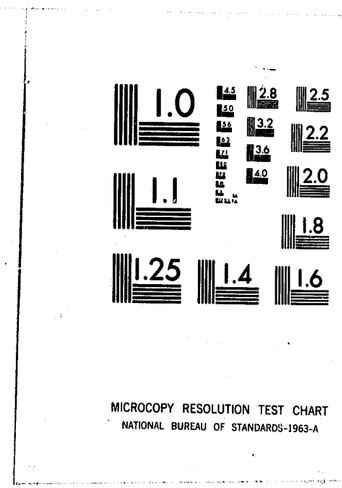

THE STUDY OF PLEA BARGAINING IN LOCAL JURISDICTIONS

A Self-Study Manual

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Introduction

This "how-to-do-it" manual is an attempt to provide local jurisdictions in the United States with the methods and tools to examine plea bargaining and the roles of participants in the process. The forms, instruments and interview schedules* were developed, administered, and interpreted over a three-year period during a national study of plea bargaining conducted by the Georgetown University Institute of Criminal Law and Procedure for the National Institute of Law Enforcement and Criminal Justice (NILECJ) of the Law Enforcement Assistance Administration, Department of Justice.

The study was undertaken because of intense controversy over the propriety of plea bargaining.** Such groups as the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals have disagreed as to the legitimacy and purposes of plea bargaining in the United States. A host of issues relating to this controversy evoke divergent opinions which are frequently based on inadequate information. The purpose of the study was to determine whether more current data would provide new perspectives on these issues.

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* See the appendices which incorporate all the research tools developed for the project. Each of these will be commented on in detail later in this manual.

** No less a personnage than the President of the United States recently criticized plea bargaining. "In many courts plea bargaining serves the convenience of the judge and lawyers, not the ends of justice, because the courts simply lack the time to give everyone a fair trial." Remarks of the President at the 100th Anniversary Lunch of the Los Angeles County Bar Association, May 4, 1978.

The project reviewed available published literature and many unpublished studies. Much of the commentary in these materials was speculative or consisted solely of legal analysis. Some of it contained empirical data which the project has used in its analysis.

The project began with the idea that a national mail survey would be attempted in about 350 local jurisdictions. After consultations with experts and discussions concerning the kind of return which could be expected, the project decided that such a study was neither feasible or viable. As a partial substitute project staff visited over 30 jurisdictions in the United States during the project. Twenty were chosen on a stratified random sampling basis from all jurisdictions over 100,000 population. Others were chosen because of some special feature involving the plea bargaining process (i.e., special rules issued by the prosecutor, special screening procedures, special treatment for specific crimes) or in the case of several jurisdictions, because plea bargaining had allegedly been abolished.

From the review of the literature, the visits to the jurisdictions, and an analysis of such data as was available from these and other jurisdictions, the project prepared an interim report.* Plans were then made to intensively study six sites to obtain an indepth perspective of the issues and hard data.

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* See H.S. Miller, W.F. McDonald and J.A. Cramer, Plea Bargaining in the United States: Phase I Report (National Institute of Law Enforcement and Criminal Justice, LEAA, 1978).

In reviewing the results of the six on-site examinations, project staff discovered that each jurisdiction had unique practices or procedures which frequently stemmed from customs or practices unrelated to the legal or administrative structure. Many customs and practices appeared routine and continuous, meaning that they occurred throughout the system whatever the relationships between the actors. Other practices stemmed from the role key actors played and the relationships between them. These were subject to change which could result in changes in the practices. It was especially clear that a change in the chief prosecutor could profoundly affect the nature, quality and scope of the plea bargaining process.

Differences between jurisdictions cover a wide spectrum of issues: judicial practices during the process of plea acceptance in court; the degree of internal control exercised by the chief prosecutor; the relationship between different actors dependent on personality; the general political situation as perceived by the actors; or the impact of a particular policy mandated by one of the actors (usually the prosecutor).

Notwithstanding these differences, there are also areas of commonality. For instance, the absolute discretion of the chief prosecutor was present in every jurisdiction as it concerned the screening and charging policies (or lack thereof) of that office. The fact that plea bargaining discussions were conducted out of sight and off the record was observed in every jurisdiction.

Each jurisdiction appears to have a distinctive flavor of its own, a circumstance which raises problems concerning acceptance of any study which doesn't look at all local jurisdictions. A typical American attitude is that a study of one jurisdiction may not be applicable to others. Similarities between jurisdictions are not regarded as controlling. Thus, it is difficult to convince a jurisdiction of the applicability of the findings of a study which does not include that particular jurisdiction.

Added on to this attitude is the peculiar structure of criminal justice in the United States. With few exceptions, the chief prosecutors in most jurisdictions are constitutional officers publicly elected, frequently on a partisan ticket. In most jurisdictions, the court system (meaning a particular judicial district within a state) and the judges within that system operate fairly independently in each case. And, of course each jurisdiction may have its own particular blend as it relates to population, work force, and educational level. In short, despite the applicability of state laws and rules to all jurisdictions within a state, the system as it now operates permits enormous discretion to be exercised by most of the actors.

Most actors in the criminal justice system have established statewide organizations to consider issues involving the administration of justice (judicial councils, prosecutors' associations, associations of criminal defense attorneys). Proposed changes in the laws or rules governing criminal procedure of a state would inevitably be considered and influenced by such organizations.

Reaction by these organizations to changes at the state level will be influenced by their members' experiences and perceptions within each local jurisdiction.

A classic example of this phenomenon is reflected in the study on sentencing disparities conducted in the second federal circuit.* The oft-repeated statement that there are extreme disparities in sentencing was not entirely accepted by the Federal District Judges in the Second Circuit. A study of sentencing disparities was therefore undertaken by the Second Circuit utilizing the facilities and resources of the Federal Judicial Center.** As a moving force in this study, Judge Marvin E. Frankel stated, "Self-knowledge is a necessary, albeit not sufficient, step towards self-improvement. . ." This manual provides the method and tools, the use of which will enable a local jurisdiction to attain that essential self-knowledge.

These tools were carefully thought out and extensively discussed before their use in the national study. The research concepts underlying them are well recognized in the social sciences and similar techniques have been used in other studies

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* The Second Circuit Sentencing Study, a report to the judges of the Second Circuit (Federal Judicial Center, August, 1974).

** The study concluded that "the consistent tenor of the data. . . is one of substantial disparity. . ." and that "disparity is a serious problem in a substantial proportion of cases." This study found disparity in the Circuit, within each judicial district, and that individual judges sometimes were inconsistent, pp. 10,14,36.

of the criminal justice system. But plea bargaining has not been studied to the extent and with the depth provided by these research tools.

We stress the preparation and comprehensiveness of these materials because this manual is predicated on their use by a local jurisdiction at minimal cost in a relatively short period of time. The jurisdiction will not have to make an investment in developing a research design.

What we hope to do in the remainder of this volume is to indicate how these tools can be used together or separately to provide facts and analysis which any jurisdiction could rely upon in assessing the need for change. This volume is not intended to provide the complete research procedure which will have to be established before the data collection, interviews and observations begin. The study director or someone with research experience should be consulted on just how the study should proceed.

Contemplating the Study

The bulk of this manual consists of four sets of research tools and accompanying instructions for applying them to the local study.* They were created to obtain hard empirical data and perceptions of key actors based on their experience in the criminal justice system. These empirical techniques provide

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* Interview Schedules (Appendices A through H); Case File Instrument and Instructions (Appendices I and J); In-Court Observation Forms and Instructions (Appendices K and L); the Plea Negotiation Simulation, Instructions and Response Sheet (Appendices M, N , and O); and an example of an offense code (Appendix P) and an in-court observation code (Appendix Q).

a comprehensive description of and perspective on the dynamics of plea bargaining in the six jurisdictions. They were supplemented by a review of plea bargaining literature, both published and unpublished. Major Supreme Court cases were analyzed, and extensive analyses of the legal and administrative structure of each of the six jurisdictions were undertaken. Finally, six national models of plea bargaining standards and rules were examined.*

Obtaining multiple views of issues from different perspectives serves to verify the reliability of divergent sources. For instance, criminal justice actors may be asked whether or not judges in a particular jurisdiction participate in the plea negotiation process. If all actors agree that judges do not participate in plea bargaining a researcher could state that there appears to be no such judicial participation. If the researcher observes cases under negotiation and sees no evidence of judicial participation, the claim that there is no judicial participation would be stronger.

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* A Model Code of Pre-Arraignment Procedure (The American Law Institute, 1975); American Bar Association Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty (Approved Draft, 1968), The Prosecution Function and the Defense Function (Approved Draft, 1971), Discovery and Procedure Before Trial (Approved Draft, 1970), and The Function of the Trial Judge (Approved Draft, 1972); National Advisory Commission on Criminal Justice Standards and Goals, Courts and Criminal Justice System (1973); Federal Rules of Criminal Procedure, Rule 11 (as amended Feb. 28, 1966, eff. July 1, 1966: April 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Aug. 1 and Dec. 1, 1975); Uniform Rules of Criminal Procedure, drafted by the National Conference of Commissioners of Uniform State Laws ( ); National Prosecution Standards, National District Attorneys Association (1977).

Actors in the system could be asked if judges differentially sentence (i.e., are individuals who plead guilty sentenced more leniently than those who go to trial?). Their answers could be compared with data obtained from case files which might show a pattern, or lack thereof, of differential sentencing.

The in-court observation form is a way of empirically recording the methods and techniques of court practices during the plea acceptance process. Researchers and judges could use the legal mandate of statutes, rules and case law as a benchmark against which to assess observed performance.

Many questions asked of defense attorneys and prosecutors relate to the charging process and the influence of the strength of the case or a defendant's prior record in making charging and plea decisions. The plea bargaining decision-making simulation, which stresses these factors, could provide a vital comparison of the actors' responses to questions against the decisions made during the simulation. A further check could be observation of actual negotiation sessions.

A study using these various instruments and interview schedules, combined with observation of the process itself, will provide a comprehensive and indepth picture of plea bargaining in any jurisdiction. This view of the system should provide decision makers the evidence on which to base policy decisions. The process of verification inherent in this comprehensive approach provides checkpoints against which allegations or assumptions about the system can be measured.

Where the data and different perspectives strengthen and support each other, policy makers will know there is strong evidence in connection with a particular issue. Where the data and different perspectives are not parallel or present conflicting information, further research may be required before decisions are made. This additional research can be critical. Individuals act on their perceptions. Whether or not these perceptions are valid they become the realities which guide decision makers. Solid research can provide the data upon which policy decisions can be rationally based.

Choosing the Director for a Comprehensive Study

One individual should supervise a comprehensive study. This individual should be familiar with the criminal justice system and criminal justice research. The specific disciplinary background is no more important than the individual's understanding of the system and criminal justice research. A study director should have completed law school or all course work towards a Ph.D. in one of the social sciences. He or she should be relatively young professionally. During the national study interviews with experienced professional indicated that their own research interests might conflict with project requirements or that most of the work would be done by research assistants responsible to them. Interviews with key actors and observation of plea bargaining dynamics should be accomplished by the study director, not junior researchers. The study director can use research assistants to gather data from case jackets and observe courtroom procedures.

Those overseeing a comprehensive study should have direct contact with the study director to determine if the director is adhering to the study plan. Monitoring responsibility should reside with a special committee composed of representatives of the criminal justice system and some experienced researchers. A local criminal justice coordinating council could also play this role.

Before the study begins there should be indepth discussions of the study, its purposes and the research tools to accomplish these purposes. Study monitors and the study director should participate in these discussions. Only in this way can all be certain that the goals are agreed upon and that a specific schedule will be followed.

If possible the study director should be recruited from outside the criminal justice system. All field directors in the national study were connected with a university and were thus able to work on the project full time during the summer. There may be benefits accruing from a study which engages the full resources of the director during the critical research stage. Conducting the interviews and observations intensively enables the director to better understand different perspectives, conduct indepth probing during interviews and gain sharper insights into the dynamics of the process.

The collection of data from case jackets can be accomplished by student research assistants. They must first be trained and attain familiarity with the material in these jackets. Intensive collection during the summer concentrates attention and can be more closely supervised.

The in-court observations can be completed by student assistants during the summer. They must first be instructed in what to look for and how to make the entries. They must also become familiar with court procedures, particularly with any informal practices as they relate to the process of plea acceptance by the judge.* A student's ability to understand and record all that occurs in court may depend on a constant presence in court, something which can best be achieved during the summer break.

All project staff experiences point to the desirability of data collection being completed within a relatively short period of time (summer).

Conducting Partial On-Site Studies

We obviously express preference for a comprehensive on-site study. Nevertheless, a limited study can be conducted for specific purposes at minimal expense. For instance, a jurisdiction may want hard data concerning differential sentencing. Extraction of key data from cases where a sentence has been imposed would provide the information.

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* In one jurisdiction defense attorneys and their clients informally reviewed a document supplied by the court concerning voluntariness, factual basis and understanding before the judge appeared. The judge later relied upon this process and made few, if any, inquiries from the bench during the plea acceptance process.

In multi-judge jurisdictions there may be interest in obtaining data on judicial practices and procedure during acceptance of a guilty plea. The in-court observation form could be utilized for this purpose.

Prosecutors or public defenders could use the plea bargaining decision-making simulation to determine how assistants in the office respond to a particular case. This would assist the chief public defender or prosecutor to determine whether or not there was an appropriate consistency in these decisions.

We do not recommend a study which utilizes interviews and observation without concurrent collection of data from the other three empirical sources. The interview and observation portion of the study is based on perceptions of the actors involved and observations of the study director. Many biases may be present. For this reason we believe the results of interviews and observations must be balanced with legal analysis and empirical data.

Data from Case Files

The case file instrument (Appendix I) was developed to obtain certain specific information from case files of individuals charged with robbery or burglary where their case resulted in a conviction by plea or trial, or an acquittal after trial.

The case file instrument has 63 different items of information. Most of the data was obtained from prosecutors'

case jackets. In one jurisdiction bail agency forms were useful in supplementing this data. Individual jurisdictions undertaking this study may find that the pre-sentence reports can supply much of the information if access can be obtained.

The project chose two crimes, a restriction mandated by limited resources and the fact that a sufficient number of cases for each crime are essential to a proper analysis. To collect adequate data for all crimes would have been prohibitively expensive.

The crimes chosen were burglary and robbery. These crimes are committed frequently in most jurisdictions, particularly burglary. Moreover, it was determined that there were variations as to how these crimes were processed and the kinds of dispositions reached. In some jurisdictions judges treat different burglaries in a specific manner, i.e., some judges were extremely hard on residential, as opposed to commercial burglaries. Other judges viewed night-time burglary as more serious than day-time.

There are also differences in how burglaries and robberies are committed. Aggravating factors might be the use of a weapon in a robbery or the wanton destruction of property during a burglary. Mitigating factors could be first offender status, no harm to the victim, or no property damage.

The essence of this research was to determine what factors affect decisions made in connection with the plea bargaining process. The key variable in differential sentencing is

whether or not the conviction resulted from a trial or plea. There is evidence that those who plead guilty are sentenced more leniently than those convicted after trial.*

By obtaining data on a minimum of one hundred cases for each crime, your jurisdiction could determine whether there is a pattern of differential sentencing or disparities in disposition which might indicate whether or not similar cases are treated in a consistent manner by the judge or within the prosecutor's office. Are minority groups receiving disparate treatment? How much influence does a prior criminal record have on the treatment of an individual case? Does the age, sex, educational background, or income level of a defendant affect ultimate disposition? Answers to these and many other questions could assist those responsible for making policy resolve a host of issues which have caused plea bargaining to be so controversial in the United States.

The Structure of the Case File Instrument

In accordance with the above considerations the case file instrument has questions which address different issues. The largest category is the defendant's background (items 3-21). Some of the issues in these items might have a profound influence on the charges against the defendant and their disposition or the ultimate sentence.

* The Supreme Court in Chaffin v. Stynchombe, 412 U.S. 17, 30-31 (1973), and the American Bar Association in its standards relating to Pleas of Guilty, section 1.8 (approved 1968), endorsed differential sentencing. See Plea Bargaining in the United States, Phase I Report, pp. 217-226 for a discussion of differential sentencing.

There are three stages in the criminal justice process at which charges are leveled against a defendant. Items 22-23 cover initial police charges. They have minimal legal status except in relation to setting initial bail. They are important becaus police may play a significant role in the charging process. One way of assessing police input is to examine Items 31-32, formal charges filed by the prosecutor. Do they differ from police charges? Interviews with the police and prosecutor could supplement the data by providing information about screening procedures and the extent of police investigation before cases are brought to the prosecutor's office.

Items 46-47 indicate the crimes for which the defendants were convicted. With items 22-23 and 31-32 the evolution of guilty plea cases may be traced. This could indicate possible overcharging or reflect the quality of the information available to the prosecutor and defense attorney. Interviews and observations could supplement this data.

Items 23,27,28,30,34, and 38 are dates in the processing of a case. Is there any correlation between the length of time it takes to process a case through the system and the charges filed or sentence imposed? Are time requirements being met or is there a pattern of delay? Are cases in which defendants are detained processed more expeditiously than cases in which defendants are released on bail?

Items 25,26 and 29 question whether the defendant had other charges pending, was in the community on probation, parole, or on pretrial release from a prior charge. One of

these statuses might affect the handling of the case by the police or prosecutor and influence a defendant's approach to the instant offense.

Items 33 and 37 include the plea entered and final disposition. Combined with the sentence imposed (Items 39-43, 48) they may indicate whether or not there is differential sentencing in the jurisdiction. While the ABA has endorsed differential sentencing the National Advisory Commission on Criminal Justice Standards and Goals has taken a different view:

> "Sentencing courts immediately should adopt a policy that the court in imposing sentence should not consider, as a mitigating factor, that the defendant pleaded guilty, or as an aggravating factor, that the defendant sought the protections of right to trial assured him by the Constitution." *

However one feels about differential sentencing, its existence and extent should be a matter of accurate public knowledge. Only in this way can policy makers render judgments about the issue. Disparities in sentencing may also be examined to determine if sex, age, race or other factors influence judicial sentencing practices. This issue can be critical in terms of assessing whether or not a plea bargaining system discriminates against any particular group.

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* NAC Corrections, Standard 5.7.

Item 36 relates to the type of counsel representing the defendant. Does it make any difference whether a defendant is represented by a public defender, court appointed or privately retained defense counsel? Measuring the type of defense counsel against disposition or sentence might indicate whether the type of counsel has an impact on case disposition or sentence.

Are most guilty pleas the result of a bargaining process? Items 44-45 may provide an answer to this question and the contention that without a "deal" defendants will opt for trial, thus creating a backlog of cases. Item 45 reveals the type of bargain consummated. Prosecutors and public defenders may find this information useful in determining how their assistants handle particular types of crimes or defendants.

Items 49 through 56 and Items 61-62 indicate what aggravating or mitigating circumstances may have affected the victim personally or financially. Comparing these factors to the disposition or sentence could provide evidence as to whether these variables make a difference in how prosecutors, defense attorneys and judges treat a case.

Item 63, the judge at sentencing, will indicate whether a particular judge sentences more severely after trial or that disparities in sentencing are based on other factors. This may sharpen the issue of judge shopping or judge avoidance.

If there is inadequate review of sentences, or the sentencing structure permits gross disparities, should defendants be given an opportunity to avoid particular judges?

The case file instrument can provide data which may be useful to prosecutors, defense attorneys and judges. We recommend that the full range of information be extracted from the case jackets. Collecting limited information would buy little economy and lose valuable data. Comprehensiveness should be the key. It is false economy to decrease the number of items. The effort required to find limited data, extract it and subsequently process it would not be that much less.

In-Court Supervision

The in-court plea acceptance process is the only formal court procedure to determine if the guilty plea has been properly entered. The plea is usually preceded by private discussions between defense counsel and the prosecutor, sometimes in the judge's presence. The formal plea entry is the only time or place at which there is a public discussion (on the record for felonies only) concerning the propriety of the plea.

The proceeding is under the complete control of the court. How long it takes, its intensity and breadth, and the acceptance or rejection of the plea, are left to the

discretion of the judge. However, in the last decade court opinions, rules, and suggested models have attempted to delineate the role of the judge during this proceeding.

Merely recording the proceeding doesn't prevent a defendant from contesting the constitutionality of a conviction resulting from a guilty plea. The U.S. Supreme Court said that once proper motions are filed the federal courts cannot always rule out any remedy or exclude

> "All the possibilities that a defendant's representations at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others as to make the guilty plea a constitutionally inadequate basis for imprisonment. Blackledge v. Allison, 97 S. Ct. 1921 (1977)"

By this the Court noted the possibility that the prosecutor or defense attorney, or both, could so conduct themselves that a guilty plea accepted by the judge without thorough probing could constitute an improper plea because of "misunderstanding, duress, or misrepresentation."

The importance of the judicial role in supervising the plea bargaining process at this critical stage is underlined by the fact that six models of plea bargaining promulgated within the last ten years address the issues related to this

proceeding, five in detail.* These five agree that the court should personally address the defendant in areas involving the defendant's understanding of the nature of the charge, the right to plead not guilty and exercise a variety of constitutional rights, and the concurrent fact that by pleading guilty these rights are waived. They specify that this personal colloquy with the defendant must include the minimum and maximum sentences and they require the court to discuss with the defendant the nature of any discussions and resulting agreements therefrom. Four require the court to personally discuss with the defendant the factual basis for the plea. (The ALI Model Code requires the court to determine if there is reasonable cause to believe that the crime has been committed if there has been no preliminary hearing which had already made that determination.) Finally, four require the court to determine through this personal approach the voluntariness

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* 1. A Model Code of Pre-Arraignment Procedure, §§350.4 & 350.5 (The American Law Institute 1975);
2. American Bar Association Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty, §§1.4-1.6 (Approved Draft 1968) and The Function of the Trial Judge, §§3.6,4.2 (Approved Draft 1972);
3. National Advisory Commission on Criminal Justice Standards and Goals, Courts §§1.2 & 3.7;
4. Federal Rules of Criminal Procedure, Rule 11 (as amended Feb. 28, 1966 eff. July 1, 1966: April 22, 1974, eff. Dec. 1, 1975; July 31, 1975; eff. Aug. 1 and Dec. 1, 1975);
5. Uniform Rules of Criminal Procedure, drafted by National Conference of Commissioners on Uniform State Laws Rule 444 ( );
6. National Prosecution Standards, National District Attorneys Association (1977) S. 16.5.
The National Prosecution Standards simply require the accused to be "properly questioned."

of the plea. (The ALI requires the court to personally inquire of the defendant to determine if the defendant is making an informed choice.)

The in-court observation form (Appendix K) was created to provide a structured method through which an assessment could be made of how the proceeding developed, what role was played by the participants in the proceedings, the thoroughness with which the various issues were covered and by whom, and whether or not the proceeding was affected by the seriousness of the crime (misdemeanor or felony).

There are thirty items on the in-court observation form and a set of instructions for the form (Appendix L). These instructions explain why each question is asked and what can be learned from the answers. Item 1, Jurisdiction, can be ignored since your study will concern your own jurisdiction. Items 2, 29 and 30 give the time spent in the proceeding by the judge. Comparing them with Item 3, Type of Court, Item 4, Name of Judge, and Item 6, Charges to Which Defendant Pled, may enable you to determine the relationship between time and these variables, if any.

Item 5, Type of Defense Counsel, and the time spent in the proceeding could reflect judicial perceptions of defense attorneys. One judge indicated that the nature of the proceeding in his court might be determined by which defense counsel was representing the defendant.

Item 7, Setting for Proceeding, should be considered in conjunction with Item 8, Nature of Litany. staff observed variances in how these items were treated by different judges. In one jurisdiction the defendants were placed in the jury box and the judge went through the litany without any script. In another jurisdiction defense attorneys and defendants went through a court document which outlined the matters to be covered and then signed it. The judge merely asked whether the issues had been covered.

Items 9 through 25 cover a variety of substantive issues which ordinarily should be considered at the proceeding (waiver of constitutional rights, establishment of factual basis, knowingness and voluntariness of plea, and an understanding of the consequences). In general, these are required issues which should be raised in this forum. Note that the observation form frequently raises the question as to who asked the defendant the various questions. Based on observations made by project staff and other research in this field, the prosecutor or defense attorney may play an active role in the proceeding.

