Below Median	84.56%	46.53

Table 2 illustrates the mean percentages of dismissals for the samples. Contrary to what was predicted by Hypothesis 1 courts with greater case loads did not use the dismissal case resolution method more often than courts with lesser case loads. The courts with greater case loads used the dismissal case resolution method 3.44% less than courts with lesser case loads.

Case load may not be the only variable affecting the resolution of a criminal case. Among some of the ancillary variables influencing a court's resolution of criminal cases are: whether the defendant had an attorney, the defense or prosecution attorney's working relationship with the court, the bureaucratic courtroom work group's customary method of resolving cases, as well as the defendant's appearance or attitude before the court and any prior record of the defendant. Also, the influence of

various factors outside of the courtroom can affect the results. This includes such factors as: pressure from citizen groups, such as Mothers Against Drunk Driving (MADD); the extent of press coverage; mandatory sentencing laws; and seriousness of the offense.

Table 2

Dismissals: Mean Percentages and Variances of Samples Above and Below the Median Value of Case Load in Ohio

Sample	Dismissals	Variance
Above Median	5.56%	14.07
Below Median	9.00%	27.41

Table 3 illustrates the results of the one-tailed Student *t* tests with respect to the samples of courts. There were real differences in the guilty plea and dismissal case resolution methods of the two samples of courts. However, these differences were not statistically significant. These results may be an indication that all courts are operating under larger than optimum case loads.

Table 3

Student's *t* Comparison of Dismissals and Guilty Pleas of Samples Above and Below the Median Case Load of Ohio Courts

Condition	df	*t*	*P* less than
Guilty Pleas	49.27	0.18	.43
Dismissals	36.80	-0.55	.70

The second comparison. The second hypothesis deals with a comparison of courts within Mahoning County. The data gathered from the courts within Mahoning County provided the material for this comparison. Because these courts do not have ultimate jurisdiction over felony cases and since traffic offenses can be considered outside of the realm of traditional criminal offenses, they were not compared. Misdemeanors and drunk driving cases were used for the comparison. The Chi-square test was used to determine if differences between them, with respect to guilty pleas and dismissals, were of statistical significance.

Tables 4 and 5 are descriptive. They allow a visual comparison of individual courts and their respective guilty pleas and dismissals for misdemeanors and drunk driving cases. Table 4

illustrates what percentage of a court's misdemeanor case load were guilty pleas and dismissals.

Table 4

Misdemeanors: Percentage Comparison of Guilty Plea and Dismissal Case Resolution Methods of Courts Within Mahoning County

	Percentage of Cases Resolved by	
Court	Guilty Plea	Dismissal
Campbell	68.50%	23.50%
Struthers	54.61%	8.99%
Boardman	63.95%	5.33%
Sebring	72.45%	10.94%
Austintown	44.26%	30.19%
Canfield	71.60%	5.23%
Youngstown	64.41%	22.02%

Table 5 illustrates what percentage of a court's drunk driving case load were guilty pleas and dismissals. The terms drunk driving and Operating a Motor Vehicle Intoxicated are used interchangeably.

Table 5

Operating a Motor Vehicle Intoxicated: Percentage Comparison of Guilty Plea and Dismissal Case Resolution Methods of Courts Within Mahoning County

Court	Percentage of Cases Resolved by	
	Guilty Plea	Dismissal
Campbell	80.49%	17.07%
Struthers	36.00%	1.71%
Boardman	20.30%	2.73%
Sebring	62.61%	2.61%
Austintown	21.49%	4.30%
Canfield	76.62%	0.00%
Youngstown	85.33%	5.02%

Table 6 illustrates the results of the Chi-square tests, with respect to guilty plea and dismissal case resolution methods of misdemeanor and drunk driving cases, used to test Hypothesis 2.

Hypothesis 2: A comparison of the use of guilty pleas and dismissals between the courts within Mahoning County shows no significant difference.