If these issues are not raised during the hearing a determination should be made as to whether there is any correlation between the questions asked by the judge and the time spent on the proceeding. There may be some correlation between the questions asked, the crime charged, and the court in which the proceeding takes place.

Item 27, about the Alford plea, and Item 28 may be related. Judges may refuse to accept a guilty plea for a number of reasons. It is important to know the basis of this refusal.

There are sound constitutional and policy reasons for careful judicial supervision of plea bargaining. There also may be tangential benefits involving the effectiveness and competence of defense counsel.

Most plea discussions occur off the record and behind closed doors. There is virtually no way for a judge to assess the effectiveness of defense counsel unless the judge participates intimately in these discussions. But many judges will not participate in them and many states have adopted rules which prohibit or restrict judicial participation. Yet judges have an obligation to oversee the performance of defense attorneys. In McMann v. Richardson, 397 U.S. 759, 771 (1970), the Court delineated the judges' role.

> "Beyond this we think the matter, for the most part, should be left to the good sense and discretion of the trial courts with the admonition that if the right to counsel guaranteed by the Constitution is to serve its purpose, the defendants cannot be left to the mercies of incompetent counsel, and that judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courtroom."

The Supreme Court has imposed a weighty obligation on judges. Without a record of the discussion it appears impossible to meet.

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* North Carolina v. Alford, 400 U.S. 25 (1970). In this case the court upheld acceptance of a guilty plea by a defendant who asserted innocence on the grounds that a trial court hearing produced overwhelming evidence of guilt.

Even with some kind of a record it would be difficult. U.S. v. DeCoster, 487 F. 2d 1197, 1204 (D.C. Cir. 1973) indicated that even a trial record did not permit judges to make rational decisions about counsel's effectiveness at trial.

> "Much of the evidence of counsel's ineffectiveness is frequently not reflected in the trial record. . . As a result, ineffectiveness cases have often evolved into tests of whether appellate judges can hypothesize a rational explanation for the apparent errors in the conduct of a trial."

Whether or not there is a record of the plea discussions, the nature of the judicial inquiry during plea acceptance can provide the judge with important clues to the role of the defense attorney. By conducting a comprehensive and thorough search into the defendant's understanding and awareness, by establishing a factual basis, by determining that the plea is voluntary, and by determining that the defendant knows the consequences of a conviction, the court may be able to assess the effectiveness of advice given to the defendant by the defense attorney.

Plea Bargaining Decision-Making Simulation

Various factors are considered by prosecutors and defense attorneys when plea bargaining decisions are made. These factors may include strength of the evidence; the defendant's age, sex, race, employment history, prior criminal record, marital status and educational background; the seriousness of the crime; the reputation of the prosecutor or defense counsel; the wishes of the victim; the wishes of the police; and other factors.

All of these may be influential, but their relative importance has been assessed only in a tentative fashion. Case strength, crime seriousness and the record and reputation of the defendant appear to be considered in most cases. An important component of the national study called for the development of a plea bargaining decision-making simulation revolving around the criteria used in making decisions.

The simulation creates hypothetical cases which include information generally available to prosecutors when making charging decisions and considering possible plea offers. We chose the crimes of burglary and robbery. These were chosen for the reasons outlined in the section on case file data.

Each case contains about forty pieces of information generally available in prosecutors' case files. Where liberal discovery proceedings are available, or where the prose utor follows an "open file" policy, this information is available to defense attorneys. Thus we conducted the simulation with prosecutors and defense attorneys. (See pp 26-7 -illustrating how the information categories would appear to those participating in the simulation.) *

The categories of information include facts and evidence about the crime; background of the defendant, including prior record; statements concerning the victims and witnesses; the criminal justice status of the defendant at the time of the offense; and any aggravating or mitigating circumstances.

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* Note that there are separate cards for "Basic facts of the Case" and "Evidence". Our experience in this simulation indicates that one card on "Facts and Evidence" would be more appropriate.

Defendant's Race/Ethnic/Nationality
Defendant's Age
Defendant's Sex
Basic Facts of the Case
Length of Time Since Arrest in Instant Case
Community Ties/Marital Status/ Dependents
Defendant's Intelligence and Education
Defendant's Employment Status
Defendant's Psychiatric Problems
Criminal History of Defendant's Family
Co-defendants
Trial Judge's Reputation for Leniency
Public and Community Sentiment
Propriety of Police Conduct After Arrest
Evidence -- Substance of Available
Date of Trial in Instant Offense & Probability of Continuance
Backlog of Docket of Judge
Available Alternatives to Incarceration
Pretrial Release Status for this Robbery
Police Attitude Toward Proposed Bargain
Defendant's Account of Incident
Effectiveness of Witnesses at Trial.

Introductory Statement
(Robbery)

You are a senior prosecutor and a junior prosecutor comes to you for advice about a plea negotiation in which he is involved.

The defendant is charged with armed robbery. The defendant is willing to plead guilty for a consideration.

Assume that the law in this hypothetical jurisdiction provides the following penalties: armed robbery is up to 30 years.

Reputation of Defense Counsel
Defendant's Prior Record & Reputation
Ability of Defendant to pay Restitution
Victim's Attitude Toward Bargain
Victim's Account of Incident
Victim Characteristics
Pretrial Release, Probation & Parole Status at Time of Offense
Aliases
Physical Health
Alcohol Use
Aggravating & Mitigating Circumstances of the Offense
Sexual Orientation
Military Record
Religion
Detainers
Length of Local Residence
Defendant's Interests & Activities
Drug Use

The format of the simulation was discussed at great length, particularly since every effort was made to present the information in an unbiased format, i.e., so that no one piece of information would achieve importance because of its location or form of presentation. The format meeting the needs of random location of information and convenience was found in folders used by real estate agents to show pictures of homes for sale. These folders allow information on a card to be covered by the card above while the label is visible. (See Appendix M for the simulation.)

Prosecutors and defense attorneys were asked to examine the labels at the bottom of each card which indicated what information was contained in the card (i.e., prior record, substance of available evidence, victim's attitude toward bargain). Thus, before the simulation actually begins participants become familiar with types of information available.

Instructions must be read to the participants before beginning the simulation (see Appendix N). The orientation is necessary to familiarize a new participant with the physical structure of the simulation, what is expected of the participant, and how the results will be recorded. The instructions fulfill this function and make certain that each participant proceeds in essentially the same manner. It is important to have the participant scan the labels on each card before beginning the simulation. It is equally important to emphasize that the items of information have been placed in the folder in random order. The participants must

understand that they should pick the items of information in the order ordinarily followed in evaluating a case, not in the order in which they are set up in the folder. When the orientation is completed the participants can begin reading the cards in order of preference by lifting up the overlapping card which covers the contents of the card to be read.

Note on the second page of the instructions a section entitled "Characteristics of Simulated Jurisdiction." In the national study prosecutors and defenders from many jurisdictions participated. It was necessary to create a simulated jurisdiction to achieve some uniformity. Since you will be conducting the simulation in your own jurisdiction, it will be unnecessary to explain such characteristics.

The individual administering the simulation kept a response sheet and marked down each item as it was selected by the participant. (See Appendix O for response sheet.) In this way a record was kept of information used and the order it was chosen. Each participant was asked to choose all the information needed to make a charging and plea offer decision, but cautioned that further items of information should not be examined out of curiosity.

As each card was read the participant informed the person administering the simulation so it could be noted on the score sheet. The participant would indicate when a decision had been reached. The response sheet provides a place for describing the particular agreement which would be offered or accepted and the reasons why. In addition, each

participant was asked what the probability of the prosecutor's winning the case would be in terms of a percentage, i.e., 80 percent chance of winning.

At the top of the response sheet there is space for information about the prosecutor or defense attorney participating in the simulation. This may help to determine whether the background and experience of the participant has a bearing on the decisions made.

In the upper righthand section of the response sheet there is space for information on the order in which a case was presented. As indicated earlier two separate cases (a burglary and a robbery) were presented to each prosecutor and defense attorney participating in the simulation. Because of unfamiliarity with the first case we varied the order, alternating the robbery and then the burglary first.

We also varied two items of information which we believed would be examined in every case by prosecutors and defense attorneys. These were (1) the substance of available evidence and (2) defendant's prior record and reputation. Each of these items had two cards for each robbery and burglary case. The information for prior record was minimal on one card and serious on the other. The cards on evidence varied from weak to strong. Each participant was presented with one of the two cards available on each issue. Thus each robbery and each burglary case could have different combinations: 1) a serious prior record (high) and weak evidence (low); 2) low record-low evidence; 3) high

record-high evidence; 4) low record-high evidence.

By varying the information and asking for the probability of winning we were able to determine those factors considered important by prosecutors and defense attorneys, and how variations in vital information affected their decisions.

For many chief prosecutors and public defenders a critical question may be whether a case is handled with consistency regardless of which assistant is assigned to the case. Marked variances in case disposition or the sentence agreed upon may cause the chief prosecutor or public defender to reexamine office procedures and guidelines to determine if more internal controls or more specific guidelines are required.

Some prosecutors and public defenders indicated that the game could be useful as a training tool. Project staff noted that in some jurisdictions participants would frequently compare their findings, conclusions and rationales. The discussions were extended and sometimes became heated.

Costs of Conducting Comprehensive or Partial Studies

These projected costs are based on national study experience in conducting on-site examinations in six different jurisdictions. We are presenting lower and upper limits. The basic costs are for the comprehensive study. A partial study would require sharply decreased expenditures.

1. Study Director -- based on a minimum of four months actual time -- $6,500 to $9,500. This is predicated on field directors organizing their information from interviews, observations, and to a limited extent from the in-court observations. Material collected from case jackets and data from the plea bargaining simulation was not examined by the study directors in the national study. Separate analyses were conducted of these materials by the national study staff, as well as a full analysis of the in-court observation forms. Should a jurisdiction want the study director to analyze all data the time frame would have to be extended up to six months, thus correspondingly increasing field director costs.

2. Student Research Assistants -- $2,500 to $5,500, depending on the size of the jurisdiction, the number of case jackets examined, judges observed. In the national study, there was an average of 550 cases per jurisdiction and slightly over 100 in-court observations per jurisdiction. Costs may vary, depending on the number of case jackets examined, in-court observations made, and the difficulty in obtaining data from the jackets.

3. Typing Services -- if there are no existing typing services which a study director could use, we suggest setting aside approximately $1,500 for such services; this could be low or high depending on the jurisdiction.

4. Incidental expenses -- if these are needed and cannot be supplied by existing offices (supplies, etc.) $250 would probably be adequate. If forms and other supplies are not available from a central office in the jurisdiction the figure could be higher.

5. Assistant Director -- in several of the larger jurisdictions assistant field directors were necessary because of the complexity of the jurisdiction and the need for the field director to be free to conduct the interviews and observations. The assistant director supervised the student research assistants. Decisions as to the need for an assistant director were made on an ad hoc basis, based on the particular needs of each jurisdiction. The salary for the 4-month period ranges from $3,000 to $3,500. Even where the total project takes six months an assistant director would be needed for just the 4-month period of intensive data collection.

6. Computer costs -- In larger metropolitan jurisdictions the data may be voluminous enough to require computerization as a prerequisite to analysis. A cost figure is difficult to project since an existing computer facility within the jurisdiction may minimize the costs. Each jurisdiction would have to independently make its own estimate. In the national study Georgetown University computer facilities were utilized and student assistants assisted in "cleaning" the data as well as coding it.

Assuming that 550 case jackets are examined and that 100 in-court observations occur, the costs of students would be about $500. Actual computer costs would probably be in the range of $1,500 to $2,500.

Totaling the figures gives a low estimate of $15,750 and a high estimate of $23,250.* These costs are not excessive considering the nature and scope of the study. The necessary start-up time and developmental costs, which were heavy in the on-site studies of the national study, will not be present if a jurisdiction replicates these methods. The methodology has been worked out, the instruments have been prepared, and much experience in conducting these studies has been gained. We assume that the local jurisdiction will piggyback on this base of knowledge and experience.

There could be other incidental costs relating to a legal analysis of the rules, statutes, and case law in your jurisdiction as these matters relate to plea bargaining. Consideration might also be given to an analysis of the

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*

Low		High
$ 6,500	Study Director	9,500
2,500	Student Assts.	5,500
2,000	Computer	3,000
1,500	Typing	1,500
250	Supplies	250
3,000	Asst. Study Dir.	3,500
$15,750		$23,250

If a jurisdiction desires the study director to analyze all the data the low figure would become $19,000 and the high figure $28,000. Partial studies would be much lower. Costs may also be lowered if existing facilities and clerical personnel are used at no specific cost to the study. If an assistant study director is unnecessary costs could still be lower. We made no attempt to estimate costs for really large jurisdictions (i.e., New York, Chicago, Los Angeles). The time and effort in such jurisdictions would undoubtedly require a more substantial investment.

six national models of plea bargaining. In any event, we believe the costs projected above are realistic. They represent a minimal investment for which each jurisdiction can buy a hard and realistic look at its own processes and how the dynamics of plea bargaining affect the administration of justice.

Note on Coding Responses

The case file instrument is precoded. That is, all of the possible responses are listed on the form itself. Thus, item no. 3, sex, allows you to check male, female or unknown. No other responses are permitted. The coding format for this data collection device was constrained by this project's need to collect data uniformly across six very different jurisdictions. In a one-jurisdictional analysis this constraint need not apply. Therefore, it is entirely reasonable to expect that the codes for any specific piece of information might be adjusted to more accurately reflect local situations.

Accompanying the case file instrument are the instructions to local field directors (Appendix J). In addition jurisdictionally specific codes had to be developed for all information concerning the offenses charged (items 22 and 31) and the conviction (item 46), as well as codes for local judges. (See Appendix P for example of an offense code.) These codes can be generated for a single jurisdiction by ordering the state offense codes from most serious to least serious, numbering them accordingly, and assigning each judge a number.

The response categories for the in-court observation instrument was developed under the constraint that the national study had to collect data from six very different jurisdictions. Therefore, it was reasonable to expect that the number and substance of responses for any item might be adjusted to suit local circumstances.

It was not practicable to use the offense codes generated for the case file instrument in this situation. Frequently the charges noted in court during a guilty plea proceeding were stated in capsule form or were partially or wholly inaudible. It was necessary, for pragmatic reasons, to accept a simple statement of the charge (e.g., burglary, rather than first degree burglary). If the jurisdictional study director has access, time, and resources to acquire the actual charge pled to, the offense codes developed for the case file instrument would be adequate. Again, it would be appropriate to use the same codes for judges as developed for the case file instrument.

In addition to the instructions for in-court observers (Appendix L), a codebook was developed (Appendix Q). This was necessary because almost 700 in-court observations were made in six different jurisdictions. If less than 100 such observations are made in a local jurisdiction it will not be necessary to computerize the data and use a codebook. It is included as an appendix for consideration by larger jurisdictions which might collect data on more than 100 cases.

APPENDIX A

Jurisdiction: 1 2 3 4 5 6

Name of Interviewee:_____

PROSECUTOR's ROLE IN PLEA BARGAINING

Title/Position of Interview:_____

Total yrs. crim. just. exp._____

1. Which of the following items of information are routinely available to you at the time you are deciding what the plea agreement in a case should be?

Notes:

(a) Read answer list.

(b) Report all applicable.

(c) If answer differs for felony and misdemeanor, use "F" and "M" to distinguish.

(d) Notice some answers should be read "if applicable", e.g., "If defendant had psychiatric problems, would you usually know?"

a. Police report of the crime

b. Defendant's juvenile record (or whether he had one -- indicate which)

c. Local prior criminal record

d. FBI prior criminal record

e. Police allegations of "known" prior crimes or misbehavior for which no arrest was made; or opinion of defendant's character

f. Police opinion of degree of severity of disposition defendant deserves or opinion of the plea agreement

g. Whether defendant is involved in another pending case

h. Whether defendant was on release (bail, probation, parole) for other crime at time of commission of instant crime

i. Victim's opinion of degree of severity of disposition defendant deserves or opinion of the proposed plea agreement

j. Amount of harm to the victim(s) e.g. hospitalization required; number of stitches

k. Defendant's employment record

l. Defendant's marital status

m. Defendant's history of alcohol use

n. Defendant's history of drug use

o. Length of defendant's residence in local community

2. In routine cases is there as much information available to you as you feel you need in order to properly evaluate a case before plea bargaining? Yes. No. If "no,"

2.a. If no,

(a) What additional information would be very important to have?

(b) If it were available, how would it be likely to affect your bargaining practices (i.e., fewer bargains? More bargains? More or less lenient terms?)

3. How do you "evaluate" a case for plea bargaining? That is, what factors do you usually consider in determining the true value of the case and what the plea agreement should be?

Notes:

(a) Allow 5 minutes maximum unless questions below are being answered.
(b) Emphasize "usual" or "typical".

4. In evaluating a case and deciding what the plea agreement should be, to what extent are you given clear and specific guidance by office policies (either de facto or formal written policies)? That is, to what extent is the final offer up to your discretion or determined within narrow limits by office guidelines which tell you which factors are to be considered and the weight to be given them? Please illustrate your answer with cases you remember well and are typical.

4A. (Note: Ask only if answer to 4. was that the decision was not determined by or guided by policy.)

What would you say about a proposal to require prosecutors to make office policies which would give clear and specific guidance to assistant prosecutors regarding setting the terms of plea agreements?

Probes: (a) Is it a good idea? Bad idea? Why?

(b) Is it possible?

5. In cases where the crime is serious, the defendant is a serious criminal (i.e., a "bad actor") and the case against him is STRONG ("deadbang"), what do you usually do regarding plea negotiations? It would be helpful if you would illustrate your answer with examples from your direct experience. But, please refer to cases which you remember well and which are typical of how you would usually deal with this type of situation. It would also be useful to know why (i.e., your rationale) for your practice.

Notes:

(a) Allow initial spontaneous response. If answers below are not mentioned, read them. In addition to getting respondents usual practice record his reactions to each answer choice below even if it is not what respondent usually does.

a. Require the defendant plead as charged (i.e. refuse to give any considerations of any kind).

b. Give the defendant some bogus considerations which have the appearance of a bargain but in fact constitute no substantive benefit for him (e.g., drop charges which were either over-charged or would not have affected the sentence any way).

c. Give the defendant some minimal considerations which do not affect the length (or substance) of the sentence but may affect other aspects of the sentence e.g., agree to recommend the sentence be served in a certain prison.

d. Give the defendant some real consideration which will (or probably will) reduce the length of the sentence imposed.

e. Other, explain.

6. In cases where the crime is serious and the defendant is serious but the evidence is WEAK, what do you usually do? Again, please illustrate with your recent cases that are typical and give your rationale.

Notes:

(a) Allow initial spontaneous response. If answers below are not mentioned, read them. In addition to indicating respondent's usual practice by circling it, record all comments to all answer choices.

a. Require the defendant plead as charged (i.e. refuse to give any considerations of any kind).

b. Give the defendant some bogus considerations which have the appearance of a bargain but in fact constitute no substantive benefit for him (e.g., drop charges which were either over-charged or would not have affected the sentence any way).

c. Give the defendant some minimal considerations which do not affect the length (or substance) of the sentence but may affect other aspects of the sentence e.g., agree to recommend the sentence to be served in a certain prison.

d. Give the defendant some real consideration which will (or probably will) reduce the length of the sentence imposed.

e. Other, explain.

7. Prosecutors sometimes find themselves in a situation where their case falls apart, that is, the critical piece of evidence is lost (such as the illegal drugs are lost in the police evidence room or the critical witness dies) and the prosecutor knows that if the case goes to trial the judge would almost undoubtedly rule that the government had not established a prima facie case. Have you ever found yourself in this situation? How often? And how have you usually handled it?

Notes:

(a) Allow spontaneous response.
(b) Then ask probes below if not already answered.

Probes:

a. Do you try to get a guilty plea or do you just dismiss the case?

b. Does it make a difference if the crime is very serious and/or the defendant is a bad actor?

c. Do you think it is proper for a prosecutor to call "ready for trial" (when calendar is called) in order to convince the defense to plead in such cases?

d. What should be the limits of ethical behavior by prosecutors in this type of situation?

8. Referring to your ten most recent felony cases in which there were plea bargains agreed to, please estimate what the probability of conviction at trial would have been for each. If any of them were like the case we just discussed in question #7, please say so.

Notes:

(a) Do not read the answer choices to respondent. The cases which were like the one in question #7 should be counted as having 0% probability of conviction unless respondent indicates otherwise.
(b) Ask if the last 10 cases are typical of his usual experience.

_____ a. 91 - 99% ("deadbang")

_____ b. 71 - 90% (strong)

_____ c. 41 - 69% (fifty-fifty "could have gone either way")

_____ d. 21 - 40% (strong enough to beat a directed verdict but defendant probably would have been acquitted)

_____ e. 19 - 20% (probably would have resulted in directed verdict)

_____ f. 0% (there definitely would have been a directed verdict because the critical witness(es) had died or disappeared or was not in court or the chain of custody of evidence had been broken or the evidence lost; or there was some other condition present which would have prevented us from establishing a prima facie case)

9. (Note: Ask only if not already answered.)
Have you had a case where you were prosecuting a serious criminal (e.g., with record of violence) charged with a serious crime (e.g., armed robbery) and you knew he committed the crime but you felt there was a good possibility you would have lost the case if it had gone to trial?

Yes, if "yes" ask 9A.
No, if "no" go to 10.

9A. If yes to 9, then ask:

(a) What was the lowest offer (i.e. most lenient plea offer) you have made in such circumstances? (e.g., probation?)

(b) Would you have gone any lower? Why or why not?

10. (Note: Do not ask if already answered clearly and explicitly.)
Has your experience been that you generally offer the "best" (from the defendant's perspective) deals in the weakest cases?

Yes No Can't Say Other

(Note: Do not ask if already covered clearly and explicitly.)

As you may know, the handling of weak cases is a matter of some difference of opinion among prosecutors. Some believe the best policy is to take weak cases to trial and negotiate pleas only in the strong cases. Others believe the best policy is just the reverse, i.e., take the strong cases to trial and negotiate the weak ones. Which alternative would you recommend and why?

1. Try strong cases, negotiate weak cases
2. Try weak cases, negotiate strong cases
3. Other, specify

Rationale:

12. One of the concerns about plea bargaining is that it can result in innocent people pleading guilty. In the following series of questions we want to pursue this point with you. First, the belief that innocent persons may be convicted by plea bargaining is based on the possibility that an innocent person may prefer to cut his losses and plead to a less serious crime (or to a lenient sentence) rather than run the risk of losing big at trial. Do you know of any cases where you are now reasonably sure that this is what occurred?

(Notes: Do not read answers. But, circle appropriate one and report any commentary.)

a. It never has and never would

b. It never has but it could happen

c. Yes it has happened →

12A. If "yes" to 12, then ask:

i. How many such cases do you know of:

ii. Describe at least one case

iii. Why didn't the prosecutor drop the case?

iv. Why didn't the judge refuse to accept the plea?

v. What did the defense attorney do in the case?

13. How do you know you are not convicting an innocent person?

Probes: a. What do you do to minimize the possibility that an innocent person might plead guilty just to cut his losses and avoid losing big at trial?

b. Do you feel that convicting innocent people through plea bargaining is any more likely to happen in weak cases than in strong cases? Explain.

14. Do you know of any case where you are now reasonably sure that an innocent person was convicted at a bench trial or a jury trial?

Bench Trial	Jury Trial
No Yes	No Yes
If "yes," ask:	If "yes," ask:
i. How many cases?	i. How mahy cases?
ii. Describe at least one case.	ii. Describe at least one case.

15. What do you feel is the difference, if any, between plea bargaining and trial with regard to the probability of convicting innocent persons?

1. No difference
2. More likely at trial
3. More likely at plea bargaining
4. Most likely at jury trial
5. Most likely at bench trial
6. Most likely at plea bargaining than either jury or bench trial

Score 4,5 or 6 only if respondent insists on this distinction

In the following series of questions we hope to kill two birds with one stone. We are interested in the roles that the police and the victims of crime play in plea negotiations. The questions to be asked about both the victim and the police are the same. So for efficiency's sake we will ask the questions together.

(Note to Field Director: In talking about victims do not allow respondent to talk only about domestic dispute type situations. Ask about stranger-to-stranger crimes as well.)

(a) How often do the police/victims convey to you what they believe the appropriate plea bargain (or disposition in general) should be?

Police	Victim
i. Rarely	i. Rarely
ii. Routinely	ii. Routinely
iii. In special circumstances, explain.	iii. In special circumstances, explain.

(b) How much weight do you give to the police officer's/victim's wishes?

Police	Victim

(c) In deciding the terms of a plea bargain does it make a substantial difference to you to know that the officer/victim has no objection to the terms of the deal?

Police	Victim
No	No
Yes	Yes

(d) Does it (c) depend upon who the officer/victim is?

Police	Victim
No	No
Yes, explain	Yes, explain

(e) What sorts of things do police officers/victims tell you about defendants (other than the police report of the crime and the police rap sheet) that you regard as important to consider in deciding what to do with a defendant?

Police	Victim

(f) In how many cases do you meet with police/victims to discuss the terms of a plea bargain? (Note: not "get approval")

Police	Victim
Rarely	Rarely
Routinely	Routinely
For special cases, explain	For special cases, explain

17. In the following series of questions we would like to learn about the role of defense counsel in plea negotiations as seen by prosecutors. How often has a defense counsel clearly indicated that he would take all his caseload to trial unless he got the terms he wanted in a plea agreement in a particular case or set of cases?

(Note: "Clearly" is to distinguish from "well it is often implied," or "you always know it could happen.")

a. Never. If "never," ask, "why do you suppose defense counsel do not do this?"

b. 1 to 3 times in all my experience

c. 4 to 10 times in all my experience

d. About once a month

e. About once a week or more often

→ If these answers, then ask 17.1:

17.1. How do you deal with such a situation?

18. How often has a defense counsel who was defending two or more defendants in either the same case or in completely independent cases offered to trade one client off against the other in plea negotiations, i.e., offer to try to persuade one client to accept a not-so-sweet deal if the prosecutor will give a very sweet deal (or even a dismissal) to the other client.

a. Never
b. 1 to 3 times in all my experience
c. 4 to 10 times in all my experience
d. About once a month
e. About once a week or more often

→ If these answers, ask 18.1:

18.1. What happens and what do (did) you do?

19. When it comes to plea negotiations, does it make any substantial difference to you who the defense counsel is? Explain

20. What kind of (how much) discovery do you, personally, give to defense counsel?

Probe: (a) Does it depend on who the counsel is? Explain.

21. Would you favor or oppose a policy requiring prosecutors to give full and complete discovery to every defense counsel?

22. How often do defense counsel reveal to you information about their clients which is subject to the attorney-client privilege?

a. Never

b. 1 to 3 times in all my experience
c. 4 to 10 times in all my experience
d. Regularly - all attorneys do it
e. Regularly -- some attorneys do it
f. Other

→ If these answers, ask 22.1:

22.1 Discuss what types of information is revealed and why and by whom, i.e., type of attorney. Illustrate with typical examples.

23. What changes in the way plea bargaining is done in this jurisdiction would you like to see made?

24. What are the advantages and disadvantages of plea bargaining?

H I S T O R I C A L S E C T I O N

To be included for experienced prosecutors, judges and defense attorney

Note: Ask only if respondent can tell you about changes in plea bargaining that have occurred over the last decade or two. In Seattle, New Orleans and El Paso these questions are not to be confused with the specific questions about the special new programs in those jurisdictions.

1. Does plea bargaining today differ from the way it was done when you first began working in criminal justice? (Note: make note here _____ of how many years ago that was.)

2. (Note: Ask only if he says a change has occurred.) In your opinion what has (have) been the major cause(s) of the change?

   A. Did any of the Supreme Court decisions regarding rights of defendants, such as right to counsel, have a substantial impact on the way in which the plea bargaining was done in this jurisdiction? If so, which decisions and what was the impact?

   B. What affects did other factors have, e.g., population growth, or growth in size of the prosecutor's office, etc?

3. Do you feel that plea bargaining that is done today is better or worse; more or less desirable than it was when you began? If so, what about it was better or worse?

   Probe: Is it more or less fair; coercive; hypocritical; influenced by improper factors such as family or political connections?

4. Years ago was there a local plead-them-guilty bar, i.e. private defense attorneys who did mostly criminal defense work and pled virtually all their clients guilty regardless of the merits of the case? Yes No

5. Has this bar been either eliminated or greatly reduced or otherwise substantially changed from what it once was?

   Yes No NA

6. If yes, what caused the change?

   Follow up? (Note: Ask only if there is a public defender servie). What impact if any did the inauguration or expansion of the local public defender service have on the plead-them-guilty bar?

7. (Note: Ask only if there is a public defender service.)

   If the local public defender service came into existence since you began practicing in the criminal justice system, could you describe the impact of that innovation on the way in which plea bargaining was done?

APPENDIX B

Jurisdiction _____

Interviewer _____

Interviewee _____

INTERVIEW SCHEDULE FOR DEFENSE ATTORNEYS

1. Background of Defense Attorney

   A. Name:

   B. Public Defender Private Attorney

   C. Years as attorney:

   D. Have you ever been a prosecutor: Yes No

      If yes, when and for how many years?

   E. Percentage of time now spent in criminal defense work:

   F. Percentage of time in defense work as privately retained attorney and as court-appointed attorney:

   G. Do you specialize in any particular kinds of defense work (i.e., drug cases, drunk driving, etc.)

2. What do you call a plea bargain or agreement? (What are the elements involved in such an agreement and which parties negotiate the bargain?)

3. What is the dominant type of plea bargaining in your jurisdiction?

   A. Charge bargaining

   B. Sentence agreements

   C. A combination of both

   Of each 100 cases where there has been a plea agreement negotiated can you approximate the percentage for each type of plea bargain?

4. At what stages do you become involved in procedures and actions relevant to plea bargaining?

   A. Police investigation

   B. Prosecutorial screening

   C. Arraignment

   D. Preliminary Hearing

   E. Grant Jury

   F. Motions

   G. Trial

   H. Other

   (Get specific responses at to exactly what happens at each of these stages or in between them which relates to plea discussions.)

5. Do you contact victims, witnesses, or those police officers involved in the case? Are such contacts a regular part of your procedure or do they occur only occasionally? For what purposes do you see the victims, witnesses, or police? (Defense attorneys may try to find out how serious the police are about pushing the case; they may want to find out if the victims are willing to back off on insisting upon a prosecution; and witnesses may be questioned to determine just how strong the case against the defendant may be.)

6. At what point in the process is contact made with the prosecutor on the case? Who makes this first contact? What is the nature of the discussion at this point?

7 How do you obtain information about the case which the prosecution has against your client? Are there formal discovery proceedings? Does the prosecutor allow you to look at the police report and material in his files? Is this practice uniform as to all defense attorneys? If no, why? Do you have preliminary hearings in this jurisdiction, and if so do they serve any discovery purposes? Are there other methods of obtaining information? In particular, how do you find out the identity of witnesses?

8 Do you feel that information you obtain about a case is adequate for you to properly advise your client how to plead? If not, what additional information do you believe is necessary and how do you believe it should be obtained? Is the information you do receive obtained in sufficient time before the pleading decision has to be made?

9. Does the prosecutor's office screen out or reject cases which have serious legal or evidentiary weaknesses? (Try to find out about the prosecutor's practices in this regard as they apply to the typical, rather than unusual or rare cases. We would like to know if certain kinds of crimes or types of defendants influence the screening of the cases.)

Does the prosecutor's office have standards or policies which govern the screening or rejection process?

A. Does the porsecutor's office accept for porsecution only cases which in the prosecutor's view are so strong as to

result in a conviction if the case went to trial?

B. Does the prosecutor's office accecpt cases which are not as strong as A. above but which the prosecutor's office feels are strong enough to get the case to a jury? (In all jurisdictions, after the prosecution has put on its case before the jury, the defense can ask the court to "direct a verdict of acquittal" or strike the evidence presented by the prosecution on the grounds that the case presented by the prosecution was so weak as to negate the necessity for the defense to even put on a case.)

C. Does the prosecutor's office accept cases which it believe would not withstand a motion for a directed verdict of acquittal, but because of the prosecutor's belief in the factual guilt of the defendant, the background of the defendant, or the nature of the crime, that the office must accept the case and attempt to get a plea of guilty to the crime charged or a lesser included offense?

10. Do you believe the prosecutor's office overcharges? Yes No If yes, why do you believe such overcharging takes place? Is the overcharging routine in all cases or does it occur primarily for certain kinds of crimes or types of defendants? What kind of overcharging takes place? (Try to find out whether the overcharging is horizontal or vertical or both. In horizontal overcharging the prosecutor comes in with a multi-count information or indictment. In such cases the prosecutor may agree to dismiss or drop many of these counts in return for a plea to one or several of the remaining counts. In vertical overcharging the prosecutor charges a higher degree or the most serious possible charge which could cover that crime. Here the prosecutor may agree to have the defendant plead to a lesser included

charge, either a felony or misdemeanor).

11. If there is overcharging in your jurisdiction does this assist you in advising your client whether or plead guilty or not guilty? (Try to find out whether the fact of overcharging makes it easier for the defense attorney to convince the client to plead guilty to a lesser charge on the grounds that the defendant is getting a good deal).

12. Have you had cases where after an information has been filed or indictment returned the prosecutor has approached you with a plea offer, which upon your client's refusal to accept resulted in a dismissal of the case by the prosecutor? Yes No

A. If yes, has this occurred frequently or infrequently? In about how many cases?

B. Where this has occurred, were you able to ascertain why the case was dismissed? (Try and find out whether these instances occurred where the case may have been strong initially, but where key witnesses were no longer available the victim no longer wanted to prosecute, or where key physical evidence would not be admitted, thus rendering the case so weak as to warrant a successful motion by the defense attorney for a directed verdict of acquittal. IN the alternative, try to determine if some of these cases were viewed by the defense attorney as inherently weak from the very beginning, but where for reasons concerning the nature of the crime or the background of the defendant the prosecutor was attempting to gain a guilty plea despite the

basic and inherent weakness of the case.)

13. Does the prosecutor's office have specific policies and standards which attempt to regulate or control the plea bargaining process in the prosecutor's office? Yes No (Polices and standards can mean the same thing, but there can be policies without standards. For instance, a prosecutor's office might have a strong policy on screening out weak cases but provide no standards to guide those assistants doing the screening. Another prosecutor might have a policy against plea bargaining out certain kinds of offenses or defendants, but not provide specific standards to guide the assistants dealing with such cases or defendants. Still, again, a prosecutor might have a policy of centralizing the plea bargaining process in several chief deputies, but provide no specific standards to those deputies as to what cases can be pled out and under what circumstances.

If yes, are the policies or standards in writing? What aspect of the plea bargaining process do these policies or standards cover? Are the policies known generally to the public, to the defense bar, or just to insiders? Does the prosecutor's office make an attempt to publicize the policies or does one find out about them on an ad hoc basis?

If there are policies and standards, do they affect the frequency and kind of agreement you reach in negotiating a

plea with the prosecutor's office?

14. If there are policies and standards relating to plea bargaining in the prosecutor's office, is it your experience that assistant prosecutors follow these policies or standards? Yes No

Do the assistants generally require clearances for negotiating a plea in cases covered by the policies or standards?

15. Where there appear to be no specific policies or standards is it your experience that assistant prosecutors exercise discretion in arriving at plea agreements? Yes No

Does this apply to all cases, crimes and defendants, or is such discretion limited to routine kinds of cases?

If no, can you specify what kind of clearances the assistants need to obtain before consummating an agreement with you?

16. If you had the same case before two different prosecutors in this jurisdiction would you get virtually the same plea offer? Yes No

If "No" ask probes:
If "no," how big a difference in the deals might you get?
Please illustrate with any actual experiences?

What accounts for the difference between prosecutors? e.g., Your personal relations with them; whether they are younger or more experienced, etc.?

16. A. Is there shopping by defense attorneys for prosecutors in this jurisdiction? Yes No

If yes, how extensive is such shopping and how do you get a change of a prosecutor already assigned or choose a prosecutor?

17. Is there shopping for judges by defense attorneys in this jurisdiction? Yes No

If no, how is such shopping prevented?
If yes, how are such changes accomplished?
(Indicate whether or not there are any mandatory challenges to a judge which results in an automatic change or other ways in which the judge can be changed in a particular case.)
Finally, how does changing the judge affect a disposition or sentence which may be imposed?

18. Are there generally accepted sentences which are imposed (i.e, routine deals) when an individual pleads guilty to a particular crime, whether it be a misdemeanor or a felony? (The terms to describe such sentences may include "market value," "true value" or the "worth of the case." The accepted value or worth of the case occurs through custom, routine, or specific policies which inform actors in the system that a particular crime will generally be disposed of in a routine way. Specific examples include first offender charged with a robbery or burglary where it is a common garden variety and not too serious which may be routinely reduced to a misdemeanor. Other examples may exist in your jurisdiction. We want to know just how widespread

this practice is if it exists for the standard types of offenses.)

19. How do you evaluate the case against your client? What factors are important? (Find out what specific factors are considered: i.e., strength of the evidence in the case, the seriousness of the offense and possibly other pending charges against your client, whether there is any prior criminal record, the background of the victi and any witnesses in the case, the victim's attitude, the pretrial status in any pending cases, or whether or not your client was on parole or probation at the time of the instant offense).

19.A. Based on the information you obtain can you predict the probability of conviction should your client go to trial? If "yes," do you tell your client what your prediction is?

20. If you have had cases involving the following situations what advise do you give your clients?

A. Where the government's case is weak in your opinion and your client claims he is innocent.

B. Where the government's case is weak and your client admits guilt.

C. Where the government's case is strong in your opinion and your client claims he is innocent.

D. Where the government's case is strong and your client admits guilt.

21. In what way do you advise your client on the issue of whether or not to plead guilty?

A. Do you simply lay out the various options available to him and the possible consequences of such options?

B. Do you attempt to persuade your client of the most viable option given all the circumstances and alternative options available?

C. Do you strongly insist that a client follow a particular course given all the circumstances? (Try to find out if this strong insistence becomes actual arm-twisting.)

21.1. Who really makes the final decision as to whether your client pleads guilty or not guilty? (Try to find out whether in fact the client really makes this final decision or whether the approach taken by the defense attorney in any way coerces the defendant into pleading the way the defense attorney desires.)

21.2 Does the advice you give your client depend upon how good a deal the prosecutor offers? Explain.

23. What affect do the following facts have on the types of disposition which a case receives in your jurisdiction?

A. Race of defendant or victim.

B. Age or sex of defendant or victim.

C. Economic and educational background of defendant or victim.

D. Political background of defendant or victim.

E. The type of attorney -- public defender, court-appointed or retained, and if court-appointed or retained, whether

the fee schedule may influence the nature and scope of the advice offered by the defense attorney.

F. The age or experience of the prosecutor handling the case.

G. Community attitudes

H. Other

24. In what way do you discuss with your client the possible sentences which could be imposed, depending on the decision the client may make on the plea? (Try and determine whether the defense attorney describes all options to the client, particularly the possibility of more severe sentence should the client decide to go to trial, rather than plead guilty. Should the client have a prior felony or misdemeanor conviction making the client subject to enhanced sentencing under an habitual criminal act, try to find out if the defense attorney informs the client of such a possibility should a plea of guilty be entered.)

25. Do you discuss with your clients in any cases possible collateral consequences which may flow from conviction of a felony? (Try and determine if the defense attorney is aware of the range of collateral consequences and whether or not they are discussed with the client. These consequences include losing the right to vote, losing domestic and marital rights, losing certain property rights, and the possibility of losing the ability to retain or obtain a license to practice a profession or occupation.)

26. To what extent do you keep your client informed of the progress of the case and any plea discussions which may be taking place? How do you communicate with your client as to these matters? What particular matters do you consider to be most important in the discussions with your client?

27. Have you ever told the prosecutor's office that you would take all cases to trial unless you got a particular kind of deal in one case? Yes NO

If yes, how often has this occurred? Could you describe a recent instance?

If no, is there any reason why this tactic has not been used?

Have any defense attorneys, to your knowledge, done this or threatened to do it? If you or any other attorney has actually done it or threatened to do it what was the outcome of the case from which this incident occurred and what was the reponse of the prosecuting attorney generally to such actions or threats?

28. Do defense attorneys in this jurisdiction ever represent more than one defendant in one case where the defendants are being charged with essentially the same crime? Yes No

Where this occurs do defense attorneys arrange one deal which covers all the co-defendants? (Try to find out whether by agreement with the prosecutor different deals in this one case may involve all the co-defendants, with the result that one co-defendant may receive a better deal than another. In other words, does the arriving at this one general deal work to the obvious disadvantage of one co-defendant as over the other.)

29. Is there a cop-out bar in your jurisdiction? Yes No
How extensive is it?

(A cop-out bar involves lawyers working on a small fee arrangement from clients who retain them or who accept a large number of court-appointed cases where the fee schedule is low. Such lawyers make their living by rapidly processing cases under these arrangements and emphasizing quantity over quality. They thus plead most of their clients fairly quickly.)

30. Is it more profitable to plead clients out in general, rather than going to trial? (This question does not have to be asked of public defenders since they are on a salary basis and it makes no difference whether they plead cases or go to trial.)

31. What advantages or disadvantages do you see in plea bargaining? (List the advantages and disadvantages enumerated by the respondant and engage the respondant in some discussion of each one mentioned.)

On balance do you feel that plea bargaining is beneficial or detrimental to the criminal justice process? (Try and find out whether the defense attorney believes innocent people can be convicted in a criminal justice system and whether the plea process or trial is more likely to result in innocent persons being convicted.)

31. What changes would you like to see in the plea bargaining process in your juridiction? (Take careful notes here and after they have finished talking you might suggest some notions, including: 1) whether or not the system should be made more open and some kind of record kept of plea discussion with reasons for an agreement being placed on that record; 2) whether or not better means of providing information to defense attorneys should be devised; 3) whether or not there should be cut-off time prior to trial after which no pleas would be accepted.)

32. Do you know of any case where you believe that an innocent person pled guilty to a crime?

Yes, if "yes," ask 32. A.

No

32. A. If "yes" to 32, then ask

1. How many such cases do you know of?
2. Please describe at least one and, if you can, indicate why the defendant did what he did.

33. Have you ever advised a client to accept a plea offer from a prosecutor even though you believed your client was innocent? If yes, please explain why?

34. Do you know of any case where you believe that an innocent person was convicted at trial?

Yes, If "yes," how many?

No

35. In your opinion which process is more likely to result in cases of innocent persons being convicted, plea bargaining or trial? Explain?

Section 2.3
Slide 11

NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE

SPACES (FIST) COSTS →

DOJ COMPUTER UTILIZATION

	FY 80 Estimate	FY 79 DISCOUNTED	FY 79 ACTUAL	
No of Juris lines printed	66,000,000	51,940,766	51,940,766	
No of Offline lines printed				
ALL DOJ Products: Juris Printing	$84,780	$94,175	$175,599	w/o 0472 (125,845)
Juris Loading	$100,800	73,202	136,317	
DDB Update	18,720	14,902	27,758	
SNI Bulletin	2,400	1,060	1,982	
DRI	—	24,397	45,478	(540)
DRI Supplement	1,200	—	—	
Bibliographies	6,000	—	—	
SNI Cards	—	2,349	4,374	
Development	9,600	10,213	19,018	
Other Production and Maintenance	26,400	22,505	41,908	
TOTAL	$249,900	$242,803	452,434	

APPENDIX C

JUDICIAL ROLE AS SEEN BY PROSECUTORS

AND DEFENSE ATTORNEYS

Directions to Field Directors

1. Answers to these questions go on a separate answer sheet. Use the extra space on the answer sheets for additional comments, qualifiers, answers to probes, etc.

2. You must fill out at the top of the answer sheet the names of all the judges about whom we want information. Use two or more pages of answer sheets if you have more than four judges.

3. The number of judges per jurisdiction are as follows:

Seattle:	10 felony judges randomly selected (if necessary) from all judges who dealt with criminal cases in the last year (2 years if necessary). 3 misdemeanor judges, randomly selected from all who have original trial jurisdiction over misdemeanors.
Tucson:	All 5 felony judges. All, up to 5, misdemeanor judges, randomly selected (if necessary) from all judges with original trial jurisdiction over misdemeanors.
El Paso:	3 felony judges. All, up to 5, misdemeanor judges randomly selected (if necessary) from all judges with original trial jurisdiction over misdemeanors.
New Orleans:	10 felony judges. 3 misdemeanor judges randomly selected from all judges with original jurisdiction over misdemeanors.
Delaware County:	10 Common Pleas Judges (including 2 senior judges) All, up to 5, misdemeanor judges randomly selected from all judges with original jurisdiction over misdemeanors

4. Ask the same question about every judge before moving to the next question.

5. These questions should be asked of at least 3 experienced prosecutors and 3 experienced defense counsel who either have practiced before the judges discussed, or know about the judges' behavior from reasonably reliable sources. If any respondent can describe the practices of some judges but not others, you can use his responses for the judges he knows and get someone else to describe the other judges.

6. This interview can be done together with or separate from other interviews with defense counsel and prosecutors.

READ TO INTERVIEWEE:

In the following series of questions we are trying to learn about the practices of the individual judges in this jurisdiction regarding plea bargaining. The same set of questions will be asked about each judge in the jurisdiction. Your answers will be held in strict confidence. We are identifying the individual judges only so that we can match the perceptions of several respondents regarding the same judges. Neither your individual answers nor the names of the specific judges will be identified in our report for publication.

1. As far as you know, does Judge _____ (insert name; repeat for each judge) sentence a defendant more severely if he/she goes to trial rather than pleading guilty?
(Note: Put letter on answer sheet. If "d", put "d" plus specific answers to probes.)

a. Can't say.

b. No, I am fairly certain that he/she does not do that at least not consciously. He/she does not have a reputation for doing so and has never done so or hinted at doing so in any cases I have observed.

c. Yes, without qualifications. Judge has well-known reputation for sentencing more severely at trial than for pleas. "Plead guilty, get mercy; go to trial, get justice." "You better have a good defense if you go to trial."

d. Yes, with qualifications. The judge usually or in selected cases indicates that he/she will or may sentence more severely if the defendant goes to trial rather than plead.

If "c" or "d" then ask:

i. What rationales does he/she use? (e.g., ABA; perjury; additional information about defendant comes out at trial; administrative necessity; other).

ii. How often and in what types of cases does he/she do this?

2. If Judge _____ (repeat each judge) does sentence more severely does he/she have a usual, customary or set "discount" or differential that he/she gives for pleading; and does this vary by type of crime (e.g., 3 years off for robberies; 1 year off for first degree burglary)?

a. Can't say, don't know.

b. No, there is no pattern to his/her discounts.

c. Yes, there is a pattern, (describe on answer sheet).

3. When it comes to plea bargaining does Judge _____ remain completely aloof and uninvolved and refuse to have anything to do with the negotiation process (in any case) or does he have some influence (Note: direct or indirect) over the negotiating process (Note: other than his known sentencing proclivities)?

a. Complete uninvolvement -- If a, then skip to question

b. Some influence

4. I will read to you a list of different ways in which judges can influence negotiations leading to pleas. We would like to know which description best fits the way in which Judge _____ usually influences plea negotiations. If more than one description fits say so. If none of the descriptions apply, please describe his usual practice.

a. Indirect influence. Type 1. Influence is minimal; e.g. he won't discuss what he will do but he will suggest that the case should be negotiated. However, the parties feel free to ignore his suggestion without danger of any reprisal from him.

b. Indirect influence. Type 2. Influence is strong; e.g. he won't discuss terms but will suggest the case be negotiated and the parties know they ignore his suggestion at the risk of some reprisal, such as being given a hard time at trial or being criticized.

c. Indirect influence. Type 3. Influence is limited to telling the prosecution and defense whether the deal they have worked out is acceptable to him and allowing them to continue to return to him with new terms until he finds them acceptable.

d. Direct participation in negotiations. Type 1. He will discuss the case and will indicate a specific sentence; e.g., the number of years, he will impose. (Note: If "d", ask "Will he stand fast by his first offer or is it negotiable?"

e. Direct participation in negotiations. Type 2. He will give a sentence range but not a specific sentence.

f. Direct participation in negotiations. Type 3. The judge will suggest that a proffered charge reduction be accepted.

g. Direct participation in negotiations. Type 4. If you don't take his suggested offer (whether it is a specific sentence or a range) and to to trial he may take reprisals, e.g., give you a hard time at trial or other things.

h. Other, specify.