The results of this comparison of the courts within Mahoning County supported the prediction of Hypothesis 2. The differences in the use of guilty plea and dismissal case case resolution methods among courts in Mahoning County for misdemeanors ranged from 17.84% (guilty pleas) and 26.20% (dismissals) and for drunk driving cases the range of guilty pleas were 63.84% and the range of dismissals were 17.07%. Despite these differences, the Chi-square results indicated they were not statistically significant.

Table 6

Chi-square Results of Mahoning Intracounty Comparison of Guilty Plea and Dismissal Case Resolutions by Case Type

Offense	χ^2	df	*P* less than
Misdemeanor	48.64	6	.0001
OMVI	24.88	6	.0004

Note. Operating a Motor Vehicle Intoxicated (OMVI).

The third comparison. The third hypothesis deals with the comparison of the guilty plea and dismissal case resolution methods used by courts within Mahoning County to other courts in the state. Student's *t* tests were used to determine if

differences between the courts, with respect to guilty plea and dismissal case resolution methods, were of statistical significance. Table 7 illustrates the differences in the means of the guilty plea and dismissal case resolution methods for Mahoning County and other courts in the state.

Table 7

Means of Guilty Plea and Dismissal Case Resolution Methods for Mahoning County and Other Courts Within Ohio

	Means of	
Courts Compared	Guilty Pleas	Dismissals
Mahoning County	69.43%	7.04%
Other Courts	69.55%	5.44%

The results of the Student's *t* tests used for the third comparison are illustrated in Table 8.

Hypothesis 3: The use of guilty pleas and dismissals by courts in Mahoning County do not differ from their use by other courts in Ohio.

As Table 8 illustrates, Hypothesis 3 was supported for the case resolution method of guilty pleas. The results indicated that the

differences in the use of the guilty plea case resolution method of the courts within Mahoning County compared to other courts in the state were not statistically significant. However, the hypothesis was not supported for the case resolution method of dismissals. The findings indicated there were differences of statistical significance with respect to the dismissal case resolution method when the courts in Mahoning County were aggregately compared to other courts in Ohio. Although the

Table 8

Student's *t* Comparison of Dismissals and Guilty Pleas Used by Courts Within Mahoning County and Other Ohio Courts

Condition	df	*t*	*P* less than
Guilty Pleas	27.63	1.942	.03
Dismissals	7.26	0.409	.34

analysis determined that the differences in the use of dismissals between courts in the county and other courts in the state were significant, they were not meaningful. Consider the fact that the actual difference between means of the two court groups only

amounted to approximately two dismissals out of every 100 court cases. (The actual difference in usage was 1.60%.)

Summary

The results of the statistical analysis were varied. The first result showed that Hypothesis 1 (When case loads increase there is an increase in guilty pleas and dismissals.) was supported as far as the guilty plea case resolution method was concerned. However, this hypothesis was not supported with respect to the case resolution method of dismissals. Alhough this hypothesis predicted that courts with larger levels of case load should make greater use of the dismissal case resolution method, they did not. Second, Hypothesis 2 (Hypothesis 2: A comparison of the use of guilty pleas and dismissals between the courts within Mahoning County shows no significant difference.) was supported. Third, Hypothesis 3 (The use of guilty pleas and dismissals by courts in Mahoning County do not differ from their use by other courts in Ohio.) was supported for the guilty plea case resolution method. However, this hypothesis was not supported for the dismissal case resolution method.

All courts may be operating under larger than optimum case loads. Consider these facts. There are 52 weeks in a year and 40 hours in a customary American work week. This amounts to 2,080 working hours per year. The court with the greatest case load,

the Hamilton County Court, had 14 judges and a total case load of 263,463 cases during the period studied. This works out to approximately six minutes available to handle each case. The case load of the Cleveland Municipal Housing Court was the median for the state, or 9,385 cases. This court could afford to allocate approximately 13 minutes to each case. Finally, consider the Harden Court, with its total case load of 436 cases. This court had the luxury to allocate over four hours to each case.

These times do not take into consideration vacations, lunches, meetings, answering questions, time to campaign, researching law or exchanging amenities with the office staff by a judge. It is clearly impossible for these courts to resolve every case by a full-blown trial. The six minutes the Hamilton County Court had available to resolve a case was hardly enough time for a judge to even properly accept a guilty plea. The position that all courts are attempting to deal with overwhelming case loads is further substantiated by the variances of the court samples above and below the median case load.