5. Of every 100 negotiated guilty pleas taken by Judge _____ about what percentage of them were ones where the judge exerted his influence over the negotiation process? _____

6. (Note: Ask only if judge does participate directly in plea negotiations.)

When Judge _____ participates in plea negotiations how often is this done in or out of court? (i.e., "in court" means sitting on the bench. "out of court" means any other place.)

a. Virtually always in court.

b. Usually in court (60 - 99% of the time) unless special circumstances arise (describe)

c. About 50% of the time

d. Usually (11 - 49% of the time) out of court

e. Virtually never in court (less than 10% of the time)

(Note: If out of court, where?)

7. (Note: Ask only if judge does participate directly in plea negotiations.)

When Judge _____ participates in plea negotiations how often is a full and complete record of the discussions (at which he is present) made (i.e. tape recorded, short or long hand, or stenograph, but not necessarily transcribed).

a. Virtually always (90% of time or more)

b. Usually (60 - 89%)

c. About half (40 - 59%)

d. Infrequently (1 - 39%)

e. Virtually never (1% of time or less)

8. When Judge _____ participates in plea negotiations will he ever negotiate with the prosecutor or the defense counsel alone or does he always require that they both be present?

   a. Both are always present

   b. Judge will see defense counsel or prosecutor alone (ex parte)

   c. Other, explain.

9. In cases where there have been sentence bargains how often does Judge _____ make his acceptance of the plea contingent upon nothing coming to light in a presentence investigation that would make him change his mind about the deal?

   a. Virtually always (90% of the time or more)

   b. Usually (60 - 89%)

   c. About half (49 - 59%)

   d. Infrequently (11 - 39%)

   e. Virtually never (10% or less)

   f. Other, e.g. special cases

10. In cases where Judge _____ rejects a sentence agreement how often will he allow the defendant to withdraw his plea?

   a. Virtually always (0% of time or more)

   b. Usually (60 - 89%)

   c. About half (40 - 59%)

   d. Infrequently (11 - 39%)

   e. Virtually never (10% or less)

   f. Other, special circumstances.

11. (Note: Question 11 should be asked only once. It applies to all judges).

   Should judges participate in discussions about possible plea bargains? Yes No

   Why?

   If yes, what should be the nature, scope and extent of such participation?

APPENDIX D

Jurisdiction _____

Field Director _____

INTERVIEW SCHEDULE FOR JUDGES

1. Name:

2. Type of Court: Misdemeanor Felony Both

3. Number of years as a judge:

4. Other criminal justice experience, (e.g., length of time, as prosecutor, defense attorney, etc.)

5. What is your role in the plea negotiation process? (i.e., when and how do you become involved, if ever?)

   (a) Do you see either the D.A. or defense attorney in chambers? Separate or together? How often?

   (b) Is the defendant ever present in your chambers for plea discussions? How often?

   (c) Will you indicate a specific sentence or a sentence range? How? What percent of the time?

6. Do prosecutors and defense attorneys present sentencing agreements for guilty pleas in your court?

   If yes, Why?

   If no, Why not?

7. Can you estimate the percentage of guilty pleas in your court that are a result of some type of plea bargain?

8. What percentage of guilty pleas in your court involve a sentence agreement between prosecutor and defense attorney? (If no percentage is given, ask about the last ten cases.)

9. If prosecutors make sentence recommendations as part of a plea agreement do you follow them? (Indicate percentage if possible).

   Exactly all the time

   Don't ever go higher but may go lower than prosecutor's recommendation.

   Will go higher than the prosecutor's recommendation but allow defendant to with his plea in that case.

   Other (specify).

   What is your rationale?

10. How do you respond if you feel a prosecutor has made an inappropriate or unreasonable sentence recommendation? (Probe: How do you discuss the matter with him? What if a prosecutor consistently makes unreasonable recommendations?)

11. Do you sentence those who are convicted at trial differently than those who plead guilty to a given offense?

12. If yes, what is the rationale for this policy? (e.g., someone pleading is showing contrition, first sign of rehabilitation, saves money and time, etc.)

13. To what extent do you differently sentence? (How often, what type of cases, the amount of differential punishment).

14. Are there any set differentials? (e.g. for 1st time burglars, a guilty plea would get 1 year and a conviction at trial 2 years.)

15. In determining factual basis for a plea, what standard do you use? That is, how do you determine whether a defendant committed the crime? (Questioning the D.A., requiring the D.A. to produce evidence or produce a witness, thoroughly questioning a defendant or his defense attorney). How do you ensure that a person who doesn't commit a crime would plead guilty?)

16. How do you determine that a plea is both "knowing and voluntary"?

17. Do you ever encourage pleas by defendants? (Do you ever point out things to a prosecutor or defense counsel that would help reveal a plea agreement ? What specifically?)

18. Would you accept a plea of guilty if the defendant maintains his innocence? (Alford situation). Under what circumstances would you accept or refuse this type of plea?

19. If you accept Alford pleas is the nature and scope of your inquiry different? (If judge asks what you mean, indicate the factual basis inquiry.)

20. In your opinion do you think innocent people are ever convicted in this jurisdiction?

    If yes, would it be more likely to be a result of a guilty plea or trial?

21. Have you had the occasion to view in your court an instance of ineffective assistance of counsel? If yes, how did you respond to this situation? If no, what measures would you take to remedy it were it to occur? What would you do if a defense counsel agreed to a sentence recommendation for his client which has higher than it normally would be for such an offense,(e.g., agreed to 3 years when 1 year was the going rate)?

22. Do you seek the victim's opinion in a plea agreement situation? If so, describe. How frequently does this occur? How are the victim's views transmitted to the judge?

23. Do you have the benefit of the police officer's opinion in a plea agreement? If yes, how do you get it? (Have you ever had a situation where the police toned down information, for example, harm to victim, in order to help get a plea?)

24. What use do you make of a P.S.I. in a guilty plea where there is a sentence recommendation? (Is it for verification purposes only? What if the probation officer makes a different recommendation than the prosecutor?)

25. In what percentage of guilty pleas is the presentence report waived in guilty pleas as opposed to trials?

26. Under the present system of docketing cases can defense attorneys or prosecutors have a case placed in front of a particular judge? Can they avoid a particular judge if desired? If yes, how?

27. Do you think there should be a cutoff date for accepting pleas, that is, should a defense attorney or client have to decide whether or not to plead guilty a certain number of days before trial or be forced to have the case tried? Why? What period of time would you recommend?

Addendum to Judges' Interview

26 A. What is your policy on granting continuances?

Is there an upper limit on the number you grant?

What if defense counsel is unprepared for trial?

28. Have there been any recent changes in either the plea bargaining procedures in this jurisdiction or in your particular role in plea bargaining? (Specify changes brought about by statute, case law, criminal rules or procedure, or an innovation by an actor in the system). Have there been, over the last 10-20 years, any major changes in the system which have affected plea bargaining? How did they come about? What import did those changes have?

29. What do you see as the major pros and cons of plea bargaining?

30. How much of the plea bargaining procedure should be placed on the record?

    a. Discussions where the judge is involved? (none, some or all discussions)

    b. Discussions between prosecutors and defense attorneys ? Which discussions?

31. One of the major criticisms of plea bargaining is that often there is no impartial third party to examine the evidence of the case. That is, judges are not required to look beyond what is necessary to determine a factual basis for a plea of guilty. How would you react to a proceeding something less than a full trial but more thorough than a guilty plea proceeding, where the state had to present some evidence and produce a witness in order for the judge to give a more complete review of the state's case?

APPENDIX E

Jurisdiction _____

Interviewer _____

Position/Title/ Responsibility of Interviewee _____

POLICE INTERVIEW

1. Describe your screening process (decision not to pass cases on to the District Attorney for prosecution). (Probe - How? Is there a formal review of arrests that includes either legal counsel for police, a district attorney or other legal counsel? What do you look for as an indication that a case being considered should be screened out? Are there official/unofficial policies concerning cases that should be screened out?)

2. Are you consulted by the District Attorney before the information/ indictment is filed? (Probe When? How? Describe).

3. Are you approached by the defense counsel at any time prior to the conclusion of trial? (Probe - When? How? Describe. Do they ask you to tone down your report or withhold information? Do they try to get you to agree to a plea bargain or agree not to object to a bargain?)

4. Do you engage in plea bargaining with defendants, that is, do you try to persuade defendants that they will do better by pleading guilty (other than informants)? For informants, do you have to get permission from the prosecutor before making a deal? (Probe - nature of plea agreement with informants).

5. Are you asked to make recommendations or comments about the nature of a proposed plea bargain? (Probe - Do you make recommendations? What types of recommendations do you make? Are there guidelines/policies for these recommendations?

6. Are there any plea bargaining practices in this jurisdiction that have affected police procedures or policies in any way?

APPENDIX F

Jurisdiction _____

Interviewer _____

Position/Title/Responsibility of Interviewee _____

INTERVIEW WITH ... PROBATION OFFICERS

(Get a copy of standard PSI form with instructions)

1. Is a PSI required in all felony cases? Yes No

   If no, how often is it requested (percent of time)?

2. Is there a routine waiver of PSI by defendant in felony cases? Yes No

   A. If no, how often is it waived (percent of time)?

   B. Is this different in guilty plea cases?

   Explain.

3. Do you do a different sort of PSI if the defendant has pled guilty as opposed to being found guilty? Yes No

   Is there an official/unofficial policy or guidelines on this? Yes No

   Explain.

4. Is a sentence recommendation required in all PSI's? Yes No

   A. If no, what proportion of time do you make a recommendation?

B. Do you confer with the judge on sentencing recommendations (percent of time) Yes No

C. Do you treat guilty plea cases differently from cases that have been found guilty in sentencing recommendations? Yes No

D. How do you arrive at (what factors do you consider) in making sentence recommendations?

Explain.

5. Do you know if there has been a plea bargain in a given case? Yes No

A. If yes, percent of time.

B. If yes, how do you know a plea bargain has been made (from what sources)?

C. If yes, do you know the nature of the agreement (percent of time)?

D. If yes, how does this affect your sentencing recommendation?

APPENDIX G

Jurisdiction _____

Interviewer _____

Position/Title/ Responsibility of Interviewee _____

INTERVIEW WITH PAROLE BOARD

1. What are the basic factors considered by the Parole Board in reaching a parole decision?

2. In individual cases do you take into account only the offense for which convicted, or also the circumstances surrounding the offense (including all the offenses for which he was charged)?

Explain.

3. If you believe there was a charge reduction in a case under consideration, do you take this into account in your parole decision? (e.g., Defendant was charged with armed robbery, reduced to robbery; with burglary 1 reduced to burglary 2. What would you do?)

4. If you believe there was a sentence agreement in a case under consideration, do you take this into account in your parole decisions? (e.g., the usual sentence for robbery is 10 years, and the defendant received something less. What would you do?)

5. When considering a case for possible parole, do you normally receive any or all of the following information:

   A. Original charges (charges dropped)

   B. Final charge

   C. Whether found or pled guilty

   D. Information or recommendation from the prosecutor or judge

6. If a defendant has pled guilty, do you normally know whether this is a result of a plea agreement?

   If yes, do you know if this was a charge reduction, charge dismissal, or a sentence agreement?

   If no, do you make inferences that there has been a plea agreement reached if there is no direct statement to that effect in the file?

   Explain.

   If information concerning plea agreements are not available, do you attempt to acquire this information?

   Explain.

7. Are there formal or informal parole board policies based on the type of offense for which the offender has been convicted?

   Explain.

8. If two offenders being considered for parole are similar in all respects, but one had pled guilty for a reduced sentence or charge and the other had not, would you (do you) take this into account in your parole decision? (The other would have gone to trial, pled guilty to the original charge without a sentence recommendation from the prosecutor.)

APPENDIX H

Jurisdiction _____

Interviewer _____

DEFENDANT INTERVIEW

Following is a set of suggested questions which you may find useful in ordering your interview with defendants. You need not ask each question verbatim, however, please be sure to deal with the issues involved.

I am part of a research project conducted by Georgetown University in Washington, D.C. I am not a part of the local courts, prison, police, or anything else in this area. All of your answers will be kept in complete secrecy. No one here will see your answers or be told about them. This will have no affect on your probation/prison sentence, your court cases or anything else.

1. Background: Charge(s):

   Sentence:

   Age:

2. Could you tell me briefly about what happened in this case:

3. How did you first want to plead?

4. How did you end up pleading?

5. What kind of sentence did you think you would get if you pled guilty to the charge(s) against you?

6. Why did you think you would get this type of sentence? Did you, in fact, get this sentence?

7. Did anyone tell you the maximum amount you could have been sentenced to if found guilty? Who?

8. If you pleaded guilty to any of the charge(s) can you give me all the reasons for doing so? (Probe - is that all? Do you have any more reasons?)

9. Do you feel the state's case against you was sound?

10. How important was this factor in your decision to plead guilty to any charges?

11. When you actually pled guilty in court did you understand the questions you were asked about the nature of your plea and the rights you gave up?

12. Did your attorney or anyone advise you how to answer these questions?

CONTINUED

1 OF 3

13. Did anyone at any stage tell you that things would go differently for you if you pleaded guilty as opposed to going to trial on any of the charges? If yes, what would be different?

14. Do you feel that your case was decided before you entered the plea?

Explain.

15. Did you feel as if you had to accept the bargain? Why?

16. Did you think your attorney discussed your plea with anyone? With whom? What do you think was said?

17. Who first made the decision to plead guilty, you, your attorney, the prosecutor, or someone else?

18. What type of attorney did you have? PD CAP PRI

CASE FILE INSTRUMENT APPENDIX 01 SIDE

RESEARCHER

LOCAL CASE IDENT.

CASE NO: 2632

3. SEX
- Male
- Female
- Unk

4. RACE
- White
- Black
- Spanish
- Oriental
- Am. Indian
- Unk

5. MARITAL STATUS
- Single
- Married
- Separated
- Divorced
- Widowed
- Common Law
- Unk

6. YEARS OF EDUCATION COMPLETED
- 1-4
- 5-8
- 9-11
- 12
- Some Col.
- Trade Sch.
- Col. Deg
- Unk.

7. YEARS IN LOCAL RESIDENCE
- 0
- 1
- 2 Yrs.
- 3 Yrs.
- 4 Yrs.
- 5 Yrs.
- 6 + Years
- Unk.

8. DATE OF BIRTH

9. CITIZENSHIP
- US
- Legal Alien
- Illegal Alien
- Unk

10. EMPLOYMENT
- Full-Time
- Part-Time
- Unemployed
- Irregular
- Unk

11. LENGTH OF CONTINUOUS EMPLOYMENT
- Up to 1
- 2
- 3
- 4
- 5
- 6
- 7
- 6 +
- Unk
- N/A

12. IS THERE A RECORD OF MENTAL ILLNESS
- Yes
- No

13. IS THERE A RECORD OF DRUG ABUSE
- Yes
- No

14. IS THERE A RECORD OF ALCOHOL PROBLEMS
- Yes
- No

15. ANY PRIOR FELONY ARRESTS
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

16. ANY PRIOR FELONY CONVICTIONS
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

17. FELONY CONVICTIONS WITHIN FIVE YEARS PRIOR TO INSTANT OFFENSE
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

18. ANY PRIOR MISDEMEANOR ARRESTS
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

19. ANY PRIOR MISDEMEANOR CONVICTIONS
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

20. MISDEMEANOR CONVICTIONS WITHIN FIVE YEARS PRIOR TO INSTANT OFFENSE
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8 +
- Unk

21. ANY JUVENILE RECORD
- Yes
- No

22. POLICE CHARGES FOR INSTANT OFFENSE (MOST SERIOUS FIRST)

23. TOTAL NUMBER OF POLICE CHARGES IN THIS CASE

24. DATE OF ARREST FOR INSTANT OFFENSE

25. CHARGES PENDING IN OTHER CASES
- Yes
- No
- Unk

26. ON PROBATION/ PAROLE/PRETRIAL RELEASE AT TIME OF INSTANT OFFENSE
- Yes
- No

27. DATE CASE RECEIVED BY PROSECUTOR

28. DATE OF FIRST APPEARANCE BEFORE JUDICIAL OFFICER

29. PRETRIAL RELEASE STATUS
- Cash Bond & Released
- Cash Bond But Not Released
- Ror
- Cr
- Bail Denied
- Unk

30. DATE OF INDICTMENT INFORMATION

31. COUNTS OR CHARGES OF INFORMATION/INDICTMENT (MOST SERIOUS FIRST)

32. TOTAL NUMBER OF COUNTS IN INFORMATION/ INDICTMENT

NOTES:

15581 7-77 Optical Forms Inc 1043

SIDE 2

CASE NO: 2632

33. PLEA AT FIRST OPPORTUNITY TO PLEA
- Guilty
- Not Guilty
- Nolo
- Unk

34. DATE OF FIRST PLEA

35. WAS THERE A CHANGE OF PLEA
- Yes
- No

36. TYPE OF COUNSEL PRESENT AT GUILTY PLEA OR TRIAL
- Pd
- Cap
- Pri
- None
- Unk
- N/A
- Yes — But — Type — Unk

37. G.P. OR TRIAL DISPOSITION
- Guilty Plea
- Nolo
- Guilty by Jury
- Guilty by Judge
- Not Guilty by Jury
- Not Guilty by Judge

38. DATE OF G.P. OR TRIAL DISPOSITION

39. IF CONVICTED, SENTENCE IMPOSED
- Probation
- Jail
- Prison
- Split Sentence
- Other
- N/A

40. RESTITUTION IS CONDITION OF SENTENCE
- Yes
- No
- N/A

41. MAX. LENGTH OF SENTENCE

42. MIN. LENGTH OF SENTENCE

43. WAS THERE A PSI
- Yes
- No
- Unk
- N/A

44. WAS THE CONVICTION A RESULT OF A PLEA AGREEMENT
- Yes
- No
- Unk
- N/A

45. IF YES, WHAT TYPE
- 1. Charge Red.
- 2. Chg Dismissal
- 3. Sent. Rec.
- 1 & 2
- 1 & 3
- 2 & 3
- 1, 2 & 3
- Unk
- N/A

46. CHARGES CONVICTED ON (MOST SERIOUS FIRST)

47. TOTAL NUMBER OF CHARGES CONVICTED OF

48. SENTENCED AS HABITUAL OFFENDER (ENHANCED)
- Yes
- No
- N/A

49. TYPE OF BURGLARY VICTIM
- Non Residential
- Residential
- Auto
- N/A

50. WAS TIME OF OFFENSE NIGHT TIME
- Yes
- No
- Unk

51. HARM TO VICTIM
- None
- Minor Injury
- Hospitalization
- Death
- Unk
- N/A

52. AGE OF VICTIM

53. RACE OF VICTIM
- White
- Black
- Spanish
- Oriental
- Am. Indian
- Unk
- N/A
- Mult.

54. SEX OF VICTIM
- Male
- Female
- Unk
- N/A
- Mult.

55. RELATIONSHIP OF OFFENDER AND VICTIM
- Family
- Friend / Acquaintance
- Stranger
- Mult.
- Unk

56. WAS THERE A WEAPON INVOLVED
- Yes
- No
- Unk

57. WAS THERE A CONFESSION
- Yes
- No
- Unk

58. WAS THERE ANY PHYSICAL EVIDENCE
- Yes
- No
- Unk

59. NUMBER OF WITNESSES

60. WAS THERE ANY POSITIVE EYEWITNESS IDENTIFICATION OF THE DEFENDANT
- Yes
- No
- Unk

61. AMOUNT OF MONETARY LOSS
- Up to $100
- 101-250
- 251-500
- 501-1,000
- 1,001-5,000
- 5,001-10,000
- Over 10,000
- Unk
- None

62. AMOUNT OF PROPERTY DAMAGE
- Up to $100
- 101-250
- 251-500
- 501-1,000
- 1,001-5,000
- 5,001-10,000
- Over 10,000
- Unk
- None

63. JUDGE AT SENTENCING

NOTES:

APPENDIX J

INSTRUCTIONS FOR CASE FILE INSTRUMENT

There are two items of information that should go at the top of the page. The researcher's name should be placed directly at the upper left-hand corner. A local I.D. number of the case, that is, any number that will enable you to identify the case in the local jurisdiction should be placed under the researcher's name.

GENERAL INSTRUCTIONS. This is an OP-SCAN data collection form. You must use a No. 2 pencil, only. You may not use pen. You may make no stray marks on this sheet. You must completely fill in all response blocks, or completely cover over numbers in response blocks. You may write only in those areas above the form calling for researcher or local case ident, or in the section at the lower right-hand of the form specified notes, or, you may, if necessary, write in numerical information in those blocks with spaces provided (for example, Item 8: Date of Birth, has six blocks immediately under the heading Date of Birth in which you may write this out numerically. However, you must fill in the appropriate numbered response blocks.) If you make a mistake, you must erase your error completely and then fill in the appropriate response category.

Item 1 & 2. Each case file instrument will be serially numbered, and will have this number imprinted immediately under the response block labeled Case No.: You must transcribe this number to machine-readable form by filling in the appropriate numbered response blocks under this number. It is necessary to fill in the appropriate numbered response blocks for Case No.: on both sides of the case file instrument. In addition, you will note a small response block, with no heading, located below and to the right of the Case No. You must fill in this isolated response block on both sides of each case file instrument.

Item 2. SEX. The three response alternatives include M for male, F for female and UNK for unknown.

Item 4. RACE. The following designations provide the response alternatives for race: W = White; B = Black; SP = Spanish; OR = Oriental; AI = American Indian; and UNK represents unknown.

Item 5. MARITAL STATUS. The response alternatives are as follows: SIN - single; MAR = married; SEP = separated; DIV = divorced; WID = widowed; COM-LAW = common law marriage (also include here defendants who indicate they are living with someone of the opposite sex); UNK = unknown.

Item 6. YEARS OF EDUCATION COMPLETED. Categories 1 through 4, 5-8, 9-11 and 12 represent the highest year completed by the defendant. SOME COL = some college; TRADE SCH = trade school; COL DEG = college degree; UNK = unknown.

Less than 6 mos. = 0
6 mos. – 1 yr. = 1

Item 7. YEARS IN LOCAL RESIDENCE. Fill in the appropriate year. If individual is not a local resident fill in response category zero. If amount of time falls between two categories, fill in the next highest year. If unknown, fill in UNK. Local residence is defined as residing in the jurisdiction.

Item 8. DATE OF BIRTH. Specify the last two digits of the month, day and year. If unknown, fill in 99 99 99.

Item 9. CITIZENSHIP. The alternatives are US = United States; LEGAL ALIEN = an alien with legal status or residency status in the country; ILLEGAL ALIEN refers to those who have unlawfully entered and maintain residence in the United States; and UNK represents unknown. If defendant was born in the U.S., he is a U.S. citizen.

Item 10. EMPLOYMENT. Here we are concerned with the employment record of the defendant. FULL TIME refers to full time employment, and includes both full time students and housewives. PART TIME refers to regular employment although on a less than full time basis, and part time students. UNEMPLOYED is self-explanatory. IRREGULAR refers to sporadic, part time employment including migrant workers. UNK = unknown.

Item 11. LENGTH OF CONTINUOUS EMPLOYMENT. Here we are concerned with the period of time for which the defendant has been regularly and continuously employed. This period of time may span several jobs. The crucial item is whether or not there has been a break of more than 30 days of unemployment between the present position and the previous position. If more than 30 days, compute time from the end of that 30-day period. If the information is unknown, fill in UNK. If the person is unemployed or irregularly employed, fill in NA. If the time falls between two categories, fill in the highest of the two.

Item 12. IS THERE A RECORD OF MENTAL ILLNESS. This item pertains to any comments or written statements by the police or prosecutors regarding problems of mental illness. Hospitalization for mental illness is not a necessary condition nor is it necessary that any formal diagnosis by a clinician be entered into the record. If there is nothing in the case file, fill in NO. If there are any comments suggesting there is a problem in this area, fill in YES. If there is an affirmative statement in the case file that there is no record of mental illness, fill in NO.

Item 13. IS THERE A RECORD OF DRUG ABUSE. This item pertains to any comments or written statements by the police or prosecutors regarding drug abuse. It is not necessary that a formal commitment to a drug program have been made. If there is nothing in the case file, fill in NO. If there are any comments suggesting there is a problem in this area,

fill in YES. If there is an affirmative statement in the case file that there is no previous record of drug abuse, fill in NO. If the defendant has two or more previous convictions for drug related offenses, excluding marijuana, fill in YES. The fact that the defendant was arrested on charge for the instant offense is not enough to constitute a record of drug abuse.

Item 14. IS THERE A RECORD OF ALCOHOL PROBLEMS. This item pertains to any comments, written statements by the police or prosecutors regarding problems in the aforementioned area. If there is nothing the the case file fill in NO. If there are any comments suggesting there is a problem in this area, fill in YES. If there is an affirmative statement in the case file that there is no record of alcohol problems, fill in NO. If the defendant has a record of two or more convictions directly relating to alcohol problems, e.g., DWI (driving while intoxicated) or drunk & disorderly, etc., fill in YES. Statements in the police rap sheet indicating that the defendant had a few drinks would not constitute a record of alcohol abuse.

Item 15. PRIOR FELONY ARRESTS. Indicate here the total number of previous feloney arrests, that is all arrests excluding the arrest for instant offenses. If absolutely no mention is made of prior felony arrests, fill in UNK.

If there is an affirmative statement in the case file stating that there are no prior felony arrests, fill in "0". If the arrest record indicates that there are previous arrests but you cannot determine whether it was a felony or misdemeanor, assume it to be a misdemeanor and record it as a misdemeanor under item 18.

Item 16. PRIOR FELONY CONVICTIONS. Indicate here only those felony charges which resulted in some form of felony conviction. If there is absolutely no information in the case file regarding felony convictions or if there are cases still pending, indicate UNK. If there are several arrests for which convictions for some are known and some are unknown, count only the numeber of known convictions and do not score "unknown." If there is an affirmative statement in the case file stating that there are no prior felony convictions or arrests fill in "0". If there are felony arrests specified in the case file but no information regarding any convictions fill in UNK. If there are felony arrests specified in the case file and some indicate a conviction for a felony while others show no disposition, fill in the number of recorded convictions.

Item 17. FELONY CONVICTIONS WITHIN 5 YEARS PRIOR TO THE INSTANT OFFENSE. Circle only the number of felony convictions which occurred within a five year period from the date of arrest of the instant offense. If there are

felony convictions listed in the case file but no date is specified, fill in UNK. If there are felony arrests listed within this period but no information regarding felony convictions, fill in UNK, but if there is information for some, count those which are known. If there is an affirmative statement in the case file stating that there are no prior felony convictions, fill in 0.

Item 18. ANY PRIOR MISDEMEANOR ARRESTS. Indicate here the total number of previous misdemeanor arrests, that is, all arrests excluding the arrest for the instant offenses. If absolutely no mention is made of propr misdemeanor arrests, fill in UNK. If there is an affirmative statement in the case file stating that there are no prior misdemeanor arrests, fill in 0. If the arrest record indicates that there are previous arrests but you cannot determine whether it was a felony or misdemeanor, assume it to be a misdemeanor.

Item 19. ANY PRIOR MISDEMEANOR CONVICTIONS. Indicate here only those misdemeanor charges which resulted in some form of conviction. If there is absolutely no information in the case file regarding misdemeanor convictions or if there are cases still pending, indicate UNK. If there is an affirmative statement in the case file stating that there are no prior misdemeanor convictions indicate so by filling in 0. If there are misdemeanor arrests specified in the case file but no information regarding any convictions, fill in UNK. If there are misdemeanor arrests specified in the case file and some indicate a conviction for a misdemeanor while others show no disposition, fill in the number of recorded dispositions.

Item 20. MISDEMEANORS CONVICTIONS WITHIN 5 YEARS PRIOR TO THE INSTANT OFFENSE. Fill in only the number of misdemeanor convictions which occurred within a five-year period from the date of arrest for the instant offense. If there are misdemeanor convictions listed in the case file but no date is specified, fill in UNK. If there are misdemanor arrests listed within this period but no information regarding misdemeanor convictions, fill in UNK, but if there is information on some convictions, count the ones which are known. If there is an affirmative statement in the case file stating that there are no prior misdemeanor convictions, fill in 0.

Item 21. JUVENILE RECORD. If there is anything in the case file indicating that there are previous juvenile arrests or convictions, fill in YES. If none, fill in NO.

Item 22. POLICE CHARGES FOR INSTANT OFFENSE. There may be several charges listed in the case files. We want you to list on our code sheet in order of descending seriousness each of the felony charges up to the first

five. To do this you must use the specially prepared list appended to these instructions. Locate the charges that are listed in the court files on our (Georgetown) rank order sheet. Then for each felony charge, enter the Georgetown code number (two digits) onto the code sheet in order of descending seriousness (i.e., smallest numbers first). If there are more than five felony charges, enter only the first five. If there are multiple charges of the same offense repeat the same Georgetown code number in each appropriate space on the code sheet. Do not enter misdemeanors, unless all more serious charges have been entered. If all five charges have not been filled with more serious offenses, and only misdemeanors are left, enter misdemeanors as code 99. All charges which are not listed on the specially prepared rank ordering of offenses are misdemeanors, i.e., if you don't find it on the list it is a misdemeanor. Note: In Pennsylvania, some misdemeanors are included (because their penalties are for more than 1 year). If you have entered all police charges for the instant offense and there are a total of less than five, fill the remaining response blocks with code 88.

Item 23. TOTAL NUMBER OF POLICE CHARGES IN THIS CASE. Count each of the police charges listed on the rap sheet, which should be included in the prosecutor's file. Indicate this number including both misdemeanors and felonies

in a two-digit number (e.g., 01, 02, etc.) If the total number of police charges in this case is unknown, enter 99.

Item 24. DATE OF ARREST FOR INSTANT OFFENSE. Indicate the numeric month, day and year for the offense or set of offenses for which the individual is currently being processed. If date of arrest for instant offense is unknown, enter 99 99 99.

Item 25. CHARGES PENDING IN OTHER CASES. In this column indicate whether or not the defendant has charges pending against him other than the instant offense or offenses. That is, if there are existing outstanding warrants for arrest on the defendant, or there are open cases resulting from previous offenses, specify this by filling in YES. If the record indicates that there are no other felony charges pending specify this by filling in NO. If there is no mention of charges pending, fill in the response category UNK.

Item 26. PROBATION/PAROLE/PRETRIAL RELEASE. If a defendant at the time of the instant offense was on probation, parole or any other form of supervised release from a previous offense, fill in YES. If nothing is stated in the record regarding this, fill in NO. If the defendant was awaiting trial on another offense, and was on bail at the time he committed the instant offense, fill in YES.

27. DATE OF CASE RECEIVED BY PROSECUTOR. Indicate the month, day and year that the prosecutor received the charge sheet or arrest sheet from the police department. If there is no date recorded as to when the record was received by the prosecutor's office, indicate the earliest date you can find in the record showing the date the case was under control of the prosecutor's office. For example, if there is no date to specify that the case was received by the prosecutor you might want to indicate the date filed by the prosecutor. In this case specify both the date and the fact that this date was for the filing of the case. Then use this system for all cases. In situations where the case may be initially received for screening and then returned to the police department then returned back to the prosecutor indicate the date that reflects the fact that the prosecutor accepted the case for prosecution. If the date case received by prosecutor is unknown, enter 99 99 99.

28. DATE OF FIRST APPEARANCE BEFORE JUDICIAL OFFICER. Indicate the month, day and year of this first appearance. It may be called "arraignment", "initial appearance", "first setting" or a number of other things. The important point is that it is the first time the defendant appears before a member of the judiciary. If the date of first appearance before judicial officer is unknown, enter 99 99 99.

Item 29. TYPE OF PRETRIAL DISPOSITION. This refers to the action the court takes in determining the reliability of the defendant to appear at trial. Disposition will either be confinement or release. The first category is CASH BOND AND RELEASED which means that the court set bond and the defendant was able to post the bond and be released. CASH BOND BUT NOT RELEASED means the court set the amount of the bail bond but the defendant was unable to raise the money and therefore was not released. ROR means release on recognizance. CR stands for conditional release and means that the person is either turned over to a third party who is responsible for his re-appearance in court or the court imposes certain conditions whereby a public official or private citizen must agree to oversee the person until trial date. BAIL DENIED should be filled in in cases where the court refuses to set bail and holds the person in confinement. Fill in UNK in situations where there is no mention of the type of bail set.

30. DATE OF INDICTMENT/INFORMATION. An indictment is a formal instrument specifying the charges on which the state plans to prosecute the defendant. The indictment is a result of a grand jury hearing which has resulted in a "true bill". That is the grand jury found that there was sufficient evidence for the state to proceed in prosecuting the defendant. Specify the month, day and year of the indictment if it is in the record. In some jurisdictions the state may proceed either by indictment or information. An information

is a formal charge with which the defendant will be prosecuted by the state. It is used in lieu of a grand jury indictment. It will specify any and all charges that the state plans to proceed on against the defendant. If the state proceeds on an information rather than an indictment indicate the month, day and year of the information. If there is no data in the file indicating either the date of information or indictment enter 99 99 99 .

31. CHARGES ON INFORMATION/INDICTMENT. There may be several charges listed in the case files. We want you to list on our code sheet in order of descending seriousness each of the felony charges up to the first five. To do this you must use the specially prepared list appended to these instructions. Locate the charges that are listed in the court files on our (Georgetown) rank order sheet. Then for each felony charge, enter the Georgetown code number (two digits) onto the code sheet in order of descending seriousness (i.e. smallest numbers first). If there are more than five felony charges, enter only the first five. If there are multiple charges of the same offense repeat the same Georgetown code number in each appropriate space on the code sheet. Do not enter misdemeanors, unless all more serious charges have been entered, in that case, enter 99 for misdemeanors or other charges. All charges which are not listed on the specially prepared rank ordering of offenses are misdemeanors, i.e., if you don't find it on the list it is a misdemeanor. Note: In Pennsylvania, some misdemeanors are included (because their penalties are for more than 1 year.) If after having entered all charges on the information/indictment, there are response blocks left unfilled, enter 00.

32. TOTAL NUMBER OF COUNTS IN INFORMATION/INDICTMENT. Indicate here every charge (and number of counts) both misdemeanors and felony listed on the indictment or information. Use two columns indicating the total number (e.g., 01, 02...12, 13, etc.)

Item 1 & 2. CASE NUMBER. Each case file instrument will be serially numbered, and will have this number imprinted immediately under the response block labeled Case No. You must transcribe this number to machine-readable form by filling in the appropriate numbered response blocks for Case No. on both sides of the case file instrument. In addition, you will note a small response block, with no heading, located below and to the right of the Case No. You must fill in this isolated response block on both sides of each case file instrument.

33. FIRST PLEA. Enter here the first record of a plea having been entered by the defendant. Indicate GUILTY if the defendant pled guilty, NOT GUILTY if the defendant did not enter a plea and the court entered one for him or the defendant entered a not guilty plea. Fill in the response category NOLO if a defendant pled nolo contendere that is, did not contest the charges (this is equivalent to a guilty plea). Or fill in UNK if there is no record of a plea other than the final disposition.

General Instructions

Every question on the form must be answered: None must be left unanswered. Many questions have a UNK (unknown). It is essential that each question be answered by the appropriate response. The appropriate response should be circled. Never circle more than one answer per question.

Specific Instructions

1. JURISDICTION -- The appropriate number should have been circled before you receive the form. If it is not, point this out to the field director.

2. TIME PROCEEDING BEGAN -- In general the proceeding will actually begin when the defendant, usually accompanied by counsel, and the representative of the prosecutor's office, stand up in front of the bench and the defendant enters a formal plea of guilty to formal charges which have been made against the defendant. This means there has either been an information or indictment (for felony charges) or a complaint in the case of a misdemeanor in misdemeanor court. In general the court may read the indictment or have the indictment or charges read to the defendant before the court asks how the defendant will plead to the charges. This will probably be the real beginning of the proceeding. Different jurisdictions may have different aspects of how the proceeding begins. It is incumbent upon the court observers to become familiar with how different judges actually begin the proceeding.

3. TYPE OF COURT -- In many jurisdictions there are separate courts to handle misdemeanor and felony cases (misdemeanor is usually defined by a penalty of up to 1 year and felonies by more than a year of possible imprisonment). In some jurisdictions there is a unified court system of courts which handles both felonies and misdemeanors. In such systems they may break the court down into divisions; felony and misdemeanor divisions. In many jurisdictions the initial appearance of people charged with felonies may be in a misdemeanor court and a person initially charged with a felony may plead guilty to a misdemeanor in that court so the entire case would be handled in a misdemeanor court. Thus a court which processes only misdemeanors will be coded as a misdemeanor court. A court which processes felonies alone, and with no misdemeanor jurisdiction, would be coded as a felony court. Finally, a court which is basically a court of felony jurisdiction but which can also process misdemeanors would be coded as both.

4. NAME OF JUDGE -- The name of the judge is important since we wish to determine whether or not different judges conduct this in court supervision differently or whether one judge conducts the proceeding differently for different crimes.

5. TYPE OF DEFENSE COUNSEL -- PD -- Public Defender; CA -- court appointed; PRI -- private retained; UNK -- unknown. There is some reason to believe that the quality of representation of a defendant may be affected by the kind of defense counsel involved in the case. We wish to ascertain whether the kind of in-court judicial supervision is affected by the nature of the defendants' representation. It may be difficult to ascertain in all cases the type of defense counsel. If you cannot learn the type of defense counsel from

merely observing the proceeding some attempt should be made through the court clerk or bailiff to determine the nature of defense counsel if this can be done conveniently. If this proves too difficult circle UNK.

6. CHARGES TO WHICH DEFENDANT PLED -- We want the observer to write in there the final charge as ascertained from hearing the proceeding, (i.e., burglary, robbery, larcency, shoplifting, etc.). The charge to which the defendant pleads may be different (usually a lesser charge) than that originally filed by the prosecutor. If you have trouble hearing just what it is,we ask that you get to know the appropriate clerk well enough so that you can find out exactly what charge was involved in the plea. The crime to which a defendant pleads may be important in that the nature and scope of the proceeding could change depending on the seriousness of the crime.

7. SETTING FOR PROCEEDING -- In what context and under what circumstances the court goes through the proceeding may impact the effectiveness and thoroughness of the in court judicial supervision of the plea bargaining process. The nature, quality and scope of the court effort in this regard may be profoundly affected. Obviously some generalized statements to a group of defendants in the audience is quite different from specific questions addressed to an individual defendant before the bench. The judge may have the defendants enter the jury box for the proceeding, bring them before the bench in a group, or treat each defendant individually.

8. NATURE OF LITANY -- The word "litany" is taken from Supreme Court opinions describing and analyzing the questions asked of the defendant by the judge in attempting to exercise formal in court supervision over the plea bargaining process. In general it will begin after the person has pled guilty. In many cases the court will go through this litany even though imposition of the sentence will be deferred until a presentence report is prepared. In such a case the court may say that the sentence to be imposed may be conditioned upon the results of the presentence report. But whether sentence is imposed immediately or deferred until a presentence report is prepared, the litany will usually occur after a plea of guilty has entered by the defendant.

The order of the litany may not follow the specific order of the In Court Observation Form. But once the litany begins the judge will probably go though the various questions and complete the litany without interuption. You should observe a judge go through this litany several times before attempting to fill out the form. Different judges may have different idiosyncrasies and some familiarity with the judge may be necessary before attempting to assess just how the litany is conducted.

Different judges will handle the litany in different ways and an individual judge may vary the proceeding, perhaps depending on the crime. Many judges have a script which they use to read to the defendant (ORAL STANDARD). They may either read from the script or refer to it as they go along. Other judges may rely on their generalized knowledge of the law and go through the litany without any script (ORAL INDIVIDUAL).

Some judges may have memorized a script and obviously be repeating something they do over and over again. This would be characterized as ORAL STANDARD. Where their appears to be a clear departure from a rote recitation, a more spontaneous recitation should be characterized as ORAL INDIVIDUAL. In some jurisdictions or courts a form may be given to the defendant to read which spells out the litany in writing and the defendant may actually read it right there in court (READ BY DEFENDANT). In yet other jurisdictions or courts this form may be given to the defendant to sign without any apparent reading of the litany by the defendant in court (SIGNED). It is possible that in some cases there may be no litany and no signed form, in which case NONE would be circled.

9. WHO RECITED CONSTITUTIONAL RIGHTS OF DEFENDANT -- When a person pleads guilty there are a number of constitutional rights which are waived, most notably the right to trial and the right to remain silent and not incriminate oneself. One purpose of the litany is to determine whether or not the defendant understands the rights which are being waived. In general the court will probably go through the list of rights. But it may be that in some cases others may actually question the defendant in court concerning his understanding of these rights and the fact that they are being waived. If other actors, namely the prosecutor or defense attorney actually recite these rights circle the appropriate category. If more than one actor recites these rights circle MUL (multiple). In such cases never circle more than one answer per question -- circle MUL. This same pattern of responses appears in questions 11,13,14,17,18,20,22,23 & 25.

10. WHICH OF THE FOLLOWING CONSTITUTIONAL RIGHTS WERE RECITED -- As indicated above, the right to have a trial and the right to remain silent are critical rights guaranteed by our Constitution. The right to confront adverse witnesses and subject them to cross examination at trial is a right flowing from the nature of the trial itself. Thus they are frequently rights recited as part of the litany. Other rights may also be recited, namely the right to have the court compel the production of any evidence and the attendance of witnesses in the defendant's behalf. Finally, a right which is not necessarily constitutional in nature, but which is waived in many jurisdictions, is the right to appeal the conviction.

11. WHO ASKED DEFENDANT IF HE UNDERSTOOD THE RIGHTS HE WAS GIVING UP -- This is basically a follow-up to question 9. In general the person reciting the constitutional rights will probably asks if he understands the nature of those rights and what it means to waive them. But if more than one actor participates in this part of the litany we would like to know who specifically said what to the defendant.

12. WAS IT NOTED THAT DEFENSE COUNSEL EXPLAINED THE DEFENDANT'S RIGHTS TO HIS CLIENT -- In some cases the judge may rely upon defense counsel to explain rights relinquished by the defendant rather than going through the litany personally with the defendant in court. In such an eventuality the judge may ask the defense counsel if defense counsel had explained the rights to the defendant.

FACTUAL BASIS

Because of advice received, pressures or some form of coercion on the defendant to plead guilty it is essential that some independent

judgment be made to ascertain whether the defendant is pleading to a crime he had not in fact committed. In establishing this factual basis a number of different kinds of questions may be asked of the defendant which would establish to the satisfaction of the judge that the defendant probably committed the crime. Numbers 13-16 are questions which may be asked to establish such factual basis.

13. WHO ASKED DEFENDANT IF HE WAS PLEADING GUILTY BECAUSE HE IS IN FACT GUILTY -- This is the most elementary question which can be asked of the defendant. By itself it may not establish a real factual basis, but it will elicit an affirmative or negative answer from the defendant concerning commission of the crime. In general the judge will probably ask this question. But we wish to determine whether other actors (prosecutor or defense attorney) asked this question.

14. WHO ASKED DEFENDANT ADDITIONAL QUESTIONS REGARDING THE OFFENSE BEHAVIOR -- This involves more than merely asking the defendant if the defendant is in fact guilty. It could involve specific questions of the defendant concerning the circumstances surrounding the crime and constitute an effort to more specifically establish the factual basis of the commission of the crime and the defendant's participation.

15. DID THE PROSECUTOR SHOW OR REPORT SOME OF THE STATE'S EVIDENCE -- This represents a further step in an attempt to establish

factual basis by having the prosecutor at least outline some of the basic facts which indicate commission of the crime by the defendant. The prosecutor might also conceivably have some physical evidence which might relate to the crime involved and which might tend to support the state's allegation of guilt.

16. DID THE STATE PRODUCE AT LEAST ONE WITNESS -- This would involve the appearance of an individual who would be a witness if the case were to go to trial. The individual may be sworn in or remain unsworn. Frequently such a witness would be the arresting or investigating officer, but it could be any other major witness who could provide the court with more substantial evidence indicating factual guilt by the defendant. It could involve a formal hearing with questions by the prosecutors and possible cross examination by the defense attorney. This might occur in those situations where the defendant asserts innocence, despite entering a plea of guilty.

KNOWINGNESS AND VOLUNTARINESS OF PLEA

A guilty plea will not be accepted by the court unless the judge believes the defendant understands the nature of the charges and the proceedings involved in accepting a plea, what the implications of a guilty plea are in terms of the sentence which can be received, and believes that the plea is made voluntarily and freely by the defendant without any pressures or coercion to make such a plea. Numbers 17-26 relate to the issues of knowingness and voluntariness of the guilty plea.

17. WHO EXPLAINED THE CHARGES TO THE DEFENDANT -- An explanation of the charges could involve one of the actors talking to the defendant

and explaining just what the nature of the charges are in terms of the various facets and elements of the crime, the allegations concerning the defendant's participation in such crime, and how such activities are prohibited by law. It could also involve a reading of the complaint, information or indictment which explains in legal language just what charges are involved.

To understand the nature of the charges the defendant should be aware of thespecific elements of the crime constituting the charge so that the defendant can intelligently plead guilty or not guilty. By elements of the crime we mean those facts and circumstances, which taken together, constitute the crime.

18. WHO ASKED THE DEFENDANT IF HE UNDERSTOOD THE NATURE OF THE CHARGES -- Here there may be questions asked in addition to those raised in the previous question which go to the defendant's understanding of the particular charges. For instance an explanation of a charge of perjury might involve the fact that a person lied under oath. To delve into whether or not the defendant understands this charge the judge or some other actor would have to ascertain that not only did the defendant lie under oath, but that at the time he lied, he knew it was a lie. Thus, if a defendant lied under oath, but at the time of the lie believed it was the truth he could not be found guilty of perjury. Unless a defendant had been adequately apprised of the peculiar nature of the perjury charge the defendant could well admit to factual guilt without fully understanding what is required to sustain a charge of perjury.

19. WAS IT NOTED IF THE DEFENSE COUNSEL HAD EXPLAINED THE NATURE OF THE CHARGES TO THE DEFENDANT -- It is possible that a judge might rely on defense counsel to explain the charges and determine if they were understood by the defendant. Thus the judge might note that the defense counsel had explained the nature of the charges to the defendant or might ask defense counsel if he had in fact done this. An affirmative answer by defense counsel without further follow-up by the court would indicate that the judge believed the defendant understood the charges sufficiently well, thus not requiring any further exploration of the issue.

20. WHO NOTED THAT A PLEA AGREEMENT HAD BEEN REACHED -- If some sort of plea agreement had been reached prior to formal entry of the plea by the defendant in court this will ordinarily be noted or entered into as part of the process by one of the major actors. We simply want to know here whether or not the prosecutor explained the agreement to the judge or whether the defense attorney or both spoke of the agreement before the judge. If an agreement has been reached and the judge was aware of it it may be possible that the judge would note the agreement during the course of the proceeding.

21. IF THERE WAS A PLEA AGREEMENT, WHAT RECORD WAS MADE OF IT --

We ask questions 20 and 21 because only a decade ago plea bargaining was not treated in an open manner by actors in the system. There were few rules, if any, which governed plea bargaining and it occurred under the table and out of sight. Thus a routine question was whether or not any promises had been made to the defendant to encourage a guilty plea. The routine answer used to be that no promises had been made, despite the fact that frequently an agreement had been reached between the

prosecutor and defense.

In the mid and late 60's several groups (American Bar Assocation and President's Commision on Law Enforcement and Administration of Justice) addressed the problems of plea bargaining more openly. The President's Commission called for standards and the American Bar Association issued a set of standards governing guilty pleas. These standards justified the practice of plea bargaining and attempted to bring them out into the open, subject to judicial supervision. The Supreme Court of the United States subsequently endorsed plea bargaining as essential to the operation of the criminal justice system.

The result has been that in many jurisdictions plea agreements are reached between the prosecutor and defense attorney and discussed in court. However, in some jurisdictions there may be traditional practices which still govern the plea bargaining process. There may also be rules adopted by the court or legislation enacted by the state legislature which define the plea bargaining process and the roles different actors play.