The variance in dismissals was reduced from 27.41 to 14.07 as the case load increased. This was a reduction of 48.67%. The variance in guilty pleas was reduced from 46.53 to 41.30. This was a reduction of 11.24%. This indicates that as the case load increases for courts, their tendency to vary in the use of a particular case resolution method decreases. In other words,

courts with greater case loads tend to resolve cases in a like fashion.

Although these results seem confusing, they are examples of both the individuality and similarity of Ohio's criminal court system. Courts have unique characteristics about them. The individuality of courts was exemplified by the fact that courts in the same county may be resolving their cases in a manner slightly different than other courts in the county. On the other hand, courts also have similar characteristics about them. The similarity of the courts was exemplified by findings that when the county was compared, as a whole, to the remainder of courts throughout the state one found courts within the county were resolving cases by the guilty plea case resolution method similarly to other courts within the state.

Chapter 5

Summary and Conclusions

The purposes of this study were to identify plea bargaining, to provide a conspectus of literature and case law about it, to identify associated variables and their effects, to identify the current state of evolution of plea bargaining, and to provide a body of knowledge which can be used as a basis for future research regarding plea bargaining.

General Implications for Future Research

This study focused on plea bargaining. It reviewed the literature relevant to the topic. Also, various court decisions were examined to ascertain the current legal standing of plea bargaining. The empirical portion of the study found the case load of a county or municipal court had no statistically significant effect on the guilty pleas or dismissal case resolutions of courts. Also, no statistically significant differences were found in the resolution of misdemeanors and drunk driving cases when courts within Mahoning County were compared. Finally, there was no statistically significant difference found

in guilty plea case resolutions when courts in Mahoning County were compared to the remainder of courts in the state.

Future researchers may be interested in applying other variables to determine what casued these findings. Some of these variables involve queries about various issues. Why did case pressure not have the predicted effect on case resolutions? Are all courts operating under extreme conditions--are all courts overloaded? A longitudinal study of case load and case resolutions over an extended time frame may support such a conjecture. The fact that all predictions of dismissal case resolutions were not supported was an unexpected finding. Was the corrections system so overcrowded that criminal cases must be dismissed, either because there was no room for defendants to serve their sentences or there were no openings available for probation or parole officers to take on more clients? Or was there widespread corruption in the court system?

For the most part, the effects case pressure had on the various case resolution methods were unexpected. Perhaps case pressure was not the real reason undergirding plea bargaining as the literature and various court decisions suggested. Since criminal courts are directly involved in confrontational social interactions, perhaps the individuals involved or the power of the juristic bureaucracy had more of an influence on case resolutions than case pressure did. A qualitative study that followed several

cases through the court system could address such issues. Also, would similar results be obtained if felonies were studied?

Summary

Indeed, the guilty plea consummating the plea bargaining process must be, in the final analysis, of a voluntary nature. One can, however, question if a choice can be indeed voluntary when one who is truly innocent of charges, yet is not blind of the state's case. By necessity the defendant pleaded guilty to the lesser of two evils, the reduced charge offered by the prosecutor during the existing method of negotiations versus certain conviction of the formal charge at trial. The negotiated guilty plea is tantamount to the signatures on a civil contract. However, due to the overwhelming power possessed by the state, these agreements between the accused and the state are equivalent to adhesion contracts. (See Footnote 2).

Other problems of the contemporary use of the negotiations were that the defendant and the victim were not involved in the plea bargaining negotiations. Instead, the agreed-upon settlement was reached between the defense and prosecution attorneys. This agreement was reached for their sole benefit rather than for the benefit of their respective clients, the defendant and the victim or the state.

Playing an even lesser role than the accused was the victim. The victim, more often than not, was never consulted for opinion or input and in many instances did not even know the defendant had pled guilty. The victim just spent wasted time--waiting in the courthouse to testify in a trial that would never occur. This is unfortunate, for often this may well have been the first and only time a private citizen would be exposed to the actual criminal justice system. For the victim, the reason for appearing in court was of vital importance, yet they are often cast aside--treated like blackguards. For the regulars in the bureaucratic courtroom work group, being present in court was an everyday occurrence--only a job. The presence of the victim and accused during negotiations could only interrupt the usual exchanges that the bureaucratic courtroom regulars were accustomed to.