These rules may require the agreement to be placed on the record either through a written formal form or by some exchange between the actors (defendant, prosecutor, defense attorney and judge) in open court with a court reporter present. (We note here that frequently in misdemeanor courts there is no court reporter and, unless a formal written agreement is submitted to the court there will be no record of any agreement.) Questions 20 and 21 are an attempt to determine if an agreement is discussed in court before the judge and what record was made of such agreement.

22. WHO ASKED IF PROMISES OTHER THAN THE PLEA AGREEMENT HAD BEEN MADE -- This is a further probing into the nature of any plea agreement which may have been involved in the plea. If an agreement is placed on the record the judge may want to know if any promises over and above the agreement had been made which might indicate whether or not there was undue pressure on the defendant to plead guilty. This goes to the issue of whether the plea was made voluntarily and freely. In general the judge will ask such a question.

23. WHO ASKED IF ANYONE EITHER THREATENED, COERCED OR PRESSURED DEFENDANT TO PLEAD -- This question goes to the heart of whether or not the plea was made voluntarily and freely. The Supreme Court has held that if a person who has pled guilty later raises allegations concerning other promises or any coercion or pressure, which if taken on face value and uncontradicted by any record established by the court, would require post conviction hearings to be held to determine whether or not such allegations are true. If the defendant is asked whether the plea is made voluntarily and freely this constitutes a meeting of the requirement concerning a question about threats or coercion.

24. DIRECT CONSEQUENCES: DID JUDGE SPECIFY WHAT MAXIMUM SENTENCE WAS PERMISSIBLE BY LAW --The most direct consequence of any conviction (whether by guilty plea or trial) is the sentence imposed by the sentencing authority (always the judge where a guilty plea is entered). Thus a defendant should be completely informed as to such direct consequences before pleading guilty. Many plea agreements relate to the sentence which may be recommended by the

prosecutor, frequently far less than the maximum permitted by law. Many judges routinely state that they are not bound by the agreement and will go along with the plea contingent upon the presentence report not revealing information which might cause the judge to go beyond the agreed upon sentence. It should be clear that the maximum sentence under discussion in this question is the sentence which can be imposed for the immediate crime to which the defendant is pleading guilty, not any other sentence he might receive as a result of having any prior criminal record.

25. WHO NOTED THAT THE DEFENDANT COULD BE SENTENCED AS A HABITUAL OFFENDER -- Most states have laws which authorize or require the prosecutor to hold separate proceedings after conviction of a crime where the individual has prior felony (or sometimes prior misdemeanor) convictions. The purpose of these hearings is to determine whether such prior conviction record exists and thus authorize or mandate a judge to sentence the defendant to further enhanced terms of imprisonment. In general the proceeding to determine whether or not an individual has a prior record and should thus receive an enhanced sentence will be conducted in a separate proceeding, after the plea of guilty and sentence in the instant case. However, it is possible that once a person pleads guilty and appears before the court for sentencing as a result of such plea, that the enhanced sentencing proceeding will be held concurrently with the sentence to be imposed for the instant crime.

26. WERE ANY COLLATERAL CONSEQUENCES OF THE PLEA NOTED (SPECIFY) -- Collateral consequences are those (other than the

sentence) which flow from conviction of a crime. They may include the loss of domestic or marital rights (custody of children and divorce); the loss of civil rights (right to vote); the loss of employment rights in occupations and professions which require licensing by the state; and the possible loss of contractual or property rights (the right to make a contract or own property).

27. DID THE DEFENDANT MAINTAIN HIS INNOCENCE EVEN THOUGH HE PLED GUILTY -- As a result of some defendants maintaining innocence while pleading guilty, the question of whether or not courts could accept such pleas was decided in a Supreme Court case. The court held that a judge could constitutionally accept the plea of guilty even though a defendant maintained innocence. But the court stated that the burden on the judge to establish the factual basis for the guilty plea was heavier than that required where the defendant pleads guilty and does not maintain innocence. We ask this question to determine if the judge conducts a more specific, detailed, deeper and individualized litany with defendants so pleading. The answers to many of the questions above concerning the factual basis and the knowingness and voluntariness of a plea will help us determine whether or not the court treated this kind of plea in a different manner. It may be that when a defendant asserts innocence while pleading guilty that one or more of the actors (prosecutor, defense attorney or judge) may make efforts to persuade the defendant to truly admit guilt and plead guilty without asserting innocence. This may take place in court or there may be a break in the proceedings where the defendant may be approached by one or more of the actors out of court. If

this occurs or you think it is occurring, if possible, attempt to find out what happened and what the nature of the persuasion was. The field directors should, if possible, follow up cases where this occurs and discuss the matter with the key actors to determine what in fact did occur.

28. DID THE JUDGE REFUSE TO ACCEPT THE PLEA OF GUILTY -- Some judges have indicated that they might not accept the guilty plea under some circumstances. Some judges may make a more detailed inquiry into the factual basis and find it inadequate as a basis for acceptance of a guilty plea. In such cases the judge may enter a plea of not guilty. In yet other cases the parties may come before the judge with an agreed upon sentence as part of the plea agreement. Even though judges are not bound by such an agreement, some judges may, if they cannot go along with the agreement, offer the defendant an opportunity to withdraw the plea. There may be other reasons which the observer may be able to discern where this occurs. We would like those reasons specified in the answer.

29. TIME ENDED -- As indicated earlier, the proceeding may or may not continue without interuption. But the ending of the proceeding and the litany involved in such proceeding will occur when the judge has obviously completed any questioning of the defendant or witnesses who have appeared have obviously finished their testimony or recital of the events surrounding the crime. At that point the judge will either pronounce sentence (usually the case in misdemeanors), order a presentence report and set a future date for the sentence to be imposed, or in some other fashion

obviously dismiss the defendant and defendant's counsel. It may be advisable to watch several proceedings before determining exactly when the proceeding has ended,although in general this should not be difficult.

30. TOTAL TIME ELAPSED -- If from the time the proceeding has begun until its ending there have been no breaks or other unusual occurrence which appear to relate to other matters the time elapsed should not be difficult. In some instances other matters could conceivably come up which might constitute a break in the proceeding. It may be difficult to ascertain in some instances just what is going on and whether or not the proceeding has been interrupted. The observer will have to assess the nature of the occurrence and whether or not it is part of the guilty plea proceeding relating to that defendant. We do not ask that the observers sit in court with stop watches. But the total time elapsed may be important as an indication of the thoroughness with which a court delves into the various issues which must be resolved before a guilty plea can be accepted.

Item 34. DATE OF THE ABOVE PLEA. Enter month, day and year of the plea in item 33. If unknown, enter 99 99 99.

Item 35. WAS THERE A CHANGE OF PLEA. If the record indicates yes, fill in that response accordingly. If there is no record of a change of plea and it cannot be deduced from the record that a change of plea occurred, fill in NO.

Item 36. TYPE OF COUNSEL PRESENT AT CHANGE OF PLEA OR TRIAL. At the change of plea or trial enter the specific kind of defense counsel that represented the defendant. If there was none, fill in NONE. If there is no information regarding this, fill in UNK. PD = privately retained and YES BUT TYPE UNK means that there was a defense attorney but you are unable to determine which type it was.

37. GUILTY PLEA OR TRIAL DISPOSITION. In this column you should enter the disposition of the case. If there was a guilty plea or a nolo contendere plea, fill in the appropriate response. If the case went to trial there are four possible alternatives, GUILTY BY JURY, GUILTY BY JUDGE, NOT GUILTY BY JURY, and NOT GUILTY BY JUDGE. If there should be a case which involves a directed verdict by the judge, that is, if in a jury trial the judge directs the jury to come back with a not guilty plea or in a bench trial if the judge enters a not guilty verdict, enter NOT GUILTY BY JURY or NOT GUILTY BY JUDGE respectively. In the case of a jury trial this is often called a directed verdict.

38. DATE OF GUILTY PLEA OR TRIAL DISPOSITION. Enter month, day and year on which the final plea or trial occurred. This may or may not be the same as the date of sentencing. If there is a difference between disposition date and sentencing date, select the date that the plea or trial occurred. If date of guilty plea or trial disposition is unknown, enter 99 99 99.

Item 39. SENTENCE IMPOSED. If a defendant was convicted through a guilty plea or trial indicate the specific sentence by filling in the corresponding response alternative which will normally be either PROBATION, JAIL (local institution) or PRISON (state institution). If jail or prison and probation are given as a sentence, that is, if there is a split sentence of either jail or prison time and probation, enter the response alternative SPLIT SENTENCE. If a sentence is not covered in the response alternatives, enter it as OTHER. If the individual was acquitted by the judge or jury or the judge directed the verdict of not guilty, enter the response alternative NA.

Item 40. RESTITUTION. If a defendant was convicted and restitution was indicated as a part of the punishment specify by entering YES. If no restitution was made indicate NO. If the defendant was not convicted enter the response alternative NA.

Item 41. MAXIMUM LENGTH OF SENTENCE. Specify numerically the maximum years and months of the sentence imposed. This

includes jail time, prison time or probation. If there is a split sentence of jail or prison time and probation enter only the amount of confinement time given. If there was an acquittal by judge or jury in the case or the judge directed a not guilty verdict enter 00. If maximum length of sentence was unknown, enter 99. If the maximum length of sentence was 99 years or more, enter it as 98. Do not include suspended sentences (e.g., if sentenced to 10 years, 4 suspended, record 6 years.)

42. MINIMUM LENGTH OF SENTENCE. Specify numerically the minimum numbers of years and/or months of the sentence imposed. If a split sentence is involved indicate only the confinement time and not the amount of probation given. If there was an acquittal by a judge or jury in the case or the judge directed a not guilty verdict enter 00. If the minimum length of sentence is unknown, enter 99. If the minimum length of sentence is 99 years or more, enter 98.

43. PRESENTENCE INVESTIGATION. The presentence investigation (PSI) is a report prepared by the probation department to assist the judge in determining an appropriate sentence. If there is a PSI that you are aware of, answer YES. If the PSI is waived, answer NO. If unknown, answer UNK.

Item 44. PLEA AGREEMENT. If the record indicates that a guilty plea was the result of a plea agreement, enter the response alternative YES. If the record indicates that there was no plea agreement fill in NO. If no statement is made regarding a plea agreement fill in UNK. If the conviction was a result of a trial or if the defendant was found not guilty fill in response alternative NA.

45. TYPE OF BARGAIN. If there was a plea bargain and it consisted of reduction of charges or any number of counts, enter CHARGE REDUCTION. If there was a recommendation by the prosecutor to dismiss charges but with no other form of recommendation for either charge reduction or sentence recommendation enter CHARGE DISMISSAL. If there was a sentence recommendation by the prosecutor and no charge reduction or charge dismissals, enter SENTENCE RECOMMENDATION. Response alternatives 4,5,6 and 7 include possible combinations of plea agreements that may have occurred. If any combination of charge reduction, charge dismissal or sentence recommendation were made enter the appropriate response (either 4, 5,6 or 7). If there was a plea agreement but the type was unknown enter UNK. If there was no plea agreement or the case went to trial enter NA.

46. CHARGES ON WHICH CONVICTED. Enter here in order of seriousness the charges upon which a defendant was convicted using the same format as specified in items 22 and 31. If the defendant was found not guilty enter 00. If the charges are not specified in the record enter 98.

47. TOTAL NUMBER OF CHARGES CONVICTED OF. Indicate here in two columns the total number of charges on which the defendant was convicted. This may include both misdemeanors and felonies. If the defendant was found not guilty enter OO.

48. HABITUAL CRIMINAL. If the record indicates that the defendant was sentenced as a habitual criminal enter response alternative YES. If the record indicates nothing about a conviction on an enhanced or habitual criminal statute, enter response alternative NO.

NOTE: In items 49 through 62 there may be instances where the defendant committed more than one offense or there was more than one victim. In this situation enter the most serious alternative. For instance, in item 50 if there were two burglaries and one occurred at night and the other during the day, enter night time. Likewise, in item 51 if there was more than one victim and one was injured seriously indicate that by entering the appropriate response alternative.

49. TYPE OF BURGLARY VICTIM. In this column we are concerned with the differentiation between burglaries occuring in a residential dwelling and those occurring in a non-residential situation. If it is a robbery case enter the response alternative NA. If the burglary involves a residential dwelling enter RESIDENTIAL. If it is a business, store, institution or any other commerical or non-residential situation enter the alternative NON RESIDENTIAL.

Item 50. TIME OF OFFENSE. Indicate here whether or not the offense, whether burglary or robbery, occurred at night. If your specific jurisdiction indicates a demarcation between day and night, such as a particular time, use that designation. If, however, there is no designation, use the time frame from 7:00 P.M. to 7:00 A.M. as night time. If there is no information regarding the time of the offense enter the response alternative UNK.

Item 51. HARM TO VICTIM. This category will only apply in cases where there is an injury to a victim. Thus in a burglary case where there is no contact with a victim the response alternative would be NA. If there is no information regarding the harm to the victim enter the response alternative UNK. If the record states that the victim was not harmed, enter the response alternative NONE. If the victim was injured slightly or injured but not hospitalized, enter the response alternative MINOR INJURY. If the victim was hospitalized, enter the response alternative HOSPITALIZATION. The fact that the person was taken to the hospital but was not admitted does not constitute hospitalization. In that instance the response alternative MINOR INJURY should be entered. If the victim died as a result of the offense, enter the alternative DEATH.

Item 52. AGE OF VICTIM. Enter the numerical age of the victim. If there is more than one victim enter the response alternative 97. If there is no victim involved indicate 98. If the age of any victim is unknown, enter 99.

53. RACE OF VICTIM. Enter the appropriate response for the race of the victim if known. If no statement is made regarding the race of the victim enter the response alternative UNK. If there is no victim involved enter NA. If there is more than one victim involved enter MULT.

54. SEX OF VICTIM. Specify the sex of the victim if indicated as either MALE or FEMALE. If no information is included enter UNK. If there is no victim enter NA. If there is more than one victim involved enter MULT.

55. RELATIONSHIP OF OFFENDER AND VICTIM. In this item we are interested in the nature of the relationship prior to the offense of the offender and victim. If the victim and the offender are of the same family including immediate or extended families enter FAMILY. If they are considered to be friends and interact at least occasionally, or if the victim and offender had met before but do not regularly or infrequently see each other indicate by entering FRIEND/ACQUAINTANCE. If the victim and offender have never seen each other before or met enter STRANGER. If there is more than one victim enter MULT. If nothing is known about the relationship between the victim and offender enter UNK.

56. USE OF A WEAPON. If any mention of a weapon was made in the case file on the instant offense, whether or not the

weapon was used, enter response alternative YES. If the record indicates no weapon was used enter the response alternative NO. If no mention is made of a weapon enter UNK. Note: Weapons may be defined broadly or narrowly by the criminal code in your particular state. By weapon always include such terms as guns, knives, clubs, broken bottles or blunt instruments. To determine whether items such as fingers in a coat, toy guns or shoes constitute a dangerous weapon, find out from your local prosecutor what the office policy is, if any. If you have any questions after speaking with the prosecutor call your monitor on the project staff. As with the above items where more than one offense may be included if there was a weapon used in one offense and not another enter YES.

57. WAS THERE A CONFESSION. Indicate here whether or not there is indicated by the police or prosecutor if a confession was recorded. If so, enter YES. If the record indicates that there is none enter NO. If information regarding this is unknown enter UNK.

58. PHYSICAL EVIDENCE. If the record indicates that any evidence including but not restricted to fingerprints, clothing, blood, hair, pry marks or signs of illegal entry, weapons and burglary tools, stolen items recovered, enter response alternative YES. Exclude from this category any eyewitness account. If the record indicates that no evidence was found enter NO. If no mention of evidence is made in the record enter response alternative UNK.

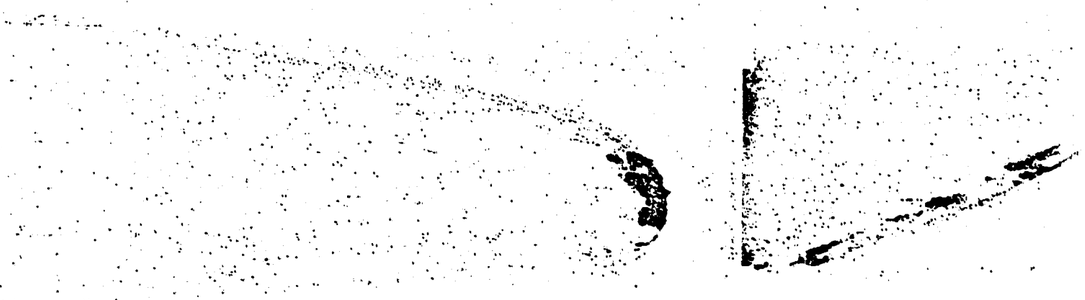
59. NUMBER OF WITNESSES. Enter the total number of witnesses mentioned in the case file. (e.g. 03) If the police report and prosecutor's records indicate no witnesses enter the number 00 . If no mention is made of any witnesses enter response alternative 99. In computing witnesses no differentiation will be made between quality of witnesses. If the record indicates possible witnesses include those in total number. Police witnesses will only be entered when a police officer was involved in terms of witnessing the crime. The mere fact that an officer filled out the complaint does not qualify him as a witness. If the record indicates possible witnesses, include those in the total number.

60. POSITIVE EYEWITNESS IDENTIFICATION. If the record indicates that through a line-up or other means a positive eyewitness identification has or can be made, enter YES. If the record specified no positive identification has been made or is likely to be made enter NO. If no mention is made of positive eyewitness identification of the defendant enter UNK.

61. MONETARY LOSS. If the record indicates the approximate or exact amount of loss through burglary or robbery circle the appropriate amount. This does not include in either burglary or robbery any damages inflicted upon the property through vandalism or entry onto the property. That is, if during a burglary a person steals $2,000 in merchandise and also inflicts $500 in property damage, include only the $2,000 in this column by entering the $1,001-5,000 response alternative. If no mention is made of monetary loss enter response alternative UNK.

62. PROPERTY DAMAGE. Indicate any damage to property while carrying out the crime. For instance, if the defendant broke down a door or damaged furniture or windows while committing an offense, circle the amount of damage specified in the record. If the record indicates there is no damage enter NONE. If no mentioned is made of property damage in the records or if no monetary amount is attached enter the response alternative UNK.

63. JUDGE AT SENTENCING. Indicate the number of the judge who sentenced the defendant. If the information is not contained in the records enter response alternative 99. If the individual was acquitted or found not guilty enter response alterantive 98. To determine the number of the judge, see your local field director for a list with the judges and corresponding numbers. Such a list should have been given you before you obtained the information from the case files.



IN COURT OBSERVATION FORM

APPENDIX K

LOCAL CASE I.D. #_____

OBSERVER _____

DATE: MO _____ DAY _____ YR _____

1. JURISDICTION 1 2 3 4 5 6
2. TIME PROCEEDING BEGAN: _____
3. TYPE OF COURT: MISDEMEANOR FELONY BOTH
4. NAME OF JUDGE: _____
5. TYPE OF DEFENSE COUNSEL: PD CA PRI NONE UN
6. CHARGES TO WHICH DEFENDANT PLED: A. _____ B. _____
   C. _____ D. _____ E. _____
7. SETTING FOR PROCEEDING:
   A. IN A GROUP AND OUT IN THE AUDIENCE
   B. IN A GROUP BEFORE THE BENCH
   C. IN A GROUP BEFORE THE BENCH WITH INDIVIDUAL FOLLOW-UP
   D. INDIVIDUALLY BEFORE THE BENCH
   E. NONE
8. NATURE OF LITANY: ORAL INDIVIDUAL ORAL STANDARD READ BY DEFENDANT SIGNED NONE
9. WHO RECITED CONSTITUTIONAL RIGHTS OF DEFENDANT: J PROS DEF MUL
10. WHICH OF THE FOLLOWING CONSTITUTIONAL RIGHTS WERE RECITED: TRIAL REMAIN SILENT CONFRONTATION OTHER (SPECIFY) _____ MUL
11. WHO ASKED DEFENDANT IF HE UNDERSTOOD THE RIGHTS HE WAS GIVING UP: J PROS DEF NONE
12. WAS IT NOTED THAT DEFENSE COUNSEL EXPLAINED THE DEFENDANT'S RIGHTS TO HIS CLIENT: YES NO

FACTUAL BASIS

13. WHO ASKED DEFENDANT IF HE WAS PLEADING GUILTY BECAUSE HE IS IN FACT GUILTY: J PROS DEF MUL NONE
14. WHO ASKED DEFENDANT ADDITIONAL QUESTIONS REGARDING THE OFFENSE BEHAVIOR: J PROS DEF MUL NONE
15. DID THE PROSECUTOR SHOW OR REPORT SOME OF THE STATE'S EVIDENCE: YES NO
16. DID THE STATE PRODUCE AT LEAST ONE WITNESS: YES NO

KNOWINGNESS AND VOLUNTARINESS OF PLEA:

17. WHO EXPLAINED THE CHARGES TO THE DEFENDANT: J PROS DEF NONE MUL
18. WHO ASKED THE DEFENDANT IF HE UNDERSTOOD THE NATURE OF THE CHARGES: J PROS DEF MUL NONE
19. WAS IT NOTED IF THE DEFENSE COUNSEL HAD EXPLAINED NATURE OF CHARGES TO DEFENDANT: YES NO
20. WHO NOTED THAT A PLEA AGREEMENT HAD BEEN REACHED: J PROS DEF MUL NONE
21. IF THERE WAS A PLEA AGREEMENT, WHAT RECORD WAS MADE OF IT:
   A. ONLY THAT A PLEA AGREEMENT HAD BEEN REACHED
   B. THE SPECIFIC AGREEMENT
   C. NO RECORD WAS MADE
   D. UNKNOWN
22. WHO ASKED IF PROMISES OTHER THAN A PLEA AGREEMENT HAD BEEN MADE: J PROS DEF MUL NONE
23. WHO ASKED IF ANYONE EITHER THREATENED, COERCED OR PRESSURED DEFENDANT TO PLEAD: J PROS DEF MUL NONE
24. DIRECT CONSEQUENCES: DID JUDGE SPECIFY WHAT MAXIMUM SENTENCE WAS PERMISSIBLE BY LAW: YES NO
25. WHO NOTED THAT THE DEFENDANT COULD BE SENTENCED AS A HABITUAL OFFENDER: J PROS DEF MUL NONE
26. WERE ANY COLLATERAL CONSEQUENCES OF PLEA NOTED (SPECIFY): _____
27. DID THE DEFENDANT MAINTAIN HIS INNOCENCE EVEN THOUGH HE PLED GUILTY: YES NO
28. DID THE JUDGE REFUSE TO ACCEPT THE PLEA OF GUILTY: YES NO
    IF YES TO ABOVE, STATE ANY REASONS IF GIVEN _____
29. TIME ENDED: _____
30. TOTAL TIME ELAPSED: _____

APPENDIX L

INSTRUCTIONS FOR FILLING OUT THE IN COURT OBSERVATION FORM

Introduction

The In Court Observation Form represents an attempt to observe the formal supervision of plea bargaining by judges. By formal supervision we mean only that part of judicial involvement in the plea bargaining process which usually takes place in open court, with the defendant present. It involves those proceedings which immediately follow formal entry of a plea of guilty by the defendant. Other involvement by the judiciary, either in chambers or elsewhere, where actual plea negotiations occur prior to entry of the plea is not covered by this form.

The courts conduct this formal supervision because of possible coercion inherent in the plea bargaining process and because it is essential that a plea be entered by the defendant knowingly and voluntarily. This is so because when a defendant pleads guilty a number of basic rights are waived (i.e., the right to a jury trial, the right to counsel to represent one at a jury trial, the right against self-incrimination). Under the Constitution and numerous Supreme Court cases such constitutional rights cannot be waived without a proper proceeding to determine whether they are being waived voluntarily, freely, knowingly and without any pressure.

The background of this in-court supervision and the rationale therefore are explained in pages 265-287 of the Phase I report of the project "Plea Bargaining in the United States". These pages have been supplied to you and you are urged to read them and become familiar with their contents before attempting to observe the formal supervision process and fill out the In Court Observation Form.