In this capitalistic society one can ultimately reduce all reasons and justifications for actions and procedures to the fundamental issue of economics. The profit-loss motive supports various rationales for the implementation of plea bargaining in a majority of cases; time and money are saved. First, the *ace*, or the trial, is extremely expensive and time-consuming to all players, including the public-at-large and those in the jury. Second, the defendant could often attain freedom more quickly using the plea bargained guilty plea case resolution method. Most lesser included offenses or new offenses resulting from the

negotiations that the defendant pled guilty to would not carry the same weight of punishment as the actual crime which was committed.

Third, the criminal justice system, specifically the corrections area, will not be required to spend as much to incarcerate (*i.e.*, warehouse) the defendant upon conviction because of the reduced penalty or if probation was granted. The remarks of George Jackson (1970) made those financial considerations and subsequent rationalizations quite clear: "...I accepted a deal--I agreed to confess and spare the county court costs in return for a light county jail sentence" (p. 21).

It became quite clear, however, that plea bargaining has now become an essential element that plays a vital role in this country's court system. The words of Justice Burger reflect upon the fact that plea bargaining is indeed essential to the contemporary justice system: "The disposition of criminal charges by agreement between the prosecutor and the accused...is an essential component of the administration of justice" (*Santobello v. New York*, 1971, p. 260).

Plea bargaining avails the involved participants an alternative method of dispute resolution other than trial. This alternate resolution method is not unlike collective-bargaining labor negotiations, since more often than not the actual plea bargaining negotiations take place outside of public earshot as do most labor negotiations.

It appears that there is nothing inherently wrong with any negotiated dispute resolution method. After all, aren't negotiated settlements intrinsically more civilized than the otherwise combative nature of the trial?

Currently, plea bargaining is an anomalous concept where the parties involved in a litigation choose a method of resolution other than trial or the unequivocal plea of guilt to a defendant's actions or omissions which call for criminal sanctions. The concept of justice is not an issue when resolving these cases: "Prosecutors seek convictions, and thieves seek acquittals--neither seeks justice" (Sutherland, 1937, p. 119).

Plea bargaining accomplishes little more than instilling a false sense of awareness in the defendant's mind. It leaves them with the comfortable thought that they are truly receiving some consideration for acquiescing to the state's accusations. Their behavior is analogous to that of the lemming, who blindly follows along with the group on their last great journey. However, the only true consideration is to the bureaucratic regulars. They are not forced to endure the hardships of preparing for and participating in a trial which, after all, is only a part of their job. The mini-max (Moursund, 1972) reward garnered by the bureaucratic regulars has the effect of minimizing the amount of actual time spent engaged in actual *legal* work, preparing for and

participating in a trial, and maximizing the amount of noncommitted leisure time available to them.

However, the state of events currently surrounding plea bargaining is not proper as they are now employed. Plea bargaining itself is not wrong; it is not *malum in se*. No, it is a necessary tool, an essential tool specially developed and adapted for use in the environment of the bureaucratic system of justice that has evolved since the beginnings of America's court system.

Conclusions

To date a crucial experiment has been conducted by the American legal system. The only failure is not recognized by the question: "Is plea bargaining wrong?" In fact that question can only be answered by proposing that it is the wrong question. Plea bargaining is neither right nor wrong. Plea bargaining is inevitable in a bureaucratic justice system.

No, there are two failures concerning the current state of events surrounding the issue of plea bargaining. First is that of accessibility to the negotiations by all interested parties. Second is the actual physical place where the negotiations occur.

Plea bargaining negotiations must be taken *ex umbra in solem* (from shadow into sunlight). If the defendant alone wishes to enter into plea bargaining negotiations, the process should be

held in open court--in full view of the public. The court should concern itself with matters attaining to conclusions of law rather than fact finding. It is believed a prosecution should not proffer any *bargain* to a defendant, for this has the inference that the case was of faulty construction *ab initio*. Instead, the charges should not have been entertained at all. Rather than attempting to construct a conviction by negotiation, the charges should be *quashed*.