APPENDIX M

1. White, American, U.S.

Defendant's Race/Ethnic/Nationality

2. 25 years old

Defendant's Age

3. Male

commercial area the defendant accosted a male, age 19 with a knife and demanded money. The victim gave him his wallet which contained one ten dollar bill, his student identification card and two credit cards. Minutes later a passing police patrol car was summoned by the victim who gave a description of the defendant. Approximately 15 minutes after the offense the defendant was arrested seven blocks from the scene of the crime. The victim identified the defendant as the robber.

Basic Facts of the Case

40. Defendant was arrested 2 1/2 months ago

Length of Time Since Arrest in Instant Case

6. Defendant in community five years. Defendant is married three years, a stable marriage, first for defendant. Two children, male age 1 1/2 years and female age 6 months.

Community Ties/Marital Status/ Dependents

7. Normal intelligence. High school graduate. No college. School record is unremarkable,no record of disciplinary problems

Defendant's Intelligence and Education

8. Defendant is currently employed as a machine operator for local ceramic manufacturing plant. Defendant has held this position for 6 months. Defendant's record shows 10 jobs as machine operator in light to heavy industry over last 5 years, interspersed with periods of unemployment. No job has lasted more than six months. Usually defendant leaves rather than being fired.

Defendant's Employment Status

9. None

Defendant's Psychiatric Problems

Criminal History of Defendant's Family

11. None

Co-defendants

12. The trial judge is known to be lenient and considers probation in this type of case. He generally favors rehabilitative alternatives to incarceration.

Trial Judge's Reputation for Leniency

strong. However, this case has received no publicity or press coverage.

Public and Community Sentiment

14. Not an issue.

Propriety of Police Conduct After Arrest

42. Police arrested defendant 15 minutes after and 7 blocks from scene of offense, based on the following description provided by victim: "White male 19-25 yrs. of age." The defendant matched that description. The prosecutor conducted a follow-up interview with the victim. He was only able to add to the description that the defendant was of the right height and weight.

At scene of crime (approx. 3:00 P.M., one-half hour after offense), the victim said he was "sure that was the guy." But at an interview last week he said that the crime "happened so fast" that he couldn't be absolutely sure. It was ascertained that the victim was not contacted or pressured by defense counsel or the defendant.

The defendant did have $16.00 in cash on him, includig one ten dollar bill. It was not fingerprinted. Victim's wallet was not recovered. No weapons were found. There are no other witnesses to the crime.

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Evidence -- Substance of Available

16. The case is scheduled for trial in 7 days. It is unlikely the judge will grant a continuance

Date of Trial in Instant Offense & Probability of Continuance

17. This judge is an efficient administrator and is always current on the calendar. There is no backlog.

1. Probation
2. Work-Release
3. Vocational Rehabilitation Programs
4. Military Service
5. Psychiatric/Family Counseling
6. Diversion
7. Restitution

Available Alternatives to Incarceration

19. Defendant is presently released on his own recognizance.

Pretrial Release Status for this Robbery

21. Defendant claims he is innocent, that it is a case of mistaken identity. He sayd he was out walking for pleasure and was not at the scene of the crime.

They are particularly concerned with [illegible]. Beyond this, the arresting police officers have no attitudes specifically related to this case.

Police Attitude Toward Proposed Bargain

22. A. The victim is an art major specializing in sculpture and photography of the human body and face. He has never testified at a trial before and is a little uncomfortable about taking the stand.

B. The arresting police officer is a five-year veteran with much experience as a witness and comes across well on the stand.

Effectiveness of Witnesses at Trial.

23. A recent law school graduate who has been defending criminal cases for seven months. She is extremely aggressive, however, several of your fellow prosecutors have found that a reasonable plea negotiation can be accomplished. Her preparation is generally excellent and her courtroom presentation is generally adequate.

prosecuting criminal cases for seven months. She is extremely aggressive, however, several of your fellow defense counsel have found that a reasonable plea negotiation can be accomplished. Her preparation is generally excellent and her courtroom presentation is generally adequate.

Reputation of Prosecutor

	Arrests	Dispositions
(1)	One juvenile contact at age 14 for malicious mischief	Disposition unknown
(2)	One arrest age 18 for disorderly conduct	Dismissed

Reputation: Police do not know the defendant

Defendant's Prior Record & Reputation

5.

	Arrests	Dispositions
(1)	Three juvenile contacts,* one at age 14 for assault two age 16 both for unlawful entry	Disposition unknown
(2)	Arrest for burglary, age 18	Probation, 1 year.
(3)	Arrest for robbery, age 19	Dismissed
(4)	Arrest for attempt rape, age 21 - Dismissed	
(5)	Arrest for robbery, age 24	Dismissed

*In this jurisdiction defendants under age 18 are treated as juveniles.
Reputation: Police believe, through a reliable informant, but cannot prove, that defendant is responsible for several robberies in the area.

Defendant's Prior Record & Reputation

25. Defendant could pay restitution

Ability of Defendant to pay Restitution

26. Victim is concerned with street cirme in general, and is angry at the defendnat in particular for accosting him. However, the victim believes that his case has been well handled to this point by criminal justice system officials, and is willing to leave all decisions in the hands of the prosecutor.

27. Victim's Attitude Toward Bargain

Victim was walking down the street [illegible] girlfriend for a date later that evening. He was accosted by the defendant, a complete stranger, who demanded money. He was terrified and immediately complied. After handing over his wallet the defendant slashed him and knocked him down for no reason. The whole incident was over "very quickly".

Victim's Account of Incident

28. White, male (age 19) College student, no record, no prior victimizations

Victim Characteristics

29. Defendant at liberty, no restrictions. Not on probation, parole, or pretrial release or other supervision at time of instant offense.

Pretrial Release, Probation & Parole Status at Time of Offense

30. None

Aliases

31. Excellent

Physical Health

32. Moderate social drinker, no evidence of intoxication at time of arrest

Alcohol Use

43. The victim's arm was slashed by the robber without provocation and he was pushed to the ground. The victim was later taken to the hospital and received five stitches for the laceration he received.

Aggravating & Mitigating Circumstances of the Offense

34. Heterosexual

Sexual Orientation

35. None, defendant eligible for draft, but was not called

Military Record

36. Unknown

Religion

37. None

Detainers

38. Local resident for five years

Length of Local Residence

39. Unknown

Defendant's Interests & Activities

33. None

Drug Use

APPENDIX N

PLEA BARGAINING DECISION SIMULATION

General Instructions to Be

Read to the Respondent

(1) Do NOT Give the Respondent the Simulation Instruments Until you Read the Following

(2) READ: One of the goals of our study of plea bargaining in America is to achieve a systematic understanding of how prosecutor (defense attorneys) decide whether to negotiate a case and what offer should be made (accepted). One of the ways in which we are doing this is to use two hypothetical cases and to try to simulate "in slow motion" the process by which the decision regarding the plea is made. We are about to do the latter with you.

Enclosed in these folders are two hypothetical cases.

Assume that you are a senior prosecutor (defense attorney) and that a junior prosecutor (defense attorney) has come to you for advice about plea negotiating these cases. You have to tell her/him what is the best (worst) offer to which he/she should agree. However, initially you are told very little about the case. The object of the experiment is to see what additional information you would want to know before you can decide what the lowest offer should be. To get that information you have to choose from these cards (OPEN SIMULATOR AND SHOW CARDS).

Notice that at the bottom of each card (i.e., the part which is showing) there is a label describing what information that the card contains. In order to find out what that information is you must lift the card and read it. You may use as many cards as you want; and you may choose them in any order you want. However, as soon as you have as much information as you feel you need in order to properly advise your junior prosecutor (defense attorney), stop and tell us what your decision is.

As you choose cards I will record the identifying number which is on the upper left corner of the cards. Each time you read a card be sure to put all the cards back in their original "down" position before picking the next cards (so you can see all the cards agains). Once you

have chosen a card you may refer to it again later if you need to refresh your memory. (Note to Field Director: If this happens, do not count the card twice.)

Now before I give you the first case let me tell you about the jurisdiction in which you must assume you are operating. You are not operating in your own jurisdiction but one which has the following characteristics. (GIVE RESPONDENT A COPY OF THE SIMULATED JURISDICTION SHEET AND EITHER READ THE SHEET TO RESPONDENT OR LET HIM READ IT ALONE OR BOTH, AS YOU SEE FIT.)

CHARACTERISTICS OF SIMULATED JURISDICTION

(A copy of this may be handed to Respondent in the Plea Bargain Simulation)

In this jurisdiction the following conditions prevail:

(1) Prosecutors are permitted to present to the court plea agreements involving charge reductions and dismissals and sentence recommendations.

(2) These agreements are generally followed by the judges.

(3) Time served in pretrial custody is always deducted from sentences imposed.

(4) There are no mandatory sentences for repeat or habitual offenders.

(5) Any motions in a case are heard immediately prior to trial.

(6) No offenses are impeachable convictions.

(7) There is an individual (vs. a master calendar) system of case docketing. Every judge gets an equal share of the caseload and is responsible for disposing of it himself.

(8) There is a 90-day speedy trial rule.

(9) No youth corrections act.

Field Director:

(1) Hand folder to Respondent

(2) Repeat any parts of the directions that are necessary

(3) Be sure Respondent does not start rifling through the cards or flipping them up the wrong way.

(4) When the respondent has reached a decision be sure to determine whether the decision is a charge reduction, sentence recommendation, or both. If there is a sentence recommendation get the specific amount of time involved. If there is to be no sentence recommendation, and the prosecutor will stand mute, note this. If there is to be a charge reduction get the specific nature of this reduction, i.e., pleading to a lesser included felony or misdemeanor. In any event, be sure to get both a statement on sentence and a statement on charge from each respondent.

PLEA NEGOTIATION SIMULATION APPENDIX O

Response Sheet

Participant's Name:_____ Home Jurisdiction_____

Type of Participant: PROS.
PD
PRI

This case was presented: a. first
b. second

Years experience as above _____
Years experience as other _____
Type of other experience _____
Total years as lawyer _____

Type of case: (Evid., Priors)
R 1 (high, high)
R 2 (low, low)
R 3 (low, high)
R 4 (high, low)

B 1 (high, high)
B 2 (low, low)
B 3 (low, high)
B 4 (high, low)

1. _____	23. _____
2. _____	24. _____
3. _____	25. _____
4. _____	26. _____
5. _____	27. _____
6. _____	28. _____
7. _____	29. _____
8. _____	30. _____
9. _____	31. _____
10. _____	32. _____
11. _____	33. _____
12. _____	34. _____
13. _____	35. _____
14. _____	36. _____
15. _____	37. _____
16. _____	38. _____
17. _____	39. _____
18. _____	40. _____
19. _____	41. _____
20. _____	42. _____
21. _____	43. _____
22. _____	44. _____

Decisions: (1) a)Dismiss, (b) go to trial (c) plead
(2) If plead, what sentence would be recommended in court? _____
(3) If plead, what would the sentence be in terms of "real time" to serve in incarceration _____
(4) If plead, to what charge level: (a) as charged
(b) to lesser felony
(c) to misdemeanor
(5) If you were taking this case to trial, what is your probability of winning? _____%
(6) Give rationale:

APPENDIX P

Offense Code Interpretations

Code #	Name of Offense	La. Crim. Code	Maximum Sentence
01	Murder: First degree	14.30	Death
02	Aggravated rape	14.42	Death
03	Aggravated kidnapping where victin is not liberated unharmed before sentence imposed	14.44	Death
04	Murder: Second degree	14.30.1	Life
05	Aggravated kidnapping where victim is released unharmed	14.44	Life
06	Drugs:		
	1 Schedule I: manufacture, distribution by persons over 25 years to persons under 18 years	40.966(A)(B)	Life
	2 Distribution by persons over 25 to persons under 18	40.981(A)	Life
	3 Distribution by persons over 18 to persons under 18 and 3 years his junior of Schedule I narcotics	40.981(B)	Life
07	Armed robbery	14.64	99
08	Attempted:		50
	1 murder, first degree	14.27D(1)	
	2 aggravated rape	14.27D(1)	
	3 aggravated kidnapping	14.27D(1)	
	4 attempt or conspiracy of certain drug offenses: Schedule I: manufacture, distribution of narcotic	40.979	

9	Drugs: Second offense for anything included in Georgetown Code item #15(1) below	40.982	40
10	Aggravated burglary	14.60	30
11	Manslaughter	14.31	21
12	Conspiracy for a cirme which is punishable by death or life (see above)	14.26 27	20
13	Rape (simple or forcible)	14.43 & 14.43.1	20
14	Arson (aggravated or other related)	14.51 & 14.54 & 14.54.2 & 14.54.3	20
15	Drugs: 1 Distribution by persons over 18 to persons under 18 and 3 years his junior, any 2 Schedule I through V drug except Schedule I and II narcotics		20
	2 Second offense for anything covered under Georgetown Code # 23(1)(2)(3)(4)(5) below	40.982	20
	3 Attempt or conspiracy for any of following: (a) Schedule I: manufacture, distribution of non-narcotic (b) Schedule I: possession (c) Schedule II: manufacture, distribution (d) Schedule III: manufacture, distribution (e) Schedule IV: manufacture, distribution		
16	Extortion	14.66	15
	Aggravated criminal damage to property	14.55	15
18	Aggravated battery	14.34 & 14.34.1	10

19	Conspiracy or attempt to rape, simple or forcible	14.26	10
20	Simple arson with $500 or more damage; or conspiracy to aggravated arson or to other arsons	14.52. & 14.26	10
21	Theft and arsons, worthless checks $500 or more	14.67 & 14.67.3 & 14.71	10
22	Forgery	14.72	10
23	Drugs:		
	(1) Schedule I, manufacture, distribution of non-narcotic	40.966(A)(B)	10
	(2) Schedule I: possession	40.966(C)	10
	(3) Schedule II: manufacture, distribution	40.967(A)(B)	10
	(4) Schedule III: manufacture, distribution	40.968 (A)(B)	10
	(5) Schedule IV: manufacture, distribution	40.969(A)(B)	10
	(6) Second offense for anything covered under Georgetown Code # 33(1)(2)(3)(4)(5) below	40.982	10
	(7) Attempt or conspiracy for any of following: (a) Possession marihuana with second conviction (b) Schedule II: possession (c) Schedule III: possession (d) Schedule IV: possession (e) Schedule V: possession	40.979	10
24	Simple burglary	14.62	9
25	Conspiracy to aggravated criminal damage to property	14.26	7.5
26	Negligent homicide	14.32	5

27	Simple Robbery	14.65	5
28	Simple kidnapping	14.45	5
29	Illegal use of Weapons with second or more convictions with in 5 years	14.94	5
30	Illegal carrying weapons third conviction within 5 years	14.95	5
31	Carnal knowledge of juvenile	14.80	5
32	Pandering	14.84	5
33	Drugs:		
	(1) Possession of marijuana second offense	40.966(d)	5
	(2) Schedule II: Possession	40.967(c)	5
	(3) Schedule III: Possession	40.968(c)	5
	(4) Schedule IV: Possession	40.969(c)	5
	(5) Schedule V: Manufacturing Distribution or possession	40.970(1)(13)(c)	5
34	Conspiracy to:	14.26 &	2.5
	(1) Negligent homicide	40.979	
	(2) Simple Robbery		
	(3) Carnal knowledge of juvenile		
	(4) Pandering		
	(5) Illegal use of weapons where second or more convictions within 5 years		
	(6) Illegal carrying weapons with third conviction within 5 years		
	(7) Possession of any drug schedule I through V		

35	Inciting a felony	14.28	2
36	Indecent behavior with juvenile	14.81	2
37	Contributing to delinquency of juvenile	14.92	2
38	Illegal use of weapons, first offense; or illegal carrying weapons, second offense within 5 years	14.94 & 14.95	2
39	Theft, receiving stolen property or issuing worthless checks, $100 - $499.99	14.67 & 14.67.3 & 14.69 & 14.71	2
40	Jumping bail in a felony case	14.110.1	
99	All Misdemeanors		
97	All other felonies		

APPENDIX Q

IN-COURT OBSERVATION CODEBOOK

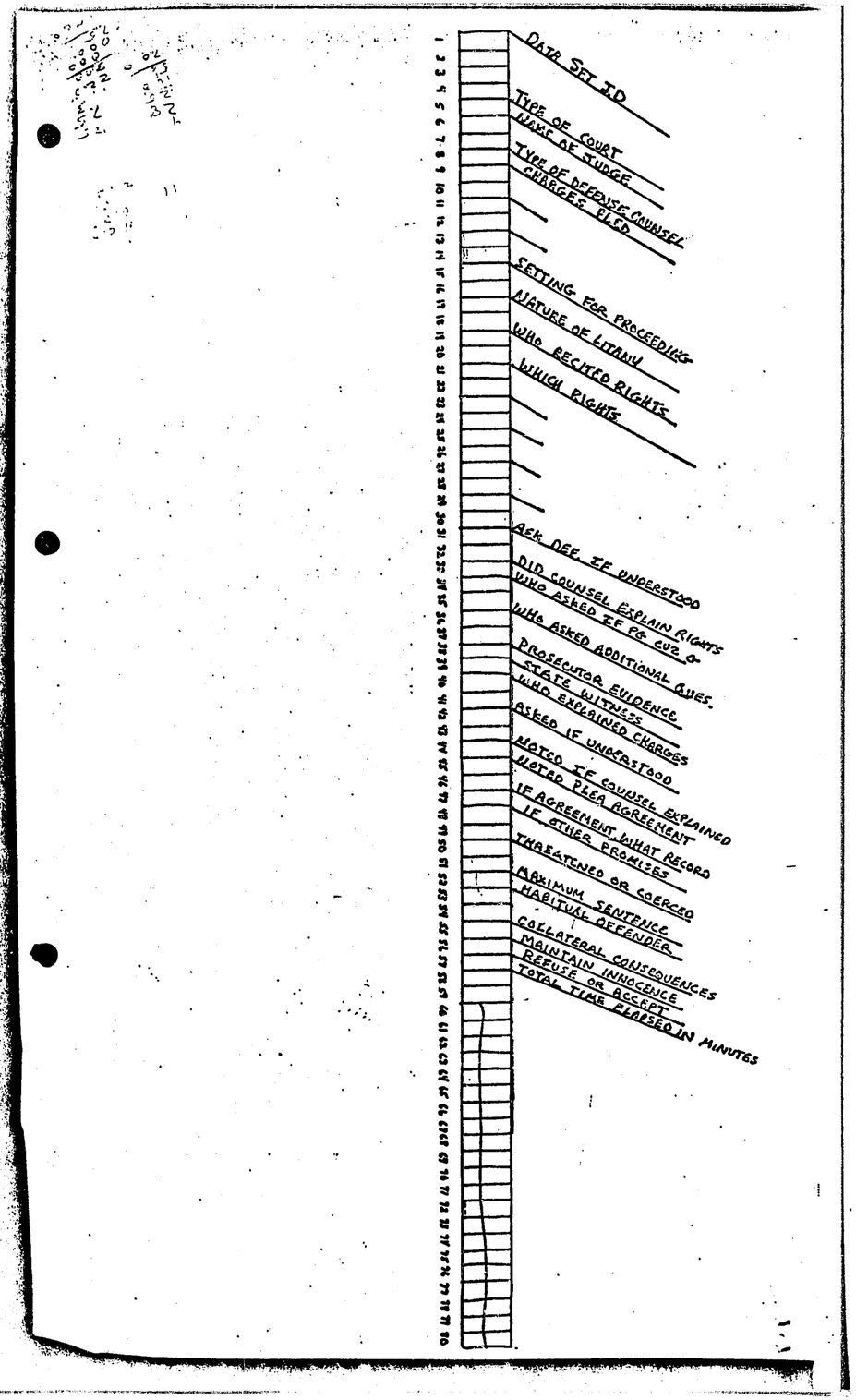
Col. #	Var. #	Description	Codes	Ques. #
01, 02 03, 04	01	Data Set ID	Actual #	1
05	02	Type of Court	0=Misdemeanor 1=Felony 2-Both 3=Other 9=Missing Data	3
06, 07	03	Name of Judge	Actual # on Code Sheet	4
08	04	Type of Defense Counsel	0=PD 1=CA 2=PRI 3=None 4=UNK 9=Missing Data	5
09, 10, 11 12, 13, 14	05	Charges Pled	Code # from Code Sheet 6(Diff. fo Juris. 00=NoChrg	
15, 16	06	Setting for Proceeding	00=A 01=B 02=C 03=D 04=E 05=In group, in chambers 06=Individual in Chambers 07=In group, in chambers w/indiv. followup 08=In group & in audience w/indiv. followup before bench 09=Co-defendants 10=Defendant in absentia 11=Other 99=Missing Data	7
17, 18	07	Nature of Litany	00=Oral Individual 01=Oral Standard 02=Read by Defendant 03=Signed 4=Oral Indiv. & Oral Standard 05=Oral Indiv. & Read by Def. 06=Oral Individual & signed 07=Oral Standard &Read by Def. 08=Oral Standard & Signed 09=Read by Defendant and Signed 10=None 11=Other 99=Missing Data	8

Col. #	Var. #	Description	Codes	Ques. #
19, 20	08	Who recited rights	00=Judge 01=Prosecutor 02=Defense 03=Judge and Prosecutor 04=Judge and Defense 05=Judge, Pros & Defense 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=Counsel recited prior to proceeding, and judge asked if understood 10=Not recited 11=Other 99=Missing Data	9
21, 22, 23 24, 25, 26 27, 28, 29 30	09	Which rights	00=No additional rights 01=Trial (Includes right to present witnesses burden of proof, right of making defense, right to testify, due process of state's burden, right to present evidence right to subpeona witnesses, trial by jury, to prove elements, right to plead not guilty, picking of jury) 02=Remain silent 03=Confrontation (Includes right to cross-examine) 04=Conpulsory Process 05=Right to Appeal 06=Motion to suppress 07=Protest search on constitutional grounds 08=Right to Attorney (Free of cost 09=Compulsory service 10=Right to additional time on charge 11=Reasonable doubt 12=Free record 13=Right to plead guilty before jury 14=Other 15=None 16=Unknown 99=Missing Data	10

Col. #	Var. #	Description	Codes	Ques. #
31, 32	10	Ask defendant if understood	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros, & Def 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=None 10=Other 99=Missing Data	11
33	11	Did Counsel Explain Rights	0=Yes 1=No 9=Missing Data	12
34, 35	12	Who Asked if Plead guilty because guilty	00=J 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defendant 05=Judge, Pros, & Def 06=Prosecutor & Defense 07=Translator 08=Judge & Ct. Administrator 09=None 10=Other 99=Missing Data	13
36, 37	13	Who asked additional questions	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros. & Def. 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=None 10=Other 99=Missing Data	14
38	14	Prosecutor Evidence	0=Yes 1=No 9=Missing Data	15
39	15	State Witness	0=Yes 1=No 9=Missing Data	16
40, 41	16	Who explained charges	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros. & Def. 06=Pros & Defense 07= Translator 08=Judge & Ct Administrator 09=Judge read BOI 10=Judge read Indictment 11=Formal Reading Waived 12=None 13=Other 99=Missing Data	17
42, 43	17	Asked if Understood	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros. & Def. 06=Pros & Defense 07=Translator 08=Judge & Ct Administrator 09=Counsel stated he'd gone over statement w/defendant 10=Formal reading waived 11=None 12=Other 99=Missing Data	18
44	18	Noted if counsel explained	0=Yes 1=No 2=Missing Data	19
45, 46	19	Noted Plea agreement	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros, & Def 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=None 10=Other 99=Missing Data	20
47	20	If agreement, what record	0=A 1=B 2=C 3=D 4=No plea agreement 5=N/A 6=Other 9=Missing Data	21

Col #	Var. #	Description	Codes	Ques. #
48, 49	21	If other promises	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros, & Def 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=Counsel Stated 10=None 11=Other 99=Missing Data	22
50, 51	22	Threatened or coerced	00=Judge 01=Prosecutor 02=Defense 03=Judge &Prosecutor 04=Judge & Defense 05=Judge, Prosecutor, & Def 06=Prosecutor & Defense 07=Translator 08=Judge & Ct Administrator 09=Counsel Stated 10=None 11=Other 99=Missing Data	23
52	23	Maximum Sentence	0=Yes 1=No 2=No, Def Attorney did 3=No, Prosecutor stated 4=No, Other did 9=Missing Data	24
53, 54	24	Habitual Offender	00=Judge 01=Prosecutor 02=Defense 03=Judge & Prosecutor 04=Judge & Defense 05=Judge, Pros, & Def 06=Prosecutor & Defense 07=N/A 08=Already adjudicated a habitual offender 09=None 10=Other 99=Missing Data	25

Col. #	Var. #	Description	Codes	Ques. #
55	25	Collateral consequences	0=Yes, Unspecified 1=No 2=No parole possible for __ years 3=No option for probation 4=Pts. on driver's license 5=Record will show __ nunber of felony convictions 6=Restitution 7=Other 9=Missing Data	26
56	26	Maintain Innocence	0=Yes 1=No 9=Missing Data	27
57	27	Refuse or Accept	0=Yes 1=No 9=Missing Data	28
58, 59	28	Total time elapsed in minutes	Actual number	30


DATA SET ID
TYPE OF COURT
NAME OF JUDGE
TYPE OF DEFENSE COUNSEL
CHARGES PLED
SETTING FOR PROCEEDING
NATURE OF LITANY
WHO RECITED RIGHTS
WHICH RIGHTS
ASK DEF IF UNDERSTOOD
DID COUNSEL EXPLAIN RIGHTS
WHO ASKED IF PG GVR OF
WHO ASKED ADDITIONAL QUES.
PROSECUTOR EVIDENCE
STATE WITNESS
WHO EXPLAINED CHARGES
ASKED IF UNDERSTOOD
NOTED IF COUNSEL EXPLAINED
NOTED PLEA AGREEMENT
IF AGREEMENT WHAT RECORD
IF OTHER PROMISES
THREATENED OR COERCED
MAXIMUM SENTENCE
HABITUAL OFFENDER
COLLATERAL CONSEQUENCES
MAINTAIN INNOCENCE
REFUSE OR ACCEPT
TOTAL TIME ELAPSED IN MINUTES

FORTRAN CODING FORM

PROGRAM | NAME

ROUTINE | DATE | PAGE OF

TYPE	STATEMENT NO.	CONT.	FORTRAN STATEMENT (0 = ZERO, Ø = ALPHA O; 1 = ONE, I = ALPHA I; 2 = TWO, Z = ALPHA Z)	SEQUENCING NUMBER
1	0012	4	3110100000301000101305110100000d901010001011000100071011r0	
1	0020	3	509400000310101100000000109109091112111042101010711104	

IN COURT OBSERVATION FORM

SAMPLE

OBSERVER Tolman

DATE: NO 6 DAY 16 YR 7-

1. JURISDICTION (1) 2 3 4 5 6 7
2. TIME PROCEEDING BEGAN: 10:10
3. TYPE OF COURT: MISDEMEANOR FELONY (BOTH)
4. NAME OF JUDGE: Coleman
5. TYPE OF DEFENSE COUNSEL: PD (CA) PRI NONE UN Bass
6. CHARGES TO WHICH DEFENDANT PLED: A. robbery 1st B. _____ C. _____ D. _____ E. _____
7. SETTING FOR PROCEEDING:
   A. IN A GROUP AND OUT IN THE AUDIENCE
   B. IN A GROUP BEFORE THE BENCH
   C. IN A GROUP BEFORE THE BENCH WITH INDIVIDUAL FOLLOW-UP
   D. (INDIVIDUALLY BEFORE THE BENCH)
   E. NONE
8. NATURE OF LITANY: ORAL INDIVIDUAL (ORAL STANDARD) READ BY DEFENDANT SIGNED NONE
9. WHO RECITED CONSTITUTIONAL RIGHTS OF DEFENDANT: (J) PROS DEF MUL
10. WHICH OF THE FOLLOWING CONSTITUTIONAL RIGHTS WERE RECITED: (TRIAL) REMAIN SILENT (CONFRONTATION) OTHER (SPECIFY) appeal, reasonable doubt, witness on own behalf MUL
11. WHO ASKED DEFENDANT IF HE UNDERSTOOD THE RIGHTS HE WAS GIVING UP: (J) PROS DEF NONE
12. WAS IT NOTED THAT DEFENSE COUNSEL EXPLAINED THE DEFENDANT'S RIGHTS TO HIS CLIENT: (YES) NO

ACTUAL BASIS:

1. WHO ASKED DEFENDANT IF HE WAS PLEADING GUILTY BECAUSE HE IS IN FACT GUILTY: (J) PROS DEF MUL
2. WHO ASKED DEFENDANT ADDITIONAL QUESTIONS REGARDING THE OFFENSE BEHAVIOR: J PROS DEF MUL (NO)
3. DID THE PROSECUTOR SHOW OR REPORT SOME OF THE STATE'S EVIDENCE: (YES) NO
4. DID THE STATE PRODUCE AT LEAST ONE WITNESS: YES (NO)

KNOWINGNESS AND VOLUNTARINESS OF PLEA:

1. WHO EXPLAINED THE CHARGES TO THE DEFENDANT: (J) PROS DEF NONE MUL
2. WHO ASKED THE DEFENDANT IF HE UNDERSTOOD THE NATURE OF THE CHARGES: (J) PROS DEF MUL NO
3. WAS IT NOTED IF THE DEFENSE COUNSEL HAD EXPLAINED NATURE OF CHARGES TO DEFENDANT: YES (NO)
4. WHO NOTED THAT A PLEA AGREEMENT HAD BEEN REACHED: J (PROS) DEF MUL NONE
5. IF THERE WAS A PLEA AGREEMENT, WHAT RECORD WAS MADE OF IT:
   A. ONLY THAT A PLEA AGREEMENT HAD BEEN REACHED
   B. (THE SPECIFIC AGREEMENT)
   C. NO RECORD WAS MADE
   D. UNKNOWN

   dismiss after Negotiation
6. WHO ASKED IF PROMISES OTHER THAN A PLEA AGREEMENT HAD BEEN MADE: (J) PROS DEF MUL NONE
7. WHO ASKED IF ANYONE EITHER THREATENED, COERCED OR PRESSURED DEFENDANT TO PLEAD: (J) PROS DEF MUL NONE

   free + voluntary
8. DIRECT CONSEQUENCES: DID JUDGE SPECIFY WHAT MAXIMUM SENTENCE WAS PERMISSIBLE BY LAW: (YES)
9. WHO NOTED THAT THE DEFENDANT COULD BE SENTENCED AS A HABITUAL OFFENDER: J PROS DEF MUL NA
10. WERE ANY COLLATERAL CONSEQUENCES OF PLEA NOTED (SPECIFY): NO

11. DID THE DEFENDANT MAINTAIN HIS INNOCENCE EVEN THOUGH HE PLED GUILTY: (YES) NO Alford is too intoxicated to know if he did it
12. DID THE JUDGE REFUSE TO ACCEPT THE PLEA OF GUILTY: YES (NO)
    IF YES TO ABOVE, STATE ANY REASONS IF GIVEN _____
13. TIME ENDED: 10:55
14. TOTAL TIME ELAPSED: 1:05 min judicial questioning more extensive than usual

one charge robb 1st d/w

IN COURT OBSERVATION FORM

#002

SAMPLE

OBSERVER Tolman

DATE: NO 7 DAY 14 YR 72

NB Statement not filed as required

1. JURISDICTION (1) 2 3 4 5 6 7
2. TIME PROCEEDING BEGAN: 11:00 30
3. TYPE OF COURT: (MISDEMEANOR) FELONY BOTH
4. NAME OF JUDGE: [illegible]
5. TYPE OF DEFENSE COUNSEL: (PD) CA PRI NONE UN Chris Wyatt
6. CHARGES TO WHICH DEFENDANT PLED: A. M/L 3 B. _____ C. _____ D. _____ E. _____
7. SETTING FOR PROCEEDING:
   A. IN A GROUP AND OUT IN THE AUDIENCE
   B. IN A GROUP BEFORE THE BENCH
   C. IN A GROUP BEFORE THE BENCH WITH INDIVIDUAL FOLLOW-UP
   D. (INDIVIDUALLY BEFORE THE BENCH)
   E. NONE
8. NATURE OF LITANY: ORAL INDIVIDUAL ORAL STANDARD READ BY DEFENDANT SIGNED (NONE)
9. WHO RECITED CONSTITUTIONAL RIGHTS OF DEFENDANT: J PROS DEF MUL NONE
10. WHICH OF THE FOLLOWING CONSTITUTIONAL RIGHTS WERE RECITED: TRIAL REMAIN SILENT CONFRONTATION OTHER (SPECIFY) _____ MUL
11. WHO ASKED DEFENDANT IF HE UNDERSTOOD THE RIGHTS HE WAS GIVING UP: J PROS DEF (NONE)
12. WAS IT NOTED THAT DEFENSE COUNSEL EXPLAINED THE DEFENDANT'S RIGHTS TO HIS CLIENT: YES (NO)

ACTUAL BASIS:

1. WHO ASKED DEFENDANT IF HE WAS PLEADING GUILTY BECAUSE HE IS IN FACT GUILTY: J PROS DEF MUL NO
2. WHO ASKED DEFENDANT ADDITIONAL QUESTIONS REGARDING THE OFFENSE BEHAVIOR: J PROS DEF MUL NO
3. DID THE PROSECUTOR SHOW OR REPORT SOME OF THE STATE'S EVIDENCE: YES (NO)
4. DID THE STATE PRODUCE AT LEAST ONE WITNESS: YES (NO)

KNOWINGNESS AND VOLUNTARINESS OF PLEA:

1. WHO EXPLAINED THE CHARGES TO THE DEFENDANT: J PROS DEF (NONE) MUL
2. WHO ASKED THE DEFENDANT IF HE UNDERSTOOD THE NATURE OF THE CHARGES: J PROS DEF MUL (NONE)
3. WAS IT NOTED IF THE DEFENSE COUNSEL HAD EXPLAINED NATURE OF CHARGES TO DEFENDANT: YES (NO)
4. WHO NOTED THAT A PLEA AGREEMENT HAD BEEN REACHED: J PROS DEF (MUL) NONE
5. IF THERE WAS A PLEA AGREEMENT, WHAT RECORD WAS MADE OF IT:
   A. ONLY THAT A PLEA-AGREEMENT HAD BEEN REACHED
   B. THE SPECIFIC AGREEMENT
   C. (NO RECORD WAS MADE)
   D. UNKNOWN

   the specific agreement was stated but no statement having required to be recorded
6. WHO ASKED IF PROMISES OTHER THAN A PLEA AGREEMENT HAD BEEN MADE: J PROS DEF MUL (NONE)
7. WHO ASKED IF ANYONE EITHER THREATENED, COERCED OR PRESSURED DEFENDANT TO PLEAD: J PROS DEF MUL (NONE)
8. DIRECT CONSEQUENCES: DID JUDGE SPECIFY WHAT MAXIMUM SENTENCE WAS PERMISSIBLE BY LAW: YES
9. WHO NOTED THAT THE DEFENDANT COULD BE SENTENCED AS A HABITUAL OFFENDER: J PROS DEF MUL NA
10. WERE ANY COLLATERAL CONSEQUENCES OF PLEA NOTED (SPECIFY): _____

11. DID THE DEFENDANT MAINTAIN HIS INNOCENCE EVEN THOUGH HE PLED GUILTY: YES (NO)
12. DID THE JUDGE REFUSE TO ACCEPT THE PLEA OF GUILTY: YES NO
    IF YES TO ABOVE, STATE ANY REASONS IF GIVEN _____
13. TIME ENDED: 16:40:05
14. TOTAL TIME ELAPSED: 3min 75 sec majority of time taken up by def statement which was much more

1.

White/ American/ U.S.

Defendant's Race/Ethnic/Nationality

2. 22 years old.

Defendant's Age

3. Male

Defendant's Sex

4.

At 11:30 P.M. police respond to a radio dispatch about an individual seen exiting the window of a house. The police apprehend the defendant one block from the house. Resident of the house reported that money and jewlery were taken. At the time of the apprehension the defendant had $207.50 in his pocket. Also, jewelry was found in a bush three feet away from him. Entry to the house had been gained through an unlocked but closed window. A neighbor had called in the prowler report.

Basic Facts of the Case

38.

Defendant reports family centered activities and participation in local sports. He is member of a local league softball team.

Defendant's Interests & Activities

6. Defendant is married with one child, age 3

Defendant's Marital Status

7.

Normal intelligence, high school graduate, one year junior college, not currently in school.

Defendant Intelligence & Education

8.

Defendant is an employee of a local fast food restaurant. Has held this position for six months. Has had several prior positions since leaving school three years previously, none longer than six months.

Defendant's Employment Status

9. None

Defendant's Psychological Problems

10. None

Criminal History of Defendant's Family

11. None. There were no other individuals involved in this offense.

Co-Defendants

12. Judge has reputation for severity in burglary of residence cases. he can be persuaded to go along with the sentence recommendation of the prosecutor.

Trial Judge's Reputation for Leniency

CONTINUED

2 OF 3

13. Community sentiment against burglary is strong. However, this case has received no publicity or press coverage.

Publicity/Community Sentiment

14. Not an issue.

Propriety of Police Conduct After Arrest

15. The police officers responding to the radio dispatch saw the defendant who matched the description given of a young while male with red plaid trousers. Hewas a block away from the scene of the burglary. When he saw the police he made a motion. It appeared to the police that he was throwing something into a nearby bush. When the bush was checked the police found jewelry which was later positively identified as belonging to the the burglary victim. Also, the victim indicates that two hundred dollars (ten 10's, and 20 5's) were stolen. The defendant was carrying $207.50 (ten 10's, 21 5's and some change) at the time of arrest. No fingerprints were found at the victim's home. The neighbor reporting the prowler was not identified.

40.

The police officers responding to the radio dispatch stopped the defendant because he matched the general description on the radio dispatch (namely, a white male) and because he was one block from the scene of the burglary. Jewelry which was later positively identified by the victim as his was found in a bush three feet away from the place where the defendant was stopped by the police. The neighbor who reported the prowler could not be located in order to give an identification. The victim's house was checked for fingerprints but none matching the defendant's were found. The jewelry could not be subjected to fingerprint analysis. The victim was unsure of the amount of money stolen.

16.

This judge has a hard time keeping up with his docket. He is already over 50 cases behind and his docket is growing.

Backlog of Docket of Judge to Whom Case is Assigned

17.

Defendant was arrested in this case 28 days ago.

Length of Time Since Arrest in Instant Offense

18.

1. Probation
2. Work-Release
3. Vocational Rehabilitation Programs
4. Military Service
5. Psychiatric/Family Counseling
6. Diversion
7. Restitution

Alternatives to Incarceration

19.

Police are generally opposed to plea bargaining. The arresting officer thinks the defendant should get some time.

Police Attitudes Toward Proposed Bargain

20.

Defendant said he was walking on his way home and that someone ran past him and threw something into a nearby bush. He says he won the money he had on him in a crap game with people he cannot identify.

Defendant's Account of the Incident

21

(1) Police Officer A has been on force for four months. He is the one who saw the defendant first and who conducted the search. He has not yet testified in any case at trial.

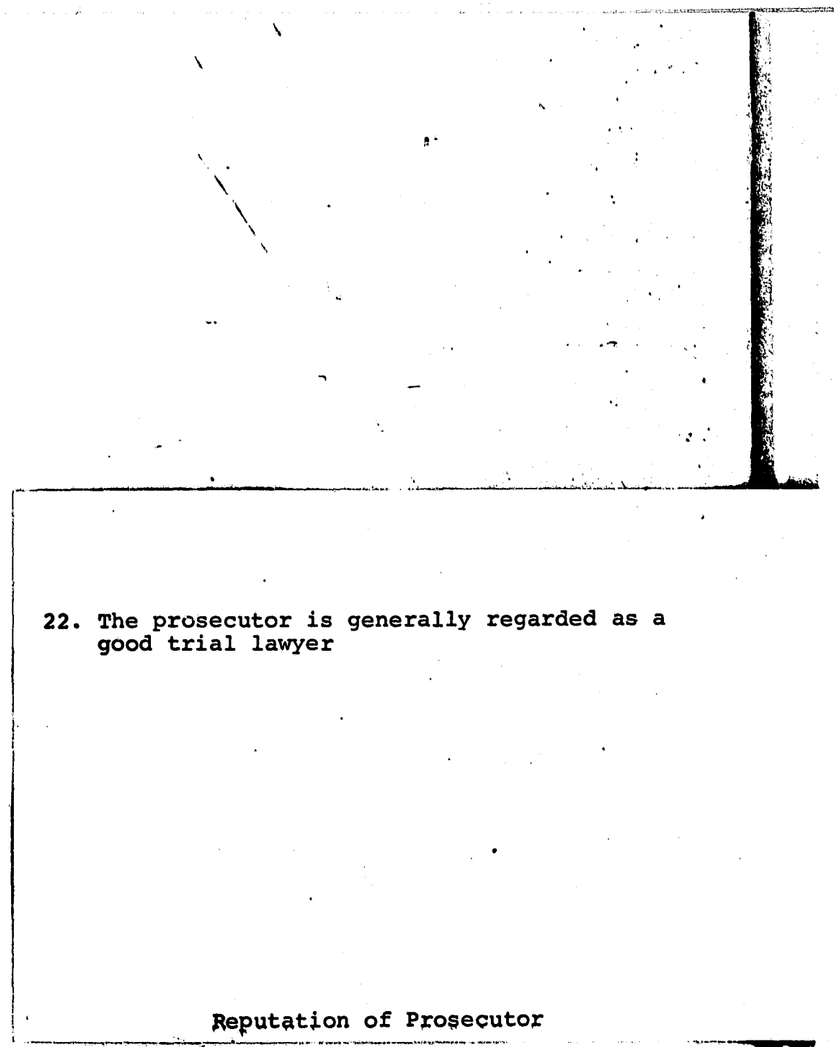
(2) Police Officer B has been on the force over seven years and has testified in numerous cases.

(3) The burglary victim is a middle aged white male who has never testified at trial before. He has no hesitancy about testifying and he can positively identify the jewelry.

(4) The neighbor who called in the prowler report refused to identify himself and could not be found for use as a witness.

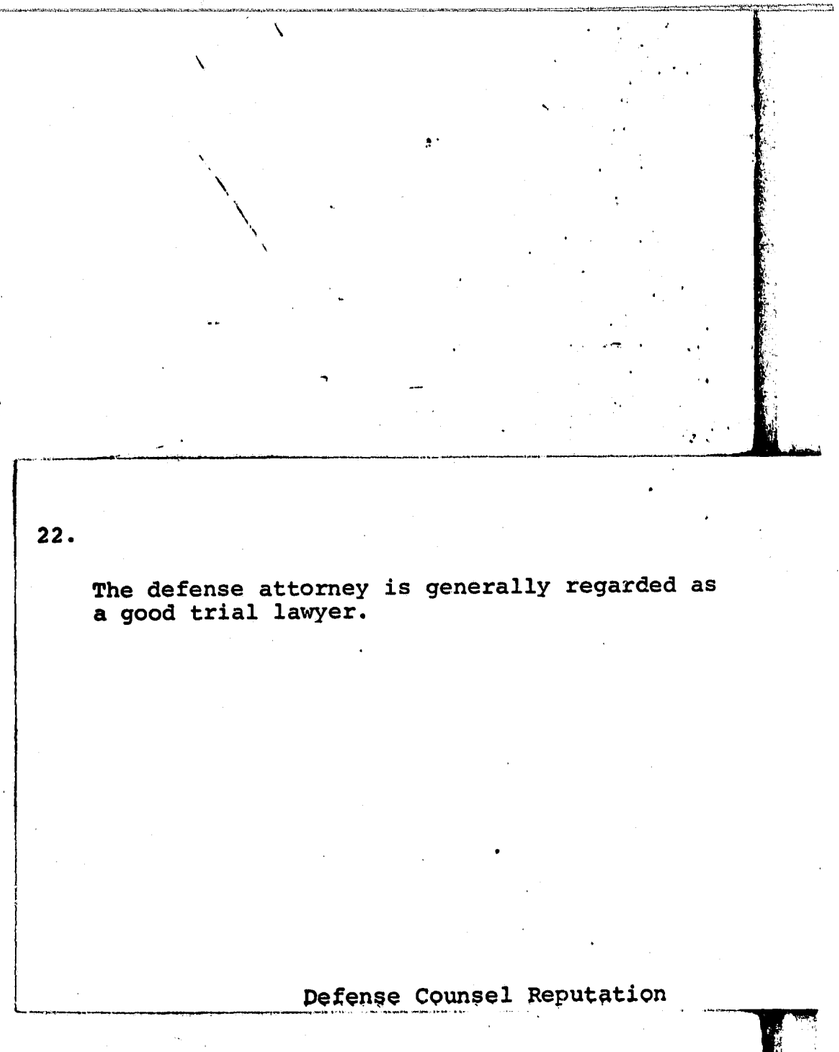
Effectiveness of Witness at Trial

22. The prosecutor is generally regarded as a good trial lawyer



22.

The defense attorney is generally regarded as a good trial lawyer.



23.

The junior prosecutor has had no prior contact with this attorney.

Relationship Between Prosecutor & Defense Attorney

23.

The junior defense attorney had no prior contact with this prosecutor.

Relationship Between Prosecutor & Defense Attorney

24.

Defendant could pay restitution.

Ability of Defendant to Pay Restitution

(Burglary)

You are a senior prosecutor and a junior prosecutor comes to you for advice about a plea negotiation he is involved with.

The defendant is charged with burglary at night and is willing to plead for consideration.

Assume that the law in your jurisdiction provides that the penalty for burglary at night is up to a 10-year maximum. Any sentence less than 10 years, including probation is legally permissible.

The indictment/information has been filed. No motions have been filed. The case is scheduled for trial within two weeks.

Introductory Statement

(Burglary)

You are a senior defense attorney and a junior defense attorney comes to you for adfice about a plea negotiation he is involved with.

The defendant is charged with burglary at night and is willing to plead for consideration.

Assume tha the law in your jurisdiction provides that the penalty for burglary at night is up to a 10-year maximum. Any sentence less than 10 years, including probation is legally permissible.

The indictment/information has been filed. No motions have been filed. The case is scheduled for trial within two weeks.

Introductory Statement

25.

Victim is upset and feels the defendant should be "behind bars".

Victim's Attitude Toward Bargain

26. White male, 40, respected businessman, no record, no prior victimizations.

Victim's Race, Age, Sex, etc.

5.

Arrests	Dispositions
(1) 1 juvenile contact, 5 years earlier	Adjudicated "involved"
(2) 1 juvenile contact, 3 years earlier	Adjudicated "not involved"
(3) Burglary 2 1/2 years earlier	Dismissed
(4) Burglary, 9 months earlier	Dismissed
(5) Burglary, 8 months earlier	(No entry on rap sheet)

Reputation: Police believe, through a reliable informant, he is responsible for several other burglaries. They know he was in the neighborhood but can't prove he aided them.

Defendant's Prior Record & Police Reputation

39.

Arrests	Dispositions
(1) I juvenile contact, 7 years earlier	No adjudication
(2) 1 juvenile contact 5 years earlier	Adjudicated "Not involved"
(3) Shoplifting, 25 days before instant offense	(No entry on rap sheet)

Reputation: Arresting police officer in instant offense says defendant "hangs around with the wrong kind of people."

Defendant's Prior Record & Police Reputation

28.

He was on release on his own recognizance for a shoplifting case which has since been dropped.

Pretrial Release, Probation/Parole Status at Time of Offense

29.

None

Defendant's Aliases

30.

Good

Physical Health of Defendant

32.

Defendant denies drug use but arresting officer says the crowd the defendant hangs around with is "into hard drugs." Defendant was not on drugs at time of arrest.

Record of Drug Use by Defendant

33.

Heterosexual.

Defendant's Sexual Orientation

34.

None

Defendant's Military Record

35.

Protestant - Baptist

Religious Affiliation of Defendant

36. None

Detainers on Defendant

43.

The victim was in the house and asleep at the time of the crime. No contact was made between the burglar and anyone in the house. There was no property damage to the house or its contents.

Aggravating & Mitigating Circumstances of Offense

27.

Released on own recognizance

Defendant's Pretrial Release & Status for this Burglar

37. Lifelong resident in local community

Length of Local Residence of Defendant

END