The jury is only one method allowing direct active public interaction in the criminal justice system. They are the traditional fact finders. Plea bargaining, in its current state of evolution, does not provide for direct public interaction. However, public interaction can be preserved by allowing all pertinent parties the opportunity to introduce their causes during the plea bargaining negotiations. After all, crime is a community problem and the community should be urged to become actively involved in all solutions to crime (*i.e.*, true crime prevention) rather than just dealing with the symptoms, the criminal act.

Plea bargaining is a judicially recognized alternative criminal case resolution method. The current plea bargaining process should not be allowed to stagnate mired in controversy about whether or not it is or isn't the proper method of criminal case resolution.

If Darwin (1958) was correct, then evolution is the nature of things and plea bargaining has most certainly evolved from within the system of justice. However, it has developed and evolved through the actions of those actively involved with the court system--the bureaucratic courtroom work group regulars--without providing any room for other involved individuals.

The nature of what is considered criminal has also evolved. What is considered a crime today might well not have been considered criminal in the past. For example, if criminal laws did not evolve to address contemporary issues a person could perhaps not be charged let alone convicted of invading computer memory data banks using laws existing as little as ten years ago. The antithesis is also true. What were crimes at some past time may not be considered criminal today.

The evolutionary process of plea bargaining should not suddenly grind to a halt. The plea bargaining process should contain more community effort and involvment in order to better serve the interests of justice and the community rather than as it currently exists, a process providing maximum consideration only to the bureaucratic regulars, the attorneys and judges--making their jobs a little easier when they don't have to sit through a trial.

A Revised Definition of Plea Bargaining

As far as plea bargaining is concerned, the plea is not for mercy and the bargain is not like that found at a discount store. Instead, the plea is guilty and the bargain is consideration.

Whenever individuals socially interact, a relationship among involved parties ensues that depends on all parties (McCurdy, 1965, p. 30). Within the bureaucratic court room environment this relationship has manifested itself in a manner best described by the terms of classical Chinese medical texts. The position concerning causation was not, "...what *causes* what, but rather what 'likes' to *occur with* what" [italics in original] (Jung, 1964, p. 227).

The idea of *what likes to occur* best describes the paradigm explaining the plea bargaining process within the criminal court system in the United States. Using the principle of parsimony, the title of this thesis reduces this paradigm to the simplest term describing the plea bargaining process. A more appropriate term for describing the process of what is referred today as plea bargaining might be guilty pleas for consideration.

First, does the act of accepting plea bargaining, or a quite submission to Packer's presumption of guilt, describe the relative positions of the involved parties? It does. The accused accepted the fact that they were charged with a criminal action and acquiesced by not fully asserting their innocence or guilt.

Meanwhile, the prosecution accepted the fact that the defendant may have been factually innocent, regarding the specific offense charged. However, all parties acquiesced to the Crime Control principle that the defendant must have been guilty of something or the charges would not have been filed in the first place.

Since the guilty plea was used to terminate the vast majority of criminal cases, it can be considered to be a legal norm in a bureaucraticized system of justice. Norm was defined by Anderson and Gibson (1978): "Norms are general, sometimes specific, cultural indications of what people *should* or *ought* to do under certain circumstances..." [italics in original] (p. 30). In other words, when an accused was charged, he was expected to enter a guilty plea, which, more often than not, involved some degree of negotiations between the prosecution and defense counsel.

Second is the principle of consideration. The legal definition of consideration is "...the inducement to a contract, something of value given in return for a performance by another, for the purpose of forming a contract..."(Gifis, 1984, p. 90). A contract stipulates the consideration for each party to the document and the the guilty pleas consummating the negotiationsons are equivalent to the signatures on a contract. The negotiated guilty plea stipulates certain considerations to involved parties.

The defendant will be availed certain considerations. These include: having some control about the outcome of the criminal

charges; the sentence would not be as severe as a sentence subsequent a trial on all charges; the charges could be resolved sooner than they would be resolved during a trial some distance in the future.

The prosecution and defense attorneys are availed certain considerations. These include: quick resolution to charges; reduced costs of preparing for a trial; a sense that neither side lost--they both walked away from the negotiations with something tangible--a conviction for the prosecutor and a reduction in penalty or charges for the defense.

The consideration to the judge includes such aspects as: no requirement to preside over a lengthy trial; no need to determine a sentence since more often than not there would be a recommended sentence; and since there are few grounds supporting an appeal, the chance of having any decision overturned or remanded is reduced.

Third, the phrase *in a bureaucratic environment*, indicates the stage in which the process is handled. The bureaucratic environment lends itself to a stylized response to problem resolution. Bureaucracies have the characteristic of being goal oriented. Decisions are made so that they conform to expected outcomes. Also, flexibility is not a desirable characteristic. Not interacting with bureaucracies in the expected customary fashion is quite often referred to in the vernacular as the

experience of *red-tape*. The bureaucratic setting is a breeding ground for conformity. Because most defendants entering the bureaucratic justice system plead guilty, all other defendants are also expected to plead guilty.

The conceptual definition of plea bargaining. It is concluded that the best description of what plea bargaining consists of, in its current state of evolution, is denoted by the phrase:

ACQUIESCING FOR CONSIDERATION IN A BUREAUCRATIC ENVIRONMENT.

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Washington v. Texas, 388 U.S. 14 (1967)

Weatherford v. Bursey, 97 S.Ct. 837, 429 U.S. 545, 51 L.Ed.2d 30 (1977)

Footnotes

1 A judge would not normally be included in the precise definition of a bureaucrat since they are not appointed to their position by means of a competitive examination. However, once they become elected or politically appointed to the position of judge they assume the remainding roles and features of the bureaucrat identified by Pierce (1979). These features include: requirement of competence; receiving a fixed salary; has a designated position of rank and status; committed to the organization; views the career as a way of life; distinction between personal and organizational property; and has a high level of loyalty for the bureaucracy of which they are a part of. Thus, the judge can be conceptualized as a *petty bureaucrat* in much the same manner as Marx and Engles referred to those occuping salaried and management positions as the *petty bourgeoisie* (cited in Lnych and Groves, 1986, p. 10).

2 The *adhesion contract* is a legal term indicating an agreement between parties that can be questioned as to whether it was voluntarily entered into by both. This question can be raised because of the extreme differences in bargaining power possessed by the parties as well as severe restrictions placed on one party whereas the other receives great latitude.

Appendix

This appendix contains reproductions of the two spreadsheets used to collect data from courts within Mahoning County.

Administrative Judge Report

COURT: _____ DATE: _____

	A	B	C	D	E	F	G	H	I	T
1										
2										
3										
4										
5										
6										
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8										
9										
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11										
12										
13										
14										

Individual Judge Report

COURT: _____ DATE: _____

	B	C	D	E	F	G	H	T
1								
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8								
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10								
11								
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14								
15								
16								
17								

Cells used from the Administrative Judge Report to calculate case load:

A4 (Felonies) totals of: cases pending, new cases filed, and cases transferred in or reactivated.

B4 (Misdemeanors) totals of: cases pending, new cases filed, and cases transferred in or reactivated.

C4 (Drunk driving) totals of: cases pending, new cases filed, and cases transferred in or reactivated.

D4 (Other traffic) totals of: cases pending, new cases filed, and cases transferred in or reactivated.

Cells used from the Individual Judge Report to calculate case resolution methods:

B5 and B6: total misdemeanor trials.

B7, B8, and B9: total misdemeanor guilty pleas.

B10 and B11: total misdemeanor dismissals.

C5 and C6: total drunk driving trials.

C7, C8, and C9: total drunk driving guilty pleas.

C10 and C11: total drunk driving dismissals.

Only data from the cells indicated above was used. The unused Data in the remaining cells concerned felony preliminary hearings, as well as various civil cases and their associated resolutions, contracts, and bankruptcy and unavailability of the accused.